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Ministry for the Environment

By e-mail: [EEZFees@mfe.govt.nz](mailto:EEZFees@mfe.govt.nz)

## **Submission on Proposed changes to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013**

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### **Introduction**

1. Energy Resources Aotearoa is New Zealand's peak energy advocacy organisation. We enable collaboration across the energy sector through and beyond New Zealand's transition to net zero carbon emissions in 2050.
2. This paper constitutes our submission on the Ministry for the Environment's (MfE) consultation paper *Proposed changes to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013* (the Consultation Paper).

### **Submission**

3. Energy Resources Aotearoa welcomes the opportunity to comment on the review of fees and charges relating to monitoring and consenting of activities in New Zealand's exclusive economic zone. We support the need for this review.
4. A cost recovery regime should allocate costs in a predictable, fair, transparent, and accountable manner. The Consultation Paper describes a set of principles that are largely consistent with this view. However, the changes outlined overwhelmingly focus on cost recovery, due in large part to the worryingly low amount of relevant costs recovered by the EPA. While we agree this is an area that requires attention, we are concerned by the lack of additional focus on improving regulatory accountability and administrative efficiency.
5. We also note the Ministry's preference to retain an hourly charge-out rate model. We believe cost recovery should look to minimise administrative costs while encouraging efficient regulatory outcomes. We submit a hybrid cost model, where applicants are charged a fixed fee with additional costs for procuring specific technical expertise as required, provides the best approach. This approach better aligns incentives and accountabilities for staff and requires the Environmental Protection Authority (EPA) to remain cost focused while ensuring a fair process for applicants.



6. We also support the current model of procuring specialist technical expertise as required rather than maintaining expensive, specific technical expertise on staff. We caution that section 14 of the Environmental Protection Authority Act 2011, which limits the ability to contract out the functions of the EPA, may require the EPA to retain more technical staff than would otherwise be preferred. Again, we note this approach is consistent with our preferred hybrid cost recovery model, where administrative costs can be managed separately (as a fixed fee) from technical review and advice.
7. The 2020 report "*The EPA's cost recovery arrangements*" prepared for the Ministry for the Environment by Martin Jenkins identified a lack of accurate timekeeping as an issue when accounting for costs.<sup>1</sup> This paucity of data, which details how much time staff have allocated to consenting and monitoring activities, means this review lacks a robust evidence base when estimating annual staff hours. We recommend the EPA implements a suitable time recoding practices to better inform future fees reviews.
8. We note the implementation of this fees review will likely coincide with an increased focus on cost recovery. This will likely see monitoring and consenting costs sharply increase and we recommend this is signalled clearly by the EPA.
9. Our responses to specific questions posed in the consultation document follow.

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<sup>1</sup> See "*The EPA's cost recovery arrangements*" prepared by Martin Jenkins available at <https://environment.govt.nz/publications/the-epas-cost-recovery-arrangements/>

## Attachment 1: Responses to consultation questions

Consultation questions	Our answer
<p>1. Do you have any comments on the cost-recovery objective and principles? Let us know if you think the objective and principles should be different, and why.</p>	<p>In general, we support the cost recovery principles outlined in the consultation document. These principles are largely consistent with our view that a cost recovery system should allocate costs in a predictable, fair, transparent, and accountable manner.</p> <p>However, we suggest greater emphasis needs to be placed on ensuring the EPA is accountable for delivering cost-effective and efficient services.</p> <p>The report by Martin Jenkins acknowledges the costs for marine consents can be significant. With no emphasis on service delivery, cost recovery for the decision-making process can seem like an open-ended process.</p> <p>While we accept this may be inferred in the principles of equity and efficiency, we feel financial responsibility should be more explicit in the guiding principles.</p>

<p>2. What are your views on the current hourly fee method of charging, as compared with either a fixed fee or a hybrid fee</p>	<p>Our preference is for a hybrid cost recovery approach (fixed fee plus some element of variable costs). This would apply to both monitoring and decision-making (consenting) activities. Our primary reasons are outlined below.</p> <p><b>Accountability</b></p> <p>An hourly rate approach is open-ended and fails to incentivise the right behaviour in terms of efficiently bringing the work to a satisfactory conclusion in the most cost-effective manner.</p> <p><b>Monitoring</b></p> <p>A fixed component is useful in “sweeping up” the low-level activities such as answering e-mails and phone calls. However, we also recommend a fixed fee approach for other inspections and monitoring activities. Actions resulting from an inspection would be charged separately, as a variable cost component.</p> <p>We acknowledge this requires significant engagement (and agreement) with operators to define what a fixed fee would cover. Our expectations are this would include; the number of EPA staff numbers in attendance, inspection scope, duration, and logistics as well as covering the cost of preparing the inspection report.</p> <p>This approach minimises cross-subsidising inspection activities, while providing operators with cost certainty for regular compliance monitoring.</p> <p><b>Decision-making (consenting)</b></p> <p>Marine consenting processes typically follow a prescribed process. The fixed fee element should be set to cover the predictable components such as fees for a decision-making committee (if required) and the public consultation process. The variable component should reflect the additional specific technical advice procured to support the decision-making process.</p>
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Consultation questions	Our answer
	<p>We agree that procuring specific technical advice as required, to assist decision-makers in reaching their conclusions, may be more efficient and cost-effective than maintaining expensive technical resources on staff. However, the case needs to be made that this complies with section 14 of the Environmental Protection Authority Act 2011, which limits the power to contract the functions of the EPA.</p> <p>While we recognise their issue of cross-subsidising applications, a hybrid approach provides incentives for the EPA to monitor and review their costs and processes, ideally driving towards more cost-effective and efficient regulatory outcomes.</p>
<p>3. Are there other aspects of hourly rates or the other options that we should be considering?</p>	<p>The internal business practices of the EPA are not part of this review, we consider these practices would benefit from a review.</p> <p>We note the Martin Jenkins report highlighted two distinct issues with cost recovery at the EPA:</p> <ul style="list-style-type: none"> <li>• current hourly rates were set in 2013 do not reflect staff costs and available working hours (and require updating); and</li> <li>• staff are not accurately billing their time to specific projects.</li> </ul> <p>We are concerned that if billable hours targets are introduced by EPA management this will lead to unnecessary costs being imposed.</p> <p>We also note with concern the lack of a suitable time recording system at the EPA to track hours spent on activities, and the culture change required within the EPA to accurately record time spent. Introducing a time recording system will provide a robust dataset for future fees reviews.</p>

Consultation questions	Our answer
<p>4. Are there other elements the EPA could consider including in its EEZ cost-recovery policy, to help users?</p>	<p>As it stands, cost recovery is on a pass-through basis, with additional time for administration. However, these costs are open-ended, with the EPA only required to provide an estimate of costs on request.</p> <p>The lack of appropriate mechanisms for applicants to engage with the EPA on projected costs (and challenge where appropriate) is concerning. Other than a disputes mechanism for issued invoices, there doesn't appear to be sufficient checks and balances to incentivise cost accountability within the EPA.</p> <p>For complex applications, where procuring specialist technical advice is anticipated, we would expect to see explicit requirements for better engagement and to agree costs upfront as ultimately those costs fall to applicants or duty holders.</p> <p>We suggest it would be helpful for the EPA to develop a set of cost estimating norms which could be used to forecast likely costs. This approach is widely used in the service sector and would help to ensure monitoring and consenting functions are carried out in a consistent, predictable manner.</p>
<p>5. Do you have any comments on the formula used to calculate the charge-out rates?</p>	<p>In principle we agree with the approach taken to calculate the hourly rates for staff undertaking monitoring or consenting work. However, reservations about the calculation of the hours worked used in the denominator remain. We expand on these concerns in our response to question 6 below.</p>

6. Do you have any comments on how we have set each element of the formula (salary costs, other direct costs, overhead costs and total hours)?

We do not agree with the deduction of hours relating to staff training and general administration from the total hours worked. Similarly, we do not see why deductions relating to KiwiSaver and ACC levies should be included. This has the effect of inflating the hourly rate by reducing the denominator in the hourly rate formula.

Applicants and duty holders should have a reasonable expectation that EPA staff are qualified and competent to perform their functions, particularly where these functions are subject to cost recovery. Accounting for these costs in the calculation is a departure from current practices and require further consultation with applicants and duty holders.

If training were charged, the EPA should be more vigilant about time recording to ensure junior staff members do not overcharge for 'on the job' training by writing off excess time spent on pieces of work and time spent attending meetings where they are not strictly required. Again, we note our preferred hybrid cost model and the development of cost estimating norms would better manage these issues.

The lack of an appropriate time recording system to accurately capture time spent on activities used in the calculation of effective hours for cost recovery purposes is concerning. This necessitates the need for time allocation assumptions, developed over a two-week study period, to be applied uniformly in determining the effective hours available for hourly rates.

We would also like to see more granularity in how the hours are calculated for the different staff roles rather than taking a generic allocation of hours. This would better reflect available hours for each role each year and provide additional accountability and transparency in allocating time for EPA staff for various activities.

Consultation questions	Our answer
<p>7. Please advise us if there are other factors you think should be considered</p>	<p>We consider the following factors should be considered when determining the hours available used to calculate hourly charge-out rates ;</p> <ul style="list-style-type: none"> <li>• more specificity in determining the annual hours for the different levels and functions of staff involved in monitoring and consenting activities;</li> <li>• should training and general administration time be deducted from the total hours worked, it needs to be carefully considered if these deductions are relevant to the performance of the staff function, and;</li> <li>• implementing an appropriate time recording system to collect data to better inform future fees reviews.</li> </ul>
<p>8. What are your views on having charge-out rates set that apply from 1 July 2023 to 30 June 2024, from 1 July 2024 to 30 June 2025, and from 1 July 2025, as compared to a single set of charge-out rates?</p>	<p>We prefer a single set of charge-out rates.</p> <p>A single set of charge-out rates gives more cost predictability for applicants where marine consent considerations span different financial years.</p>



Consultation questions	Our answer
<p>9. What are your views on the preferred option for cost recovery as compared to the alternative options? If you have an alternative preferred option, could you please outline this</p>	<p>We prefer a hybrid model for cost recovery from applicants.</p> <p>A hybrid model incorporates a fixed fee element designed to cover the direct and indirect costs of the EPA for a specific type of application. The variable fee element would be used to cover the procurement of specific technical advice to assist decision-makers to arrive at their conclusion.</p> <p>It is our view that this model is better suited to aligning incentives appropriately and would ensure financial discipline within the EPA. It would require the on-going review of the EPA functions and staffing levels to ensure cost recovery goals are being met.</p> <p>It would seem reasonable that the low-level interactions, such as a short phone call and answering e-mails, are exactly the type of activity that would be captured by a fixed fee in a hybrid model, which “sweep up” all these short interactions. This would remove the need for incremental time keeping and invoicing noted in the Martin Jenkins report, which imposes additional cost on both the EPA and applicants.</p> <p>Please see also our response to question 2.</p>

Consultation questions	Our answer
<p>10. If the proposed increases went ahead, are there impacts on your business we may not have considered?</p>	<p>The Martin Jenkins report identified a worryingly low level of cost recovery. Applicants should expect to see a significant increase in monitoring and consenting costs because of;</p> <ul style="list-style-type: none"> <li>• increased hourly rates for EPA staff, and;</li> <li>• greater emphasis on cost recovery for EPA staff by management.</li> </ul> <p>It would be helpful for the EPA or MfE to estimate and socialise these impacts at the earliest convenience with targeted guidance.</p>
<p>11. Would the proposed increases change how you approach making applications for marine consents or other ways you engage with the EPA?</p>	<p>We expect the proposed cost increases, both in terms of hourly rates and focus on timekeeping practices, will adversely affect the relationship between the EPA, applicants, and duty holders. Specifically, we would expect to see;</p> <ul style="list-style-type: none"> <li>• greater scrutiny of EPA charges and invoices, and;</li> <li>• fewer voluntary (ad hoc) interactions with the regulator, as these interactions will attract additional charges.</li> </ul> <p>For the above reasons we again highlight the benefits of our preferred hybrid approach to cost recovery. We believe this approach would reduce administrative costs and maintain a spirit of cooperation between the EPA and applicant.</p>