

26 June 2020

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By email to: [Jillian.Kennemore@epa.govt.nz](mailto:Jillian.Kennemore@epa.govt.nz)

Tēnā koe Sandra

**Request for advice under section 56 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 regarding the Beach Energy Limited Application – EEZ100019**

I am providing you advice from the Department of Conservation (DOC) as per your letter dated 8 June 2020, conveying the Decision-making Committee's (DMC) request for information from DOC (under s.56 EEZ Act) regarding potential effects of Beach Energy's application to undertake activities associated with marine discharge from deck drains of a Mobile Offshore Drilling Unit (MODU) for their exploration programme in Canterbury Basin (Petroleum Exploration Permit Area – PEP38264).

**Q1. Please describe the DOC's responsibilities in relation to Beach Energy's operation of a MODU within Petroleum Exploration Permit (PEP) 38264 in the Canterbury Basin.**

1. For the purposes of the EEZ Act, DOC administers the following marine management regimes:
  - Marine Mammals Protection Act 1978
  - Wildlife Act 1953
  - Marine Reserves Act 1971 (territorial sea)
  - Hauraki Gulf Marine Park Act 2000 (territorial sea)
  - Resource Management Act 1991 (territorial sea)

2. The latter three responsibilities only apply in the territorial sea. DOC does not anticipate Beach Energy's exploration activities in the Canterbury Basin are likely to have adverse effects on the coastal marine area or marine reserves.
3. The Marine Mammals Protection Act 1978 and the Wildlife Act 1953 do apply in the EEZ and DOC considers there may be potential for adverse effects on species protected by those two Acts. The following paragraphs set out DOC's key responsibilities and functions under those Acts, followed by responses to the DMC's questions on species protected by those Acts, specifically marine mammals and seabirds.

#### The Marine Mammals Protection Act 1978

4. The Marine Mammals Protection Act 1978 (MMPA) provides for the protection, conservation and management of marine mammals within New Zealand and within New Zealand fisheries waters. The MMPA provides for:
  - Any marine mammal to be declared a threatened species for the purposes of the Act,
  - Controlling the "taking" and "holding" of marine mammals, including issuing and administration of permits,
  - The creation and administration of marine mammal sanctuaries,
  - Regulations that are necessary or expedient for the protection, conservation, or management of any marine mammal.
5. All marine mammals are protected species under the MMPA. No person may take or hold in captivity any marine mammal, or import or export any marine mammal or marine mammal product, without a permit issued under the Act. Section 26(4) of the MMPA allows for accidental or incidental injury or death as a defence provided the incident is reported to DOC or MPI.
6. The Marine Mammals Protection Regulations 1992 were established under the MMPA to regulate human interaction with marine mammals - they establish a permitting regime for commercial marine mammal watching operators and prescribe appropriate behaviour by commercial operators and other persons.

#### The Wildlife Act 1953

7. The Wildlife Act 1953 provides absolute protection for most species of wildlife in New Zealand and within New Zealand fisheries waters - excluding marine mammals, which are specifically protected under the Marine Mammals Protection Act as set out above. The Wildlife Act can address adverse effects of activities on marine species in four ways:

- (a) Protecting most **seabirds**

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- (b) Minister of Conservation can establish *population management plans* for “marine wildlife” (other than marine mammals) and *maximum allowable levels of fishing related mortality* of marine wildlife (to address fishing-related mortality).
  - (c) Declaring certain marine species as “animals” which are absolutely protected under the Act. These include *some corals, some sharks and rays, and giant grouper and spotted black grouper*; and
  - (d) Establishment of *wildlife refuges, wildlife sanctuaries, and wildlife management reserves* which may include the waters of the sea and harbours. The Act provides measures for restricting entry to, and interaction with, wildlife (as defined in the Wildlife Act) in these protected areas.
8. Note that an authorisation under the Wildlife Act is required if a proposed activity will kill any protected species. The approach being taken by the Director-General of Conservation following the Court of Appeal decision on shark cage diving and authorisations under section 53 of the Wildlife Act is that an authorisation cannot be sought for accidentally killing a protected species (i.e. not intended and not likely). It is, however, possible to apply for an authorisation for incidental kill (i.e. not desired, but a likely result).

**Q2. In Table 10 (page 67) of its Impact Assessment, Beach Energy lists marine mammal species and their likely occurrence in and around the Wherry and Gondola areas of interest within the PEP 38264. Table 13 (page 79) lists the seabirds that could be present. Please confirm that these lists, together with the conclusions on the likelihood of these species occurring in the Wherry and Gondola areas of interest are accurate and comprehensive.**

### Marine Mammals

- 9. Pygmy blue whales are listed as ‘Data Deficient’ by the IUCN (<https://www.iucnredlist.org/species/2479/9449204> ) and are likely to be ‘occasional visitors’ to this area (see track from 2018 NIWA tagging project here: <https://niwa.co.nz/coasts-and-oceans/research-projects/satellite-tracking-of-blue-whales-in-new-zealand-waters>).
- 10. Given the prevalence of northbound-migration of humpback whales in late autumn and early winter, this species should be ‘Likely’ at those times of year.
- 11. Shepherd’s beaked whales have been repeatedly sighted in the offshore Otago canyon systems in recent years and these canyons extend into the Gondola AOI. These whales should therefore be considered ‘Likely’ to be present.

12. Otherwise DOC is satisfied the applicant has identified the likely marine mammals and their likely occurrence in this table.

Seabirds:

13. Beach Energy provides a list of seabirds that could occur in the area of interest (AOI), but does not appear to provide a likelihood of occurrence for different seabird species.
14. The Impact Assessment states that “knowledge of the at-sea distribution of New Zealand’s seabird species is limited and generally restricted to targeted studies and observations from commercial fishing vessels (Richard et al. 2011)”, which is used as a reference for seabirds occurring in the AOI. Please note that this list is therefore likely to be biased towards species that are attracted by (fishing) vessels and is also inherently biased by what fisheries observers can see and what they can identify. Small and difficult to identify/see species (e.g., storm petrels, prions, penguins etc.) will be largely underestimated using this method.
15. The AOI is in close proximity to substantial seabird breeding sites including smaller species nesting around Foveaux Strait and Stewart Island. These include large colonies of sooty shearwaters, fairy prions, broad-billed prions, white-faced storm petrels and common diving petrels. The world’s largest colony of mottled petrels is on Codfish Island and the only colony of the southern Cook’s petrel (likely to be a separate taxon after new genetic studies) occurs on Codfish Island. There are also many seabird species nesting at the Snares, Auckland, Campbell, Antipodes and Bounty Islands. Species from these locations are more than likely to also forage in or around the AOI. These include Antarctic prions, fulmar prions, black-bellied storm petrels, grey-backed storm petrels, white-chinned petrels, white-headed petrels, grey petrels and Snares cape petrels.
16. Some species that can occur in the area are not listed, including (but not necessarily limited to) Fiordland Crested Penguins / Tawaki, which use these waters between January and April, and black-bellied storm petrels.
17. There is more recent literature for seabird distributions (i.e. compared to more traditional vessel observations) from tracking seabirds in New Zealand to inform the likelihood of occurrence. Spatial distribution patterns of seabird species could paint a more realistic picture of seabirds occurring around the proposed AOI. Also, it is noted that the distribution maps for individual seabird species (based on records around fishing vessels) are available via the Dragonfly website (<https://seabird-counts.dragonfly.co.nz/explore/>). The information will still be limited at the data input level but will provide additional information on the most abundant seabird groups that may occur in the AOI.

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18. Although Beach Energy states that there is no overlap of the proposed activity with important bird areas, species from important bird areas will almost certainly transition and occur within the AOI.
19. Please also note there is a typo on page 78. Little Penguins forage within 30m of nest sites. Should be more in the range of 30km.

**Q3 Beach Energy provides an assessment of the environmental consequences of the proposed activities on marine mammals and seabirds in its Impact Assessment (pages 115-116).**

- a. **Please confirm that the Beach Energy's assessment of effects on marine mammals and seabirds is robust.**

Q2a Marine mammals

20. Regarding impacts on marine mammals, the discharge of substances from the MODU is appropriately assessed as negligible. These animals are unlikely to spend enough time in the immediate proximity of such discharges to incur impacts. This is reinforced by the fact that the operation of the dynamic stabilisation system which holds the MODU in place is relatively noisy and likely to cause marine mammals to move away from the area.
21. This noise is, in fact, the greatest source of potential impact on marine mammals, though it is not considered within the scope of this application.

Q2a Seabirds

22. In general, it is difficult to assess whether the impacts on seabirds is robust as there is no certainty on what ecotoxic substances will be released and in what quantity, which renders assessing immediate and long-term adverse effects difficult.
23. Seabirds often congregate behind and around vessels/MODUs and could come into contact with toxic substances if they are in close proximity to the MODU at the time of discharge. If the quantity of toxic substances that are released are indeed only trace levels, effects are likely to be localised any potential impacts are likely to be on individuals rather than having population level effects.
24. The type and quantity of toxic substance that may be discharged has the potential to contaminate seabird plumage which could adversely affect thermal and water insulation, with potentially lethal effects.

25. Please note there is an inconsistency in the assessment of the likelihood of the consequence/adverse effects on seabirds between Table 23 (1 - remote) and the summary table on p116 (3-Unlikely). Given that seabirds are attracted to and feed around structures, it is considered the likelihood of seabirds to come in contact with discharge is 'possible' rather than 'unlikely'.
  26. Knowledge of the timing of the proposed activity is also critical for assessing what seabirds may be present in the area at the time (e.g., seasonal foraging, migration of seabirds).
  27. The application states there may be multiple toxic substances released. The IA also states there could be more than one MODU operating in the AOI at the same time. The possibility of cumulative effects of ecotoxic substances on seabirds may need to be considered.
- b. Please provide comment on any measures you consider are reasonably necessary to avoid, remedy or mitigate adverse effects of the activity on marine mammals and seabirds.**

Q3b Marine mammals

28. Due to the likely noise of the MODU marine mammals are unlikely to spend enough time in the immediate proximity of the discharges for any impacts to occur.

Q3b Seabirds

29. A response plan should be put in place to outline how to respond to injured and/or exhausted seabirds. However, such a plan should be developed for the exploration consents that Beach Energy will also apply for, and could be used for this deck drainage discharge activity.

**Q4. Beach Energy has identified the presence of Protected Species under the Wildlife Act 1953 that may be present within the Wherry and Gondola areas of interest. (Section 4.3.2 Protected Species, pages 81-81 of the IA).**

- a. Please confirm that Beach Energy's identification of Protected Species and its assessment of the impact of the proposed discharges on them is accurate and comprehensive.**
30. Please refer to response for Question 2 as this provides a detailed assessment of all species and their likely occurrence in and around the Wherry and Gondola areas of interest.

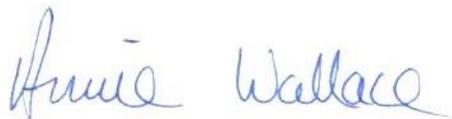
**b. Please provide an explanation of any regulatory approvals required by Beach under the Wildlife Act 1953 in relation to Protected Species that may be affected by Beach's activities in the Canterbury Basin.**

31. As noted in paragraph 8, authorisation under the Wildlife Act is required if a proposed activity will kill any protected species. The approach being taken by the Director-General of Conservation following the Court of Appeal decision on shark cage diving and authorisations under section 53 of the Wildlife Act is that an authorisation cannot be sought for accidentally killing a protected species (i.e. not intended and not likely). It is, however, possible to apply for an authorisation for incidental kill (i.e. not desired, but a likely result).

**Q5. In relation to your responsibilities under any marine management regime (as defined in section 7 of the EEZ Act), please provide comment on any other matter you consider may assist the DMC in determining the applications under section 59 and 61 of the EEZ Act.**

32. Given the assessed negligible risk of the activity to DOCs interests the Department does not have any other comments to add.

Naku noa, na



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