

Key Issues Report

**Beach Energy Resources
Limited**

EEZ100019

10 JULY 2020



**Environmental
Protection Authority**
Te Mana Rauhi Tairāo

New Zealand Government

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Glossary of terms

Beach	Beach Energy Resources NZ (Holdings) Limited (NZBN: 9429038240751)
CMA	Crown Minerals Act 1991
D&D Regulations	Exclusive Economic Zone and Continental Shelf (Environmental Effects - Dumping and Discharge) Regulations 2015 (D&D Regulations)
DMC	Decision-making Committee
EAD	Exploration and Appraisal Drilling
EEZ Act	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
EPA	Environmental Protection Authority
ESRP	Emergency Spill Response Plan
HSNO Act	Hazardous Substances and New Organisms Act 1996 (HSNO Act)
IA	Impact Assessment: "Impact_Assessment_Marine_Discharge_Consent-Deck_Drainage_20200325"
IAA	Impact Assessment Area
Marine Consent	Under section 4 of the EEZ Act a Marine Consent Means- (a) a marine consent (including a marine discharge consent or a marine dumping consent) granted under section 62; or (b) an emergency dumping consent
MODU	Mobile Offshore Drilling Unit
OGS	Oil & Gas Solutions Pty Limited
OPD	Under regulation 3 of the D&D Regulations Offshore Processing Drainage (OPD) (a) means water from hazardous and non-hazardous deck drains; but (b) does not include oil mixed with water from machinery spaces
PEP	Petroleum Exploration Permit
SDS	Safety Data Sheets

Introduction

1. My name is Tim Roser. I am a Senior Advisor in the EEZ Applications team at the Environmental Protection Authority (EPA).
2. I have technical and regulatory experience in the resource development sector including environmental monitoring, research and stakeholder engagement. Before joining the EPA, I provided technical and regulatory advice for MBIE and NZP&M. I have BSc degrees in Geology and Physical Geography from the University of Otago and have worked as an exploration geologist across Australia and Europe.
3. In March 2020, Beach Energy NZ (Holdings) Limited (Beach) applied for a Marine Discharge Consent under section 38 of the Exclusive Economic and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). The application (EEZ100019) is seeking authorization to discharge small (trace) amounts of harmful substances from the deck drains of a Mobile Offshore Drilling Unit (MODU) associated with the Canterbury Basin Exploration and Appraisal Drilling (Canterbury Basin EAD) program within Petroleum Exploration Permit (PEP) 38264.
4. The documents listed below in Table 1 have formed the basis for my report. Please note, the matters covered by the NKTT report are not considered in this report.

Table 1: Documents reviewed for this key issues report.

Date	Author	Organisation	Document Title
March 2020	Dan Govier	SLR Consulting NZ Limited	Marine discharge consent application – Discharge of harmful substances from deck drains
25 March 2020	Mat Quinn	Beach Energy Resources NZ (Holdings) Limited	Environmental Protection Authority Application Form EPA0401, Marine Discharge Consent
26 June 2020	Frank Broomhead	Oil & Gas Solutions	Technical Review and Analysis of Operational Activities associated with Beach Energy's Marine Discharge Consent Application – Canterbury Basin Exploration & Appraisal Drilling
8 July 2020	David Allen & Mark Mulholland	Buddle Finlay	Approach to uncertainty in the context of the Beach Energy Marine Discharge Consent application

Background

5. Beach Energy Resources NZ (Holdings) Limited (Beach) is the permit operator of Petroleum Exploration Permit (PEP) 38264 under the Crown Minerals Act (CMA: 1991). In terms of prospectivity, PEP 38264 is considered to be a green-field area, as it has not been fully explored for oil and gas reserves. Beach has identified some areas which it considers to be prospective hydrocarbons and intends to target these as part of its proposed exploration and appraisal drilling (EAD) program.
6. Beach is proposing to drill at least one exploration well (Wherry Prospect) as part of the Canterbury Basin EAD Program and depending on the learnings and results from this well, Beach may pursue a

wider work program within PEP 38264 that could include up to 11 follow-up exploration or appraisal wells. Drilling is anticipated to commence late 2020 and will be completed as part of one or more drilling campaigns, using either a semi-submersible Mobile Offshore Drilling Unit (MODU), a drill ship MODU or a combination of both.

7. PEP 38264 was granted, subject to conditions under the CMA. PEPs often include minimum work programme conditions that require the holder to drill wells within the exploration permit area, within a set date, or surrender the permit. Condition 8 of PEP 38264's minimum work programme (schedule 3) requires Beach to drill an exploration well within PEP 38264 by 8 October 2021 and either notify NZP&M of their commitment to carry out the next stage of the work programme or surrender the permit. The next stage of PEP 38264's minimum work programme (condition 9, schedule 3) requires Beach to complete at least an additional two wells by 8 November 2021 however this is contingent on Beach's commitment under condition 8.
8. The permit's current expiry date is 8 November 2021 however Beach may apply to NZP&M to extend the duration of PEP 38264 for up to eight more years, for appraisal purposes. As drilling could occur beyond 2021, Beach has sought a marine discharge consent expiry date of 8 November 2029.
9. While Beach requires multiple consents before it can carry out exploration drilling in PEP 38264, the only activity that is the subject of this publicly notified application for marine discharge consent is the discharge of trace amounts of harmful substances from the deck drains of any MODU used for OMV's exploration drilling activities in PEP 38264.

Purpose of the key issues report

10. This report addresses what I consider to be two key and fundamental issues associated with the application that the Decision-making Committee (DMC) will need to consider as part of its decision making process. These issues are:
 - a) uncertainty in the application arising from the specific MODU not being known at the time of lodging the application; and
 - b) the volumes of harmful substances that could be discharged to the marine environment;
11. I have deliberately not provided a conclusion/recommendation on whether the application should be granted or refused.
12. This report has been prepared before the exchange of evidence by both the applicant and submitters. I have not considered submissions lodged on the application. Additional information, may therefore be provided in evidence, by way of submission, and during the hearing.

The application – EEZ100019

Scale and scope of the application

13. This application (EEZ100019) seeks consent to discharge trace amounts of harmful substances through the hazardous deck drains of a MODU into the sea as offshore processing drainage¹ (OPD). As the proposed EAD programme in PEP 38264 could consist of more than one drilling campaign over a period to 2029, one or more MODUs could be used. Beach is seeking consent to cover this discharge activity until 2029.
14. There is no volume threshold, or minimum quantities, of harmful substances that trigger the need for a marine discharge consent. Section 20B of the EEZ Act, applies to trace amounts which may be left on the decks after the clean-up of drips and spills. The proposed discharge of trace amounts of harmful substances being either oil, or substances ecotoxic to aquatic organisms², as offshore processing drainage, is classified under regulation 16(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects - Dumping and Discharge) Regulations 2015 (D&D Regulations) as a discretionary activity.

Proposed activity

15. The activity for which consent is sought in this application (EEZ100019), is the intermittent discharge of trace amounts of harmful substances as OPD through the deck drains of any MODU(s) used by Beach for its EAD programme in PEP 38264.
16. The small (trace) amounts of harmful substances are those which remain on deck after a spill has been cleaned, and are:
 - a) too minor in local concentration to be observed by eye;
 - b) too minor in local concentration to be absorbed or collected through the cleaning procedures in place on the MODU; and
 - c) may remain on the decks after the clean-up of drips or spills.
17. Rainwater is the primary way in which any trace amounts of harmful substances will be washed into the deck drain system and subsequently discharged to the marine environment as OPD. However, trace amounts of harmful substances could also enter the deck drain system and be discharged to the marine environment during deluge events³, or, as a result of sea spray washing over the decks of a MODU.
18. As outlined in section 3.2.1 of the application, Beach anticipates that the EAD programme will commence in 2020. The programme will include the drilling of up to ten wells may be drilled at the

¹ as defined in regulation 3 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects - Dumping and Discharge) Regulations 2015

² and is hazardous for the purposes of the Hazardous Substances (Minimum Degrees of Hazard) Notice 2017

³ the pumping of vast quantities of water on to the deck of a MODU in response to a fire or heat event

Wherry prospect and up to two wells at the Gondola Prospect. If commercially viable oil and gas resources are not discovered within the two prospects, minimal drilling will occur.

19. As the EAD programme could consist of a number of stages, a different MODU could be contracted to carry out drilling for each stage. The types of MODU that could potentially be used during the EAD programme are a semi-submersible drilling rig, and a drill-ship.

Location

20. Section 3.1 of the IA outlines the location of the proposed activity. Figure 1 shows the location of PEP 38264 and the two Impact Assessment Areas (IAA) Gondola and Wherry. Beach's application states the final wellsite locations will be within 1km of the potential wellsite locations shown in Figure 2 and Figure 3. 11km radius circles were plotted around each of the proposed well locations to allow for any future well location adjustments (up to 1km) and a minimum 10km impact assessment radius. To determine the overall IAA boundary for each area (Gondala & Wherry), a rectangle was then plotted to encompass these 11km circles.



Figure 1: PEP 38264 and IAA's Gondola (Red) & Wherry (Yellow).

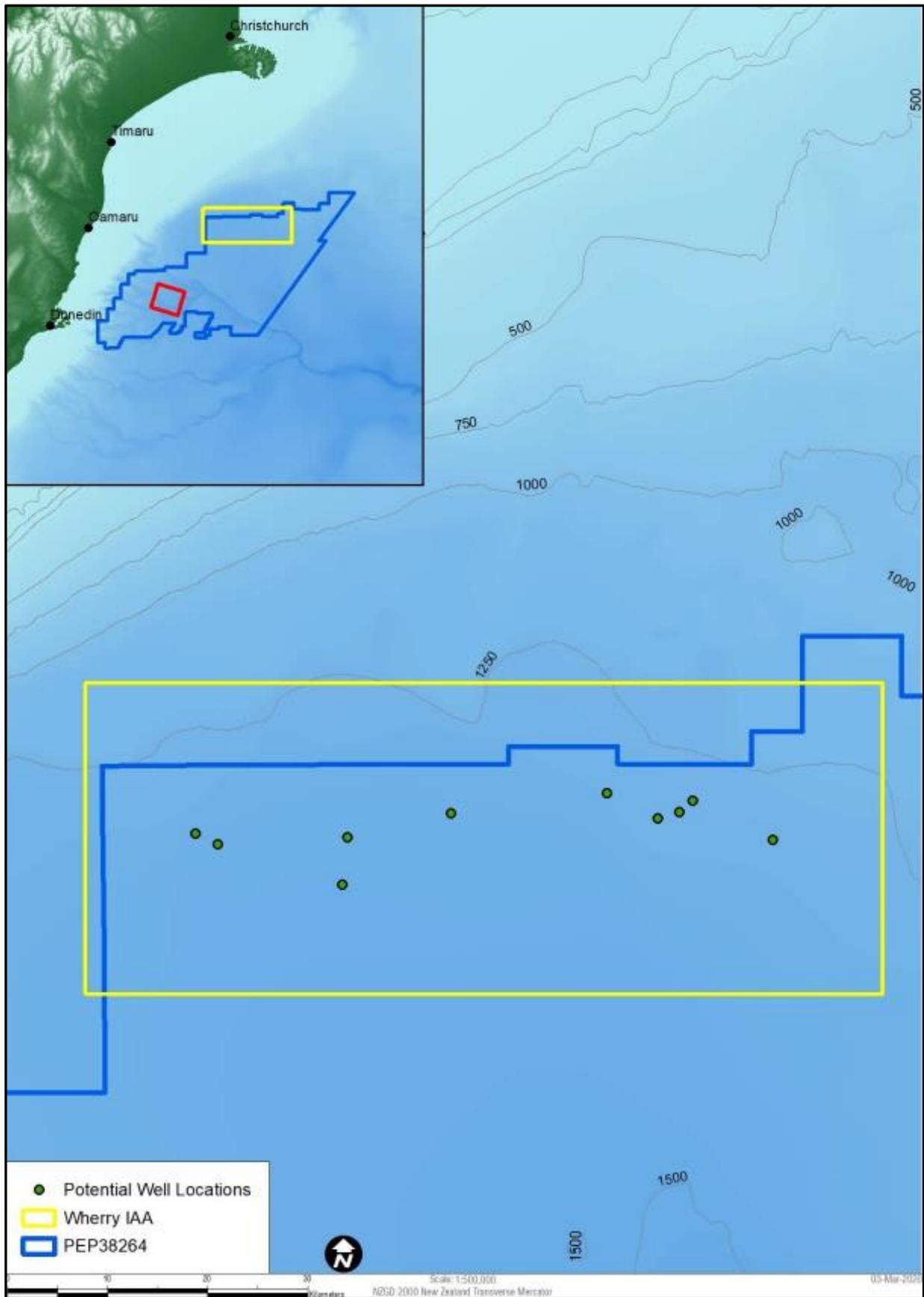


Figure 2: Proposed well site locations within the Wherry IAA.

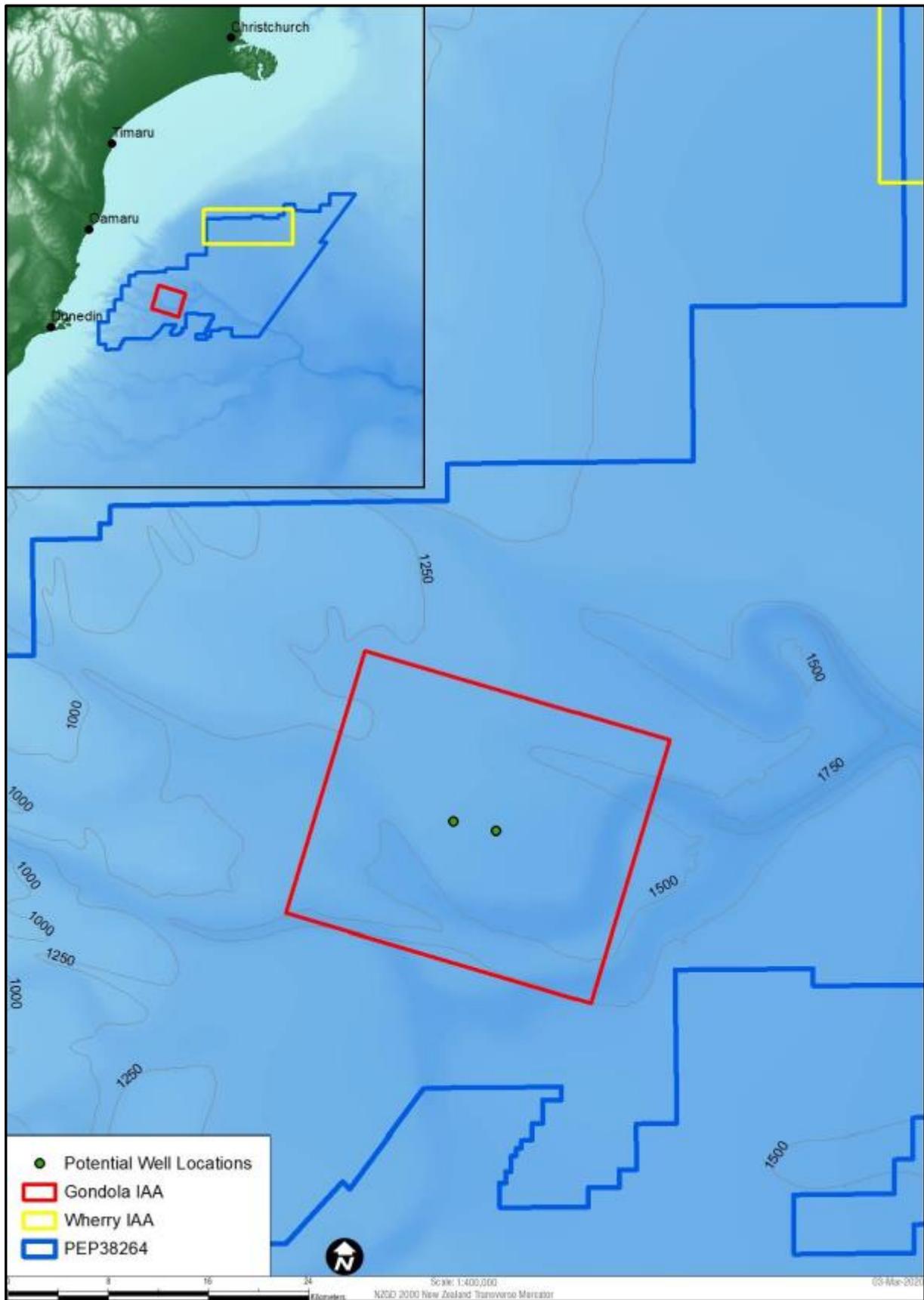


Figure 3: Proposed well site locations within the Gondola IAA.

Statutory framework

The EEZ Act

21. Applications for marine discharge consent are determined according to the requirements of the EEZ Act. The EEZ Act outlines the relevant matters that must be taken into account when considering whether to grant or refuse a marine discharge consent, including the information principles set out in section 61.
22. When making a decision for a marine discharge consent, an overall determination must also be made in regards to whether or not the granting of the application would be consistent with the purpose of the EEZ Act.

Purpose

23. The purpose of the EEZ Act is set out in section 10 of the EEZ Act:

“(1) The purpose of this Act is—

- (a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and*
 - (b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.*
- (2) In this Act, sustainable management means managing 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 while —*
- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) safeguarding the life-supporting capacity of the environment; and*
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*
- (3) In order to achieve the purpose, decision-makers must—*
- (a) take into account decision-making criteria specified in relation to particular decisions; and*
 - (b) apply the information principles to the development of regulations and the consideration of applications for marine consent.”*

Decision making function

24. The EEZ Act prescribes the decision making function of the EPA. For this application, decision-making has been delegated to the DMC by the EPA Board.
25. In light of the purpose of the Act, to best discharge its responsibilities for assessing, hearing and making a decision on this application, the DMC must take into account or have regard to the decision-making criteria in sections 59 and 60, and apply the information principles outlined in section 61 of the EEZ Act.
26. The decision-making criteria in section 59 apply to any application for a marine consent. For a marine discharge consent, however, section 59(2A)(a) directs the DMC to specifically exclude the matters described in section 59(2)(c) from its considerations, which relates to the effects on human health that may arise from effects on the environment. Section 59(2A)(b) instead directs the DMC to take into account the effects on human health of the discharge of harmful substances, if consent is granted.
27. Section 61(1)(b) of the EEZ Act requires the DMC to base its decisions on the best available information. Section 61(5) defines that for the purposes of section 61, best available information means the best available information that, in the particular circumstances, is available without unreasonable cost, effort, or time.
28. Under section 61(2), if the information available is uncertain or inadequate, the DMC must favour caution and environmental protection. As Beach's application is for a marine discharge consent, section 61(4)(a)(ii) applies, and provides that if the information available is uncertain or inadequate, the DMC is not able to consider, whether taking an adaptive management approach would allow the activity to be undertaken.

Conditions of consent

29. Section 59(2)(j) of the EEZ Act requires the DMC to take into account the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity. Under section 63(1) the DMC may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests.
30. Section 63(2) gives examples of the types of condition which may be imposed, and sections 65 to 67 (bonds, monitoring, observers) give further detail regarding the type of conditions outlined in section 63(2).
31. Under section 64(1AA)(b), section 64 (adaptive management approach) does not apply to a marine discharge consent. Conditions under 63(2)(b), which together amount or contribute to an adaptive management approach, can therefore not be imposed, if consent was to be granted.
32. Sections 63(3) and 63(4) give further detail of conditions which cannot be imposed on consents. These include:
 - a) conditions which are inconsistent with the EEZ Act or any regulations; or

b) conditions to deal with an effect, if the condition would conflict with a measure required in relation to the activity by another marine management regime (MMR) or the Health and Safety at Work Act 2015.

33. I note that other conditions volunteered by Beach, including conditions that may be outside those that the DMC may impose under the Act, may also be imposed and become enforceable, by the EPA. Such conditions are often referred to as 'Augier' conditions. The prohibitions in section 63(3) and 63(4), however, still apply.

Section 20B restriction

34. The discharge of harmful substances from a structure into the sea is a restricted activity under section 20B of the EEZ Act.

35. Section 4 of the EEZ Act defines "structure" to mean any building, equipment, or device and includes an offshore installation. Any MODU when anchored, or connected to the wellhead, is considered to be an offshore installation and therefore a "structure" under the EEZ Act. When a MODU does not fit this criteria, such as when it is in transit, it is not considered an offshore installation under the EEZ Act but a "vessel" or "ship" under the Maritime Transport Amendment Act 2013.

The D&D Regulations 2015

Offshore processing drainage

36. The specific nature of the harmful substances to be stored on board the MODU(s), and therefore have the potential to be discharged as OPD, will be driven by operational requirements of the MODU, the well design, and the geology of the formation being drilled. Beach has not yet decided on the MODU(s) for its EAD programme. The specific harmful substances that will be on-board the MODU(s) are therefore not yet known.

37. Under regulation 3 of the D&D Regulations, offshore processing drainage:

(a) means water from hazardous and non-hazardous deck drains; but

(b) does not include oil mixed with water from machinery spaces.

Offshore processing drainage therefore includes water that runs off a MODU incidental to its drilling activities, e.g. rainwater.

38. Regulation 16 of the D&D Regulations pertains to discharge from petroleum extraction activities. Under regulation 16 the discharge of harmful substances described in regulation 4(a) and (b) from offshore processing drainage is classified as a discretionary activity under the Act if the substance is:

(a) ecotoxic to aquatic organisms and is hazardous for the purposes of the Hazardous Substances (Classification) Notice 2017; or

(b) oil.

39. The discharge activity proposed by Beach does not relate to regulation 16(2) (test flow of exploration drilling), or 16(3) (from an existing structure). Any MODU used by Beach for its EAD programme in PEP 38264 is not an existing structure; it is a new structure brought in for a specific drilling operation. Therefore regulation 16(1) applies in this instance.

Emergency spill response plan

40. Under regulation 24 of the D&D Regulations, the owner of an offshore installation must not operate the offshore installation without an Emergency Spill Response Plan (ESRP) approved by the EPA. Under regulation 24(3), the ESRP must contain emergency spill response procedures for any ecotoxic, or very ecotoxic substances held on-board in volumes exceeding 20 litres, and for any other substances covered by regulation 4(a), where substances are held in volumes exceeding 100 litres. Under regulation 24(4)(a), these procedures must include:

- (i) a list of harmful substances stored on the offshore installation;*
- (ii) the maximum volumes of the substance likely to be stored on the offshore installation; and*
- (iii) a description of the processes and activities that present a risk of a spill of a substance.*

41. The list of harmful substances to be held on the MODU, as described above, will need to be provided to the EPA, in accordance with the ESRP requirements under regulation 24(5) of the D&D Regulations at least two months before the date on which operations are due to begin.

Hazardous Substances and New Organisms Act 1996

Purpose

42. The purpose of the Hazardous Substances and New Organisms Act 1996 (HSNO Act) as set out in section 4 is:

- (a) to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.*

HSNO approvals

43. Under section 28 of the HSNO Act an importer or manufacturer of a hazardous substance must obtain approval(s) for the substance under the HSNO Act. Approval must be obtained prior to the substance being imported or manufactured.

44. Any harmful substance intended for use as part of Beach's EAD programme, or to be stored on-board the MODU while it carries out the EAD programme, will need to hold an existing approval under the HSNO Act.

Hazardous Substances (Classification) Notice 2017

45. Most of the hazardous substance rules the EPA remains responsible for are set in EPA Notices rather than by regulation. This includes rules for environmental controls and hazardous substances disposal controls.

46. Under section 74 of the HSNO Act, the EPA may issue a notice establishing a hazard classification system. Such a classification system is in place under the Hazardous Substances (Classification) Notice 2017. The classification system groups substance according to their ecotoxicity. The classification is represented by:
- a) a number which identifies the class and subclass of the hazard;
 - b) a letter, which ranks the hazard; and
 - c) an associated hazard phrase.
47. The HSNO classification most relevant to this application is 9.1, which relates to aquatic ecotoxicity. The HSNO 9.1 classification has four separate groups which vary depending on the ecotoxicity, as follows:
- a) HSNO Class 9.1A – substances that are very ecotoxic in the aquatic environment
 - b) HSNO Class 9.1B – substances that are ecotoxic in the aquatic environment
 - c) HSNO Class 9.1C – substances that are harmful in the aquatic environment
 - d) HSNO Class 9.1D – substances that are slightly harmful to the aquatic environment or are otherwise designed for biocidal action.
48. The HSNO Act and classification system uses the term ‘hazardous substance’ when referring to substances that are ecotoxic to aquatic organisms. The EEZ Act, and associated regulations, uses the term ‘harmful substance’ when referring to oils and hazardous substances that are ecotoxic to aquatic organisms. All 9.1 classified substances are considered ecotoxic under regulation 16(1) of the D&D Regulations.

If the DMC is minded to grant consent subject to conditions, the most appropriate approach to classifying hazardous substances according to their aquatic ecotoxicity in New Zealand, is to use the New Zealand HSNO classification system.

Key Issues

Introduction

49. After reviewing the documents listed in Table 1, and considering the scale and scope of the application, I have found there to be two key issues associated with the application that the DMC will need to consider as part of its decision-making process under sections 59-61 of the EEZ Act:
- a) uncertainty in the application arising from the specific MODU not being known at the time of lodging the application;
 - b) the volumes of harmful substances that could be discharged to the marine environment; and

Information uncertainty

50. This application has been lodged before Beach has contracted the specific MODU(s) to be used in the EAD programme. That gives rise to uncertainty around:
- a) the specific on-board deck drainage system;
 - b) the specific level of treatment deck drainage will receive prior to discharge;
 - c) the on-board system for the management of harmful substances, and
 - d) the suite of chemicals that may be used or stored on-board the MODU(s).
51. When considering previous applications for consents for the discharge of trace amounts of harmful substances from the deck drains of an unknown MODU (EEZ100017 & EEZ100018), the EPA commissioned Stantec (under section 56 of the EEZ Act), to provide expert advice on best practice in assessing and determining applications where there is information uncertainty. Advice from Buddle Finlay reviews the expert advice previously provided by Stantec and provides an update in light of new case law from the TTRL court of appeal decision.
52. It is my view that in the current context, the findings in the Buddle Finlay advice are relevant to the DMC's consideration of this application (EEZ100019).
53. Section 61 of the EEZ Act provides the primary statutory direction for approaching matters of uncertainty and incomplete information in a marine consent application by setting out information principles to be applied when considering an application. Advice from Buddle Finlay sets out some practical guidance when applying these information principles, and provides a set of considerations for the DMC.
54. While there is some uncertainty within Beach's applications, in Appendix B of the IA, Beach commits to a number of minimum MODU standards that will reduce and mitigate the risk of harmful substances being discharged to the marine environment. These standards incorporate a minimum standard of deck drain system design requirements of any MODU which, *inter alia*, must be of a specification that can ensure the oil content of deck drain discharges will not exceed 15 ppm. Beach also commits to standard operational procedures that control harmful substance handling and storage practices on-board any MODU.
55. OGS was commissioned to review the operational aspects of MODU systems and procedures relating to deck drains and harmful substances, detailed in Beach's IA. The OGS report found that the standard of the deck drain system, harmful substance storage and handling protocols, and emergency response procedures outlined in Beach's IA align with industry best practice.
56. I agree with the OGS conclusion that although there is uncertainty in Beach's application, the minimum MODU operational requirements (section 3.2 and Appendix B of the IA) and the systems and processes outlined in sections 3.3 of Beach's IA will be effective at reducing the risk of spills to deck of harmful substances, and thereby adequately control the levels of harmful substances discharged from the deck drains of any MODU.

57. If the DMC is minded to grant consent, conditions under section 63 of the EEZ Act, and the required ESRP, could provide key control mechanisms around the storage and use of harmful substances on the MODU(s).

Volumes of harmful substances entering the marine environment

58. Rainwater will be the primary pathway for any trace amounts of harmful substances that remain on deck after cleaning to be discharged from the hazardous deck drains into the marine environment as a constituent of OPD. Section 3.5 of the IA provides examples of the expected levels of rainfall, and the volumes of rainwater that could subsequently enter the deck drains and be discharged into the marine environment.

59. Potential environmental effects need to be assessed while considering the spatial scale, temporal scale and magnitude of ecological impact, value of environment that could be subject to harm, connectivity (e.g. bioaccumulation), and reversibility of potential harm.

60. As outlined in the Buddle Finlay advice, when assessing the significance of potential environmental effects of an activity, a worst case scenario can be considered. The worst case scenario presented in section 3.6 of the IA is that 250 ml of a 9.1A substance (Sodium Hypochlorite Potable Grade HSR003698) becomes entrained in the deck drains system. The 250 ml of the 9.1A substance then flows to the deck drain settlement tank and becomes diluted in 2500 L of water, prior to being discharged to the marine environment. Once discharged into the marine environment the concentration of any of the 9.1A harmful substance will be rapidly diluted to below ecotoxic levels within a highly localised area around the point of discharge.

61. When considering this worst case scenario it should be noted that the measure of aquatic ecotoxicity that is used to classify a substance as 9.1A is representative of the effects on an aquatic organism after a minimum of 48 hours exposure to that substance at a given concentration. In reality, any 9.1A substance discharged into the marine environment will immediately undergo rapid dilution, significantly reducing the exposure time for any marine species that come into contact with the discharge.

62. The need for certainty of information in an application should largely be driven by the scale, intensity and duration of the potential adverse environmental effects that could arise from the proposal.

63. The IA outlines there is likely to be negligible environmental effects from the proposed offshore processing deck drainage activities in a worst case scenario. Should the DMC be minded to grant the proposed consent, conditions may be imposed under section 63 to provide regulatory assurance.

64. In the TTRL Decision, the Court of Appeal stated that it is not consistent with section 10(1)(b) of the EEZ Act, to permit marine discharge that will cause material harm to the environment, on the basis that the harm will subsequently be remedied or mitigated by consent conditions. If material harm is likely to arise from the discharge activity, then the application fails to meet the purpose of section 10(1)(b) and must be refused. If it is determined that material harm will be avoided through regulation, the consent can be granted and conditions imposed under section 63.

65. In a worst case scenario, the IA provides, and I agree, there is likely to be negligible environmental effects from the proposed offshore processing deck drainage activities. I recommend the DMC takes this into account when considering this application.

Conclusion

66. I have considered Beach's application, IA and associated appendices as well as the technical report by OGS and advice from Buddle Finlay.
67. While no outstanding points of clarification were considered critical to the understanding of the proposed activities, the OGS technical report highlights four points the DMC might wish to seek clarification on. Should the DMC choose to, clarification may be sought from the applicant via requesting information under section 54. However, should the DMC be minded to grant this consent application, conditions may also be imposed to reduce uncertainty in these areas.
68. The fourth point highlighted by OGS, looks to ensure the deck plan of the selected MODU is provided to the EPA and relates to how harmful substances are stored and handled. I note this topic is considered within the approval process for an ESRP under Regulation 24.
69. I consider that the key issues associated with the proposed activities are those outlined in this report.

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