



# Proposed changes to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013

Discussion document 2022



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

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# Abbreviations

EEZ	Exclusive Economic Zone and extended continental shelf
EEZ Act	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
EEZ Fees Regulations	Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013
EPA	Environmental Protection Authority
Ministry	Ministry for the Environment

# About this consultation

The Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the EEZ Fees Regulations) set hourly charge-out rates which are used by the Environmental Protection Authority (EPA) to charge for certain functions and services it provides under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).

We are proposing increases to those charge-out rates and changes to the staff categories used in the EEZ Fees Regulations. The current charge-out rates have not been revised since 2013 and are not recovering the EPA's costs.

This discussion document describes the current arrangements for cost recovery under the EEZ Act, discusses why this review is needed and our approach to the review. It sets out our preferred options and our analysis of the other options we considered. Complementing this discussion document is a [cost recovery impact statement](#).

The main parties affected by the EEZ Fees Regulations are people and companies who intend to apply for, or already have, marine consents under the EEZ Act, or who undertake or intend to undertake permitted activities under the EEZ Act.

## Your views

We want to know your thoughts on the proposed changes to the EEZ Fees Regulations outlined in this document, including the calculations and assumptions used to set the charge-out rates.

## What is out of scope

This consultation document does not contain any proposals that require changes to the EEZ Act, such as creating levies, statutory review periods, or changing the process for setting and authorising changes to fees. There are no current plans to review or amend the EEZ Act.

However, if you would like to share your views on the broader EEZ Act cost-recovery regime, we welcome your comments, to inform potential future consideration.

## Consultation process

This consultation will close at 5pm on 20 January 2023. After receiving submissions, we will analyse them to inform policy and government decisions. We will put final proposals to the Minister for the Environment and Cabinet for consideration next year. Subject to Cabinet approval, amendments to the EEZ Fees Regulations will be notified in the *New Zealand Gazette*.

## Submitting your views

If you want to make a submission, you can email it to [EEZFees@mfe.govt.nz](mailto:EEZFees@mfe.govt.nz) as a:

- PDF
- Microsoft Word document (2003 or later version).

Please include:

- the title of the consultation
- your name or organisation
- your postal address
- your telephone number
- your email address.

If you intend to send a written submission, please address to the Marine Policy team, Ministry for the Environment, PO Box 10362, Wellington 6143.

**Submissions close 20 January 2023.**

## Publishing and releasing submissions

All or part of any written submission (including names of submitters), may be published on the Ministry for the Environment's website, [environment.govt.nz](http://environment.govt.nz). Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting of both your submission and your name.

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If you have any questions or want more information about the proposed EEZ Fees Regulation amendments or the submission process, please email [EEZFees@mfe.govt.nz](mailto:EEZFees@mfe.govt.nz).

# Summary of proposals

The Environmental Protection Authority (EPA) performs functions and services under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) related to management of Aotearoa New Zealand's Exclusive Economic Zone and extended continental shelf (EEZ).

In broad terms, these functions and services include deciding whether proposed activities are allowed (consenting functions) and monitoring activities to make sure they are being done lawfully (monitoring functions).

Under the EEZ Act, the EPA must recover the direct and indirect costs of any of its functions and services that are not paid for by the Crown.

In 2012, Cabinet agreed that the EPA should recover 100 per cent of the costs of its consenting functions, and 80 per cent of the costs of its monitoring functions. This reflected Cabinet's agreement that consenting functions provide private benefits only, but monitoring functions provide both private and public benefits.

The Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the EEZ Fees Regulations) set hourly charge-out rates for the EPA's cost-recoverable functions and services. To align with Cabinet's 2012 decision, the rates for monitoring functions are 80 per cent of the rates for consenting functions. Table 1 (overleaf) shows the current charge-out rates.

The EPA's costs have increased over the last nine years. There are new staff categories, and there is now better information about the EPA's costs and activities that was not available in 2013.

Within this context, we have reviewed both the type and level of cost-recovery charges. We commissioned [an independent report from MartinJenkins](#) to inform our review.

We identified two other options for the type of cost-recovery charge – either a 'fixed' fee or a 'hybrid' fee (with both a fixed-fee element and an hourly-rate element). We prefer hourly charges over the other options we considered. We are not proposing to change this charging method.

Our review has confirmed the current charge-out rates are not set to recover all relevant costs. MartinJenkins' recalculation of the charge-out rates showed the rates would need to increase significantly to recover all relevant costs. The proposed new charge-out rates are based on the analysis done by MartinJenkins.

Maintaining the current charge-out rates would result in Crown funding meant for other purposes being used to pay for functions and services that should be paid for by organisations conducting activities in the EEZ. This would mean the Crown is effectively subsidising the activities (and private benefit) of those applicants and duty holders.

The proposal is to increase the charge-out rates for each of the following three financial years (2023/24, 2024/25 and 2025/26). The 2025/26 rates would continue to apply until the EEZ Fees Regulations are reviewed again.

We are also proposing amendments to the staff categories in the EEZ Fees Regulations to match the staff categories the EPA now uses. Table 2 shows the proposed rates and new staff categories.

**Table 1: Current charge-out rates in the EEZ Fees Regulations**

EPA staff role	\$/hr (ex GST)	
	Consenting	Monitoring
Principal technical advisor	290.00	232.00
Authority to accept decommissioning plan (new in 2021)	257.04	N/A
Project leader	140.80	112.64
Senior advisor	116.12	92.90
Advisor	103.75	83.00
Administrator	97.43	77.94

**Table 2: Proposed new hourly charge-out rates (ex GST)**

EPA staff role	1 July 2023–30 June 2024		1 July 2024–30 June 2025		From 1 July 2025	
	Consenting \$/hour	Monitoring \$/hour	Consenting \$/hour	Monitoring \$/hour	Consenting \$/hour	Monitoring \$/hour
Principal advisor/officer/investigator and team leader	301.00	240.80	310.00	248.00	319.00	255.20
Project leader/senior compliance officer/investigator	251.00	200.80	259.00	207.20	266.00	212.80
Senior advisor/officer/investigator	211.00	168.80	218.00	174.40	224.00	179.20
Advisor/officer/investigator	181.00	144.80	186.00	148.80	192.00	153.60
Administrator	143.00	114.40	148.00	118.40	152.00	121.60

# 1. Current arrangements for cost recovery under the EEZ Act

## The EPA's functions and services under the EEZ Act

The EEZ Act is part of Aotearoa New Zealand's legislation about the use of natural resources. Its purpose is to promote the sustainable management of the natural resources of the EEZ, and to protect the environment from pollution by regulating or prohibiting discharges and dumping of waste and other matter.

Examples of current activities in the EEZ are exploration and prospecting activities (for example, seismic surveying); drilling for and extraction of oil and gas; dumping dredged materials; and laying, maintaining, and removing seafloor cables. In future, there may be other activities in the EEZ such as aquaculture or offshore energy generation.

The EEZ Act provides for people to apply for permission (called a 'marine consent') to undertake activities related to accessing resources, placing structures and cables on the seabed and dumping on the seabed. Marine consents consider environmental impacts of the activity and include conditions to prevent, mitigate or avoid negative environmental impacts. Some activities can be done without marine consents, and these are called 'permitted activities'. There are regulations that set conditions for undertaking permitted activities.<sup>1</sup>

The EPA's functions and services under the EEZ Act include deciding applications for marine consents, monitoring compliance with the EEZ Act, enforcement, promoting public awareness of the EEZ Act requirements, and providing advice and secretarial support to boards of inquiry.

## Who pays for the EPA's functions and services under the EEZ Act?

Under the EEZ Act, the EPA must recover the direct and indirect costs of any of its functions and services that are not paid for by the Crown.<sup>2</sup> The EEZ Act gives examples of cost-recoverable functions and services, such as assisting with marine consent applications; reviewing, processing and deciding marine consent applications; administering, monitoring and supervising marine consents; certifying whether activities are compliant; and providing advice and information about permitted activities.<sup>3</sup>

In 2012, Cabinet agreed who should pay for the EPA's functions and services under the EEZ Act. Cabinet identified three categories of activity – namely, functions and services that confer:

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<sup>1</sup> Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013.

<sup>2</sup> Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 143(1).

<sup>3</sup> Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 143(2).

- private benefits, and should therefore be paid for by those undertaking activities in the EEZ (operators)
- a mixture of public and private benefits, and should therefore be paid for partly by operators and partly by the Crown
- mainly public benefits, and should therefore be paid for only by the Crown.

Cabinet agreed that the EPA should seek to recover 100 per cent of the costs of functions and services that confer private benefits, and 80 per cent of its costs for those that confer a mixture of public and private benefits.<sup>4</sup> Table 3 shows which functions and services fall into each category.

The rest of this discussion document uses the terms:

- ‘consenting functions’ for the functions and services which Cabinet agreed should be 100 per cent paid for by applicants and duty holders
- ‘monitoring functions’ for the functions and services which Cabinet agreed should be 80 per cent paid for by applicants and duty holders.

**Table 3: EPA EEZ functions and services – cost-recovery categories**

Functions and services requiring full cost recovery of actual and reasonable costs of the EPA (consenting functions)	Functions and services requiring 80% cost recovery – with the remaining 20% funded by the Crown (monitoring functions)	Functions mainly for the public benefit, which are Crown funded
<ul style="list-style-type: none"> <li>• All marine consent functions, including pre-application assistance, processing and deciding marine consents, transfer, review, cancellation</li> <li>• Permitted activity functions, including receiving, reviewing and certifying information (excluding foreign marine scientific research and government-funded domestic marine scientific research)</li> <li>• EPA rulings required under the grandfathering arrangements in the EEZ Act</li> <li>• EPA receiving and reviewing impact assessments, or any other documentation required under the transitional arrangements</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring of marine consent conditions and permitted activities</li> </ul>	<ul style="list-style-type: none"> <li>• Education and raising public awareness</li> <li>• Internal government and international reporting</li> <li>• Enforcement action, including investigations (Crown will seek to have costs awarded if enforcement is successful)</li> <li>• Investigations that do not lead to enforcement (including those initiated by the public and any scheduled compliance checks by the EPA)</li> <li>• Additional monitoring (eg, of cumulative effects) or planned monitoring</li> <li>• Permitted activity processing for submarine cabling, foreign marine scientific research and government-funded domestic marine scientific research</li> </ul>

<sup>4</sup> Cabinet Economic Growth and Infrastructure Committee. 12 December 2012. *Briefing note on Permitted Activities Proposals for EEZ Environment Effects Regulations (Reference number EGI (12) 29/14)*. Retrieved from <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/reference-number-egi-min-12-2914/> (22 September 2022).

- Monitoring of submarine cabling, foreign marine scientific research and government-funded domestic marine scientific research
- Business system and process development

## EEZ Fees Regulations set out the charge-out rates

The EEZ Fees Regulations set out the hourly charge-out rates for EPA staff, and align with the 2012 Cabinet decision by setting rates for monitoring functions at 80 per cent of the rates for consenting functions. Table 4 shows the hourly rates.<sup>5</sup>

**Table 4: Current EEZ Fees Regulations cost recovery hourly charge-out rates**

EPA staff role	\$/hr (ex GST)	
	Consenting	Monitoring
Principal technical advisor	290.00	232.00
Authority to accept decommissioning plan (new in 2021)	257.04	N/A
Project leader	140.80	112.64
Senior advisor	116.12	92.90
Advisor	103.75	83.00
Administrator	97.43	77.94

The EPA must also charge the actual and reasonable costs for any expenses that it reasonably incurs while providing these services.<sup>6</sup> This might include costs such as travel costs, fees for hire of rooms for hearings, or fees for contracted expert advice.

<sup>5</sup> Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013, cls 4(1)(a) and 5(1).

<sup>6</sup> Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013, cl 4(1)(b).

## 2. Why is this review needed?

The EEZ Fees Regulations have not been updated since 2013.<sup>7</sup> Guidance from the Treasury<sup>8</sup> says that cost-recovery regimes should be reviewed regularly to ensure they are operating efficiently, and that over-recovery and under-recovery are minimised. The Treasury guidance recommends reviewing cost-recovery regimes every three to five years.

There is now better information available about the EPA's costs and activities, which was not available in 2013. In 2013, the EPA's functions and services under the EEZ Act were new and the Government did not yet know the likely costs. The EPA's rates were therefore based on rates charged for proposals of national significance under the Resource Management Act 1991 (with adjustments for inflation). [Appendix 2](#) describes in more detail how the 2013 rates were set.

The EPA's salary costs have increased since 2013. There have also been changes to the staff categories that the EPA uses to deliver its consenting and monitoring functions.

Charge-out rates that are below the EPA's costs mean the EPA is under-recovering its costs, and is therefore not meeting the requirements of Cabinet's 2012 decision about who should pay for its functions and services. The EPA is having to use Crown funding meant for other purposes to pay for functions and services under the EEZ Act that should be paid for by applicants and duty holders. This means that the Crown is effectively subsidising the activities (and private benefit) of applicants and duty holders.

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<sup>7</sup> Except for a new EPA staff category that was brought about as a result of the new regulations being developed for decommissioning plans ([the Exclusive Economic Zone and Continental Shelf \(Environmental Effects – Decommissioning Plans\) Regulations 2021](#)).

<sup>8</sup> The Treasury|Te Tai Ōhanga. 28 April 2017. *Guidelines for Setting Charges in the Public Sector [2017]*. Retrieved from <https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector-2017-html> (22 September 2022).

# 3. What does our review involve?

## Our approach to the review

It is important that a robust process is followed when setting, reviewing and collecting third-party fees. Fee payers need to have confidence that:

- they are only being charged fees that reflect the cost of delivering a function or service
- fees are set using best practice.

Our review has followed the Treasury guidance and guidance from the Office of the Auditor-General.<sup>9</sup>

We have reviewed both the type of cost-recovery charges, and the level of the charges. To provide an independent view, we also asked MartinJenkins in 2020 to review the current type and level of charges.

Our review does not include reviewing Cabinet's 2012 decision about who should pay for the EPA's functions and services. We are not proposing any change to the policy that the EPA should recover 100 per cent of the costs of its consenting functions and 80 per cent of the costs of its monitoring functions.

## Cost-recovery principles and objectives

The primary objective in setting the charge-out rates under the EEZ Fees Regulations is to enable the EPA to continue to provide functions and services at a level of quality which supports its regulatory objectives, while recovering the costs of those functions and services in line with the EPA's statutory obligations and Cabinet's intentions about who should pay. The EEZ Act sets out principles of equity, efficiency, justification and transparency that the Minister must have regard to, in setting the type and level of charges.<sup>10</sup>

Using those principles, as well as the guidance from the New Zealand Treasury and the Office of the Auditor-General,<sup>11</sup> we have identified a set of principles for us to use to assess the type and level of charges.

- **Equity:** costs are recovered from those who the function or service benefits, or whose action or inaction gives rise to the exercise of an EPA function. The charge or fee is fair and just. A charge, fee or charge-out rate applies equally to every person or applicant who may be charged for work.
- **Efficiency:** cost recovery supports the efficient use of resources and functions, and functions and services are delivered to derive maximum benefits at minimum cost. Recovering costs should be administratively simple and cost effective.

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<sup>9</sup> The Controller and Auditor-General | Tumuaki o te Mana Arotake. August 2021. *Setting and administering fees and levies for cost recovery: Good practice guide*. Retrieved from <https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf> (22 September 2022).

<sup>10</sup> *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012*, s 143(3).

<sup>11</sup> Above, nn 8 and 9.

- **Justification:** costs recovered reasonably relate to the functions and services being charged for.
- **Transparency:** fee payers have enough information to understand the methodology used for setting the charge-out rates, whether they have been set fairly, and that revenue generated is correctly accounted for.
- **Effectiveness:** cost recovery supports the EPA's regulatory objectives and enables the cost-recovered activity to be delivered to a level of quality that is appropriate for the circumstances.
- **Simplicity:** the cost-recovery regime is straightforward and understandable. The costs of participation are kept low, and evasion opportunities are mitigated to an acceptable level.
- **Accountability:** the EPA can recover the costs for the delivery of its functions and services that are not covered by Crown appropriations in accordance with Government policy.

#### Question

1. Do you have any comments on the cost-recovery objective and principles? Let us know if you think the objective and principles should be different, and why.

## 4. Should the EPA keep using hourly rates?

The EEZ Act allows different fee methods, including fixed charges, scales, formulas or hourly rates, estimated charges and deposits.<sup>12</sup>

The current fee method is to use hourly rates. This means the total charge depends on the amount of EPA staff time used to deliver the function or service.

We identified two other options for the fee method and tested them against our cost-recovery principles and objectives.

- A 'fixed' fee – this means the fee is the same for all applicants and duty holders using that function or service, no matter how much EPA staff time is used.
- A 'hybrid' fee – this means there is a fixed fee for all applicants and duty holders using the function or service, but hourly rates are added to the fixed fee if the application or service takes more staff time than expected.

Hourly rates allow for equitable recovery of costs and are easy for applicants to understand. However, they involve administrative costs, and there can be uncertainty over what an applicant or duty holder will pay for a service in total.

The fixed fee option would be simple to understand and administer. However, EPA activities vary in complexity, which makes it difficult to set an equitable fixed fee. A fixed fee would probably result in over- or under-recovery and therefore in cross-subsidisation between fee payers and potentially by the Crown. For example, where a fee does not recover the costs of a particular function or service, that shortfall needs to be funded through another source (either by over-recovering somewhere else or through Crown funding).

The hybrid fee is less likely to create cross-subsidisation than a fixed fee. However, having two different fee types is less simple than either hourly rates or a fixed fee. It would still incur the administrative costs of time recording and would only slightly increase certainty for fee payers, compared with hourly rates.

### **Our preferred option is to continue with hourly rates**

Our preferred option is to continue with hourly rates. This is because it is the most equitable option, since it enables the fees charged to closely match the costs involved in providing the function or service. The approach of charging hourly rates is also well understood by those currently paying fees.

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<sup>12</sup> Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 144.

## The EPA cost-recovery policy helps to lessen concerns about certainty or efficiency

One disadvantage of hourly rates is uncertainty for users about total costs. Hourly rates can also create perceptions that the EPA may not be operating as efficiently as it could.

To mitigate such concerns, the EPA publishes an EEZ cost-recovery policy on its website.<sup>13</sup> This includes processes to provide users with transparency about likely total costs. The EPA provides estimates to applicants and duty holders, who can request progress reports and/or meetings with the EPA to discuss costs. The EEZ cost-recovery policy also notes how time-recording is undertaken, and that invoices are sent monthly and broken down by project phase with detailed descriptions of line items. There is a process for dispute resolution and for applicants and duty holders to make formal objections about costs.

The EEZ cost-recovery policy also says that, as far as is practicable, the EPA will use staff who are appropriate to the task being undertaken. It also outlines matters the EPA will give regard to when charging for staff time, including whether the hours involved were reasonable for the task required.

### Question

2. What are your views on the current hourly fee method of charging, as compared with either a fixed fee or a hybrid fee?
3. Are there other aspects of hourly rates or the other options that we should be considering?
4. Are there other elements the EPA could consider including in its EEZ cost-recovery policy, to help users?

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<sup>13</sup> Environmental Protection Authority | Te Mana Rauhi Taiao. July 2021. *EPA policy for recovering costs: For Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 functions*. Retrieved from <https://www.epa.govt.nz/assets/Uploads/Documents/Marine-Activities-EEZ/Policies/EEZ-cost-recovery-policy.pdf> (22 September 2022).

# 5. How have we set the proposed new hourly charge-out rates?

## New hourly charge-out rates (preferred option)

We are proposing increases to the hourly rates and changes to the staff categories.

We are proposing the EEZ Fees Regulations set out hourly rates that will apply from 1 July 2023 to 30 June 2024, from 1 July 2024 to 30 June 2025, and from 1 July 2025. This will mean the EPA’s charge-out rates increase in line with expected increases in staff costs for the next three years.

The rates that apply from 1 July 2025 would continue to apply until the EEZ Fees Regulations are reviewed again. At this point, the expectation is for a further review of the EEZ Fees Regulations in line with guidance from the New Zealand Treasury and the Office of the Auditor-General.<sup>14</sup>

Consistent with the status quo, actual and reasonable expenses will continue to be recovered.

The changes to staff categories are intended to match the staff categories that the EPA now uses to deliver its consenting and monitoring functions.

Table 5 shows the proposed new hourly rates and staff categories.

**Table 5: Proposed charge-out rates and staff categories (ex GST)**

EPA staff role [and salary band level]	1 July 2023–30 June 2024		1 July 2024–30 June 2025		From 1 July 2025	
	Consenting \$/hour	Monitoring \$/hour	Consenting \$/hour	Monitoring \$/hour	Consenting \$/hour	Monitoring \$/hour
Principal advisor/officer/investigator and team leader [18]	301.00	240.80	310.00	248.00	319.00	255.20
Project leader/senior compliance officer/investigator [17]	251.00	200.80	259.00	207.20	266.00	212.80
Senior advisor/officer/investigator [16]	211.00	168.80	218.00	174.40	224.00	179.20
Advisor/officer/investigator [15]	181.00	144.80	186.00	148.80	192.00	153.60
Administrator [12 and 13]	143.00	114.40	148.00	118.40	152.00	121.60

<sup>14</sup> Above, pp 8 and 9.

Table 6 shows how the proposed 2023/24 hourly rates for consenting functions compare with current hourly rates for consenting functions. Table 6 also compares the current staff categories with the proposed staff categories.

**Table 6: Comparison of 2023/24 rates vs current hourly rates and staff categories (ex GST)**

Current staff categories	Proposed staff category	Current \$/hour	2023/24	Per cent increase
Principal technical advisor <sup>15</sup>	<i>Category removed</i>	290.00	N/A	N/A
Authority to accept decommissioning plan <sup>16</sup>	<i>Category removed</i>	257.04	N/A	N/A
	Principal advisor/officer/investigator and team leader	–	301.00	
Project leader	Project leader/senior compliance officer/investigator	140.80	251.00	78%
Senior advisor	Senior advisor/officer/investigator <sup>17</sup>	116.12	211.00	82%
Advisor	Advisor/officer/investigator	103.75	181.00	74%
Administrator	Administrator	97.43	143.00	47%

## How have we calculated the proposed new hourly rates?

### Our review of the level of the cost-recovery charges

To support our review, we asked MartinJenkins in 2020 to look at the EPA's costs. MartinJenkins:

- analysed the EPA's costs for EEZ consenting and monitoring for 2017/18 and 2018/19
- analysed the EPA's overhead cost-allocation model
- reviewed the EPA's arrangements for recovering the cost of monitoring EEZ consents and the current level of cost recovery

<sup>15</sup> The EPA no longer employs a principal technical advisor. Because of the highly technical nature of this role, the EPA has found it more efficient to contract complex technical advice, rather than keeping a range of technical staff on the payroll.

<sup>16</sup> This rate was established to allow the EPA to recover costs of new functions introduced in the [Exclusive Economic Zone and Continental Shelf \(Environmental Effects-Decommissioning Plans\) Regulations 2021](#). Once the other charge-out rates are brought up to date, a specific rate will not be required for accepting decommissioning plans.

<sup>17</sup> The senior officer and investigator roles in this category are different to the senior compliance officer and investigator roles above which are compliance focused.

- calculated new hourly rates for EEZ staff roles based on 2020/21 salary band data and average indirect cost.

The work carried out by MartinJenkins has confirmed that the current charge-out rates are not set to recover all relevant costs. MartinJenkins also found that some EPA staff time is spent on activities that indirectly contribute to consenting and monitoring functions, which should be included in the calculation of the hourly rates.

## Our formula for calculating the proposed new hourly rates

The proposed new charge-out rates are based on this formula, which is explained in more detail below.

$$\text{Hourly charge out rate} = \frac{\text{Salary costs} + \text{other direct costs} + \text{overheads}}{\text{Annual total hours}}$$

## The ‘salary costs’ element is based on the EPA’s current salary midpoints, with adjustments for expected increases

The current charge-out rates were not based directly on EPA salaries. However, it is useful context to consider how much EPA salaries have increased since 2013. From 2013 to 2021, the EPA’s salary bands have increased on average 14 per cent. For comparison, over the same period, the Labour Cost Index (the Statistics New Zealand time series measurement of changes in wages and salaries) has increased 16 per cent.

To set the ‘salary costs’ element of the formula, we have:

- identified the salary band midpoints (as of May 2022) for the roles of administrator, advisor, senior advisor, project leader and principal advisor
- adjusted each salary band midpoint in line with the expected salary increases for each financial year (2023/24, 2024/25 and 2025/26).

Table 7 shows the expected salary increases we have used.

**Table 7: Business NZ Labour cost index forecast March 2022<sup>18</sup>**

2022/23	2023/24	2024/25	2025/26
3.4%	3.0%	3.0%	3.0%

Source: [220314-BusinessNZ-Planning-Forecast-March-quarter-2022.pdf](#)

<sup>18</sup> BusinessNZ. March 2022. *Planning Forecast*, p 19. Retrieved from [220314-BusinessNZ-Planning-Forecast-March-quarter-2022.pdf](#) (22 September 2022).

## **Other direct costs are added (KiwiSaver, ACC and other costs)**

MartinJenkins recommended that the charge-out rates should include direct staff costs such as KiwiSaver, ACC and training (the cash costs of training courses). We agree with this recommendation.

These costs make up the 'other direct costs' element of the formula and have been set at 5 per cent of the relevant salary cost.

## **Overhead costs are set at 60 per cent of total costs**

MartinJenkins reviewed the EPA's overhead costs for EEZ activities (including the cost of the general manager and managers of teams) for the 2017/18 and 2018/19 financial years. This showed overhead costs were 60.8 per cent of the EPA's total costs.

MartinJenkins reviewed the EPA's overhead cost-allocation model and did not identify any improvements needed.

Following consultation with the EPA, MartinJenkins used a slightly lower percentage – of 60 per cent of total costs – for the 'overheads' element of the formula. The effect of this in the formula is that the 'salary costs' and 'other direct costs' elements are multiplied by 2.5. This is consistent with the overhead amount the EPA used to calculate hourly rates for its cost-recovery charges under the COVID-19 Recovery (Fast-track Consenting) Act 2020.<sup>19</sup>

## **Annual total hours calculation reflects workable hours in a year, with adjustments to reflect staff time on indirect activities**

The 'annual total hours' element of the formula converts the total relevant costs (salary, other direct costs and overheads) into an hourly rate.

To recover staff time spent directly on cost-recoverable functions and services, this element of the formula identifies the total working hours in a year, minus potential leave days and public holidays, to calculate the actual workable hours in a year.

MartinJenkins observed that EPA staff spend time on indirect activities which contribute to cost-recoverable functions and services. A time-in-motion survey of EPA's applications and compliance teams was carried out over two weeks. This identified that, on average, 10 per cent of staff time was spent on development and training, and 17.5 per cent was spent on meetings and general admin. These are all activities that indirectly contribute to the performance of chargeable functions and services. MartinJenkins recommended this time spent on indirect activities should be taken into account in the hourly rate calculation. We agree with this recommendation.

This approach is consistent with section 143 of the EEZ Act, which allows for charges to be set using an average of costs or potential costs, and/or taking into account costs that do not

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<sup>19</sup> [COVID-19 Recovery \(Fast-track Consenting\) Act 2020](#).

directly benefit the person who pays the charge but that are indirect costs arising from performing the service.<sup>20</sup>

Because it is difficult to directly assign these costs to an activity (and therefore to recover costs for these activities directly via invoicing at the hourly rates), they are included in the formula by reducing the annual total hours.

Table 8 (overleaf) shows the calculation of total hours. The calculation results in annual total hours of 1276, which is a utilisation rate of 72.3 per cent. MartinJenkins advises that some public agencies have a much lower utilisation rate, of 65 per cent, whereas professional services firms may have a higher rate – around 80 per cent for some staff.<sup>21</sup>

**Table 8: Total hours calculation**

	Annual hours
Days per year	260
Hours per day	8
Starting hours	<b>2,080</b>
Less 4 weeks' annual leave	(160)
Less 3 EPA Board days' leave	(24)
Less statutory holidays (12)	(96)
Less allowance for sick and domestic leave (5)	(40)
Workable hours	<b>1,760</b>
<b>Less activities that should be loaded into the hourly rate payable by fee payers</b>	
Staff development and training (average)	(176)
Meetings and general admin (average)	(308)
Annual total hours	<b>1,276</b>

#### Question

5. Do you have any comments on the formula used to calculate the charge-out rates?
6. Do you have any comments on how we have set each element of the formula (salary costs, other direct costs, overhead costs and total hours)?
7. Please advise us if there are other factors you think should be considered.

<sup>20</sup> Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 143(4).

<sup>21</sup> MartinJenkins. October 2020. *The EPA's Cost Recovery Arrangements – Final Report prepared for the Ministry of the Environment*, p 4.

## Alternative charge-out rate options

We considered two other options for increasing the hourly rates.

Both options would remove the idea of having hourly rates increase over a three-year period. Instead, charge-out rates would apply from 1 July 2023 and would not increase until the EEZ Fees Regulations are reviewed again:

- **Option One** would set rates at the level that the preferred option uses for 1 July 2023 to 1 July 2024.
- **Option Two** would set rates at the level that the preferred option uses for 1 July 2024 to 1 July 2025.

Table 9 shows the hourly rates under each option.

**Table 9: Other options for charge-out rates (ex GST)**

EPA staff role	Option One		Option Two	
	Consenting \$/hour	Monitoring \$/hour	Consenting \$/hour	Monitoring \$/hour
Principal advisor/officer/investigator and team leader	301.00	240.80	310.00	248.00
Project leader/senior compliance officer/investigator	251.00	200.80	259.00	207.20
Senior advisor/officer/investigator	211.00	168.80	218.00	174.40
Advisor/officer/investigator	181.00	144.80	186.00	148.80
Administrator	143.00	114.40	148.00	118.40

These options would allow for the effective recovery of costs, but the preferred option is more equitable and accountable. This is because the other options involve an element of cross-subsidisation and do not reflect the EPA's actual costs for as long as the preferred option.

Table 10 shows our assessment of the options against the cost-recovery principles and objectives.

**Table 10: Assessment of preferred and alternative cost-recovery options against the cost-recovery principles and objectives**

	Proposed option – increases over three years from 1 July 2023	Option One – 2023/24 rates apply from 1 July 2023	Option Two – 2024/25 rates apply from 1 July 2023
Equity	<p>✓✓</p> <p>Allows functions and services provided over three years to be accurately costed. EPA salary increases will not be cross-subsidised via public funding.</p>	<p>✓</p> <p>After the first year, EPA salary increases are not covered by the rates, so public funding is likely to be needed, resulting in cross-subsidisation.</p>	<p>✗</p> <p>Those paying for functions and services in the 2023/24 financial year will be paying more than these functions and services cost the EPA, and those in the 2025/26 financial year will be paying less than these cost the EPA. This will result in cross-subsidisation via the use of public funds, but also an additional layer of cross-</p>

			subsidisation between applicants and duty holders in different financial years.
Efficiency	✓ Variable charging and EPA cost-recovery policy support efficient allocation of EPA resources.	✓ Variable charging and EPA cost-recovery policy support efficient allocation of EPA resources.	✓ Variable charging and EPA cost-recovery policy support efficient allocation of EPA resources.
Justification	✓✓ Costs relate to the functions and services the EPA supplies.	✓✓ Costs relate to the functions and services the EPA supplies.	✓ Costs relate to the functions and services the EPA supplies, but may overcharge in the first year.
Transparency	✓✓ Fee methodology, inputs and assumptions are made clear in this document, through consultation, and reflected in the EPA's cost-recovery policy.	✓✓ Fee methodology, inputs and assumptions are made clear in this document, through consultation, and reflected in the EPA's cost-recovery policy.	✓✓ Fee methodology, inputs and assumptions are made clear in this document, through consultation, and reflected in the EPA's cost-recovery policy.
Effectiveness	✓✓ Rates will provide a level of funding that supports the delivery of the EPA's functions and services.	✓✓ Rates will provide a level of funding that supports the delivery of the EPA's functions and services.	✓✓ Rates will provide a level of funding that supports the delivery of the EPA's functions and services.
Simplicity	✓ Hourly rates are easy to understand, but some complexity is introduced for functions and services delivered over multiple financial years.	✓✓ Hourly rates are easy to understand.	✓✓ Hourly rates are easy to understand.
Accountability	✓✓ The EPA can recover its costs for functions and services in accordance with government policy.	✗ The EPA may not recover its costs in accordance with government policy after 2023/24.	✓✓ The EPA can recover the costs for the delivery of its functions and services in accordance with government policy.
Total	<b>12</b>	<b>10</b>	<b>10</b>
Overall	✓✓	✓	✓

✓✓ Aligns with criteria

✓ Somewhat aligns with criteria

✗ Does not align with criteria

## Questions

8. What are your views on having charge-out rates set that apply from 1 July 2023 to 30 June 2024, from 1 July 2024 to 30 June 2025, and from 1 July 2025, as compared to a single set of charge-out rates?
9. What are your views on the preferred option for cost recovery as compared to the alternative options? If you have an alternative preferred option, could you please outline this?

## 6. How will changes to the rates affect users?

Applicants and duty holders will pay more for the functions and services they receive because of the proposed increases to the hourly rates. In total, we estimate they could end up collectively paying an additional \$292,000 to \$377,000 per year. [Appendix 3](#) sets out how we have calculated this estimate.

[Appendix 3](#) also has case studies that show the potential impacts of the proposed increases using examples of EPA functions and services. These case studies show increases in applicant and duty holder costs that range from 27 per cent to 80 per cent.

The rise in total costs to applicants and duty holders may not increase proportionately to the proposed individual hourly rates. This is because the EPA's actual and reasonable costs of external suppliers are not affected by the proposed changes. So for EPA functions that involve significant input from external experts, the total percentage increase in costs will be lower than the proposed percentage increases to the hourly rates.

For example, [appendix 3](#) includes a case study of a non-notified consent involving an increase in EPA staff time costs of 75 per cent. However, the costs of external suppliers are a significant part of the total cost recovered. Therefore, the total increase in cost to the applicant is only 27 per cent.

These case studies may not capture the impact of the proposed changes on everyone. Your feedback will help us to better understand the potential impacts on users.

### Questions

10. If the proposed increases went ahead, are there impacts on you or your business we may not have considered?
11. Would the proposed increases change how you or your business approach making applications for marine consents or other ways you engage with the EPA?

# 7. Implementing and reviewing the proposed changes

## Implementation plan

We are proposing the new rates take effect from 1 July 2023. This would have the following effects.

- Work completed up to (and including) 30 June 2023 would be charged at the current rates.
- Work from 1 July 2023 would be charged at the new rates. This would include work done on applications made before 1 July 2023 and still in progress. For example, for an application received in May 2023, the EPA would charge the current rates for all work performed up to (and including) 30 June 2023. This would include any pre-application work done by the EPA. From 1 July 2023, if the application is still active, the new charge-out rates would apply.
- For work that straddles future financial periods, the rates charged will depend on the period when the work is done. For example, an application received in May 2024 would be charged at 2023/24 rates for the work done up to (and including) 30 June 2024. Any work performed from 1 July 2025 would be charged at the 2025/26 rates. Since the EPA invoices on a monthly basis, this should be efficiently and transparently managed.

To minimise compliance costs, potential fee payers will be given as much notice as possible of the fee increases, and the EPA cost-recovery policy will be updated and published online.

## Future review

It is intended the EEZ Fees Regulations will be reviewed after three years. This matches the New Zealand Treasury's expectations of review.<sup>22</sup>

A future review process would consider:

- how the rates have performed (comparison of costs to revenues, how fees may have impacted behaviours or service and function delivery), and how they will continue to perform over the next three years if they remain unchanged
- whether the salary-growth expectations built into the charge-out rates have matched actual growth.

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<sup>22</sup> Above, n 8.

# Appendix 1: List of consultation questions

These questions appear throughout the consultation document. They may help you when making a submission.

## Cost-recovery principles and objectives

1. Do you have any comments on the cost-recovery objective and principles?  
Let us know if you think the objective and principles should be different, and why.

## Should the EPA keep using hourly rates?

2. What are your views on the current hourly fee method of charging, as compared with either a fixed fee or a hybrid fee?
3. Are there other aspects of hourly rates or the other options that we should be considering?
4. Are there other elements the EPA could consider including in its EEZ cost-recovery policy, to help users?

## How have we set the proposed new hourly rates

5. Do you have any comments on the formula used to calculate the charge-out rates?
6. Do you have any comments on how we have set each element of the formula (salary costs, other direct costs, overhead costs and total hours)?
7. Please advise us if there are other factors you think should be considered.

## Proposed new charge-out rates and the alternative options we considered

8. What are your views on having charge-out rates set that apply from 1 July 2023 to 30 June 2024, from 1 July 2024 to 30 June 2025, and from 1 July 2025, as compared to a single set of charge-out rates?
9. What are your views on the preferred option for cost recovery as compared to the alternative options? If you have an alternative preferred option, could you please outline this.

## **How will changes to the rates affect users?**

10. If the proposed increases went ahead, are there impacts on your business we may not have considered?
11. Would the proposed increases change how you approach making applications for marine consents or other ways you engage with the EPA?

# Appendix 2: Background information on the current EEZ Fees Regulations

The charge-out rates set in 2013 were based on the rates charged for proposals of national significance under the Resource Management Act 1991 (RMA)<sup>23</sup> and were adjusted for inflation. Rates under the RMA were used as a base because there was uncertainty around the inputs that would be required by the EPA to perform its functions and services under the EEZ Act.

The rates under the RMA were calculated using the following inputs and assumptions:

- average salaries for each category of employee (project administrator, advisor, senior advisor, project leader)
- overheads (personnel costs of support staff and corporate overheads)
- average of 1352 working hours per employee per annum.

The rate for the principal technical advisor was based on the rates paid by the Australian federal petroleum industry regulator at the time.

The rate for those with authority to accept decommissioning plans was calculated on the following inputs and assumptions:

- average mid-point of the manager and general manager salary bands
- overheads and indirect allowances are 2.5 times the average mid-point salary
- average of 1720 working hours per employee per annum.

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<sup>23</sup> Resource Management Act 1991.

# Appendix 3: Estimates and case studies of impact on applicants and duty holders

## Estimated changes in total user cost

### Estimate 1: 2021/22 financial year restated with proposed rates

Using data from the 2021/22 financial year, the EPA estimates an increase in total costs recovered across its consenting and monitoring functions of \$292,000. This has been calculated using an average of the proposed 2023/24 rates and is outlined in table 11.

**Table 11: Restated 2021/22 cost-recovery revenue**

Cost type	Current rate	Proposed rate	Increase
Staff costs	\$417,000	\$709,000	\$292,000
External suppliers	\$108,000	\$108,000	Nil
<b>Total costs</b>	<b>\$525,000</b>	<b>\$817,000</b>	<b>\$292,000</b>

### Estimate 2: 2022/23 financial year forecast using proposed rates

Using data from the 2022/23 budget, the EPA estimates an increase in applicant and duty holder costs across its consenting and monitoring functions of \$377,000. This forecast is outlined in table 12.

**Table 12: Forecast 2022/23 cost-recovery revenue**

Cost type	Current rate	Proposed rate	Increase
Staff costs	\$539,000	\$916,000	\$377,000
External suppliers	\$482,000	\$482,000	Nil
<b>Total costs</b>	<b>\$1,021,000</b>	<b>\$1,398,000</b>	<b>\$377,000</b>

## Case studies

**Table 13: Worked example of potential impact on a notified consent applicant, using the proposed 2023/24 charge-out rates**

Cost type	Current rate	Proposed rate (2023/24)	Increase	
Staff costs	\$228,000	\$400,000	\$171,000	75%
External suppliers	\$398,000	\$398,000	Nil	0%
<b>Total costs</b>	<b>\$626,000</b>	<b>\$798,000</b>	<b>\$171,000</b>	<b>27%</b>

**Table 14: Worked example of potential impact on a permitted activity (monitoring costs), using the proposed 2024/25 charge-out rates**

Role	Rate (100%) \$/hr	Rate (80%) \$/hr	Hours	Amount	2024/25 rates (80%) \$/hr	Amount
Administrator	97.00	77.96	0.75	58.47	118.40	88.80
Advisor	104.00	83.00	1.00	83.00	148.80	148.80
				<b>141.47</b>		<b>237.60</b>

An example of a permitted activity is the deposit of material on the seabed from launch of a space activity. Based on a review of invoices over the last few years, table 14 provides a reworked example using the proposed 2024/25 charge-out rates. It shows an increased cost could be incurred – from \$141 to \$238. This is a \$97 increase (68 per cent).

**Table 15: Worked example of potential impact on a certification of dredging sampling plan, using the proposed 2023/24 charge-out rates (ex GST)**

Role	Hours	Current rate \$/hr	Proposed rate (2023/24) \$/hr	Increase	
Project leader	1.50	141	251	165	78%
Senior advisor	23.00	116	211	2,182	82%
Advisor	0.50	104	181	39	74%
Administrator	0.75	97	143	34	47%
<b>Total</b>	<b>25.75</b>	<b>3,007</b>	<b>5,427</b>	<b>2,420</b>	<b>80%</b>

An example of a certification for a dredging sampling plan is set out in table 15. Reworking the example using the 2023/24 proposed charge-out rates would increase the cost to the applicant by \$2,420, or 80 per cent.

# References

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