29 June 2012

Submission on proposed EEZ regulations policy proposals
Ministry for the Environment
PO Box 10362
Wellington 6143

PEPANZ submission: Managing our oceans - a discussion document on the regulations proposed under the EEZ Bill

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ or "the Association") submission in respect of *Managing our oceans - a discussion document on the regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill* ("discussion document") released by the Ministry for the Environment in May 2012.

PEPANZ represents private sector companies which hold petroleum exploration and mining permits, service companies and individuals working in the industry. PEPANZ members are responsible for more than 95% of New Zealand's oil and gas production.

The Association and its members welcome the opportunity to comment on the proposals in the discussion document. We also consider that it is essential that once developed an exposure draft of the regulations is circulated to all relevant stakeholders, with at least a month for comment, before any regulations are brought into force.

While we are aware that comments are sought only on the proposals outlined in the discussion document, these proposals give substance to the framework provided by the Bill, and in doing so illuminate some issues with the framework itself. In this submission we identify issues with the proposed framework, and in some cases propose solutions that would involve amendment of the Bill. There are also some ambiguities in the regime, such as the scope of what an activity is, that complicate our ability to comment on the proposals in this discussion document.

We have provided specific responses to all questions of general relevance or of specific relevance to the oil and gas industry in Part B of this submission. We have not provided responses to the questions in chapters 9, 10 and 12 as they do not concern the industry. Before turning to our responses to individual questions, in Part A of this submission we raise two key concerns with the proposals outlined in the discussion document.

We recognise both that the EEZ regime is a gap filling exercise and that because of its limited application it is close to industry specific regulation. Given what is already addressed for petroleum activity under other regimes it is important that the administration of the EEZ Bill is focussed on the regulatory gap, which is those matters outlined in clause 15 of the Bill.

In relation to petroleum activity other regulation already addresses, amongst other things, the issues associated with avoiding and if necessary dealing with an oil spill from a well, specifically:

- the design, operation and safety of the well and drilling rig are regulated by the Department of Labour under the HSE regime (covers well integrity, blow out prevention etc), which is currently being updated and upgraded significantly; and
- oil spill preparedness and emergency response is controlled under the Maritime Transport Act.

The management of discharges and chemicals occurs under the Maritime Transport Act (to be transferred to the EPA in future but details and timing are yet to be defined) and this controls the discharge of drill cuttings, which is generally the greatest, albeit still modest, effect of drilling activity. This is a key part of the regulatory regime for managing the environmental effects of drilling activity and not knowing the details of how this is going to work in future makes it difficult to comment on some of the proposals in this discussion paper.

We note that biosecurity issues for activities in the EEZ will be controlled under the Biosecurity Law Reform Bill, however, processes are already in place and those rigs that enter the territorial sea already need to comply with the existing Act.

Part A – Two Key Concerns

The Association and its members support the introduction of a robust environmental effects management regime for New Zealand's Exclusive Economic Zone ("EEZ") and Extended Continental Shelf ("ECS"). We also support a regime that sets clear environmental expectations and provides processes for gaining approval to undertaken activity that are as certain and efficient as possible.

We however have the following serious concerns with the proposals in the discussion document:

- Adopting a threshold for permitted activities of "no more than minor effects" is not aligned with the regulation-making power in the Bill [clause 29(4)(a)] and imposes an unnecessarily high regulatory burden and level of uncertainty on activities with more than minor, but less than significant, environmental impacts.
- Even with a "no more than minor effects" threshold we consider that given its likely effects, with imposition of appropriate conditions plus the regulation occurring under other regimes, petroleum exploration/appraisal drilling can and should be regulated as a permitted activity as it currently is within the majority of the Taranaki coastal marine area. Pipeline inspection and maintenance should also be a permitted activity.

Given these concerns we consider the Ministry should not progress the current proposals but instead:

- adopt a threshold for permitted activities that is more consistent with the provisions of the Bill, for example "less than significant" and then re-engage with stakeholders to determine what activities should be permitted; and
- provide for exploration/appraisal drilling as a permitted activity subject to appropriate conditions.

The rationale for this view is provided below.

The proposed threshold for permitted activities is not aligned with the intent of the Bill

The Association and its members strongly oppose the proposed threshold of "no more than minor effects" for permitted activities (the proposed criterion 2).

We consider the proposed approach is misaligned with the regulation-making powers of the Bill. By pushing many conventional activities into the discretionary category, particularly those with likely small adverse environmental effects such as drilling (and noting that the risk elements of drilling are addressed through other legislative regimes, see above), it will create uncertainty that will likely discourage investment in exploration/appraisal for petroleum. As such the proposals are contrary to the Government's objective of growing returns to New Zealand from development of petroleum resources.

In our view setting the threshold at no more than minor is not consistent with the apparent intent of the regulation-making power or with the intent outlined in the Bill's purpose statement. Clause 29(4) of the Bill states that the Minister must not provide for permitted activities that are likely to have adverse effects on the environment that are *significant* in the circumstances. We support this and agree that activities with significant environmental effects that cannot be mitigated should not be classified as "permitted" and that activities with less than significant effects should be permitted. We believe this view is supported by the following analysis from page 65 of the Ministry's departmental report[1] on the EEZ Bill, which envisages that even activities with significant effects could be permitted if the effects can be mitigated:

> *"Setting the upper limit for permitted activities at "significant" is a deliberate decision. It is quite possible that activities whose effects are significant may be able to be reduced, through mitigation measures, to a point where they can be permitted. Also, there may be activities whose effects are significant but must be permitted as a consequence of international obligations"*

There is a substantial gap between "no more than minor" proposed for the regulations and "significant" in the Bill. The proposed criterion sees all activities with a more than minor effect lumped together in the discretionary activity category. This is inefficient and inappropriate because it would require activities that are inherently low impact (and the likely effects of which are well understood and straightforward to manage such as temporary drilling activity) to be treated, process wise, in the same way as long lasting activity such as seafloor mining, the effects of which are less understood and which therefore warrant comprehensive case by case basis consideration.

In our view the taking of (such) a conservative position on the threshold for permitted activities is also inconsistent with the stated purpose of the Bill, which is to achieve a balance between economic development and protection of the environment. Activities with environmental effects that are not significant, and which have the potential to generate substantial value to New Zealand should be permitted activities subject to meeting specified conditions.

We consider the Ministry should adopt a threshold for permitted activities that is more consistent with the provisions of the Bill, for example "less than significant", and then re-engage with stakeholders to determine what activities should be permitted subject to appropriate conditions.

It appears from the discussion document that a major factor for selecting a low threshold (minor effects) was a concern for the possible cumulative effects of activities being undertaken many times in the EEZ. This

[1] Departmental Report on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill, prepared by the Ministry for the Environment, March 2012

is a legitimate concern, however, applying additional costs through regulatory design to activities that might have material cumulative effects should they be undertaken at high rates, when there is little likelihood of this occurring, is to impose an unjustifiable regulatory burden. As with the coastal marine area under the RMA, the potential for cumulative effects should be considered specifically for each activity in the framing of permitted activity rules, rather than through setting a very low threshold. That this is the intention is reflected in the definition of "effects" in clause 61(1) of the Bill, which includes cumulative effects.

In New Zealand cumulative effects are unlikely to be an issue as petroleum exploration and appraisal activities are invariably low frequency, temporary and spread out. With modern technology there is no point drilling multiple exploration wells in close proximity to each other. We estimate for example that there might be 20 wells drilled over the next five years, however these will be spread over large areas of the EEZ. Even if a hundred wells were drilled the likely overall environmental impact on the EEZ would be minor given the dispersed nature of the activity.

If the intent was always to set a "no more than minor" threshold of environmental effect for permitted activities then it would have been appropriate to include within the Bill a fourth category of activity between permitted and discretionary. It does not appear this was the intent given the provisions of the Bill discussed above.

However, if this conservative approach is persisted with, we consider the Government should introduce such a category of activity. This would allow for a more nuanced treatment of some activities (such as drilling for petroleum) and make the EEZ regime more consistent with the RMA and the treatment of petroleum activities in overseas jurisdictions. Possible options would be "controlled activity" status or a "limited discretionary" status. Given the costs, time and inherent uncertainty associated with the marine consent process it is important that it is reserved for situations where there is value in exercising discretion, such as where the proposed activity is experimental/uncertain in nature, requires case-by-case consideration or will likely have significant adverse environmental impacts that need to be balanced against the benefits of the activity.

Finally we note that the concept of "minor/ no more than minor effects" is well understood under the RMA and has been subject to extensive judicial comment. However, under the RMA, this concept is only relevant to the issue of notification of resource consents, not to activity status or decisions on resource consent applications. The discussion document therefore proposes to use well understood concepts which are supported by a body of case law, but for an entirely different purpose. This could lead to confusion and unintended outcomes.

Providing for exploration/appraisal drilling as a permitted activity

Even if the Government chooses to proceed with a "no more than minor effects" threshold for permitted activities we consider that given its likely effects petroleum exploration and appraisal activity can and should be regulated as a permitted activity.

Offshore exploration and appraisal drilling for conventional petroleum is a mature activity , which takes place over a brief period and has modest environmental effects that are well understood and can be mitigated through standard (potentially stringent) conditions. The only place in New Zealand where there is substantial offshore oil and gas activity, Taranaki, provides for drilling as a permitted activity (subject to conditions) in its Regional Coastal Plan.

The likely effects of exploration or appraisal drilling are modest and confined to a small area around the drilling rig. They are not significant in the context of the EEZ and similar to other permitted activities (e.g.

the effects of a single exploration/appraisal well in a vicinity compared with drilling multiple holes in the same vicinity for scientific research drilling). As noted above, cumulative effects are unlikely to be an issue in the foreseeable future given the low level of activity in the context of the EEZ and the fact that petroleum exploration activity is generally spread out.

The main impact is from the drilling cuttings during the initial phase of drilling into the seabed and those cuttings (and associated mud components) discharged into the sea following processing (impacting the benthos over a small area and causing temporary effects on the water column). The use of low toxicity water based drilling mud and the extensive processing of cuttings can reduce the generally modest impact of cuttings further. These and other discharges are currently controlled under the Maritime Transport Act, although it has been indicated that this function will be transferred to the EPA in future. Other impacts would be from the rig itself sitting on the seabed (if not a floating rig) and/or any anchors on the seabed.

We recognise that what distinguishes petroleum drilling from say shallow research drilling is the low probability but high impact of a major oil spill following a loss of containment of hydrocarbons from a well and appreciate that "effect" under the Bill includes any potential effect of low probability, that has a high potential impact. However as noted above:

- the design, operation and safety of the well and drilling rig are already regulated by the Department of Labour under the HSE regime (covers well integrity, blow-out prevention etc.), which is currently being updated and upgraded significantly; and
- oil spill preparedness and emergency response is controlled under the Maritime Transport Act.

Given these arrangements under other legal regimes it is unclear why this low probability/high impact should be considered (again) by the EPA through a discretionary activity marine consent process, and what conditions might be imposed by the EPA on the activity to address it that are not already addressed under other regulation. As a deliberately gap-filling regime it is important that the EEZ regime remains focussed on regulating those environmental effects and activities it is responsible for [outlined in clause 15(1) of the Bill]. Putting in place specific conditions to address the risk of an oil spill or to manage drill cuttings would seem to inevitably overlap these other regimes specifically designed for that purpose.

Rather than leaving drilling as a discretionary activity we advocate that the Ministry instead set strict conditions (that reflect industry best practice) for drilling as a permitted activity, and which control the effects of those activities on the matters outlined in clause 15 of the Bill. This would incentivise operators to operate to the highest standards in order to fit within the scope of a prescribed permitted activity. This approach would reduce as far as practicable the environmental impacts of drilling activity whilst also providing a highly streamlined regulatory process.

Conditions for exploration/appraisal drilling could be imposed along the lines of the following:

- That an environmental management plan be put in place to address the matters covered by the EEZ regime and submitted to the EPA to requirements specified in the regulations.

- Provide to the EPA in advance of an activity being undertaken evidence of compliance with other regulatory controls applying to offshore drilling activity, specifically:
    - Under the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations*[2]:
        - Requirements relating to well design and well integrity.
        - Requirements relating to preparation and acceptance of safety cases for offshore installations (includes mobile drilling rigs).
    - Under the *Marine Protection Rules Part 200* (Maritime Transport Act 1994) an approved discharge management plan which includes:
        - Emergency spill response procedures for oil and other harmful substances
        - In relation to the use of drilling fluids (muds) and discharge of drill cuttings: the likely distribution of the cuttings; the chemicals in the muds and their likely effects; justification for the drilling mud proposed to be used; proposed volumes of muds intended for discharge; systems for reducing the muds on cuttings discharged; and monitoring and reporting that will be undertaken.
        - The treatment and discharge of any produced water.
    - Evidence that the drilling rig complies with biosecurity standards as if the Biosecurity Act 1992 applied outside 12 nautical miles (until the Biosecurity Law Reform Bill is enacted).
    - Requirements under the *Marine Mammals Protection Act 1978* and regulations.
    - Any flaring is in accordance with the *Crown Minerals (Petroleum) Regulations 2007* (would only be relevant in some cases).
    - Other requirements under the *Maritime Transport Act 1994* relating to certificates of insurance, rig operations lighting, the management of solid waste and garbage etc.

The Association and its relevant members would be happy to work further with MfE, the EPA and other stakeholders on the development of detailed conditions for exploration/appraisal drilling activity to be included in regulations.

[2] These regulations are currently being reviewed and a significantly upgraded version of the regulations is likely to be in force before the commencement date of the EEZ legislation.

Part B - Responses to the specific questions in the discussion document

Assessment criteria

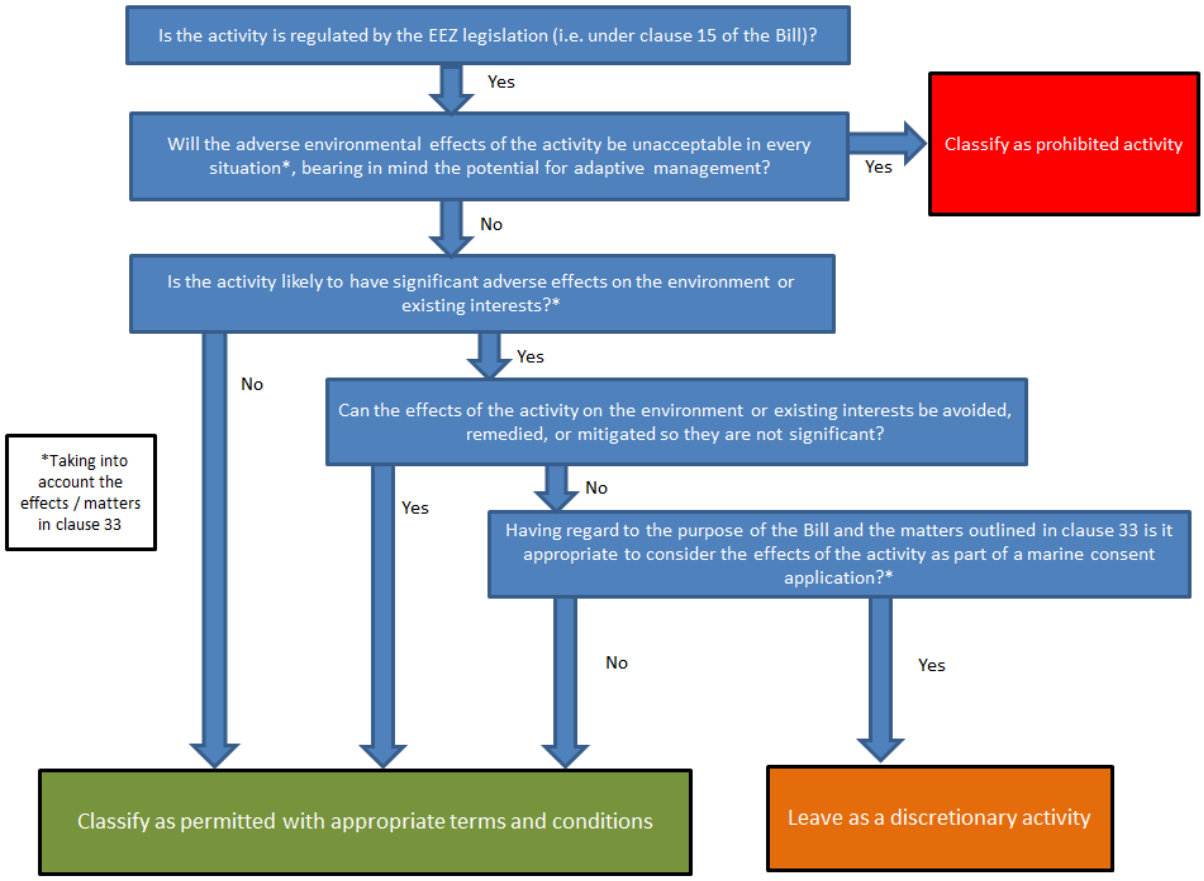
Q1.	Do you agree with the proposed assessment criteria and the way that they have been arranged? If not, please explain alternative assessment criteria and arrangements/ weightings, and how these might perform against the stated objectives.

The Association does not agree with proposed criterion 2 and does not consider it is aligned with the provisions of the Bill. Our reasons for this view are outlined more fully in our response to question 5 below.

The concept of balancing environmental effects with the economic development, as outlined in the Bill is effectively not provided for at all within the proposed criterion as it has no influence at all on whether an activity is determined to be a permitted activity. Our reasons for this view are outlined more fully in our response to question 8 below.

We do not have significant concerns with Criterion 1 but consider it unnecessary.

We propose the following diagram of assessment criteria based on the provisions of the Bill as an alternative to that outlined in the discussion document.



Q2.	Do you agree that international obligations should be considered first, environmental effects second, and other matters third? If not, why? How else would you order or weight the criteria?

The Association's recommended approach to ordering the consideration is outlined in our response to question 1.

Criterion 1: Does New Zealand have binding international obligations to permit the activity?

Q3.	Do you agree with the proposed criterion for considering international obligations and how it is arranged within the assessment criteria? What other criterion would you use to meet the objectives?

We do not have significant concerns with Criterion 1 and it does directly impact the petroleum sector.

We note however that it is based on a very expansive interpretation of how activities that are permitted under UNCLOS should be treated, which appears inconsistent with how New Zealand regulates, for example, fishing activity in the EEZ.

Q4.	Do you agree with the impacts of this criterion? How would you describe the impacts? How would you assess the impacts of an alternative criterion?

The Association agrees with the impacts of this criterion outlined in the discussion paper.

Criterion 2: Are the environmental effects of the activity minor, or can they be avoided, remedied, or mitigated so they are minor?

Q5.	Do you agree with the proposed environmental threshold for a permitted activity being minor environmental effect (after the consideration of conditions to avoid remedy or mitigate)? How would you assess the impacts of this proposal?

As outlined in Part A of this submission the Association and its members strongly oppose the proposed threshold of "no more than minor effect". We have repeated the text from Part A here in the interests of completeness.

We consider the proposed approach is misaligned with the regulation-making powers of the Bill. By pushing many conventional activities into the discretionary category, particularly those with likely small adverse environmental effects such as drilling (and noting that the risk elements of drilling are addressed through other legislative regimes, see above), it will create uncertainty that will likely discourage investment in exploration/appraisal for petroleum. As such the proposals are contrary to the Government's objective of growing returns to New Zealand from development of petroleum resources.

In our view setting the threshold at no more than minor is not consistent with the apparent intent of the regulation-making power or with the intent outlined in the Bill's purpose statement. Clause 29(4) of the Bill states that the Minister must not provide for permitted activities that are likely to have adverse effects on the environment that are *significant* in the circumstances. We support this and agree that activities with significant environmental effects that cannot be mitigated should not be classified as "permitted" and that activities with less than significant effects should be permitted. We believe this view is supported by the following analysis from page 65 of the Ministry's departmental report[3] on the EEZ Bill, which envisages that even activities with significant effects could be permitted if the effects can be mitigated:

> *"Setting the upper limit for permitted activities at "significant" is a deliberate decision. It is quite possible that activities whose effects are significant may be able to be reduced, through mitigation measures, to a point where they can be permitted. Also, there may be activities*

[3] Departmental Report on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill, prepared by the Ministry for the Environment, March 2012

whose effects are significant but must be permitted as a consequence of international obligations"

There is a substantial gap between "no more than minor" proposed for the regulations and "significant" in the Bill. The proposed criterion sees all activities with a more than minor effect lumped together in the discretionary activity category. This is inefficient and inappropriate because it would require activities that are inherently low impact (and the likely effects of which are well understood and straightforward to manage such as temporary drilling activity) to be treated, process wise, in the same way as long lasting activity such as seafloor mining, the effects of which are less understood and which therefore warrant comprehensive case by case basis consideration.

In our view the taking of (such) a conservative position on the threshold for permitted activities is also inconsistent with the stated purpose of the Bill, which is to achieve a balance between economic development and protection of the environment. Activities with environmental effects that are not significant, and which have the potential to generate substantial value to New Zealand should be permitted activities subject to meeting specified conditions.

We consider the Ministry should adopt a threshold for permitted activities that is more consistent with the provisions of the Bill, for example "less than significant", and then re-engage with stakeholders to determine what activities should be permitted subject to appropriate conditions.

It appears from the discussion document that a major factor for selecting a low threshold (minor effects) was a concern for the possible cumulative effects of activities being undertaken many times in the EEZ. This is a legitimate concern, however, applying additional costs through regulatory design to activities that might have material cumulative effects should they be undertaken at high rates, when there is little likelihood of this occurring, is to impose an unjustifiable regulatory burden. As with the coastal marine area under the RMA, the potential for cumulative effects should be considered specifically for each activity in the framing of permitted activity rules, rather than through setting a very low threshold. That this is the intention is reflected in the definition of "effects" in clause 61(1) of the Bill, which includes cumulative effects.

In New Zealand cumulative effects are unlikely to be an issue as petroleum exploration and appraisal activities are invariably low frequency, temporary and spread out. With modern technology there is no point drilling multiple exploration wells in close proximity to each other. We estimate for example that there might be 20 wells drilled over the next five years, however these will be spread over large areas of the EEZ. Even if a hundred wells were drilled the likely overall environmental impact on the EEZ would be minor given the dispersed nature of the activity.

If the intent was always to set a "no more than minor" threshold of environmental effect for permitted activities then it would have been appropriate to include within the Bill a fourth category of activity between permitted and discretionary. It does not appear this was the intent given the provisions of the Bill discussed above.

However, if this conservative approach is persisted with, we consider the Government should introduce such a category of activity. This would allow for a more nuanced treatment of some activities (such as drilling for petroleum) and make the EEZ regime more consistent with the RMA and the treatment of petroleum activities in overseas jurisdictions. Possible options would be "controlled activity" status or a "limited discretionary" status. Given the costs, time and inherent uncertainty associated with the marine consent process it is important that it is reserved for situations where there is value in exercising discretion, such as where the proposed activity is experimental/uncertain in nature, requires case-by-case consideration or will

likely have significant adverse environmental impacts that need to be balanced against the benefits of the activity.

Finally we note that the concept of "minor/ no more than minor effects" is well understood under the RMA and has been subject to extensive judicial comment. However, under the RMA, this concept is only relevant to the issue of notification of resource consents, not to activity status or decisions on resource consent applications. The discussion document therefore proposes to use well understood concepts which are supported by a body of case law, but for an entirely different purpose. This could lead to confusion and unintended outcomes.

Q6.	Is there a different threshold you consider would better manage the environmental effects of a permitted activity and result in classifications proportionate to the level of environmental effect?

In our view a threshold more consistent with the provisions and intent of the Bill would "be less than significant" for the reasons outlined in our response to question 5.

Q7.	Do you agree with the impacts of this criterion? How would you describe the impacts? How would you assess the impacts of alternative thresholds?

The impact of this proposal is significant as setting the threshold at minor environmental effect means that any activity with a greater impact is subject to the substantial costs (estimated at a minimum of $450,000 in the discussion document), delay in securing approval, uncertainty of outcome, and risk of legal challenge associated with being a discretionary activity and requiring a marine consent.

For activities where the environmental effect is more than minor, but predictable and less than significant, this appears an inappropriate regulatory burden that is inconsistent with the intent of the Bill.

Criterion 3(a) Are there any other matters, including the effects on existing interests, that would make it more appropriate to consider the activity as part of a marine consent?

Q8.	Do you agree with how non-environmental impacts are considered in the assessment criteria?

Economic factors feature only in criterion 3 and as part of a consideration of many factors. As the criterion is located and phrased economic factors could only lead to an activity being classified as discretionary rather than permitted, and not vice-versa.

Given the purpose statement of the Bill we consider that economic factors should be given consideration and this is reflected in the proposed assessment criteria diagram outlined above in our response to question 1.

Q9.	Do you agree with the potential impacts of this criterion? How would you describe the impacts? How would you assess the impacts of an alternative criterion?

The Association agrees with the brief outline of the potential impacts of this criterion contained in the discussion document. However, for activities with few effects the presumption should be that they will be permitted unless there are compelling reasons otherwise.

Criterion 3(b) Will the environmental effect of an activity be unacceptable in every case, bearing in mind the potential for an adaptive management approach?

Q10.	Do you agree with the proposed environmental threshold for a prohibited activity being unacceptable environmental effect? How would you assess the impacts of this proposal?

This approach seems logical however given the inherently subjective nature of "unacceptable" it is not clear how this might be applied in practice.

Q11.	Is there a different threshold you consider would be more appropriate for prohibited activities?

No.

Q12.	Do you agree with the impacts of this criterion? How would you describe the impacts? How would you assess the impacts of alternative thresholds?

The opportunity costs of not doing the activity may not be solely to the potential operator. There will also likely be opportunity costs to the New Zealand economy and to the Crown directly if the activity would have involved royalties to the Crown.

Net impacts of proposals

Costs and benefits of different classifications

Q13.	Do you agree with the assessment of costs and benefits of different classifications? What evidence do you have to support an alternative assessment?

We agree with what has been included but consider that some additional matters should also be included (refer to our answer to question 14).

Q14.	What costs and benefits are you aware of that have not been included? How should these be assessed?

The third bullet point under costs for discretionary activities should be split into its two component ideas as the uncertainty of outcome and uncertainty of timing are separate matters. Both have significant, but separate, costs and implications for applicants and potential investors.

We consider the opportunity costs of discretionary activities not given marine consent and prohibited activities not allowed to take place, should also be included in the costs and benefits.

Net impact of proposed assessment criteria

Q15.	What do you consider to be the net impacts of the proposed classifications criteria? How should we value those impacts? What evidence do you have to support this assessment?

The Association agrees that the proposed regime delivers a low risk of adverse environmental outcomes.

We do not support the view that it delivers a "low cost" regime as it imposes potentially substantial costs on those activities that require a discretionary marine consent.

Potential volume of activities

Q16.	What do you consider to be the potential volume of activities in the EEZ? What evidence do you have to support this assessment?

We expect petroleum related seismic surveys to remain common in the EEZ, potentially increasing in intensity over the next five years. These would occur only within areas permitted under the Crown Minerals Act.

We expect approximately 20 petroleum exploration wells to be drilled in the EEZ over the next five years in areas such as offshore Taranaki, the Canterbury Basin and the Great South Basin. These wells would be drilled within petroleum permits already held or in any permits allocated through the 2012 or 2013 block offers conducted by New Zealand Petroleum and Minerals. Permits allocated subsequently are unlikely to be drilled within the next five years.

The drilling of appraisal wells and the installation of any new petroleum production facilities in the EEZ within the next five years would rely on discoveries from exploration drilling within the next couple of years.

An increase in exploration drilling activity beyond five years is possible depending on the allocation of offshore exploration blocks over coming years.

Detailed costs and benefits of the proposed permitted classifications

Q17.	Do you agree with the assessment of costs and benefits of the proposed permitted classifications? What evidence do you have to support an alternative assessment?

We consider that the comments on "certainty" overstate the benefits over the lifecycle of activity. Petroleum activity follows a sequence from early research, seismic surveying to delineate a potential resource, exploration drilling of identified leads and if exploration is successful then further appraisal drilling and ultimately development of production infrastructure to commercialise the resource. It is only at the production phase that any revenue is generated.

Certainty of being able to undertake activity in the early stages of a petroleum project (i.e. seismic surveying) does not encourage investment if there is significant uncertainty regarding the ability to progress the project further (i.e. because subsequent steps such as drilling are subject to discretion) and with the timeline associated with getting consent. For example as proposed there will be certainty that a seismic survey can be conducted provided that the DOC guidelines for minimising acoustic disturbance to marine mammals from seismic survey operations are adhered to. This is positive in itself however an investor might have by then spent $20 million on seismic surveying with no certainty about whether they will subsequently be able to obtain a marine consent to drill a well and potentially discover a resource.

Aside from these comments we agree with the assessment of cost and benefits.

Q18.	Are you aware of any costs and benefits that have not been included? How should these be assessed?

The major cost of the proposed permitted classifications is that it requires activities considered to be more than minor to seek a discretionary marine consent.

Detailed costs and benefits of the proposed discretionary classifications

Q19.	Do you agree with the assessment of costs and benefits of the proposed discretionary classifications? What evidence do you have to support an alternative assessment?

We consider that the costs of the marine consent process to applicants are understated given the likelihood of public hearings.

We agree with the benefits identified for the proposed discretionary classifications.

Q20.	Are you aware of costs and benefits that have not been included? How should these be assessed?

The discussion document omits perhaps the single biggest cost of the proposed discretionary classifications, which is the fact that the activities are discretionary. The inability to know in advance whether an activity can be undertaken, versus knowing that an activity *can* be undertaken in certain circumstances if strict conditions are adhered to, is fundamental and may act as a significant deterrent to investment.

The Association also considers that the timing uncertainty for applicants is a very significant factor that is understated in the discussion document. The potential for consent applications to be appealed on points of law risks a substantial extension to the three to six month period which will make it very difficult to efficiently plan the series of activities that make up a programme of investment. This is a particularly significant issue for exploration drilling in New Zealand.

Because rig owners will not sign conditional contracts it is not practical for an operator to contract a rig until they are confident they can drill a well, which if drilling was a discretionary activity would be when a marine consent had been secured and any appeals concluded. As such the whole process for getting consent to drill would need to come before the rig is contracted, which is in turn a substantial period of time before the well is drilled. The likelihood of appeals to the High Court by third parties, and uncertainty of time associated with that, means that operators need to factor in a substantial and uncertain period of time between the point of application and the time of intended drilling.

We note that the potential for some activities to be declined consent is noted in summary table (table 3) but not in the detailed costs and benefits section. The opportunity costs of not conducting an activity and the potential chilling effects on other possible investors should be noted here.

Grouping of activities for assessment

Criteria

Q21.	Do you agree with the proposed criteria for how the activities should be grouped for assessment? If not, what other criteria would you suggest?

Yes

Options for grouping activities

Q22.	Do you agree with the options for how activities will be grouped for assessment? Are there any other options that should be considered?

Yes. We can see no other logical options for grouping activities.

Assessment of options

Q23.	Do you agree with the assessment of the options for grouping activities? How would you assess these options differently?

We agree with the comments on the benefits of grouping activities by restricted activity and by industry and note that the assessment suggests that relative merits of the two options identified are very similar.

Preferred option and impacts

Q24.	Do you agree with the preferred option for grouping activities? What alternative option would you prefer?
Q25.	What do you consider are the net impacts of the proposed grouping? What are the net impacts of an alternative grouping option?

We have concerns with the preferred option for grouping activities and support a focus remaining on the environmental-effects of activities. Grouping activities by industry risks the regulations containing inconsistencies and losing coherence in terms of environmental effects as industry specific issues, rather than actual environmental effects become the focus of the regulations. Nonetheless we recognise that the grouping of activities by industry has the advantage of allowing the regulations to be tailored to the specific activities undertaken by each industry.

We accordingly advocate for a mixture of the two proposed options. For example, the status of activities (and their associated conditions) should first be determined based solely on their environmental effects with activities then inserted into the applicable industry based section(s) of the regulations.

Industries proposed to be classified

Q26.	Do you know of any other activities that should be covered under the scope of this discussion document (i.e., that are currently occurring in the EEZ or are likely to be operative over the next five years and are not covered by other legislation)?

If exploration for, and possible extraction of, methane hydrates is considered as part of oil and gas, then no.

How conditions for permitted activities are considered

How conditions for permitted activities are considered in this section

Q27.	Do you agree with the objectives for setting conditions on permitted activities? What objectives would you set?

Subject to our comments on using "no more than minor" as a threshold, the objectives for setting conditions on permitted activities seem appropriate.

Monitoring of activities by the EPA

Q28.	What information do you consider is important for the EPA to collect?
Q29.	How should this information be collected?
Q30.	Have all feasible monitoring options been identified? What other options should be considered?
Q31.	What are the potential impacts of these options? How should we value these impacts?

The Association considers that the EPA should collect sufficient information to be notified of and monitor the effects of activities provided for under the Bill. Requiring relevant records to be available for audit is sensible.

In some cases using observers may be appropriate to monitor activities however this should be on an case-by-case basis rather than a default in all situations.

In collecting information the EPA must ensure commercially sensitive information is appropriately protected. The EPA should also endeavour to ensure that it does not seek to collect information which is the responsibility of another agency.

Involvement of relevant iwi

Q32.	Which of the two proposals for operators to engage with iwi/Māori for permitted activities do you prefer, ie, formally notify iwi, or formally notify iwi and receive consent from iwi about known wāhi tapu? What other options should be considered?

The Association considers it important to consult iwi on matters that affect their interests, such as where an activity might impact on a wāhi tapu site or area, and the industry engages with iwi in relation to activities undertaken in our marine areas. We note also the importance of the Crown-Maori relationship and the responsibilities that exist only between these two parties.

In requiring operators to notify iwi of any activity in the EEZ (including permitted activities), rather than only activities that might have an effect on a particular cultural interest of a particular iwi group, such as a wāhi tapu location, the proposals appear to go beyond the provisions of the Bill and practise under the RMA. The discussion document does not outline the rationale for this approach.

The Bill provides for the views of parties other than the applicant and the EPA (i.e. "third parties") to be sought and considered in the development of regulations and on decisions on consents. It does not provide for third parties to be involved in or have direct control over whether activities can take place – this power is reserved solely to the EPA.

The industry is very familiar with engaging with iwi regarding wāhi tapu on land and in coastal areas but is less clear what sorts of wāhi tapu might exist in the EEZ. We note that the Ministry has not identified in the discussion document, or in response to specific requests, specific examples of wāhi tapu in the EEZ, or potential types of wāhi tapu in the EEZ. Given the distance from land and the general absence of distinguishing features it would seem that wāhi tapu would be less numerous than on land or closer to shore.

The discussion document states that it is important that iwi are notified of all permitted activities occurring in the EEZ. The rationale for notifying iwi seems to be to identify whether the activity might affect wāhi tapu. We note that for petroleum activities this would duplicate an earlier process as iwi are consulted by the Crown on the permit areas before they are awarded to an operator and a key part of this consultation is identifying areas of particular cultural significance such as wāhi tapu.

Information on wāhi tapu sites/areas within a petroleum permit located in the EEZ, if any, can be provided by the Crown to the operator at the time of awarding the petroleum permit. This would makes a notification requirement under the EEZ regime an inefficient and unnecessary piece of regulation for petroleum related activities as they will only take place within permitted areas.

The two options proposed in the discussion document

Of the options proposed the Association would prefer option 1, which would require operators to formally notify relevant iwi of the nature and location of permitted activities.

Particularly in the absence of up-front information about the location of wāhi tapu (see our comments in relation to question 33 below), the veto right afforded to iwi under option 2 would create significant uncertainty that could undermine investment in commercial activity in the EEZ.

In relation to both options it is unclear from the discussion document how it would be determined which iwi should be notified in regard to a particular activity taking place in a particular area. This will be less significant issue for activities in the parts of the EEZ that are closer to land, but for those activities taking place far out to sea it start to become unclear which iwi, if any, might have a specific connection to a particular area. In the absence of a specific connection to an area it is unclear from the discussion document what the purpose of notification would be.

Other options

Another option would be for the EPA to proactively engage with iwi and determine the location of wāhi tapu in the EEZ. For activities notified to the EPA where there is a risk the activity might adversely affect a wāhi tapu site/area the EPA could work with operators to avoid or mitigate the effect.

Q33.	Of the two proposals to seek information on wāhi tapu, what would be your preferred approach? What other options should be considered?

The EPA holding a list of known wāhi tapu, and making relevant aspects of this available publicly or to affected operators would provide much greater certainty for investors and avoid the need for iwi to inform different operators of the same information.

As noted in our response to question 33, for petroleum activities there are already processes in place that require consultation by the Crown with iwi on the specific area covered by a permit before a permit is issued to an operator.

Q34.	What are the potential impacts of these options? How should we value these impacts?

The unfettered veto right envisaged under option 2 would create significant uncertainty that would likely undermine investment in commercial activities in the EEZ. This impact would be mitigated if information was held by the EPA on the location of wāhi tapu and made available to existing and prospective operators in the EEZ, and a process was put in place to determine what would be considered an effect on a wāhi tapu site.

Option 1 would have much lesser impact on operators and investment certainty.

Notification of local authorities

Q35.	Do you agree that regional councils and unitary authorities should be notified where the effects of a permitted activity might cross the boundary with the territorial sea?
Q36.	What are the potential impacts of this option?

The Association supports this proposal in principle and notes that industry engages with councils on these matters already.

Seismic surveying

Q37.	Do you consider the activities listed for seismic surveying cover the current seismic surveying activities in New Zealand? If not, what isn't included in this list?

Yes.

Q38.	Do you agree that seismic surveying should be a permitted activity? If not, how else would you classify the activity and why?

Yes. As outlined in the discussion document the environmental impacts are brief in duration and can be mitigated.

Q39.	Do you agree with the potential conditions for seismic surveying? If not, what changes would you propose? What evidence supports changes to the conditions?

The Association and its members support compliance with DOC's *Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Surveying Operations*.

We do not consider however that it is practical for DOC to be expected to indicate its satisfaction that the Code of Conduct will be complied with in advance of the survey being undertaken and so we do not support the proposed condition requiring "evidence that DOC is satisfied that the code of conduct will be complied with". It is the responsibility of the operator of the seismic survey and the firm contracting the survey to ensure they are complied with. The presence of marine mammal observers on all seismic surveys is one way in which compliance is monitored.

Further to our comments in response to question 32 we are unclear as to the rationale for operators being required through regulation to provide a monitoring management plan to iwi on surveys taking place in the EEZ. This is not required for activities with the coastal marine area (inside 12 nautical miles) and there is seemingly less, rather than greater reason, to provide it for activities occurring further from shore. It is the responsibility of the EPA and DOC to monitor compliance with the Code of Conduct.

We note that the Code of Conduct was established between DOC and industry as a voluntary Code of Conduct, and that by referencing the guidelines in regulations the Authority has effectively made them a compulsory legal requirement for activity in the EEZ.

Q40.	Do you agree with the estimated costs to comply with the DOC Code of Conduct? What would you estimate the costs to be? How would you value the benefits?

The Association agrees with estimated compliance costs of 1% to 4 % of total survey costs? We consider it appropriate to incur these substantial costs so as to minimise the risks of adverse impacts on marine mammals.

Oil and gas

Q50.	Do you consider the activities listed in the oil and gas section cover current oil and gas activities in New Zealand? If not, what isn't included in this list?

Yes

Q51.	Do you agree that oil and gas exploration (surveying the seabed for deposits) should be a permitted activity? If not, how else would you classify the activity and why?

Yes

Q52.	Are you aware of any specific costs that might relate to the conditions for oil and gas activities?

No. Please however note our comments in relation to question 39.

Q53.	How do you consider that operators should provide information on the environmental impacts of decommissioning during the production phase?

The Association agrees that the potential environmental impacts of decommissioning, based on available knowledge, should be considered as part of the environmental impact assessment.

We do not consider however that developing a decommissioning plan at the time a production facility is installed is sensible as technologies will improve, and expectations may change, rendering a plan developed at project commencement out of date and of little value. By way of example what would have been considered appropriate for decommissioning some of the existing infrastructure when it was installed decades ago, would not be considered appropriate now.

The effects of various decommissioning options should be considered at the time it is to take place and on a case by case basis. Accordingly decommissioning is sensibly a discretionary activity.

Q54.	Do you agree that exploration/appraisal, development well drilling/production and decommissioning should be discretionary activities? If not, how else would you classify the activities and why?

We outline in the following table a summary of our views on the proposed discretionary activities outlined on page 58 of the discussion document. Detailed comments are provided following the table.

Proposed discretionary activities relating to oil and gas industry	PEPANZ Comment
• well-drilling activities	The Association considers these activities should be permitted subject to appropriate conditions
• construction of platform structure, including anchors and moorings	The Association considers it appropriate that this is not a permitted activity.
• underwater pipeline laying, trenching, inspection and maintenance	The Association consider that pipeline inspection and maintenance should be permitted activities. We consider it is appropriate that pipeline laying and trenching is not a permitted activity.
• well capping (decommissioning)	The Association considers it appropriate that this is not a permitted activity.
• removal of all equipment, plant and machinery (decommissioning).	The Association considers it is appropriate that this is not a permitted activity.

Exploration and appraisal well drilling activity

As outlined in Part A of this submission the Association and its members consider that exploration and appraisal drilling activity should be provided for as a permitted activity. We have repeated the text from Part A here in the interests of completeness.

Even if the Government chooses to proceed with a "no more than minor effects" threshold for permitted activities we consider that given its likely effects petroleum exploration and appraisal activity can and should be regulated as a permitted activity.

Offshore exploration and appraisal drilling for conventional petroleum is a mature activity , which takes place over a brief period and has modest environmental effects that are well understood and can be mitigated through standard (potentially stringent) conditions. The only place in New Zealand where there is substantial offshore oil and gas activity, Taranaki, provides for drilling as a permitted activity (subject to conditions) in its Regional Coastal Plan.

The likely effects of exploration or appraisal drilling are modest and confined to a small area around the drilling rig. They are not significant in the context of the EEZ and similar to other permitted activities (e.g. the effects of a single exploration/appraisal well in a vicinity compared with drilling multiple holes in the same vicinity for scientific research drilling). As noted above, cumulative effects are unlikely to be an issue in the foreseeable future given the low level of activity in the context of the EEZ and the fact that petroleum exploration activity is generally spread out.

The main impact is from the drilling cuttings during the initial phase of drilling into the seabed and those cuttings (and associated mud components) discharged into the sea following processing (impacting the benthos over a small area and causing temporary effects on the water column). The use of low toxicity water based drilling mud and the extensive processing of cuttings can reduce the generally modest impact of cuttings further. These and other discharges are currently controlled under the Maritime Transport Act,

although it has been indicated that this function will be transferred to the EPA in future. Other impacts would be from the rig itself sitting on the seabed (if not a floating rig) and/or any anchors on the seabed.

We recognise that what distinguishes petroleum drilling from say shallow research drilling is the low probability but high impact of a major oil spill following a loss of containment of hydrocarbons from a well and appreciate that "effect" under the Bill includes any potential effect of low probability, that has a high potential impact. However as noted above:

- the design, operation and safety of the well and drilling rig are already regulated by the Department of Labour under the HSE regime (covers well integrity, blow-out prevention etc.), which is currently being updated and upgraded significantly; and
- oil spill preparedness and emergency response is controlled under the Maritime Transport Act.

Given these arrangements under other legal regimes it is unclear why this low probability/high impact should be considered (again) by the EPA through a discretionary activity marine consent process, and what conditions might be imposed by the EPA on the activity to address it that are not already addressed under other regulation. As a deliberately gap-filling regime it is important that the EEZ regime remains focussed on regulating those environmental effects and activities it is responsible for [outlined in clause 15(1) of the Bill]. Putting in place specific conditions to address the risk of an oil spill or to manage drill cuttings would seem to inevitably overlap these other regimes specifically designed for that purpose.

Rather than leaving drilling as a discretionary activity we advocate that the Ministry instead set strict conditions (that reflect industry best practice) for drilling as a permitted activity, and which control the effects of those activities on the matters outlined in clause 15 of the Bill. This would incentivise operators to operate to the highest standards in order to fit within the scope of a prescribed permitted activity. This approach would reduce as far as practicable the environmental impacts of drilling activity whilst also providing a highly streamlined regulatory process.

Conditions for exploration/appraisal drilling could be imposed along the lines of the following:

- That an environmental management plan be put in place to address the matters covered by the EEZ regime and submitted to the EPA to requirements specified in the regulations.
- Provide to the EPA in advance of an activity being undertaken evidence of compliance with other regulatory controls applying to offshore drilling activity, specifically:
    - Under the *Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations*[4]:
        - Requirements relating to well design and well integrity.
        - Requirements relating to preparation and acceptance of safety cases for offshore installations (includes mobile drilling rigs).
    - Under the *Marine Protection Rules Part 200* (Maritime Transport Act 1994) an approved discharge management plan which includes:

[4] These regulations are currently being reviewed and a significantly upgraded version of the regulations is likely to be in force before the commencement date of the EEZ legislation.

- Emergency spill response procedures for oil and other harmful substances
- In relation to the use of drilling fluids (muds) and discharge of drill cuttings: the likely distribution of the cuttings; the chemicals in the muds and their likely effects; justification for the drilling mud proposed to be used; proposed volumes of muds intended for discharge; systems for reducing the muds on cuttings discharged; and monitoring and reporting that will be undertaken.
- The treatment and discharge of any produced water.

- Evidence that the drilling rig complies with biosecurity standards as if the Biosecurity Act 1992 applied outside 12 nautical miles (until the Biosecurity Law Reform Bill is enacted).
- Requirements under the *Marine Mammals Protection Act 1978* and regulations.
- Any flaring is in accordance with the *Crown Minerals (Petroleum) Regulations 2007* (would only be relevant in some cases).
- Other requirements under the *Maritime Transport Act 1994* relating to rig operations lighting, certificates of insurance, the management of solid waste and garbage etc.

As noted in Part A the Association and its relevant members would be happy to work further with MfE, the EPA and other stakeholders on the development of detailed conditions for exploration/appraisal drilling activity to be included in regulations.

Pipeline inspection/maintenance should be a permitted activity

By not providing for underwater pipeline laying, trenching, inspection and maintenance as permitted activities the discussion document proposes these will be discretionary activities.

The Association considers that pipeline inspection and maintenance should be permitted activities. These activities have little impact on the environment and it is not clear what evidence from the NIWA report or otherwise supports a discretionary activity status classification. Furthermore putting in place a high regulatory burden for inspection and maintenance activities risks perverse outcomes.

We do not understand the environmental effects based rationale for the trenching and installation of submarine cables being proposed as a permitted activity (aside from on massive sulphide deposits) whereas trenching and laying of pipelines is not, given the activities and effects are similar.

We assume that inspection and maintenance of existing pipelines would not require a marine consent by virtue of clause 16 of the Bill – we would however appreciate confirmation of this from the Ministry.

Potential impacts of the proposed classifications

The proposed "discretionary" status of exploration/appraisal drilling would make it uncertain for existing exploration permit holders whether they would be able to drill an exploratory well, having already likely invested tens of millions of dollars in research and seismic surveying. It would also likely discourage companies from bidding for permits released in future block offers as it is highly risky from a commercial perspective to commence investment in an exploration program if approval of the drilling component is left to chance.

It is difficult to quantify the impact of the proposed classifications as some key questions remain unanswered including:

- would it be possible to apply for a consent covering part or all of an exploration permit, before you have identified the precise drilling location?
- if a drilling rig is contracted for an 8 well programme across 3 different permits, will this require 1, 3 or 8 consent processes to be run?

Q61.	For each of the EPA's following functions do you consider the benefit to be public, private or mixed?

The Association's comments on the assessment of the benefits of activities outlined on page 76 of the discussion document are contained in right hand column of the following table.

Proposal			**PEPANZ Comment**
Functions/ services	Benefit accrues to?	Should costs be recovered?	
Pre-application assistance	Private	Yes	**We consider this should be "mixed" with partial cost recovery. There are clearly private benefits from pre-application assistance however it is also in the interest of the public for the regime to be well and easily understood by applicants. This will incentivise the regulator to make the regime as easily understandable as possible.**
Processing and deciding applications	Private	Yes	**Support proposed approach**
Processing notifications and confirmation of permitted activities	Private	Yes	**Support proposed approach**
Monitoring of marine consents	Mixed	Yes	**Support proposed approach**
Enforcement of conditions on marine consents	Public	No (although could be recovered if costs are awarded through the courts)	**Support proposed approach**
Appeals	Mixed	No (will be recovered if costs are awarded through the courts)	**Support proposed approach**
Monitoring of permitted activities under regulations	Mixed	Yes	**Support proposed approach**
Additional monitoring (eg, for cumulative effects	Public	No	**Support proposed approach**
Reporting	Public	No	**Support proposed approach**
Information awareness	Public	No	**Support proposed approach**

Q62.	For each of the functions or services of the EPA listed in section 14.4, which cost recovery method do you consider to be the most equitable, efficient, transparent and justifiable?
Q63.	Do you agree with the proposed methods for cost recovery? What methods would you use?

The Association's comments on the proposed cost recovery methods for functions and services outlined on pages 78-79 of the discussion document are contained in right hand column of the following table.

Proposal		**PEPANZ Comment**
Pre-application	Prescribed hourly rates plus actual and reasonable costs, invoiced on a monthly basis, to be paid by the 21st day following the date of issue.	**Support proposed approach, subject to recovery being partial rather than full, as outlined in our response to question 61.**
Processing and deciding applications	Initially, a refundable deposit based on a percentage of the total estimated cost of the application process. Then monthly invoices for costs will be provided from the EPA to the applicant until the phase is complete. The refundable deposit provided by operators will be spent by the EPA based on prescribed hourly rates and actual and reasonable costs.	**Support proposed approach**
Processing notifications and confirmation of permitted activities	Prescribed hourly rates and actual and reasonable costs, invoiced on a monthly basis, to be paid by the 21st day following the date of issue.	**Support proposed approach**
Monitoring of conditions on marine consents	Some of the EPA's costs will be funded by the Crown and some will be funded by the marine consent holder. Charges will be based on prescribed hourly rates and actual and reasonable costs. Half of the monthly amount will be invoiced to the applicant on a monthly basis, to be paid by the 21st day following the date of issue.	**Support proposed approach**
Enforcement of conditions on marine consents	This cost will be funded by the Crown. The Crown may seek to recover costs through the courts.	**Support proposed approach**
Appeals	The EPA's costs will be funded by the Crown. If an appeal is unsuccessful, the Crown will seek costs.	**Support proposed approach**
Monitoring of permitted activities as required by regulations	Some of the EPA's costs will be funded by the Crown and some by the person doing the activity. If based on fixed charges, these would be payable when the operator notifies the activity. Where more extensive monitoring is required, prescribed hourly rates and actual and reasonable costs will be invoiced to the operator.	**Support proposed approach**
Other monitoring (eg, for cumulative effects)	This cost will be funded by the Crown.	**Support proposed approach**
Reporting	This cost will be funded by the Crown.	**Support proposed approach**
Information awareness	This cost will be funded by the Crown.	**Support proposed approach**

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