

Submission Form

Marine Consents and Marine Discharge Consents Application

Date Created: 12/12/2016 03:26:09 p.m.

SUBMISSION122009

Submitter Name:

Helson

Jeremy

Fisheries Inshore New Zealand Limited

Hard Copy Form

Incomplete Submission

Marine Consents and Marine Discharge Consents Application

Application Name: Trans-Tasman Resources Limited iron sand extraction and processing application

EPA Reference: EEZ000011

Applicant: Trans-Tasman Resources Limited

Notification Date: 17 September 2016

Submissions Close: Further extension of submission period to 5:00pm, Monday 12 December 2016
Originally submission period was to close 5:00pm, Friday 14 October 2016

3. Electronic correspondence

You will receive information by email. If you are unable to receive emails, please indicate below:

I cannot receive electronic copies of information and updates

4. Do you wish to speak to your submission at the hearing?*

I / We **do not wish** to speak about my / our submission at the hearing.

OR

I / We **wish** to speak about my / our submission at the hearing.

If you **wish to speak** at the hearing, tick as many as apply to you:

If others make a similar submission, I / we will consider presenting a joint case with them at the hearing.

I / we wish to present in Te Reo Māori.

I / we wish to present in New Zealand Sign Language.

I / we intend on having legal representation (i.e. a lawyer speaking on your behalf).

I / we intend to have expert witnesses to support my / our submission.

5. What decision do you want the EPA to make and why?*

If you require more space, please attach additional pages. Please include your name, page numbers and *Trans-Tasman Resources Limited iron sand extraction and processing application* on the additional pages.

- Grant
- Grant with conditions
- Neutral
- Decline

My reasons for seeking this decision are:

See attached letter

6. Do you have an existing interest that may be affected by what is proposed in this application?

- Lawfully established existing activity, whether or not authorised by or under any Act or Regulations, including rights of access, navigation and fishing
- Any activity that may be undertaken under the authority of an existing marine consent
- Any activity that may be undertaken under the authority of an existing resource consent granted under the Resource Management Act 1991
- Settlement of a historical claim under the Treaty of Waitangi Act 1975
- Settlement of a contemporary claim under the Treaty of Waitangi as provided for in an Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
- Protected customary right or customary marine title as recognised under the Marine and Coastal Area (Takutai Moana) Act 2011

What is your existing interest and how may it be affected by this application?

See attached letter

If you would like to attach any supporting documents please do so below.



FINZ submissions on TTR
application (12 December
2016).pdf
Adobe Acrobat Document
164 KB

Only ONE PDF or Word document with a maximum size limit of 15MB can be attached to this submission form. Please forward larger files or file types other than PDF or Word, or multiple documents directly to the EPA on a CD or DVD or USB stick.

Email Address

I wish to receive a copy of my completed submission via email.

12 December 2016

FISHERIES INSHORE NEW ZEALAND LIMITED SUBMISSION ON THE PROPOSAL BY TRANS-TASMAN RESOURCES LIMITED TO MINE IRON SANDS WITHIN THE SOUTH TARANAKI BIGHT

Submitter: Fisheries Inshore New Zealand Limited (**FINZ**)

Application Name: Trans-Tasman Resources Limited iron sand extraction and processing application

EPA reference: EEZ000011

Applicant: Trans-Tasman Resources Limited

1.0 INTRODUCTION

1.1 Fisheries Inshore New Zealand Ltd (**FINZ**) is the Sector Representative Entity for inshore finfish, pelagic and tuna fisheries in New Zealand. Its role is to deal with national issues on behalf of the sector and to work directly with, and behalf of, its quota owners, fishers and affiliated sector representative organisations. Its key outputs are:

- developing appropriate policy frameworks, processes and tools to assist the sector to manage inshore, pelagic and tuna fish stocks more effectively;
- minimising fishing interactions with protected species and the associated ecosystems; and
- working positively with other fishers and users of marine space where we carry out our harvesting activities.

1.2 Collectively, FINZ's members own more than 51% of the quota in 187 (of 239) inshore, pelagic and tuna stocks and have shareholdings in the remaining inshore stocks. This equates to approximately 80% of the inshore finfish sector by value and volume.

1.3 Members of FINZ collectively represent a broad cross-section of the New Zealand seafood industry with a long history of involvement in the South Taranaki Bight, and areas beyond, which may be affected by the application. This involvement is through quota ownership, commercial fishing operations, ownership of aquaculture assets and as licensed fish receivers.

1.4 Please note that Sanford Ltd is a member of FINZ and is a significant quota owner of inshore stocks. Sanford has chosen to submit on this matter independently.

2.0 EXISTING INTEREST

- 2.1 FINZ represents the interests of its members who conduct a lawfully established existing activity.
- 2.2 The proposed iron sands mining operation (**proposed activity**), if approved, would occur in New Zealand fisheries waters, defined under the Fisheries Act 1996 between 22km and 35km offshore in an area known as the South Taranaki Bight. The proposed activity is located in Fisheries Management Area 8 (**FMA 8**) and is within the New Zealand Fisheries Statistical Area 040.
- 2.3 FINZ is the Sector Representative Entity for inshore fish stocks and holds a mandate to represent a large number of commercial inshore finfish and highly migratory fish stocks in New Zealand waters. Member companies of FINZ collectively own quota for and/or harvest a range of species within FMA 8 including, but not limited to, the following examples:
- Snapper
 - Tarakihi
 - Flatfish
 - Gurnard
 - Trevally
 - Blue warehou
 - Skipjack tuna
 - Mackerel
 - John dory
 - Barracouta
 - Leatherjacket
 - Rig
 - School shark
- 2.4 Members of FINZ have Individual Transferable Quota (**ITQ**) in stocks which will be impacted by Trans-Tasman Resources Limited's (**TTR**) proposed activities within the South Taranaki Bight.
- 2.5 Commercial fishing rights are recognised in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act** or **Act**) as lawfully established activities (i.e. a "*lawfully established existing activity ... including rights of ... fishing*"). The Environmental Protection Authority (**EPA**) "*must take into account*" any effects of allowing TTR's application for marine consent on FINZ members' existing interests under s 59(2) of the Act.

3.0 FINZ CONCERNS WITH THE PROPOSED ACTIVITY

- 3.1 TTR has made a new application, pursuant to the EEZ Act, for various marine extraction and discharge consents to allow it to extract and process iron-sand from the seabed in the South Taranaki Bight. FINZ does not consider the application was complete or publicly notified until 9 November 2016 (i.e. the date the plume information was released).
- 3.2 FINZ was a submitter on TTR's first application for marine consent to undertake iron ore extraction and processing operations, which was lodged with the EPA in 2013 (**first application**). FINZ opposed that application due to concerns about the impact of that proposal on existing fishing activities.
- 3.3 The first application was **refused** due to (amongst other things) the uncertainty of the proposal and its potential impact on existing fishing interests (see *Trans-Tasman Resources Ltd Marine Consent Decision*, Environmental Protection Authority, dated 17 June 2014). The EPA states at para [846] of the decision that:

*We accept that, if the mining ceased, the **plume and changes to the seafloor bathymetry** would stop. However, we do not know if the effects on the receiving environment that would have already been created would be irreversible, i.e. they may have already caused irreversible damage such as to biogenic areas, **permanently affected commercial and recreational fishing interests**, affected iwi's existing interests and relationship to Tangaroa and affected marine mammals.*

[Emphasis added]

- 3.4 FINZ understands that TTR has conducted further work that may reduce the adverse effects (or impacts) of the proposed mining operation on fishing activities, and the bio-physical environment upon which fish stocks and the fishers themselves rely.
- 3.5 However, TTR applied for a direction restricting the publication of plume information contained in its most recent application. The EPA made a direction, pursuant to s 158(3) of the EEZ Act, restricting the publication of the plume information on 14 September 2016. The Environment Court overturned the EPA's direction on 8 November 2016 (see *Kiwis Against Seabed Mining Incorporated v Environmental Protection Authority* [2016] NZEnvC 217). The EPA released the plume information on 9 November 2016.
- 3.6 The quantum of information contained in these released reports is substantial and of a highly technical nature. Given the limited time available between the release of the information and preparing a submission, FINZ has not been able to engage its experts (**Jacobs**) to undertake an in-depth review of the plume information. Jacobs has instead undertaken a high-level review of the plume information. This has limited Jacobs' ability at the time of preparing this submission to adequately assess the reliability or accuracy of the further work that has been undertaken by TTR, or whether TTR's proposed conditions of consent are adequate to mitigate the potential impacts of the proposal on the marine environment, fisheries resources, fishing activities and fisher people.

3.7 Jacobs has been able to complete a high-level gap-analysis of TTR's most recent proposal. Based on Jacobs' gap analysis, FINZ continues to have concerns with regard to the potential adverse effects/impacts of the proposed activity on fisheries, commercial fishing activities and the surrounding marine environment. These concerns include, but are not limited to, the following matters:

- **Discharge of sediment, including onsite and off-site dispersion, plume modelling and effects of the sediment plume, suspended sediment and sedimentation**

TTR has presented further information that has apparently allowed more accurate modelling of the sediment plume, particularly in relation to flocculation, sediment settling rates and sediment resuspension. TTR contend that this has enabled it to recalculate the effects on primary production using revised optical model results.

Jacobs has undertaken a high-level review of the laboratory testing and plume modelling information that was previously redacted in the application by TTR (being the latest sediment plume assessments conducted by HR Wallingford Ltd and NIWA). FINZ continues to have concerns, based on the Jacobs review, regarding the information in the laboratory testing results and the subsequent NIWA modelling of the sediment plume.

FINZ is concerned with the potential for immediate and cumulative effects from the proposed activity. These concerns include whether all sediment sources from the operation have been accounted for and quantified; the uncertainty of the plume density and dispersion; the effects of the plume on fisheries resources and fishing activity (particularly as krill and pelagic species are sensitive to water quality), clarity changes and noise; and the effects on primary production in the surrounding areas.

FINZ considers further that there has been inadequate consideration of the effects of current flows, upwelling and dispersal of nutrients in the South Taranaki Bight on commercial fish species.

- **Baseline of information concerning existing interests of the commercial fishing industry**

TTR's additional analysis of the potential impact on commercial fishing interests, prepared by NIWA as Technical Report 18 titled "*South Taranaki Bight Commercial Fisheries 1 October 2006 – 30 September 2015*", consists of an analysis of catch and effort data.

FINZ is concerned that this assessment does not provide sufficient certainty to the industry of effects on food sources, species abundance, species distribution, displacement of fisheries resources and whether proposed mitigation measures and ongoing consultation with the industry will result in effects of the proposal on commercial fisheries being minimised.

FINZ is concerned that TTR has not had sufficient regard to the environmental and economic consequences on fishing activities that could be caused by TTR's proposed activity.

- **Loss of spawning areas and nurseries**
FINZ is concerned that there is the potential for the mining activity and sediment plume to affect spawning sites or juvenile nursery areas in the South Taranaki Bight, which features significant upwelling of nutrients for zooplankton, krill and other species in the Bight.
- **Potential effects of suspended sediment on krill and zooplankton**
TTR's most recent application provides additional data that has been collected by NIWA in relation to zooplankton, between the sea surface a sea floor, from 16 – 20 stations across the area potentially affected by the sediment plume. The conclusion drawn is that the neritic zooplankton community and its distribution depends on the prevailing currents and advective processes as well as in-situ primary production and that away from the source, suspended sediment concentrations are predicted to be well below levels that would impact on these communities.

FINZ is concerned that the information provided and additional work undertaken by NIWA and AES does not sufficiently address the effects, and the uncertainty of those effects, on krill and zooplankton, which in turn has effects on the marine food web and supporting ecosystem.

- **Seabed effects on fishing activities**
Section 4.5.2 of TTR's Impact Assessment considers the potential effects created by the deposition of de-ored sediments (e.g. creating pits and mounds) on surf breaks and waves, but does not address the effect of mounds on fishing operations. FINZ is also concerned that TTR continue to rely on the argument that displaced fishing effort can be deployed elsewhere in the FMA with minimal increase to overall costs.
- **Effects of heavy metals released in to the water column**
FINZ is concerned that no new information has been presented by TTR concerning the adverse effects of heavy metals and other contaminants released into the water column, the potential for these to affect zooplankton, and the potential for heavy metals to accumulate in marine species at higher trophic levels.

The effects of such contaminants on marine species are not well known and in addition to potential adverse effects on the marine ecosystem, may have consequential adverse impacts on social, cultural and economic activities associated with the affected area or species

- **Optical Effects**
The TTR Impact Assessment predicts that there will be a localised decrease in optical water quality in the immediate vicinity of the iron sand extraction activities. FINZ is concerned that the extent of optical effects has been underestimated and that there will be adverse effects on krill, zooplankton and fish; particularly pelagic species that occur in significant abundance in the South Taranaki Bight and nearby waters.

- **Economic effects**

FINZ is concerned about the potential adverse economic effects and subsequent effects on the viability of commercial fishing in some areas if, as a result of the proposed activity, there are changes in fish biomass or distribution.

FINZ is concerned that the proposal will adversely affect local and export markets, and/or the overall reputation of New Zealand fisheries.

FINZ considers that the provision of compensation to existing interests should be provided if such economic effects occur.

- **Reputational risk to New Zealand Fisheries**

The mining proposal presents a risk to New Zealand's reputation as a supplier of premium seafood and as a world-class marine manager of fisheries due to its potential impacts on fish quality caused by increased sediment loads and other contaminants. This was raised during the hearing of the first application and is still not addressed.

- **Proposed Marine Consent and Marine Discharge Consent Conditions**

An indicative set of consent conditions has been provided by TTR in Attachment 1 of the Impact Assessment. FINZ has undertaken a preliminary review of the proposed conditions and have the following concerns with the conditions proposed, being:

1. The robustness of the proposed response and compliance limits and the extent of baseline data that they are reliant on.
2. The dynamic between this and the apparent need for two years more baseline monitoring to verify assessments and trigger limits when the DMC was so critical of the lack of baseline data in the first application.
3. Clarity on exactly what data are needed for consent and to establish reliable triggers and what can be left to post-consent stage.
4. The upgrading of the Management Plan conditions to meet best practice.
5. A clearer framework of obligations and undertakings associated with the Fishing Industry Meetings.
6. The process proposed in Condition 17 to change trigger limits in Schedule 2 which currently enables changes without input from stakeholders or a formal change of conditions process.
7. The need for improved post-extraction recovery measures if natural recovery is found not to be occurring, possibly including a bond to ensure this can be achieved.

- 3.8 FINZ considers the proposal fails to satisfy the requirements of the EEZ Act because *inter alia* it:
- (a) does not include an impact assessment prepared in accordance with s.39 insofar as it fails to:
 - (i) identify the effects of the activity on the environment and existing interests;
 - (ii) identify persons whose existing interests are likely to be adversely affected by the activity;
 - (iii) specify the measures that the applicant intends to take to avoid, remedy, or mitigate the adverse effects on existing interests or the environment;
 - (iv) contain information in such detail as corresponds to the scale and significance of the effects that the activity may have on the environment and existing interests; and
 - (v) contain information in sufficient detail to enable the EPA and persons whose existing interests are or may be affected to understand the nature of the activity and its effects on the environment and existing interests;
 - (b) fails to satisfy the decision-making criteria under ss.59 and 60 of the EEZ Act and the information principles under s.61 of the EEZ Act;
 - (c) fails to take a precautionary approach in the face of uncertain information and the risk of potential significant effects on the environment and existing interests;
 - (d) fails to provide sufficient baseline information against which an adaptive management approach might be taken;
 - (d) is contrary to the Supreme Court's decision of in *Sustain Our Sounds Inc. v NZ King Salmon Company Ltd* [2014] NZSC 40 (SC) insofar as:
 - (i) there is poor baseline information about the receiving environment;
 - (ii) the conditions do not provide for effective monitoring of adverse effects using appropriate indicators;
 - (iii) thresholds are unlikely to trigger remedial action before effects become overly damaging; and
 - (iv) effects are unlikely to be remedied before they become irreversible;
 - (e) is contrary to the s.10 sustainable management purpose of the EEZ Act insofar as it fails to manage the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being.

4.0 DECISION SOUGHT FROM THE EPA

- 4.1 FINZ **does not support** TTR's proposal to mine iron sands in the South Taranaki Bight and seeks that the application be **declined**.
- 4.2 FINZ members have lawfully established existing fishing interests in the South Taranaki Bight. FINZ has concerns about the potential impact of TTR's proposal on commercial fishing activities. FINZ wishes to ensure that the EPA has a full understanding of commercial fishing activities in the Bight, and all the potential impacts that TTR's proposal may have on those fishing activities.
- 4.4 FINZ wishes to participate in the hearing of TTR's new application to ensure that fishing activities are not adversely affected by the proposal, or at the very least can be appropriately remedied or mitigated (including through refinement and/or agreement to conditions).
- 4.5 FINZ wishes to be heard and call experts.

Dated this 12th day of December 2016

Dr Jeremy Helson
Chief Executive
Fisheries Inshore New Zealand Ltd