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Submission on proposed EEZ regulations 2013
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Discussion Document: Activity classifications under the EEZ Act

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of *Activity classifications under the EEZ Act: A discussion document on the regulation of exploratory drilling, discharges of harmful substances and dumping of waste in the Exclusive Economic Zone and continental shelf* ("discussion document"), which was released by the Ministry for the Environment in August 2013.

PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry. PEPANZ members account for more than 95% of New Zealand's hydrocarbon production and include the operators of all New Zealand's offshore petroleum fields and exploration permits.

This submission is in two parts:

- Part 1 – Overarching comments on the proposals in the discussion document
- Part 2 – Responses to specific questions in the discussion document

Part 1 - Overarching comments on the proposals in the discussion document

PEPANZ considers the proposals are, in general terms, appropriate and reasonable. With reference to the petroleum sector the proposals would put New Zealand regulations broadly in line with practice in mature petroleum producing regions such as the North Sea (UK/Norway/Netherlands) and Australia.

We consider the detail of how many of the proposals will be implemented is not fully apparent given the relatively high level of the proposals in the discussion document. Further consultation with those potentially subject to the regulations will be required to ensure that once further developed (more detailed proposals and/or drafts of the regulations) the detailed requirements and drafting (e.g. definitions) are workable and achieve the policy intent.

We note that having marine consents and discharge and dumping consents creates a potential confusion in scope of the "marine consent" versus the other consents. For example, an EIA for a marine consent will presumably be expected to address the environmental effects of discharges where those are an important aspect of the activity even though these are the subject of a separate consent (which could be sought at a different time) under the same *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012* ("the Act"). What is expected in terms of the marine consent in regard to discharges (or dumping) will

need to be clarified to make this workable, especially for situations where the two types of consent might logically be sought at different times. We have touched on this issue, where relevant, later in this submission.

Part 2 – Responses to specific questions in the discussion document

Section 2.2 Exploratory drilling in the EEZ and continental shelf

Question 1(a): Do you agree with the proposal that exploratory drilling for oil and gas be classified as non-notified discretionary? If not, how should the activity be classified or regulated?

PEPANZ supports the introduction of a "non-notified discretionary" class of activity into the EEZ Act framework. This will align it more closely with the RMA framework and provide a place for those activities not aligned with being a 'permitted' activity but which are not of an actual or perceived 'scope and scale' to justify a notified discretionary classification.

PEPANZ agrees exploratory (and appraisal) drilling for oil and gas should be classified as a non-notified discretionary activity under the EEZ Act. Appraisal drilling activity is part of the exploratory phase and the drilling of the well is effectively the same activity. Offshore drilling is a mature activity globally (tens of thousands of offshore wells drilled) and in New Zealand (around 200 wells drilled). Whilst the detail of each planned well requires careful regulatory consideration the general attributes of offshore drilling are well understood and the likely effects on the environment and other parties are minor, localised and generally brief in duration. These characteristics are analogous to permitted activities with the point of difference being the low probability of a high-consequence oil spill.

As the discussion document points out, given the rigorous regulatory requirements already provided for this activity by: the permit conditions under the *Crown Minerals Act*; the safety case, well examination scheme and other drilling related requirements under the *HSE Regulations*[1]; discharge management plans[2] ("DMP") currently/discharge marine consents in future; and the well control/oil spill contingency requirements and insurance and liability provisions under the *Maritime Transport Act*; we consider the effects of exploration/appraisal drilling activity are appropriately managed as "non-notified discretionary" activities. As outlined on page 11 of the discussion document many components of exploration drilling activity such as placement of structures on the seabed and the use of mooring arrays are considered to have only minimal impacts on the environment.

We consider the discussion document has addressed most of the issues associated with exploration (and appraisal) drilling although it does not specifically discuss exploration/appraisal wells that might be drilled within existing producing fields in Taranaki or producing fields established in future. We note that whilst in future the marine consents of any new producing fields may be able to provide for activities occurring after initial field development, existing fields did not have this opportunity.

Whilst the bulk of field development may occur in an initial establishment phase (e.g. platforms and pipelines installed and production wells drilled), fields are often subject to subsequent near field exploration and appraisal activity. These are similar in nature to other exploration/appraisal drilling activities and should be treated as such. The same issues relating to regulatory certainty (such as the need to secure a drilling rig in a timely manner) apply to drilling such wells.

[1] Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013
[2] Discharge management plans issued under the Marine Protection Rules Part 200: Offshore Installations – Discharges.

We also consider that incremental or infill production wells within existing producing fields in Taranaki or new producing fields could be treated the same - like exploration and appraisal wells these are short term activities with minimal marginal environmental impact given the impacts associated with the development of the field have already be considered.

As in other jurisdictions the industry utilises drilling rigs mobilised (in our case imported) to carry out relatively short term drilling work (generally a period of months rather than years for each operator). In most cases rigs are brought to New Zealand by a group of companies with each contributing to the substantial costs of mobilising it and then meeting their own costs of drilling. This has proven to be the most effective and efficient arrangement for conducting drilling operations in New Zealand. Like other business onward the rig owners require on-going workload to commercially run the rigs and this necessitates the contracting of rigs via tender a considerable time in advance on a relatively unconditional basis. In order to progress these collaborative partnership arrangements companies must be able to work to a defined time line for regulatory approval.

A long period between seeking the regulatory approvals to drill and undertaking the activity is impractical for reasons, including:

- a prudent operator would be unlikely to contract a drilling rig without first getting consent to use it to drill a well as once committed to the operator is liable to pay for the rig whether they use it or not and the per day costs are substantial.
- it is neither practical nor commercially rationale for a company to apply for a marine consent to drill a well until they have enough information on a prospect to justify this investment decision.
- the government requires fulfilment of work programme commitments under the *Crown Minerals Act* that leave relatively little time between maturing geological work (seismic surveys etc) to a drill ready status, and the commencement of drilling activities.

The potential for a fully notified consent process itself to take at least six months (which could be extended and so not a certain timeframe) plus the time to prior to this to develop the impact assessment and other material required for the consent application, plus an allowance of time between securing the consent and undertaking the activity could make this impractical in many situations. The timelines and process provided under the non-notified discretionary process would be workable for industry and would align with the regulatory treatment of these activities in other jurisdictions.

Given the likely effects of the activity are minor and brief in duration, the significant regulatory oversight in place, and the industry's requirement for a timely regulatory process, we consider it appropriate that exploratory (and appraisal) drilling for oil and gas should be classified as non-notified discretionary under the EEZ Act. The definition of exploratory drilling (in the footnote on page v) should be refined in light of final policy decisions when developing the regulations to ensure it is as unambiguous as possible.

Question 1(a)

- **PEPANZ agrees exploratory (and appraisal) drilling for oil and gas should be classified as non-notified discretionary under the EEZ Act and that this should include exploration/appraisal drilling associated with or nearby to existing fields and also infill production drilling in existing fields.**

Question 1(b): Are there any issues that you think have not been considered?

An issue that needs to be considered in developing regulations for non-notified discretionary activities is the nature and scope of conditions relating to the management of activities after they have been consented. The environmental impact assessment submitted with a consent application must address the potential impacts of the activity but some of the details about the activity (for example the specific rig to be used) may not be available at the time the consent application is made. We note for example that while much analysis is conducted by an operator prior to drilling (as outlined in Table in A2 on page 35) some of this takes place after a consent would be sought. Given the mature nature of petroleum drilling we consider the sort of conditions that would be applied to drilling activities could be identified in regulations to build on what is outlined in section 63 of the Act. This would increase regulatory certainty.

Question 1(b)

- **PEPANZ recommends the nature and scope of conditions that would usually be applied to drilling activities be identified in regulations.**

Section 2.3 Discharges and Dumping

Question 2: Has section 2.3.1 correctly described the key issues related to discharges and dumping?

PEPANZ considers that, in general, section 2.3.1 has correctly described the key issues related to discharges and dumping. We consider the regulation of discharges and dumping should, where possible, be discussed separately as the activities are quite different. Regulations should be drafted to deal with each specifically.

Question 3: Do you agree that 'harmful substances' should be defined as in the proposed definition in 2.3.2? If not, how should the term be defined?

It is sensible that the environmental effects of the discharges of sediments and tailing from mineral mining operations should be regulated. Simply deeming them to be harmful substances is an odd way of achieving this when sediments/tailings from mineral mining operations are often simply constituents of the local environment and may not be harmful as such. We recognise however that this proposal addresses an issue with the Act itself.

We note petroleum is considered a subset of "mineral" under both the existing EEZ regulations and within the definition of "mineral" in the Crown Minerals Act. For this reason the regulations should clearly exclude "petroleum operations" from "mineral operations" so as to avoid any ambiguity and achieve the policy intent of this proposal.

Question 4: Do you agree that the activities set out in Table 4 should be classified as permitted activities and regulated with these conditions? If not, how else could they be classified or regulated?

We support the activities set out in Table 4 being classified as permitted activities and regulated with the conditions provided in the table. Given the minor effects associated with discharges at these levels alignment with international standards is appropriate and efficient, particularly as vessels and installations are set up to be compatible with international standards.

Discharges of grey and black water do not however appear to be provided for specifically in Table 4. These should also be permitted activities when undertaken to international standards (i.e. MARPOL).

How the EPA is going to monitor the permitted activities is not apparent from the proposals in the discussion document. Auditing as occurs currently under the Maritime Transport Act would seem an appropriate part of the approach. PEPANZ is keen to contribute to the development of a consistent approach to monitoring in this area.

Question 4

- **PEPANZ agrees that the activities set out in Table 4 should be classified as permitted activities and regulated with the proposed conditions.**
- **PEPANZ recommends the discharge of grey and black water should also be classified as permitted activities subject to international standards.**

Question 5: Do you agree that the activities set out in Table 5 should be classified as non-notified discretionary? If not, how else could they be classified or regulated?

Discharges

We agree with the discharge activities set out in Table 5 being classified as non-notified discretionary activities. These are technical matters that require regulatory expertise, scientific input and careful consideration to ensure the localised environmental effects are managed, but don't have impacts on other parties that would be considered through a fully notified process.

Discharge consents may require environmental monitoring such as seabed sampling (before and after an activity), as is generally required under DMPs issued currently. Given the negligible effects of these activities it would be sensible for these to be able to be provided for as part of a discharge consent, rather than being dealt with as a separate permitted activity under the current permitted activity regulations.

We note the Act allows in section 83 for minor changes to consent conditions but does not otherwise provide for consent holders to initiate changes to consents. Therefore depending on the view taken as to what is "minor", a new marine discharge consent could be required for modest changes to a discharge consent. This could be completely disproportionate and unnecessary and could possibly discourage for example the adoption of more environmentally benign chemicals.

Dumping

The dumping activities provided for as non-notified discretionary activities in Table 5 exclude oil and gas structures dumped during decommissioning (i.e. this is a discretionary activity). As outlined in response to the next question we consider it appropriate that any large scale abandonment of oil and gas structures be fully notified.

We note however that field decommissioning does not necessarily happen in one phase or at one time. A non-notified process would be appropriate for abandonment activities with minor to modest effects, particularly if these in occur in advance of field decommissioning or are associated with exploration or appraisal. If overly costly and prolonged, the regulatory process could discourage activities being progressed in advance of final field decommissioning, in situations where this might be an appropriate approach.

However, if there were also applied to small structures (e.g. not platforms) then this would be out of step with the intention of the EEZ framework to classify activities based on their environmental effects and potential effects on third parties. It would not be logical that dumping any oil/gas a structure is fully notified but all other dumping is non-notified regardless of scale and environmental effect.

We consider disposal of a minor non-hazardous oil and gas structures in a way or area where there will be no further impacts on the environment or third parties should be progressed on a non-notified basis. It may be useful to more closely link the activity classifications to the provisions of the *London [Dumping] Convention 1973 and its 1996 Protocol*.

We consider activities such as well completion and abandonment activities (e.g. abandoning wellheads), and any mooring and anchoring related are included in a 'non-notified discretionary' classification as they generally have minimal effects on the environment and other parties. The 'discretionary' classification for all petroleum related activities regardless of scale and impact would be out of step with the potential effects of some of these activities and the current regulatory settings.

Question 5

- **PEPANZ supports the discharge activities set out in Table 5 being classified as non-notified discretionary.**
- **PEPANZ recommends dumping activities should be classified as notified or non-notified on the basis of the potential effects and international practice rather than the sector involved. Activities involving the dumping of smaller scale oil/gas infrastructure should be classified as non-notified discretionary where the effects on the environment and/or other parties are minor.**

Question 6: Do you agree that the activities set out in Table 6 should be classified as discretionary? If not, how else could they be classified or regulated?

Discharges

We don't support consent applications for the discharge of drilling fluids from development drilling at new fields entering the production stage being classified as a notified discretionary activity.

The effects of likely discharges associated with development drilling to establish the field should be considered in general terms as part of the notified marine consent required for the field development. Because of this and the following reasons, we do not consider it appropriate that the discharge consent itself should be on a notified basis:

- some planned production wells may not be drilled until a number of years after consenting of the field development as it takes time to construct production facilities and depending on reservoir performance the timing and location of some wells as well as chemicals used may change;
- if an additional well is required a number of years after consenting it would be out of step on an effects based assessment to go through a full discretionary process for the discharges associated with drilling a single additional well; and
- there is no indication of how changes to consented discharges are to be progressed - for example if an amendment is needed to add a new chemical to a drilling process how will this be treated? If this were to trigger another notified discretionary process then this would be out of line with the effects being managed and other regulatory frameworks.

Dumping

We support any dumping or abandonment of large scale oil and gas infrastructure such as production platforms being classified as a notified discretionary activity. This is a material activity with potentially

longstanding effects (could for instance restrict certain activities in certain places in future) and so should be open to public submissions. This would be consistent with both the current regulatory arrangements and international practice.

However as outlined above PEPANZ considers the dumping of oil/gas infrastructure should be classified as non-notified discretionary where the effects on the environment and third parties are minor. In response to the previous question we outlined some of the relevant activities.

Question 6

- **PEPANZ recommends discharges of drilling fluids from field development should be classified as non-notified discretionary rather than discretionary.**
- **PEPANZ agrees any dumping or abandonment of large scale oil and gas infrastructure such as production platforms should be classified as a discretionary activity but considers activities involving the dumping of oil/gas infrastructure should be classified as non-notified discretionary where the effects on the environment and/or other parties are minor.**

Section 2.4 Implementing the proposed package of reforms

Section 2.44 Transitional Provisions

Exploratory drilling

PEPANZ considers the transitional provisions applying to exploratory drilling appear reasonable in the circumstances. We support the non-notified discretionary classification being introduced in late 2013, well in advance of the end of the transitional period provided under section 166 of the Act. This will provide certainty to operators earlier and simplify the situation for operators looking to undertake activities near to and immediately beyond the end of the transitional period in mid-2014.

Discharges

The transitional provisions applying to discharge and dumping activities outlined in Table 9 appear reasonable in principle. Whether they prove workable in practice will depend on the lead times provided in relation to the transfer of functions from Maritime New Zealand to the EPA, and whether any DMP's need to be renewed (i.e. for existing producing fields) or sought (i.e. for new drilling activities) around the time the regulatory transition occurs. The workability of the transitional provisions will be particularly important given the offshore petroleum industry will be busy in the period when, and more importantly immediately after, it appears the transfer of discharge functions is set to occur.

Operators need sufficient notice of when the transition is likely to occur and certainty of the detail of proposed changes to enable them to either apply for DMPs before the transition, if this is sensible and practical, or prepare an appropriate application for a marine discharge consent. Specifically, potential applicants need sufficient time between when the regulations are finalised (at which point applicants know precisely what they are applying for and under) and when the regulations come into effect. Otherwise there is the risk that regardless of how organised and prepared an operator may be, they are caught in a situation where they have insufficient time to develop and finalise their submission, submit it, have it considered by the EPA and hopefully granted before an activity can take place. The time this takes should not be underestimated.

Even for activities requiring a non-notified consent this period is substantial and would be at least 6 months: 3 months for the non-notified consent process; plus the time to develop the right material for submission (different from DMPs currently); plus an allowance for any extensions to the statutory timeframes (more likely for the first applications); plus a period of comfort for securing consent before the activity takes place to avoid incurring rig costs due to consenting delays. Given the cost of drilling rigs (can be $1 million dollars per day) it would be extremely costly for a company if it ended up paying this per day cost while waiting for a discharge consent to be processed.

Another matter that is not covered by the proposals outlined in Table 9 is how to amend a DMP that is grandfathered (i.e. deemed to be marine discharge consent). As noted on page 16 of the discussion document DMPs are amended on a fairly frequent basis. Often these amendments relate to minor changes to the DMP, such as changing from the use of one chemical to a similar but different chemical. It would be possible instead for the EPA to administer the DMPs under the rules under which they were granted (Maritime Transport Act and Part 200) until they reached the end of their term. We consider this would be a pragmatic approach that achieves a more comprehensive grandfathering. DMPs last for only three years so this situation would not continue for a prolonged period. Otherwise a marine consent could be necessary if any changes are required as the Act does not appear to provide for this situation. This would make the grandfathering very limited and undercut regulatory workability and certainty.

We consider further engagement with industry on the workability of the transition would be appropriate before any timelines for the transition are fixed. It may be necessary to progress the discharge regulations for different sectors separately to allow time for a sensible and workable transition for the petroleum sector whilst not holding up the new regulation applying to the mineral mining sector.

Dumping

The same general issues relating to discharges would apply also to the transition of the administration of dumping regulation from MNZ to the EPA. Based on historical experience there are, however, likely to be fewer, if any, applications for dumping consents around the transition period. Nonetheless the transitional period has to be sufficient to allow for any potential activities across this period.

Comments on transitional provisions outlined in section 2.44 and Table 9

- **PEPANZ recommends a realistic transition time of no less than 6 months is provided to between when the regulations on discharges and dumping are finalised and when they come into effect to make it workable for potential applicants.**
- **PEPANZ recommends the EPA administer DMPs under the rules under which they were initially granted (Maritime Transport Act and Part 200 of the Maritime Rules) until the end of their term.**