In Confidence

Office of the Minister for the Environment

Chair

Cabinet Economic Growth and Infrastructure Committee

Permitted Activities Proposals for Exclusive Economic Zone Environmental Effects Regulations

Proposal

1. This paper seeks approval for the policy proposals that will underpin regulations pursuant to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Executive summary

2. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the Act) fills a gap in the legislative framework by establishing a regime for managing the environmental effects of activities in the Exclusive Economic Zone (EEZ) and on the continental shelf. The Act will be brought into force by Order in Council once regulations are developed.

3. Our EEZ has many areas of ecological interest and contains non-renewable resources of significant economic potential (several $100 million in royalties a year), including petroleum deposits, phosphate nodules, massive sulphides and iron sands. The proposals in this paper are in line with the Government's Business Growth Agenda as they seek to enable economic growth while maintaining environmental integrity.

4. The Act enables regulations to be made to classify low impact activities as "permitted", with or without conditions, meaning they can be carried out as of right if any relevant conditions are met. Unless otherwise classified by regulations, the Act sets the default classification for activities as "discretionary", meaning they require a marine consent from the Environmental Protection Authority (EPA) before proceeding. This paper presents proposals for permitted activities, including which activities should be permitted and how they should be controlled.

5. This paper also presents regulatory proposals for a cost recovery regime to fund the EPA's statutory functions. The apportionment of costs across the EPA's functions has financial implications for both private industry and the Crown.

6. Under the Act, if an activity is not expressly permitted or prohibited in regulations, it is discretionary, requiring an operator to seek a marine consent from the EPA before they can carry out their activity. I propose that activities such as the production phases of minerals mining and petroleum, decommissioning of petroleum structures and any new, to date unassessed activities are discretionary. I do not propose to prohibit any activities.

7. Four permitted activities are proposed: seismic surveying, certain activities within the prospecting and exploration phases for seabed minerals and petroleum, submarine cabling, and marine scientific research. All of these activities have been expertly assessed by the National Institute of Water and Atmospheric Research (NIWA) as having an environmental impact that is no more than minor, or that can be managed to no more than minor with appropriate conditions. This is lower than the maximum

threshold in the Act; that an activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances.

8. Notification, monitoring and reporting requirements are proposed to control permitted activities, with specific requirements for sensitive environments. Allowance has been made for New Zealand's international obligations in respect of submarine cables and international research. Operators planning to undertake the proposed permitted activities will have to notify the EPA two months prior to conducting the activity and provide planning detail that includes ways in which the activity can be modified if a sensitive environment is located. All information supplied to the EPA will be published on its website.

9. Although informed by consultation that has included expert scientific input, regulations development has been constrained to some extent by incomplete information. Although the monitoring framework and other work across government will lead to better information in time, this shortage of information has led to a cautious initial approach and a proposal to review the regulations five years after their commencement.

Background

10. The exclusive economic zone (EEZ) is the area of sea, seabed and subsoil 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 deeper water). Together, New Zealand's EEZ and continental shelf cover an area over 20 times the land mass of New Zealand, among the largest in the world. Not much is known about New Zealand's EEZ and continental shelf. Only 24 percent has been mapped and only 15 percent to a standard necessary to distinguish likely seafloor habitats, most of which require further sampling to confirm. However, we do know that the area is home to critical fish species, many iconic marine mammals and areas of high, sometimes unique biodiversity on and around seamounts, deepwater coral reefs, hydrothermal vents and other features.

11. Our EEZ also holds non-renewable resources of significant economic potential, such as petroleum deposits, phosphate nodules, massive sulphides and iron sands. The petroleum industry (offshore and onshore) generates around $400 million in annual royalties and around $300 million in annual company tax revenue for government. Petroleum is also New Zealand's fourth largest merchandise export. The minerals mining industry in New Zealand's EEZ and continental shelf is in its infancy and while prospecting activity has taken place by three companies, no mining licences have been issued. The potential royalties from minerals production is accordingly difficult to estimate, but based on the modelling work undertaken as part of the review of mineral royalty rates, it is thought to be around $250 million over the lifetime of mine development for phosphate modules, massive sulphides and iron sands.

12. The EEZ Act and the proposals for regulations set out in this paper 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 inextricably linked and focuses on getting the right regulatory settings to enable economic growth while maintaining our environmental integrity. These proposals aim to strike this balance. With the management of environmental effects built into my consideration of which activities to permit, these activities can proceed without the time delays and costs imposed by the case by case consideration required under the marine consent process that discretionary activities must go through. While it is appropriate that higher impact proposals go through the marine consent process, it would be disproportionate to place this requirement on lower impact activities.

13. The Act was passed to manage the environmental effects of activities not already regulated in New Zealand's environmental management regime [CAB Min (11) 19/7B and CAB Min (12) 26/7B refer]. The gap-filling nature of the EEZ regime means that it does not regulate activities that are covered by existing legislation, such as the Fisheries Act 1996 and the Maritime Transport Act 1994. These other regulatory regimes include controls on specific matters that have an environmental impact.

14. The purpose of the Act is to promote the sustainable management of the natural resources of the EEZ and continental shelf. The Act sets up a general framework of rules and consents, similar to, but more streamlined than the Resource Management Act 1991 (RMA). There are three classes of activity: permitted, discretionary and prohibited; although it should be noted that permitted activities under the EEZ regime are different and broader than under the RMA. The regulations bring this framework to life, by filling out the detail, including which activities are expressly permitted, and under what conditions. This includes any notification, monitoring and reporting requirements.

15. If an activity is not expressly permitted or prohibited in regulations under the Act, it is discretionary, requiring operators to apply for a marine consent before they can carry out their activity. The consent process is set out in the Act, and allows a case by case consideration of larger scale activities. The added costs of this process are justified by the scale of the activities and the need for a case by case assessment of their effects. Discretionary activities will include the production phases of seabed mining and petroleum, any decommissioning of associated production structures and any other activities not explicitly classified as permitted (e.g. any unforeseen novel activities).

16. The EPA may set conditions on consented activities. The process involves operators preparing an impact assessment and includes public notification and hearings. Obtaining consent is likely to take several months, with the EPA's costs largely falling to the operator, estimated between $250,000 and $700,000 per consent. Until the EPA's decision is known, an operator will not know if they can undertake the activity or not, or under what consent conditions.

17. I do not consider the regulations need to canvass rules and standards for discretionary activities at this time. I consider the considerations set out in the Act provide sufficient guidance for the EPA as the decision-maker.

18. The proposals for regulating activities in this paper do not include proposals to classify petroleum exploration drilling. Given the importance of this activity, and the technical complexity surrounding it, I am testing proposals with officials and with my colleagues. I propose to bring a paper to Cabinet early in 2013 with recommendations for the regulation of petroleum exploration drilling.

19. I do not propose to prohibit any activities at this time because I am satisfied with the robustness of the discretionary marine consent process. I consider it would be premature to prohibit activities before methods to implement them have been fully developed, tested and monitored through an adaptive management regime under the Act's marine consent process.

20. The Act received royal assent on 3 September 2012. It will come into force no later than 1 July 2014, or earlier by Order in Council once regulations are developed.

Comment

Regulations approach and development

21. In considering what to classify as permitted activities under the regulations, I have considered a range of matters, as I am required to do under the Act. These matters are set out more fully in Appendix 1.

22. I have considered the level of environmental effects, and whether a marine consent process would be more appropriate. I have also had regard to feedback received in consultation, and taken into account the matters in s 33(3) of the Act which include the impact on the environment and existing interests, the importance of protecting rare and vulnerable ecosystems, our international obligations, economic benefit and industry best practice.

23. I considered other approaches. Some of these were of a much more prescriptive nature than what I am proposing in this paper. These prescriptive approaches would have produced an uncertain and cumbersome framework, less able to manage environmental effects.

Implications of this approach for the EPA

24. For permitted activities, the EPA is not able to undertake an assessment of the effects of the proposed activity, for example, to decide whether the activity should proceed in the intended location. The EPA is also not able to assess the standard of information it is provided, such as whether the operator's plan to avoid, remedy or mitigate their likely effects is adequate. This is appropriate for activities that are permitted and I consider requirements to publish information will incentivise adequate planning for likely effects, and assist in ensuring an acceptable standard of information is supplied.

Overview of proposed regulations

25. After considering statutory requirements, I propose four groups of permitted activities, subject to certain conditions, as set out in Table 1 below:

Table 1: overview of permitted activities

Group	Sensitive environments conditions	Monitoring and reporting conditions
1: Seismic surveying	No	No
2: Prospecting and exploration for seabed minerals	Yes	Yes
3: Cable laying	No	Yes
4: Marine scientific research	Yes	Yes

26. Conditions on permitted activities will form part of a package of incentives to ensure operator compliance and to manage the environmental effects of activities. This package will also include preventing the sale of material and specific conditions for sensitive environments.

27. In terms of those activities that are expressly permitted, I propose regulations that:

- limit permitted activities to those low-intensity activities assessed as having up to a minor level of routine effects on the environment and on existing interests
- set conditions to manage routine effects to ensure they remain minor, based on the type of operating environment and the best available scientific advice
- are industry specific, to provide clarity to users and the public
- contain measures to limit the scale, intensity and duration of the activity
- take into account the sensitivity and regenerative capacity of the environment in which the activity is undertaken.

The proposals

Group 1: Seismic surveying

28. Seismic surveying gathers information about the shape of the seafloor and the layers beneath it by a ship sending and receiving acoustic sound waves. Seismic surveys are carried out by marine scientists and by other industries, including the petroleum industry. Seven to eight surveys are conducted each year, and this may increase as interest in our offshore petroleum reserves grows.

29. I propose to permit seismic surveying under the regulations, subject to mandatory compliance with the *2012 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations* (the Code). The Code was recently updated with industry input. The Code is monitored by the Department of Conservation (DOC) and requires marine mammal, passive acoustic monitoring observers on ships, and activity reports. I propose to incorporate the Code by reference in the EEZ regulations until regulations are developed under the Marine Mammals Protection Act 1978. I expect that DOC and the EPA will formalise a process by which DOC informs the EPA of non-compliance with the Code so the EPA can investigate.

30. Within the Code, three different levels of power are recognised for generating the sound waves. Level 1 uses high-capacity, high-energy air guns, level 2 smaller-capacity air guns and level 3 either low-energy, electronic acoustic sources or small, low-capacity air guns. Levels 1 and 2 create acoustic disturbance that can affect marine mammals.

31. This condition would apply to any seismic survey operation, regardless of the industry it is carried out in. I am satisfied that this condition will manage the environmental effect of this activity, given the Code's requirements for observers and activity reports.

Group 2: the prospecting and exploration phases of seabed mineral and petroleum activities (excluding petroleum exploration drilling)

32. Group 2 comprises every activity undertaken in seabed minerals prospecting or exploration. Group 2 also includes all petroleum activities[1] except exploration drilling and production. These activities have been expertly assessed as having no more than a minor environmental effect or can be managed to ensure the environmental effects are minor.[2] In many cases they have a negligible effect. Operators may take samples of the seafloor, for example by using probes or coring devices, or by dredging a small area. They may also place instruments and moorings or ballast on the seafloor. (Examples of activities can be found in Appendix 3).

33. Structures (e.g. drilling rigs) and objects such as anchors and moorings affect only the area of seabed they touch. Although there are some effects from structures sinking into the seabed, these do not differ markedly with depth.

34. Due to their minor environmental effect, I do not propose to set any conditions specific for these activities. I do propose that notification, monitoring and reporting conditions (see paragraphs 62 to 72) and conditions to minimise the effects to sensitive environments (see paragraphs 53 to 61) will apply.

35. I propose to specifically classify maintenance and removal activities of structures and objects associated with prospecting and exploration as permitted. Removing structures and objects from the seabed placed there during a permitted activity (i.e. during

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[1] These activities include all prospecting activities and certain exploration activities such as carrying out sampling or placing a structure on the seabed.

[2] MacDiarmid, A, *et al*, 2011, *Expert Risk Assessment of Activities in the New Zealand Exclusive Economic Zone and Extended Continental Shelf*, NIWA, Wellington, NZ. Note that any associated oil spill risk, for example from vessels conducting activities, would continue to be managed under Part 200 of the Marine Protection Rule.

prospecting or exploring) is a discrete activity requiring specific regulation (decommissioning of structures and requirements to remove structures will continue to be regulated under Part 200 and 180 of the Marine Protection Rules respectively). Removal is unlikely to affect an area of the seabed larger than the area affected by the original placement of the structure or deposit of the object. I therefore propose to allow removal of structures and objects associated with prospecting and exploration activities without further conditions, other than notification, monitoring and reporting conditions (see paragraphs 62 to 72). I also propose that the conditions relating to sensitive environments not apply to removal activities. Maintenance activities are unlikely to have any additional effect, and are essential for the safe operation of structures. As such, I propose maintenance of structures be permitted without conditions.

Measures to limit size, scale and duration of activities

36. I am satisfied that all activities undertaken in Group 2 are unlikely to have any environmental effects that are more than minor. However, I consider it prudent to place some limitation on these activities in order to regulate their size, scale and duration to ensure the effects remain no more than minor. I have considered the use of numeric thresholds, for example, by limiting the size of a dredge or the cubic metres of material it could remove from the seabed. However, when officials interrogated these parameters in detail with scientists, such spatial and volume thresholds were considered highly uncertain in practice. Such limits are arbitrary, difficult to comply with, hard to monitor and ultimately unable to provide any meaningful limitation on activities.

37. Instead, I propose to permit these activities provided material removed during prospecting and exploration phases of seabed minerals activities is not sold. I consider this will incentivise operators not to remove any more valuable material than is necessary during the course of a sampling programme, and therefore minimise environmental effects. This would also align with the Crown Minerals Act 1991 (CMA) (which does not currently apply to minerals on the continental shelf but will soon be incorporated into the Continental Shelf Act 1964 through an amendment via the Crown Minerals (Permitting and Crown Land) Bill to cover minerals activities on the continental shelf) because a mining permit is required in order to mine. This condition would not need to apply to petroleum exploration. The duration of this activity is already restricted by CMA regulations and preventing the sale of extracted petroleum would not have any impact on environmental effects.

38. It will be difficult for operators to flout this condition. My officials were advised by New Zealand Petroleum and Minerals that anyone who wishes to sell material removed during the prospecting or exploration stages of mineral extraction will need to first seek approval from them. In addition the EPA could set up arrangements with companies likely to buy or on-sell such material and request they notify the EPA if a breach of this condition is suspected.

39. In addition, I propose the notification, reporting and monitoring conditions (refer paragraphs 62 to 72), and the sensitive environments conditions (refer paragraphs 53 to 61) apply to seabed minerals and petroleum prospecting and exploration activities. Along with the prevention of the sale of material (excluding extracted petroleum), these conditions will manage environmental effects and ensure activities are of small scale and low impact.

Group 3: Submarine cabling

Cable laying

40. Specific regulation is required for submarine cable laying due to the protections under the United Nations Convention on the Law of the Sea (UNCLOS), to which New Zealand is a signatory. UNCLOS provides for the right of all States to lay submarine cables and pipelines on the continental shelf, unimpeded by the coastal State, subject

to the coastal State's right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines. While the coastal State has an overall obligation to "protect and preserve" the environment, the low environmental impact of undersea cables is clearly reflected in UNCLOS. I have considered these factors as well as the high economic importance to New Zealand of such cables.

41. I propose to permit the laying of submarine cables with only the notification, monitoring and reporting conditions (refer paragraphs 62 to 72). Given UNCLOS recognises laying submarine cables as a freedom which States have in another State's EEZ, it would be inappropriate for New Zealand to charge operators for undertaking this activity. As such, I do not propose to recover the costs of processing or monitoring this activity. Unlike prospecting for minerals or exploring for petroleum, I do not propose to extend the sensitive environments conditions to cable laying. Industry submissions were that these environments are avoided by cable layers due to their difficult, and therefore expensive terrain. Given the protected status of this activity under UNCLOS and the limited environmental impact of cable laying (essentially the act of placing a cable the size of a garden hose on the seabed), I consider it hard to justify additional environmental regulation on this activity.

Cable maintenance and removal

42. I propose that for maintenance and removal, submarine cables be treated like other industries. That is, that the maintenance of cables is permitted with no conditions and removal is permitted subject to the notification, monitoring and reporting conditions.

Seismic surveying and seabed sampling by the cable industry

43. I propose to permit seismic surveying and seabed sampling in preparation for laying cables, with the same conditions as anyone else conducting these activities. This is because the environmental impacts of seismic surveying and sample collection are the same regardless of the industry using the information. I am advised that the cabling industry seldom, if ever, undertake seismic surveying and sampling. Instead, they generally rely on historical data.

Group 4: marine scientific research

44. Marine scientific research includes a wide range of sampling methods, placing instruments and depositing structures on the seabed. Research adds to our knowledge of the EEZ and gathers information for industry.

45. Many (although not all) of the research activities are the same as those described earlier under Group 2, such as taking samples by coring, drilling or dredging. All of these activities were assessed as having either a minor or in many cases a negligible effect on the environment. (Detail of activities can be found in Appendix 2.)

46. I propose to permit marine scientific research subject to the notification, monitoring and reporting conditions. I also propose that conditions relating to sensitive environments and the removal and prevention of sale apply to this activity.

47. I do not propose to recover processing or monitoring costs from marine scientific researchers where the research is government funded (the onus would be on researcher to provide evidence of their funding source). Otherwise government would in effect be paying itself with the net result of reducing marine research funding by increasing overheads on public marine research. Where research is commissioned by industry, charges will apply.

Foreign marine scientific research

48. Similarly to submarine cabling, under UNCLOS New Zealand has a duty to allow certain foreign marine scientific research activities in our EEZ and continental shelf. I propose

to permit activities undertaken by foreign marine scientific researchers (with the same conditions as other research), consistent with our UNCLOS obligations. It should be noted that the monitoring and reporting requirements under the regulations will integrate with an existing process led by the Ministry of Foreign Affairs and Trade which approves, in consultation with agencies such as the EPA, requests to undertake marine scientific research in New Zealand's EEZ and continental shelf, under UNCLOS. The existing consent process considers grounds for withholding consent under UNCLOS which include direct significance for the exploration and exploitation of natural resources, drilling into the continental shelf and the use of explosives or harmful substances.

49. In recognition of the fact New Zealand scientists generally do not face charges when they conduct research in other jurisdictions and given the valuable information foreign research activities can provide for New Zealand, I do not propose to recover processing or monitoring costs from foreign marine scientific researchers exercising their freedoms under UNCLOS.

Sensitive environments

50. In response to submissions, officials across government, with assistance from NIWA, advise me that it is possible to identify environments that are 'sensitive' – that is, environments that are important or especially vulnerable because of their biophysical characteristics as set out in s 28(1)(a) of the Act. These characteristics, which include regenerative capacity, are set out more fully in Appendix 3, and include environments containing coral thickets or reefs, sponge gardens, hydrothermal vents and methane seeps.

51. The approach I propose aims to manage the scale, intensity and duration of permitted activities in these areas. While the sensitivity of these environments is sufficiently certain to include them in regulations, the location of such environments is less well understood. While we don't have enough information yet to map the locations of all these environments, the habitat types can be identified. After future reviews, it may be possible to protect specific sites.

Sensitive environments – the "four Rs" approach

52. I propose the following three-stage process for operators to mitigate the effects of their activities on sensitive environments. I recommend this process only apply to the activities in Groups 2 and 4.

53. Stage 1: Prior to departure, operators undertake an Initial Environmental Assessment. An Initial Environmental Assessment would be a desktop assessment of the environment in which their activity will be carried out. This process would assess whether the location they are considering is known to, or is likely to include a sensitive environment. The operator might at this point choose a location that is less likely to include a sensitive environment, unless the purpose of their activity relates to sensitive environments (e.g. scientific research of corals; prospecting for phosphate nodules). Even if the operator does not expect to operate in a sensitive environment, they would be required to create a contingency plan, outlining what they will do if at any point they find evidence of a sensitive environment (for example a dredge pulls up some coral). Contingency planning will use the "four Rs" (below) when considering how to avoid or mitigate the environmental effect on the sensitive environment:

- relocate the activity if possible or
- reduce the amount of contact with the seafloor or
- replace the intended method with lower impact method/s or
- refine the method/s (e.g. take smaller samples).

54. Officials intend to provide information on applying the four Rs in non-statutory guidance.

55. Stage 2: The operator would be required to submit the information gathered in Stage 1 to the EPA, notifying the EPA of their proposed activity (along with other notification requirements proposed later in this paper). They may then undertake their activity, and the operator would be required to comply with the contingency plan they prepared if they discover a sensitive environment. Requiring operators to comply with their own contingency plan creates an incentive for them to specify low compliance contingency methods. This makes it important for the regulations to outline the contingency plan requirements in sufficient detail to ensure such assessments adequately avoid and mitigate the effects of activities on sensitive environments. During this stage operators would also be required to fill out a log book describing the actual activity taken to avoid or mitigate effects to sensitive environments. They would be required to submit a completed log book to the EPA at weekly intervals while conducting their activity.

56. Stage 3: The operator would be required to submit a post-activity report to the EPA (set out in the Monitoring and Reporting section), which would include a report on how the four Rs were applied to minimise the impact of the activity. The final completed log book would need to be submitted at the same time as the post-activity report, no more than 3 months after the activity is complete. The nature of the information in this report would also contribute to New Zealand's understanding of the impact of activities on sensitive marine environments.

57. The ability of the EPA to ensure and enforce high-quality reporting is limited by the statutory scheme: permitted activities do not require approval and so any available recourse is limited. As such, the EPA will not be able to make any judgements on the quality of the process. It can only assess whether or not the process has been followed.

58. The EPA will be able to carry out enforcement or other action if they have reason to suspect this process has not being followed.

59. However, other incentives will help to ensure operator compliance:

- the potential for future regulatory reviews to make activities discretionary if permitted processes are not well followed
- any performance issues in the permitted stage coming to light during the publicly open marine consent process required to enter production
- acting in accordance with the permitted activity conditions in the exploration or prospecting phases reducing compliance costs and saving time and money when operators choose to move into production. For example, fulfilling reporting conditions would mean some of the work necessary for the consent process had already been done.

60. I also propose that Initial Environmental Assessments and post-activity reports to the EPA are published on the EPA's website. In carrying out this requirement, the EPA would have to consider any grounds for withholding information under the Official Information Act 1982, for example, due to commercial sensitivity.

Proposals for notification, monitoring and reporting

61. Effective notification, monitoring and reporting are essential to the success of the EEZ regime; addressing compliance, increasing information about the EEZ and allowing the EPA to monitor cumulative effects.

62. I propose to include a requirement on operators to notify relevant iwi and hapu. Relevant iwi and hapu include any customary marine title holders under the Marine and Coastal Area (Takutai Moana) Act 2011, who are listed as having existing interests under s 4 of the Act. The purpose of notification is to provide an opportunity for iwi and

hapu to begin a process of engagement with the operator and outline the nature of their interests and views on an area, so that operators undertake their activity in light of this knowledge. The proposal will be supported by guidance prepared by the EPA.

63. I propose the following set of notification, monitoring and reporting conditions apply to all permitted activities except seismic surveying.

Notification

64. I propose that before a permitted activity commences, the operator must:

- notify the EPA of the activity, (via a prescribed form) at least 2 months' prior to it commencing
- provide the EPA with an Initial Environmental Assessment which will contain information to enable an understanding of the activity and its impact. The Initial Environmental Assessment would include:
    - a general description of the activity, including methods, the proposed date of commencement, and its approximate duration
    - the coordinates of the broad area within which activity is to be conducted
    - a general description of the environment likely to be encountered and where that environment is expected to be sensitive, a description of how the stage 1 approach will be applied
    - for marine scientific research and Group 2 minerals and petroleum activities, a contingency plan to demonstrate how the stage 1 approach will be applied should an unexpected sensitive environment be encountered.
- require the EPA to publish all Initial Environmental Assessments on its website
- require operators carrying out permitted activities to
    - notify relevant iwi and hapu, including any customary marine title holders under the Marine and Coastal Area (Takutai Moana) Act 2011, of the nature and location of intended permitted activities no later than six weeks prior to conducting the activity
    - provide the EPA with a report no later than two weeks prior to conducting the activity, on who was contacted, how and when they were contacted and the outcome of any dialogue. The detail will be commensurate with the scale and significance of the effects of the activity, relating to those iwi that responded to notification.

65. Under proposed amendments to the CMA, offshore petroleum and minerals operators will be required to report annually on their engagement with iwi and hapu under the CMA. The current CMA proposals require notification of iwi and hapu whose rohe includes or abuts the area of activity. I propose that the iwi and hapu notification under these regulations apply to offshore petroleum and minerals operators only until the CMA amendments are in force, after which time they will no longer apply.

66. The technical detailed content of the Initial Environmental Assessment is still being worked through. I propose that Cabinet authorise me to approve any further minor and technical matters.

Monitoring and reporting

67. The most effective way for the EPA to monitor compliance is onboard observation. I consider placing observers on five random voyages a year would be sufficient to incentivise compliance with conditions. However, costs for this requirement are not

clear. Under other regimes the costs for onboard marine observers range between $500/day to $5000/day.

68. It is difficult to know what the actual costs will be before the regime takes effect. Trained scientists could be used to check accurate compliance with the 'four Rs' but their costs would be high. Untrained officials, at a lower cost, could check action is being taken by operators but would unlikely be able to accurately judge for consistency with planned mitigation measures. Eighty percent of the costs would need to be borne by the operator selected for random observation. High costs could significantly impact smaller industries, such as scientific research and small-scale mineral prospecting, even if costs were spread across all users. Therefore, I propose random observers be approved in principle, subject to further investigations into the likely costs and necessary skills for observers.

69. After the permitted activity is completed, I propose that the operator must provide a post-activity report to the EPA, including:

- the date and time the activity was undertaken, and its duration
- GPS coordinates of the activity's actual location
- for activities required to consider sensitive environments, the Stage 3 reporting requirements (i.e. the results of applying the four Rs)
- an estimate of the footprint of the activity on the seabed, including an estimate of the volume of any material removed and a description of any indicators of sensitive environments.

70. The EPA would review the post-activity report. If the operator had found a sensitive environment but it was evident they did not adjust their activity as outlined in their Initial Environmental Assessment, they would have breached the permitted activity conditions. The EPA could then take enforcement action.

71. I propose that EPA to publish all post- activity reports on its website.

Proposals for cost recovery

72. The Act states that the EPA must take all reasonable steps to recover the direct and indirect costs associated with its functions and services under the Act, where money is not appropriated by Parliament for that purpose. Therefore, the regulations need to provide for the recovery of those costs.

73. Section 143(3) of the Act sets out the criteria for determining the method of cost recovery. Among other factors, this section requires regard to equity, and that the funding of a service or function is recovered from the person who benefits from the performance of the function; or whose action or inaction gives rise to the need for that function.

74. In accordance with Treasury guidelines, I consider the cost recovery approach should take into account where the benefit of the function falls (i.e. whether it has private, public or mixed benefit).

Cost recovery of private benefit functions

75. I consider the following functions to have private benefit, because they are driven by the operator carrying out the activity. Accordingly, I propose these functions are cost recovered from the operator:

a. all marine consent functions, including pre-application assistance, processing and deciding marine consents, transfer, review and cancellation

b. reviewing and certifying information for permitted activities (excluding foreign marine scientific research and government funded domestic research)

c. EPA rulings required under the grandfathering arrangements in the Act

d. receiving and reviewing impact assessments or any other documentation required under the transitional arrangements

76. I propose to recover actual and reasonable costs in line with how the EPA recovers costs for Nationally Significant Proposals under the RMA.

77. Costs recovered for all private benefit activities will be calculated as follows:

- Charging 100 percent of any direct costs such as expert advisors, decision maker costs, travel, site visits, hearing costs, printing, notification, circulation of documents, facilitation services, transcriptions services, fixed term contractors and anything else which results from the necessity to carry out that function; and
- Charging a maximum hourly rate for EPA staff time as shown in Table 2.

Table 2: Charge out rates of the Environmental Protection Authority

Staff level	Rates
Principal technical advisor	$290.00
Project Leader	$140.80
Senior advisor	$116.12
Advisor	$103.75
Administrator	$97.43

78. The hourly rates in Table 2 are based on the rates currently charged for the Nationally Significant Proposals RMA function of the EPA, adjusted for the 2013/14 financial year. However, the principal technical advisor rate is a new rate, and acknowledges the specialized skills and experience required to carry out the function. The hourly rate is based on that paid by the Australian federal petroleum industry regulator. Charges will be accumulated and invoiced to the operator or applicant on a regular basis.

79. For marine consent applications, the EPA will seek a refundable deposit of 20 percent of the estimated total cost of the pre-lodgment, processing and decision on the marine consent. The EPA will not undertake any pre-application or advisory work until the deposit has been received.

Mixed benefit functions

80. Mixed benefit functions include:

- monitoring marine consent conditions
- monitoring permitted activities.

81. These monitoring functions include receiving, reviewing, verifying and certifying information during or after activities have been carried out. They include any investigations required in relation to the information received. The public benefit aspect of monitoring and investigations is the information gained, which will build our knowledge of the EEZ, including knowledge of cumulative effects which cannot be attributed to a single operator or activity. These functions also assure the public of appropriate regulatory oversight.

82. I propose that for these mixed benefit functions, operators pay 80 percent of costs, with the remaining 20 percent funded by the Crown. Costs will be apportioned in accordance with the hourly rates set out in Table 2, and direct costs in paragraph 78, above.

83. It is difficult to accurately estimate costs due to the uncertainty associated with both the volume and complexity of applications. I consider it is necessary that the fees and

charges set out in regulations are reviewed one year following the commencement of the regulations.

Funding of public benefit functions

84. The public benefit functions I propose are funded by the Crown are:

a. education and raising public awareness

b. internal government and international reporting

c. enforcement action, including investigations (Crown will seek to have costs awarded if enforcement is successful)

d. investigation which does not lead to enforcement (including those initiated by the public and any scheduled compliance checks by the EPA)

e. additional monitoring, e.g. of cumulative effects, or planned monitoring

f. permitted activity processing for submarine cabling

g. permitted activity processing for foreign marine scientific research

h. permitted activity processing for government funded domestic marine scientific research

i. monitoring of submarine cabling, foreign marine scientific research and government funded domestic marine scientific research

j. business system and process development.

Risks

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Consultation

91. Section 32 of the Act requires me to consult with the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected when developing regulations and I have done so. On 7 May 2012 Cabinet approved the release of a discussion document [CAB Min (12) 15/8 refers].

92. Developing regulations has been a collaborative process, involving extensive consultation with stakeholders, including the Iwi Leaders Group, members of the petroleum and minerals mining industries, scientific community, environmental NGOs, civil society and other government agencies.

93. The proposals were developed by applying an expert risk assessment commissioned from NIWA by the Ministry for the Environment. Public consultation on initial proposals ran from May to June 2012, based on the discussion document *Managing our Oceans.* 11,834 submissions were received, of which 326 were individualized submissions.

94. Analysis of submissions resulted in officials seeking further involvement from technical industry and CRI scientists to better understand some of the technical issues raised in consultation. Combined industry and science workshops were held in late August.

95. During August 2012 scientific expertise within government was also drawn on to consider the best regulatory response for sensitive environments. In late October, officials invited stakeholders to a workshop to explain the changes in approach from that earlier consulted on.

96. In November officials sought nominations from NGOs, government agencies and CRI's for international oceans experts to review the process for managing the effects of activities on sensitive environments. Nominations were provided by government departments and CRI's. Two experts with a broad expertise and knowledge base about marine ecology and human impacts on the marine environment were asked to provide their view on the adequacy of the proposed policy in terms of how well it is likely to manage effects to the environment.

97. A strong interest has been expressed in further consultation on an exposure draft of the regulations. I consider this may be advantageous in order to ensure industry has a clear understanding of what will be expected of them. However, I consider that it is highly desirable that the regulations are in force without undue delay, to provide investment certainty for operators. I therefore propose that consultation on an exposure draft is undertaken so long as it does not unduly delay the regulations from coming into effect. It would need to be clearly communicated that the purpose of consultation was not to re-litigate the policy that underpinned the regulations but rather to ensure those who will be asked to comply with regulations consider the wording is sufficiently clear to enable them to understand their obligations.

98. This paper has been developed in consultation with the following agencies: Ministry of Business, Innovation and Employment, the Environmental Protection Authority, The Treasury, Department of Conservation, Ministry of Transport, Maritime New Zealand, Ministry for Primary Industries, Te Puni Kōkiri, Ministry of Foreign Affairs and Trade, Ministry of Justice, Department of Internal Affairs, New Zealand Customs Service, Land Information New Zealand and the Ministry for Culture and Heritage. The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.

99. The EPA raised concern that the permitted activity proposals would not provide it with the powers to effectively influence how the activities are carried out. Clear

communications about the role of the EPA in terms of permitted activities will avoid public misperceptions.

Financial implications

100. Original Cabinet decisions noted that the EPA would not require additional appropriations to fulfill its functions under the EEZ regime (CAB Min (11) 19/7B refers). However, due to significant changes to the proposals since then, it may be necessary for the EPA to seek additional appropriations.

101. The EPA estimates the total cost of carrying out all of its functions associated with administering the EEZ regime will be between $4.1 – 14.3 million per annum. The EPA will recover private benefit functions from operators. The largest portion of these functions is the processing marine consent and permitted activities. The large variability in the estimate is because it is unclear how many applications the EPA will receive or how complete each application may be.

102. Of these total costs, the EPA estimates that between $639,000 and $5.6 million will be cost recovered from industry. The EPA estimates an individual marine consent will cost the operator between $250,000 and $700,000 for the EPA to process. The EPA estimates the processing of each permitted activity will cost between $5,000 and $20,000. These costs will be fully cost recovered from operators. In terms of monitoring, the EPA estimates that each marine consent will cost between $12,000 and $90,000 per year and that each permitted activity will cost from $10,000 to $70,000 to monitor (including any subsequent investigations). Eighty percent of monitoring costs will be recovered from operators.

103. The EPA estimates that carrying out its public benefit functions will cost between $3.4 and $8.7 million per annum, depending on the amount of education and reporting activity carried out and the number of appeals and enforcement actions. This includes the 20 percent of monitoring costs associated with marine consents and permitted activities funded by the EPA.

104. The EPA is continuing to refine its processes, particularly its assessment, monitoring, investigation and enforcement processes in the light of the findings of the report of the Royal Commission on the Pike River Coal Mine Tragedy.

105. For delivery of the public benefit functions the EPA will review its total appropriation and consider if it may be able to absorb some of these costs from other EPA functions (such as RMA, or Hazardous Substances and New Organisms Act 1996 or Emission Trading Scheme) funded in part by appropriation change. Any shortfall will be considered as part of the EPA's budget bid process for the 2013/14 financial year.

106. The EPA estimates the cost of the EEZ regime on an operator undertaking a permitted activity will be a total of $17,000-$80,000, this can be broken down into:

- approximately $5,000-$20,000 per activity for the EPA to process the permitted activity
- approximately $8,000-$56,000 (80% of $10,000-$70,000) per activity for the EPA to process monitoring reports, and undertaking investigations if the EPA suspects non-compliance as a result of information provided
- approximately $4,000 for an operator to prepare the initial impact assessment, and complete the post-activity report (industry estimate).

107. For a discretionary activity operator, the EPA estimates the cost of the EEZ regime will be $360,000-$1,272,000, comprised of:

- approximately $250,000-$700,000 for the EPA to process the marine consent application
- approximately $10,000-$72,000 (80% of $12,000-$90,000) for the EPA to process monitoring reports and undertake investigations if the EPA suspects non-compliance as a result of information provided (likely to be on a yearly basis)
- approximately $100,000-$500,000 for the operator to prepare an impact assessment.

Human rights

108. The proposed regulations are consistent with the Human Rights Act 1993 and the Bill of Rights Act 1990.

Legislative implications

109. Regulations are required to implement the proposal. My officials will prepare drafting instructions for the Parliamentary Counsel Office based on the recommendations in this paper. Parliamentary Counsel Office advise that an exposure draft would take four months to draft.

110. The Act will be brought into force by Order in Council once regulations are developed.

Regulatory impact analysis

111. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

112. The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry for the Environment and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

Consistency with Government Statement on Regulation

113. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest
- will deliver the highest net benefits of the practical options available, and
- are consistent with our commitments in the Government statement "Better Regulation, Less Regulation".

Publicity

114. As noted, I propose the release of an exposure draft and public consultation on it. I propose to make public announcements about the proposals when the exposure draft is released. To date all Cabinet papers and Minutes associated with policy decisions regarding the Act and Regulations have been publicly released. In line with that policy I propose that this paper be released at my discretion.

Recommendations

115. The Minister for the Environment recommends that the Committee:

1 note that the recommendations in this paper are made in accordance with the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and sections 10, 27, 29, 30, 32, 33, 34 and 35 in particular

Classification of activities

2 note that no activities are proposed to be prohibited under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

3 note that activities proposed to be permitted are otherwise restricted by section 20(2) or section 20(4) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

4 note the activities to be permitted (seismic surveying, the prospecting and exploration phases of petroleum and minerals activities (except for petroleum exploration drilling), cable laying and marine scientific research) have been assessed to have routine effects that are minor or less if carried out in accordance with the recommended conditions

5 agree that conditions relating to notification (recommendations 6 to 14), monitoring and reporting (recommendations 15 to 18) and sensitive environments (recommendations 19 to 29) will apply to all permitted activities unless expressly exempted in these recommendations

Notification

6 agree a person or entity intending to undertake a permitted activity (permitted activity operator) must notify the EPA, via a prescribed form at least 2 months prior to undertaking the activity, of:

- 6.1 a general description of the activity, including the proposed date of commencement and its approximate duration
- 6.2 the coordinates of the area within which activity is to be conducted
- 6.3 the Initial Environmental Assessment, and contingency plan undertaken in regard to sensitive environments

7 agree to the EPA publishing all Initial Environmental Assessments on its website

8 agree a permitted activity operator must directly notify any relevant iwi and hapu, including any customary marine title holders under the Marine and Coastal Area (Takutai Moana) Act 2011, of the nature and location of intended permitted activities no later than six weeks prior to conducting the activity

9 agree that if a response is received within four weeks a permitted activity operator must provide the Environmental Protection Authority with a report no later than two weeks' prior to conducting the activity on

- 9.1 who was contacted
- 9.2 how and when they were contacted
- 9.3 the information provided
- 9.4 any responses received, and
- 9.5 the outcome of any dialogue

10 agree the report need only relate to those iwi and hapu who responded to the notification

11 agree if no iwi or hapu respond to notification, an operator is not required to provide a report

12 note under proposed amendments to the Crown Minerals Act 1991 offshore petroleum and minerals operators will be required to engage with iwi or hapu whose rohe includes or abuts the location of the activity and report annually on any consultation undertaken with iwi and hapu

13 note best-practice guidance will be developed to support offshore petroleum and minerals operators to engage with iwi and hapu under the Crown Minerals Act 1991

14 agree that when the amendments to the Crown Minerals Act 1991 come into force, petroleum and mineral operators will no longer have to comply with iwi and hapu notification requirements under the EEZ regulations

Monitoring and reporting

15 agree an operator must provide a post-activity report to the Environmental Protection Authority no later than three months' after the completion date of the activity, except if the activity is seismic surveying which is exempt from these requirements

16 agree the report must include as a minimum:

- 16.1 the date and time the activity was undertaken, and its duration
- 16.2 GPS coordinates of the activity's actual location
- 16.3 the post-activity reporting requirements relating to the sensitive environments process
- 16.4 an estimate of the footprint of the activity on the seabed including an estimate of the volume of any material removed

17 agree in principle to random observers being placed on voyages for permitted activities, pending further investigations into the costs and skills required for observers to ensure operators adequately comply with permitted activity conditions

18 agree to the Environmental Protection Authority publishing all post activity reports on its website

Sensitive environment conditions

19 note insufficient information means that specific locations cannot be set aside and prescribed as sensitive environments under the regulations

20 agree sensitive environments are environments that are important or especially vulnerable because of their biophysical characteristics as set out in section 28(1)(a) of the Act and include:

- 20.1 Stony coral thickets or reefs
- 20.2 Xenophyophores (sessile protozoan) beds
- 20.3 Bryozoan beds
- 20.4 Calcareous tube worm thickets
- 20.5 Chaetopteridae worm fields
- 20.6 Sea pen fields
- 20.7 Rhodolith (maerl) beds
- 20.8 Sponge gardens
- 20.9 Beds of large bivalve molluscs
- 20.10 Macro-algal beds
- 20.11 Brachiopods
- 20.12 Deep-sea hydrothermal vents
- 20.13 Methane or cold seeps

21 agree operators are responsible for mitigating their environmental impact of their activities if they are operating, or find they are operating in a sensitive environment

22 agree any operator conducting a permitted activity under the EEZ regulations must complete an Initial Environmental Assessment, which may be a desktop assessment

23 agree any operator conducting a permitted activity under the EEZ regulations must submit the Initial Environmental Assessment to the Environmental Protection Authority no later than two months' prior to starting the activity

24 agree the Initial Environmental Assessment must identify whether the proposed location is known to contain sensitive environments

25 agree the Initial Environmental Assessment must include a contingency plan identifying what actions will be taken if a sensitive environment is encountered

26 agree the actions an operator proposes to take in a sensitive environment that are required to be covered in the contingency plan must include thorough assessment of what measures the operator will undertake to:

- 26.1 relocate the activity
- 26.2 reduce the amount of contact with the seafloor
- 26.3 replace the intended activity with lower impact activities
- 26.4 refine the methods of operation to lower the impact of the activity on the environment

27 agree if a sensitive environment was encountered, in order to provide evidence of compliance with the regulations, the post activity report required under recommendation 15 must include a report on how the impact of the activity was minimised by:

- 27.1 relocating the activity
- 27.2 reducing the amount of contact with the seafloor
- 27.3 replacing the intended activity with lower impact activities
- 27.4 refining the methods of operation to lower the impact of the activity on the environment

28 agree that if a sensitive environment was encountered, an operator must keep a logbook of actual activity undertaken to avoid and mitigate effects to sensitive environments and provide this logbook to the Environmental Protection Authority weekly while the activity is being undertaken

29 agree to the Environmental Protection Authority publishing all Initial Environment Assessments and post activity reports on their website

Permitted activities

Seismic surveying

30 agree to permit seismic surveying subject to mandatory compliance with the *2012 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations*

31 agree to incorporate the *2012 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations* by reference into the EEZ regulations

32 note the intention is for regulations to be developed under the Marine Mammals Protection Act 1978 to replace the Code at a later date

Prospecting and exploration phases of seabed minerals and petroleum activities (excluding petroleum exploration drilling)

33 agree all activities conducted during the prospecting or exploration phase of a seabed mineral or petroleum operation (except for petroleum exploration drilling) are classified as permitted activities subject to the following conditions:

33.1 notification, monitoring and reporting conditions in recommendations 6 to 18 for the prospecting and exploration phases of seabed minerals or petroleum activities

33.2 sensitive environments conditions in recommendations 19 to 29 for the prospecting and exploration phases of seabed minerals or petroleum activities

34 agree the maintenance of a structure during the prospecting or exploration phases of seabed minerals or petroleum activities is a permitted activity with no conditions

35 agree to the maintenance of platforms and pipelines as a permitted activity with no conditions

36 agree the removal of permitted structures and objects from the seabed the prospecting or exploration phase of seabed minerals or petroleum activities is a permitted activity subject to the notification, monitoring and reporting requirements in recommendations 6 to 18, but is exempted from the sensitive environments conditions

37 note that due to the scale, intensity and duration of activities associated with production mining of seabed minerals and petroleum, it is not proposed that this phase of activity be permitted for either industry

Preventing sale of material

38 agree that in addition to the conditions above, any material removed during the prospecting or exploration phase of a seabed mineral operation must not be sold, is an additional condition on these permitted activities

Submarine cabling

39 agree to the laying of submarine cables as a permitted activity under the regulations, subject to the following conditions:

39.1 the notification, monitoring and reporting conditions in recommendations 6 to 18 apply to cable laying

40 agree that cable laying is exempt from conditions relating to sensitive environments

41 agree to permit the maintenance and repair of cables with no conditions

42 agree to permit the removal of cables subject to the notification, monitoring and reporting conditions in recommendations 6 to 18

Marine scientific research

43 agree to marine scientific research as a permitted activity under the regulations, subject to the following conditions:

43.1 the notification, monitoring and reporting conditions in recommendations 6 to 18 will apply to marine scientific research

43.2 the conditions relating to sensitive environments in recommendations 19 to 29 will apply to marine scientific research

43.3 any material removed during marine scientific research must not be sold,

44 agree the removal of permitted structures and objects from the seabed for marine scientific research is a permitted activity subject to the notification, monitoring and reporting requirements in recommendations 6 to 18

45 agree the removal of permitted structures and objects from the seabed for marine scientific research is exempted from the sensitive environments conditions

46 note that the cost recovery proposals exempt foreign marine scientific research and government funded domestic scientific research from cost recovery provisions

47 agree that domestic marine scientific researchers will have to show evidence of the source of their funding to the Environmental Protection Authority to qualify for the exemption in recommendation 48.2

Cost recovery

48 agree to full cost recovery of actual and reasonable costs of the following Environmental Protection Authority functions:

48.1 all marine consent functions, including pre-application assistance, processing and deciding marine consents, transfer, review, cancellation

48.2 permitted activity functions, including receiving, reviewing and certifying information (excluding foreign marine scientific research and government funded domestic marine scientific research)

48.3 Environmental Protection Authority rulings required under the grandfathering arrangements in the Act

48.4 Environmental Protection Authority receiving and reviewing impact assessments or any other documentation required under the transitional arrangements

49 agree to these EPA charge out rates:

Staff level	Rates
Principal technical advisor	$290.00
Project Leader	$140.80
Senior advisor	$116.12
Advisor	$103.75
Administrator	$97.43

Mixed benefit functions

50 agree to operators paying 80 percent of the costs of

50.1 monitoring marine consent conditions, including receiving, reviewing, verifying and certifying information during or after an activity has been carried out as required by marine consent conditions

50.2 monitoring permitted activities, including receiving, reviewing, verifying and certifying information received during or after an activity is carried out as required by permitted activity conditions

Public benefit functions

51 agree to fund the following Environmental Protection Authority functions through appropriation by parliament:

51.1 education and raising public awareness

51.2 internal government and international reporting

51.3 enforcement action, including investigations (Crown will seek to have costs awarded if enforcement is successful)

51.4 investigation which does not lead to enforcement (including those investigations initiated by the public and any scheduled compliance checks by the Environmental Protection Authority)

51.5 additional monitoring, e.g. of cumulative effects

51.6 permitted activity processing for submarine cabling

51.7 marine consents or permitted activity processing for international marine scientific research

51.8 marine consents or permitted activity processing for government funded domestic marine scientific research

51.9 business system and process development

52 note any appropriation changes may be sought by the Environmental Protection Authority through the 2013/14 budget bid process

53 invite the Minister for the Environment to report back to Cabinet with any necessary amendments to the fees and charges prescribed in regulations one year following the commencement of the regulations

Information

54 invite the Minister for the Environment to report to Cabinet by 1 December 2013 on information needed to inform future reviews of the regulations and on cost-effective ways to generate and procure that information

Review

55 agree that the regulations will be reviewed as soon as reasonably practicable five years following their commencement

56 invite the Minister for the Environment to report to Cabinet on the findings of the review

Next steps

57 authorise the Minister for the Environment to further clarify or develop technical and policy matters relating to the regulations set out in this paper in a way that is not inconsistent with Cabinet decisions on these recommendations

58 authorise the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in this paper

59 agree that the Minister for the Environment will develop regulations prescribing forms to give effect to decisions in this paper, in consultation with the Environmental Protection Authority as appropriate

60 agree that the Parliamentary Counsel Office may commence drafting regulations prescribing forms to give effect to decisions in this paper

61 agree the Minister for the Environment may, without waiving legal privilege, share this Cabinet paper, drafting instructions to the Parliamentary Counsel Office, subsequent drafts of regulations, and related documents, with the Environmental Protection Agency, as a key agency in the proposed regulations

62 agree the Minister for the Environment may, without waiving legal privilege, share this Cabinet paper, drafting instructions to the Parliamentary Counsel Office, subsequent drafts of regulations, and related documents, with Maritime New Zealand, as a key agency in the proposed regulations

63 agree that consultation should be undertaken on an exposure draft of regulations so long as such consultation does not delay the regulations coming into force to such an extent that it creates industry uncertainty

64 note the Minister for the Environment intends to make public announcements about the proposals when the exposure draft is publicly released

65 note the Minister for the Environment intends to publicly release this Cabinet paper at her discretion

66 note the Minister for the Environment proposes to bring a paper to Cabinet early in 2013 with recommendations for the regulation of petroleum exploration drilling

Hon Amy Adams
Minister for the Environment

6 / 12 / 12

Appendix 1: matters considered in developing regulations pursuant to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Section 29

116. For all the activities subject to these proposals, I am satisfied that the restriction in s 29(4) of the Act does not apply – that is, that in my opinion:

- the activity does not, or is not likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and
- that it is not more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent.

117. Section 29(4)(a) refers to an activity that is "likely" to have adverse effects that are "significant in the circumstances". The definition of "effect" in s 6 includes "any potential effect of low probability that has a high potential impact". Moreover, the definition of "effect" includes "any cumulative effect that arises over time or in combination with other effects".

118. Expertise provided by the NIWA was a key input into considering the effects of activities. NIWA completed an expert Ecological Risk Assessment on certain activities prior to the release of a public discussion document.[3] The report provided an indication of activities that might require special conditions and close monitoring and its findings were applied along with further information and assessment.

119. Based on the NIWA report and consideration of s 29, activities were identified which could lawfully be classified as permitted. These activities are described in Table 1 and were consulted on as described below.

Section 33(2) - consultation

120. Section 33(2) requires me to have regard to comment received in consultation throughout the development of the regulations, which I have done. In May this year I sought public comment on *Managing our Oceans – A discussion document on the regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill.* 11,834 submissions were received in response to the public consultation document, of which 326 were individualized submissions. Also eight hui were held with Māori throughout the country and the Iwi Leader's Group was consulted.

121. Submitters said the regulations should take into account the sensitivity of particular marine environments. Analysis of submissions resulted in officials seeking further detail from industry technical experts and Crown Research Institute (CRI) scientists to better understand technical and environmental impact issues. This process showed that prescriptive thresholds were unlikely to be effective. Scientific expertise across government was drawn on to determine the conditions needed to mitigate effects on sensitive environments. The overall approach was then peer reviewed by two international experts with a broad expertise and knowledge base of marine ecology and of managing the effects of human impacts on the marine environment. The reviewers

[3]MacDiarmid, A, *et al*, 2011, *Expert Risk Assessment of Activities in the New Zealand Exclusive Economic Zone and Extended Continental Shelf*, NIWA, Wellington, NZ. This was assessed by firstly considering the level of environmental risk as assessed in the NIWA *Expert Risk Assessment,* which combined consequence with likelihood, and secondly considering any further information alongside measures to avoid, remedy and mitigate effects. Officials considered scale in limiting activities by industry phase (i.e. exploration and prospecting) in the proposals.

were broadly supportive of the approach and suggested an additional monitoring requirement which has been included.

Section 33(3) consideration

122. I have considered the matters in s 33(3), where I must take into account—

(a) any effects on the environment or existing interests[4] 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 the 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 effects on human health that may arise from effects on the environment; and

(d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and

(e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and

(f) New Zealand's international obligations; and

(g) the economic benefit to New Zealand of an activity; and

(h) the efficient use and development of natural resources; and

(i) the nature and effect of other marine management regimes; and

(j) best practice in relation to an industry or activity; and

(k) 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

(l) any other relevant matter.

123. I have considered all of the matters under s 33(3), particularly:

- any impacts on existing interests, including the effects of activities not regulated under the Act, for example, fishing rights. The most likely effect is exclusion for the duration of the permitted activity – where other users cannot use that particular part of the EEZ. I am advised that, in general, there is not a lot of overlap in the areas of the EEZ where activities take place. In particular, given the low level and short term nature of the activities I am proposing to classify as permitted, there is unlikely to be an overlap in use. Production phases for petroleum and minerals, which are longer term activities, will require a marine consent
- effects on the environment. The proposals manage the environmental effect to one that is up to minor and this includes cumulative effect
- activities with up to a minor effect are not likely to adversely affect human health
- the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species has been considered in determining conditions for sensitive environments
- our international obligations, in considering the framework for submarine cabling and foreign marine scientific research

[4] 'Existing interest' is defined in section 4 of the Act.

- economic benefit to New Zealand, in considering the workability and range of permitted activities - as stated in the Background to this paper, the proposed permitted activities are of significant economic potential, and the proposed regulations are commensurate in scale to the effects of the activities, maintaining environmental integrity and allowing economic growth
- efficient use and development of natural resources has also been considered in the proposals
- the nature and effect of other marine management regimes – I have avoided duplication with other regimes due to the gap filling nature of the Act. For example, the proposed regulations will not affect commercial fishing, which is regulated under the Fisheries Act 1996, or shipping, regulated under the Maritime Transport Act 1994
- best practice, when seeking technical industry and scientific input, including international peer review
- the activities proposed to be permitted are generally of low public interest, as such I have considered the desirability of allowing the public to be heard when considering which activities should be classified as permitted
- as a further relevant matter, I have considered the need to provide regulatory certainty to users, so that the regulations are practical and not open to interpretation.

Section 34 – information principles

124. I have also applied the information principles in s 34, which require me take into account uncertainty or inadequacy of the information available, and if the information is uncertain or inadequate to favour caution and environmental protection.

125. Development of these proposals has been somewhat constrained due to the current state of knowledge about New Zealand's EEZ and continental shelf. As noted in paragraph 10, little is known about the EEZ and continental shelf. I have formed the view that with improved understanding of the location of sensitive environments, and the impact of activities on those environments, it would be possible to develop regulation that maintained the same level of environmental protection as offered by the proposals in this paper, while enhancing certainty and lowering compliance costs for industry. To take account of improvements in our understanding of the EEZ I propose that these regulations are reviewed as soon as practicably possible; five years following their date of commencement. Meanwhile, I propose the EPA be required to publish certain reports by operators on its website. This requirement will improve the planning of activities and build knowledge of the EEZ and continental shelf. I also propose to direct officials to consider ways to generate and procure more information to improve our knowledge.

126. Although I am required to take into account countervailing factors like the economic benefit to New Zealand of an activity, both the purpose of the Act and s 34(2) require me to err on the side of protecting the environment in the face of uncertain information. This is the approach that I have adopted, particularly in regard to sensitive environments.

Appendix 2: Detail of activities undertaken in prospecting and exploration phases of seabed minerals and petroleum operations and by marine scientists

Examples of structures placed and objects deposited on the seabed

- Instruments
- Arrays (collections of instruments)
- Moorings (concrete or iron wagon wheels)
- Discarded ballast from underwater vehicles (iron plates)
- Drilling rigs
    - Note production drilling platforms used for mining petroleum are proposed as discretionary activities
- Drill cuttings
- Well heads (permanent caps for wells)
- Recovery cones (steel guiding cones for research drilling)
- Anchors
- Cables (exempted from most conditions because of UNCLOS protection).

Examples of sampling activities

- Fixed-point sampling of the seabed (both non-extractive and extractive), including:
    - Remotely operated vehicle (ROV) and autonomous underwater vehicle (AUV) sampling
    - Probes
    - Penetrometer testing
    - Grabs
    - Suction cores
    - Coring (which may include single, box, multi, piston or vibro coring).

- Mobile sampling of the seabed (both non-extractive and extractive), including:
    - Towed sampling objects
    - Sleds
    - Trawls
    - Dredging (using "rock dredges" with a mouth of $1m^2$)
    - Test mining methods.

Appendix 3: Sensitive environments – biogenic (biologically formed) or geological

In consultation with NIWA, the following biogenic (biologically formed) and geological environments were identified as sensitive:

- Stony coral thickets or reefs
- Xenophyophores (sessile protozoan) beds
- Bryozoan beds
- Calcareous tube worm thickets
- Chaetopteridae worm fields
- Sea pen fields
- Rhodolith (maerl) beds
- Sponge gardens
- Beds of large bivalve molluscs
- Macro-algal beds
- Brachiopods
- Deep-sea hydrothermal vents
- Methane or cold seeps.

While I propose to list the above environments in regulations, for ease of understanding, they can be further summarised as follows:

- Biogenic habitats made by fragile/inflexible organisms, e.g. coral
- Biogenic habitats made by more flexible organisms, e.g. sponges
- Deep-sea hydrothermal vents
- Methane or cold seeps.