

Submission to MINISTRY FOR THE ENVIRONMENT on

“DRAFT EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS – PERMITTED ACTIVITIES) REGULATIONS 2013” (MAY 2012)

INTRODUCTION

1. Straterra¹ represents more than 90% by value of New Zealand minerals production, exploration, scientific research, engineering and other services, and support, on land and in the oceans.
2. In preparing this submission, Straterra has consulted with Chatham Rock Phosphate, Trans-Tasman Resources, Neptune Minerals, Nautilus Minerals, Youngson & Associates, GNS Science, National Institute of Water and Atmospheric Research, Atkins Holm Majurey, Bell Gully, Merman Ltd (a marine environmental consultancy), and Simpson Grierson.
3. As previously submitted, we believe New Zealand’s Exclusive Economic Zone and Continental Shelf – the EEZ – presents major opportunities for the national economy and the resource sector: rock phosphate, ironsands and other placer deposits, base and precious metal deposits in seabed massive sulphides (SMS), as well as oil & gas, metal nodules and crusts, and methane hydrates. While current mining in the EEZ is restricted to oil & gas, there is significant potential in the other areas mentioned.
4. Straterra welcomes the opportunity to submit on the draft Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013. We do so from the perspective that the costs in time and resources of compliance for activities having adverse effects that are less than minor, or are negligible, should be minimal². We confine our attention to marine scientific research, and minerals prospecting and exploration, and, to a lesser extent, seismic surveys.
5. The substantive content of this submission is contained within Straterra’s 25 recommendations to the Ministry for the Environment. We are guided by the Ministry’s stated intent, which we support, to introduce a regime for operators to carry out permitted activities as of right, subject to reasonable conditions, and providing transparency to all.

¹ <http://www.straterra.co.nz/About+Straterra>

² Refer also to the Ministry’s Regulatory Impact Statement: Regulations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, in particular, para. 30

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OVERVIEW

6. The EEZ is a vast region, and marine scientific research, minerals prospecting and exploration activities would adversely affect a vanishingly minute part of it, and/or have no immediate or lasting effects³. Examples of such activities will be provided in submissions by Chatham Rock Phosphate, and Trans-Tasman Resources.

7. Notwithstanding the explanations provided at the Ministry’s engagement meeting with industry on 13 May, we remain a little mystified as to the attention devoted to “sensitive environments”. Consider the reality of operating in the deep ocean, say, in an area where the seafloor has not been mapped previously, and where sampling of the seafloor or below the seafloor is taking place. It would not be apparent necessarily that the vessel is operating over a sensitive environment, from samples lifted, images taken, or even with access to taxonomists/marine biologists on board, or on shore. But nor would it matter. The point is that prospecting and exploration would have little or no effect, positive or negative, on such environments. Natural disturbances in these environments would have greater effects by orders of magnitude, and this is particularly true of the Kermadecs where ecosystems must cope with a dynamic volcanic and tectonic environment.

8. Obviously, mining activities would have a different scale and intensity of effects, and it is appropriate that these fall within the ambit of discretionary activities. There, a determination or otherwise of sensitive environments would be made during the environmental impact assessment process set out in the primary legislation.

9. Be that as it may, the industry’s priority concern is that the regulations are promulgated as soon as practicable. Accordingly, we do not wish to revisit Cabinet’s decisions in any significant way. Nonetheless, we do see room for improvement, for clarity and workability of the EEZ

³ By way of comparison, bottom trawling affects a *new* area of seafloor equivalent to that of the Wairarapa every year.

environmental effects regime, as discussed at the engagement meeting, and have made recommendations to that end, summarised immediately below.

KEY RECOMMENDATIONS FOR CHANGE

- The date of entry into force of the permitted activity regulations should be amended to read **1 July 2013 or earlier** (Rec. (d));
- The role of the EPA should be made explicit, i.e., that it will have **no discretion to act or decide on information provided to it**, other than monitoring operators' activities (Rec. (j));
- Operators should not have to provide more than **five working days'** notice to the EPA from the start of a permitted activity (Rec. (l));
- At the same time operators would provide **written notification to Maori groups** the EPA has listed and presented spatially on its web site (Rec. (m));
- The EPA should **explain to relevant Maori groups** the new permitted activity regime, including that they may receive written notification from operators (Rec. (n));
- The Government should produce a **field guide** to aid lay identification of sensitive environments, as proposed by the Ministry and the EPA (Rec. (s)); and
- Operators should have an **exemption from providing weekly logbook reports** in situations where this is not possible or practicable, or when no activity has occurred (Rec. (u)).

FULL LIST OF RECOMMENDATIONS

10. Straterra recommends the Ministry for the Environment to:

- a) Note Straterra's support for the classification of marine scientific research, minerals prospecting and exploration, and seismic surveys, as permitted activities, on the basis that the adverse effects of these activities on the marine environment, sensitive or not, will be no more than minor, and in most cases, negligible;
- b) Note Straterra's general support of the Ministry's Regulatory Impact Statement, as containing a sound analysis of options, and sound conclusions, e.g., paras. 72, 76 of the RIS;
- c) In relation to Rec. (b), note Straterra's view that the cost of observers could be significant, as much as \$2000 a day (refer to paras. 123 and 139 of the RIS), and that their presence would

not necessarily add value because, in many cases, there would be little to observe, noting also Straterra's support of the Ministry's intention to rescind this proposal;

- d) Agree to amend the date of entry into force (section 2) to earlier than 1 October 2013, and preferably 1 July 2013 or earlier, as per the Ministry's intentions, noting time constraints operating on a number of minerals investors;
- e) Agree to merge section 4 (marine scientific research), and section 6 (minerals prospecting and exploration) because the requirements are the same;
- f) Note that in practice that "reasonable steps" (section 4 (2) (e), and 6 (2) (e)) to avoid, remedy or mitigate adverse effects will often entail no steps being taken because there are none such that can be taken, accepting that the adverse effects of aerial surveys; geophysical surveys; geochemical (water chemistry) surveys; other remote-sensing surveys (e.g., photography, multi-beam bathymetry, side-scan sonar); taking core samples or box cores or grab or bulk samples, will be no more than minor, and in most cases will be negligible or non-existent;
- g) Agree that the ecosystems of the Kermadecs are at least as resilient to disturbance as any place on Earth because these organisms must cope with undersea volcanic eruptions, landslides, earthquakes, and rapid changes in hydrothermal vent activity (which is the energy source for many of these organisms), and that there is ample scientific evidence in support of this statement, e.g., from Woods Hole Oceanographic Institution, and the University of Victoria, British Columbia, Canada;
- h) Note Straterra's support for the regulation of seismic surveys as permitted activities (section 7), as logical, appropriate, and consistent with the Government's earlier decisions on this issue;
- i) In relation to Rec. (h), note that it is not clear who would be monitoring compliance with the Code of Conduct - the Department of Conservation, or the EPA, or both agencies, and agree that this should be made explicit;
- j) Agree to expand on the EPA's role and functions to make it explicit that the EPA will have no discretion to exercise subjective judgments on information provided to it in relation to permitted activities (viz. "reasonable measures" or actions that are "reasonably necessary"), to clarify the EPA's and operators' respective responsibilities, and to provide certainty to all interests;

- k) Note that over time non-statutory codes of practice could be developed, or would develop in any event, between industry and the EPA, to standardise permitted operations, where that would be useful, and to provide additional clarity to all;
- l) Agree to replace the words “2 months” from schedule 1, section 1 (1), with “five working days”, with a provision for exceptional circumstances, to reflect the reality among researchers, prospectors and explorers of planning and carrying out permitted activities;
- m) In relation to Rec. (l), note that a 5-day limit would have implications for notification of iwi, hapu and other Maori groups, and agree that this could be done concurrently, and in writing, to a list of contacts on the EPA web site;
- n) To enable Rec. (m), agree to task or invite the EPA (in relation to schedule 1) with explaining⁴ to relevant iwi, hapu, and other Maori groups the nature of permitted activities, which includes a requirement for written notification from operators, on the rationale that: (1) the EPA is responsible for identifying these groups, (2) the EPA will maintain the list and map of these groups, (3) it should be acceptable for operators to provide “notification”⁵ in writing, without having to build relationships⁶ with these groups for that sole purpose, and (4) relationship-building in the way being envisaged by the EPA⁷ would be a consequence of the operator’s requirements under the amended Crown minerals regime (due to enter into force on 24 May 2013), and/or of the operator’s general strategy, and would be carried out over a longer term and for broader purposes than a permitted activity under these regulations;
- o) In relation to Rec. (n), note that there would be nothing to prevent an operator conducting dialogue with relevant iwi or Maori groups on a permitted activity, if it wished, and making changes to planned activities in light of that dialogue, if that were appropriate or useful;
- p) Note that compliance with schedule 2, section 1 (c) and (d) will likely entail a desk-top study to describe the marine environment, viz. para. 53 of the Cabinet paper;
- q) Note that Straterra’s supports the Ministry’s intent to avoid a requirement to have marine biologists on board vessels, as onerous, expensive and unnecessary;

⁴ Refer to the EPA’s functions under section 13 (e) of the EEZ Act 2012

⁵ Experience has shown that posting a letter to iwi by way of “notification” is not always acceptable to iwi, although in the present case it should be acceptable, with appropriate advance communication by the EPA.

⁶ Note that it can cost an operator \$20,000 to hold an education session for an iwi, and a liaison group can cost an operator \$15,000 a year in meeting fees.

⁷ The EPA has developed a policy on engagement with Maori, and is developing guidelines to apply the policy

- r) In relation to Rec. (q), note that in many cases it would be difficult or impossible to determine whether or not an operator is working in a sensitive environment, noting also that this lack of knowledge would not matter because the effects of the permitted activities would be no more than minor, and in most cases, negligible;
- s) In relation to Recs. (q) and (r), note Straterra's support of the Ministry's and the EPA's intent to produce (Straterra assumes at their cost) a field guide⁸ for identification of sensitive environments, for the use of non-qualified staff on vessels, as the alternative to a requirement for operators to have a marine biologist or biologists on board their vessels;
- t) Note that compliance with schedule 2, section 1 (g) will often entail few or no extra steps being taken, because there are none such that can be taken, noting that the adverse effects of the activity on the environment, sensitive or not, will be no more than minor, and in most cases, negligible;
- u) Agree to provide more flexibility to operators when filing logbook returns (schedule 3, section 1 (b)), to avoid operators having to provide weekly reports when this would not always be possible or practicable, or at times when no activity is taking place;
- v) Note that the indicators of sensitive environments in schedule 6 contain insufficient detail about relevant factors such as the distance between point samples and the length of tow, and as noted in previous Recs. will not affect survey operations because in most cases no additional actions would be required, or could be undertaken;
- w) Note Straterra's understanding that the EPA will publish information it receives from operators (e.g., para. 24 of the Cabinet paper), noting also the EPA's assurance it will respect any commercial sensitivities (under the Official Information Act 1982);
- x) Note Straterra's understanding that regulations for cost recovery by the EPA, which is a very significant issue, will be addressed separately; and
- y) In relation to Rec. (x), note Straterra's concern that no rationale has been provided to support an 80% costs charging regime on monitoring of operators where a mixed private-public benefit has been identified (para. 132 of the RIS), other than the Ministry's explanation that this is a decision that Cabinet has taken.

⁸ The field guide would complement the useful NIWA report, "Sensitive benthic habitats defined" (2013)