

# Departmental Disclosure Statement

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Exclusive Economic Zone and Continental Shelf (Environmental Effects) (Transitional Provisions) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill; and
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 February 2015.

**Contents**

Part One: General Policy Statement ..... 3

Part Two: Background Material and Policy Information ..... 4

Part Three: Testing of Legislative Content..... 6

Part Four: Significant Legislative Features ..... 8

## **Part One: General Policy Statement**

On 8 December 2014, Cabinet agreed to amend section 162 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).

Section 162 provides for existing petroleum operators, permitted under the Crown minerals regime, to continue their existing activities for the duration of their mining permits or privileges, as they were on the day before the EEZ Act came into force.

To continue operating once those mining permits or privileges expire, existing petroleum operators must have a marine consent under the EEZ Act. Currently section 162 does not allow existing petroleum operators to continue their activities while a marine consent application is being considered by the Environmental Protection Authority and any objections or appeals are determined. Uncertainty about how long it may take to resolve any appeals creates an unnecessary risk around the transition of existing operators into the EEZ Act regime.

The purpose of this Bill is to allow existing petroleum operators who have applied for a marine consent to continue their operations until the application is decided and any subsequent objections or appeals are determined.

The Bill will not change the requirement for existing petroleum operators to transition into the EEZ Act regime through the marine consenting process.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
<p>Analysis informed the policy advice that led to this Bill. Due to time constraints no formal Regulatory Impact Statement (RIS) was prepared at the time policy decisions were made in December 2014.</p> <p>A RIS was subsequently prepared by the Ministry for the Environment, which will be available on the Ministry for the Environment website.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>No. The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement prepared by the Ministry for the Environment, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>As outlined above (question 2.3) a RIS has been prepared by the Ministry for the Environment, which will be available on the Ministry website at <a href="http://www.mfe.govt.nz/marine/legislation/transitional-provisions-amendment-bill">http://www.mfe.govt.nz/marine/legislation/transitional-provisions-amendment-bill</a></p>	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p>The Regulatory Impact Statement provides analysis of the potential economic impacts on the New Zealand economy, and the relevant operator's Māui field that the amendment will apply to in the immediate term, Shell Todd Oil Services (STOS).</p> <p>If amendments are not made to the transitional provisions under section 162 of the EEZ Act before the end of June 2015, STOS will be in breach of the requirements of the EEZ Act if it continues operating beyond 27 June 2015 without a marine consent, or will have to cease its operations at the Māui field.</p> <p>Even if STOS is granted a marine consent before 27 June 2015, there is a risk the EPA's decision could be appealed, in which case STOS would similarly be in breach of the EEZ Act if it continues operating.</p> <p>The ceasing of STOS's operations at Māui would result in a significant impact on the New Zealand economy. STOS's operations at Māui contribute to approximately 26 per cent of New Zealand's gas supply (as of 2010). STOS also contributes to the financial wellbeing of the Taranaki region by employing more than 300 personnel.</p> <p>An outage at the Māui field in 2011 resulted in a five day shutdown of operations. Following this shutdown, the Ministry of Business, Innovation and Employment calculated a gross cost to gas consumers of \$200 million over the five day duration (\$40 million per day).</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
<p>The potential benefits will largely depend on whether the proposed amendment Bill comes into force before 27 June 2015.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Bill will only allow current lawful petroleum activities to transition into the regulatory regime without breaching the requirements of the EEZ Act, therefore international obligations do not directly apply to the Bill.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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MfE considers that this Bill is consistent with the principles of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>NO</b>
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There are no implications arising from the Bill. The Bill is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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Yes, they were consulted on whether the Bill is consistent with the Bill of Rights 1990.
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
Consultation on the intent of the proposed amendment has occurred with affected parties, who indicated support.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
MfE has worked directly with the EPA on the development of the Bill, and the EPA is comfortable that the Bill will be workable in practice.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	Yes
The Bill will amend the EEZ Act to allow existing operators (relevant to Section 162 of the EEZ Act) to continue their activities while a marine consent application is being considered by the EPA, and any objections or appeals are determined.	



4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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**Any other unusual provisions or features**

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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