TE OHU
KAIMOANA

MĀORI FISHERIES TRUST

25 September 2013

Submission on proposed EEZ regulations 2013

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ACTIVITY CLASSIFICATIONS UNDER THE EEZ ACT

Introduction

1. This submission is from Te Ohu Kai Moana Trustee Ltd (Te Ohu) in its role as corporate trustee of Te Ohu Kai Moana Trust.

2. Te Ohu Kai Moana Trust was established under s.31 of the Maori Fisheries Act 2004. The purpose of Te Ohu Kai Moana Trust is to advance the interests of Iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:

   - ultimately benefit the members of Iwi and Maori generally
   - further the agreements made in the Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
   - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

3. Te Ohu Kaimoana maintains an interest in the development of the EEZ legislation and its regulations because of the potential effects on fishing and the fisheries settlement of activities carried in the marine environment, in this case beyond the territorial sea. Given the value of New Zealand's fisheries to Maori and the wider seafood industry, the regime for managing these activities must ensure that any actual or potential adverse effects on fisheries and their habitat is avoided, remedied or mitigated.

4. We are aware of and support the submissions of the Ngatiwai Trust Board, Ngati Toa Rangatira and Te Atiawa kit e Upoko o te Oka a Maui Potiki Trust.

The provision for non-notified discretionary activities and its application

Exploratory drilling

5. Te Ohu's position is that given its potentially disastrous effects on fisheries and the wider environment, exploratory drilling should be a *discretionary* activity.

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6. In general, Te Ohu Kaimoana accepts that a non-notified discretionary category is appropriate for some types of activities where the scale of potential effects is relatively minor and well understood. While we don't have an objection to the additional non-notified discretionary activity classification, we do object to it applying to exploratory drilling because of the scale of adverse effects that can occur if things go wrong. A public notification process may well take time and expense, however it can generate important information to contribute to decision making. In addition, the costs would seem to be a relatively small proportion of those that will be associated with establishing the exploratory operation.

Dumping

7. We are concerned that certain "dumping" activities are being treated in a "catch-all" manner and classed as a *non-notified discretionary* activity. We think an alternative approach would be more appropriate.

8. As happens under the RMA, the consent authority (in this case the EPA) could make an assessment of whether a particular application for dumping should be notified or non-notified given the nature of the application. This would provide more flexibility in different circumstances than a "catch-all" approach, as proposed in the paper. The EPA would exercise discretion as to whether the application is notified or not, based on the location, intensity, scale etc of the activity.

9. We note that particular iwi groups and organisations are required to be notified when applications for *non-notified discretionary* activities are lodged. Any consultation with affected users is also required to be described in an impact assessment. In principle, good thorough consultation with iwi and affected users by an applicant as part of preparing an application could provide enough information for the EPA to consider processing an application as non-notified. We think that this would provide a good incentive on applicants to be thorough.

10. Nevertheless, these parties do not have a chance to challenge the way their information is utilised. Without the checks and balances inherent in a publicly notified process, we consider that affected users and iwi organisations should have a right to appeal a decision of the EPA not to notify an application. The EPA would need to formally make their decision known.

11. We refer you to the submission made by the Ngatiwai Trust Board, which provides a good example of why dumping should not be classed in one basket as "*non-notified discretionary*".

12. In the case of exploratory drilling, if the Government wishes to continue to allow for a non-notified approach, there should be a presumption that an application should be notified unless there is good reason not to notify it. A decision not to notify such an application would be subject to the same process we have outlined above, including a provision to appeal the decision.

13. The reasons not to notify would be justified on the basis of the effects of the application, the location of the proposed activity (e.g. whether it falls within an important fishing area), the experience and credentials of the proponent, the nature of the exploratory activity and what is understood of its effects and the type of environment in which it is proposed to take place. The cost to the applicant should not be a factor.

14. Ultimately – the risks of the proposed exploratory drilling activity would need to be demonstrably low. On that basis, it is hard to envisage many instances in which non-notification of an application for exploratory drilling could be justified.

Transfer of functions from the MTA

15. The proposals to transfer the regulation of various functions from the Maritime Transport agency appear acceptable.

Classification of harmful substances

16. Te Ohu supports the classification of harmful substances and the inclusion of discharged sediments and/or tailings from mineral operations, which can be very harmful to fisheries.

17. Te Ohu Kaimoana would welcome the opportunity to discuss these matters further.

Kirsty Woods
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