



## ENVIRONMENT AND CONSERVATION ORGANISATIONS OF NZ INC.

Level 2, 126 Vivian St, Wellington, New Zealand  
PO Box 11-057, Wellington  
Email: [eco@eco.org.nz](mailto:eco@eco.org.nz) Website: [www.eco.org.nz](http://www.eco.org.nz)  
Phone/Fax 64-4-385-7545

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[eezregulations@mfe.govt.nz](mailto:eezregulations@mfe.govt.nz)  
Ministry for the Environment  
PO Box 10362  
Wellington 6143

# **Submission on Exclusive Economic Zone and Continental Shelf (Environmental Effects—Non-Notified Activities) Regulations 2013**

## **1.0 INTRODUCTION**

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 55 groups with a concern for the environment. We were established in 1972. Our reach within New Zealand is substantial. Oceans Policy and its cut-down derivatives have been a central concern for many years, and has had much attention from our members and working groups and Exec committee and has been discussed at successive AGMs.

This submission has been prepared by members of ECO Executive and is in line with ECO Policy that was developed in consultation with ECO member bodies and endorsed by our AGM.

While ECO welcome the opportunity to make a submission on the proposal to non-notify petroleum exploration activities we are concerned that it appears that both the Ministry and the Minister have closed minds on these issues.

ECO refers the Ministry to our previous submissions (May 2013 and September 2013) on the draft regulations, the proposed activity classifications, and our concerns over the approach and implementation of those proposals.

ECO is concerned that the introduction of Non-notified Discretionary Classification to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 occurred without the opportunity for public submissions or a Select Committee review process. ECO considers that the Ministry is in breach of its obligations under the Environment Act. The Ministry has failed in these provisions to provide “mechanisms for promoting effective public participation in environmental planning” and the requirements of section 17 of the Environment Act.

ECO considers it is essential for the applications for exploratory petroleum mineral activity to be notified given in part due to the high risk nature of the activity. The risk of this activity is

clearly identified in recent EIAs and oil spill analysis prepared by applicants to undertake exploratory petroleum mining. The provisions of the Crown Minerals Act do not consider the environmental impacts of the activity, are aimed at promoting mineral activity rather than accessing the environmental impacts, and fail to include public participation processes.

## 2.0 Policy approach objections

ECO is adamant that the current Regulations and the current proposal strikes the wrong balance between economic imperatives and environmental protection and preservation. Specifically, ECO considers the EE&CS Act is already geared in a manner that focused on promoting marine mining including oil and gas mining and other such activities in the EEZ.

The EE&CS Act does so despite the fact that this approach:

- Ignores the obvious risks associated with such activities;
- perpetuates New Zealand's dependence on fossil fuels; and
- is unsustainable, exposes the marine environment and New Zealand's economy to significant risks, in particular because of the climate impacts of fossil fuels and the cost associated with addressing such impacts.

The policy position behind that the Regulation proposals take a permissive approach to activities which have been established as environmentally risky in nature. ECO considers that combined the current regulations are inconsistent with the Act and international obligations. ECO is opposed to making exploration drilling a non-notified activity.

Overall the Draft Regulations are extraordinarily lax, cannot be allowed to endure, and will be the subject of sustained campaigns by ECO and other to remedy the regulatory failings.

We are disappointed that the Ministry makes no proposals for closed areas, and that the current regulations do not suggest anything should be prohibited, even though the weak NIWA Risk Assessment is clear that some activities are extremely damaging.

## 4.0 Section 34 and the precautionary principle

### 34 Information principles

- (1) When developing regulations under [section 27](#), the Minister must—
  - (a) make full use of the information and other resources available to him or her; and
  - (b) base decisions on the best available information; and
  - (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary.
- (4) In this section, *best available information* means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

Section 34 of the EE&CS Act provides that when developing regulations under section 27, the Minister must:

- make full use of the information and other resources available; and
- base decisions on the best available information (meaning the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time); and
- take into account any uncertainty or inadequacy in the information available.

This section also provides that if, in relation to the making of a decision under this Act (such as how regulations under section 27 should be drafted), the information available is uncertain or inadequate, and the Minister *must favour caution and environmental protection*.

As is noted above, where the information available is uncertain or inadequate, the Minister *must favour caution and environmental protection*. The legislature, in enacting this provision sought to import the precautionary principle. The primary function of the Principle is to guide environmental decision making about planned human activities.

The precautionary principle, part of customary international law, provides that decision makers (such as regulators), when making decisions about an Activity, are to act with care and foresight (in other words take precautionary steps), to protect the environment when faced with scientific uncertainty as to the environmental damage that the Activity may cause. In the present case it is readily accepted that in setting the Draft Regulations the Minister is faced with significant uncertainty.

Neither the Ministry or the applicant have all the relevant information which a decision maker should consider. When considering the risk of a oil spill or worse (eg explosion and long term damage) the Minister should allow public participation and notify and application. Exploration activity can have different risks to production activity due to the uncertainties over the resource that is being considered.

#### **4.2 Permissive approach is not acceptable**

ECO is of the view that the permissive approach taken by the Draft Regulations and the absence of public participation is the result of a wider Government strategy to maximise the income stream from future oil and gas royalties by making it easier and less costly to exploit oil and gas in New Zealand's marine environment. Such an approach is inappropriate, as it fails to give effect to the EE&CS Act's purpose as it places too much emphasis on economic considerations.

### **5.0 Scale of Activity and sensitivity of sites and public interest**

ECO believes that the salient unknown variables associated with petroleum exploration which includes:

- the size/scale of an Activity;
- the fact certain exploratory drilling may involve different scales and impacts on the seafloor and may at times be conducted/occur in highly sensitive marine environments;

- the indeterminate amount/levels of disturbance and interference with, the seafloor, subsoil and the surrounding ecosystems associated with a given Activity.
- the unlimited and indeterminate number of exploratory drilling that may be conducted in any given area, and in turn the varying level of environmental pressure that a single marine area may be subject to;
- the fact they may be conducted in any number of EEZ and continental shelf locations which:
  - may vary significantly in terms of the local ecosystems and the ability of such ecosystems to withstand and recover from disruption; and
  - may include sensitive areas (the locations of which are mostly unknown), or rare, threatened or endangered species or vulnerable marine ecosystems.

ECO considers the activity should be notified as there are people in the community who have expertise and information which the EPA lacks in considering an application. This includes marine biologists, people with personal knowledge, industry knowledge, local knowledge, and access to networks of expertise eg IUCN commissions of experts.

Without this input the EPA will be making decision based on inadequate information or biased in favour of the application.

## **6.0 Prohibited Activities**

ECO is concerned that the Ministry still has not identified prohibited activities or areas (eg sensitive areas (the locations of which are mostly unknown), or rare, threatened or endangered species or vulnerable marine ecosystems) where exploration activities should be prohibited.

ECO looks forward to the Ministry delivering on its obligations under the EEZ&CS (Environmental Effects) Act and the Environment Act to identify prohibited activities and areas where activities should be prohibited.

## **7.0 Request**

ECO would welcome the opportunity to discuss this submission with the Ministry. Please contact ECO at [eco@eco.org.nz](mailto:eco@eco.org.nz) tel 04385-7545 or ring me on 021-738807 and copy in [ecowatch@paradise.net.nz](mailto:ecowatch@paradise.net.nz) and for any arrangements about this submission.

Yours sincerely,

Barry Weeber  
Co-Chairperson  
Environment and Conservation Organisations