Decision on marine discharge consent

OMV Taranaki Limited
(NZBN 9429040947921)

EEZ300012

February 2020
Pursuant to section 62(1)(a) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the application for marine discharge consent by OMV Taranaki Limited to undertake restricted discretionary activities (listed in Schedule 2) associated with its Crestal Infill drilling activities at up to 7 existing well locations at Māui Platform Alpha located within Petroleum Mining Licence 381012 in the Taranaki Basin is **GRANTED** subject to conditions set out in Schedule 2.

Marine discharge consent EEZ300012 expires on 24 February 2023.

Dated this day 24 February 2020.

Michelle Ward  
Acting General Manager
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SCHEDULE 1: OMV TARANAKI LIMITED MARINE DISCHARGE CONSENT

EEZ300012 AUTHORISED RESTRICTED ACTIVITIES

This marine discharge consent authorises the following restricted activity, subject to conditions listed in Schedule 2.

Section 20B states that no person may discharge a harmful substance from a structure or from a submarine pipeline into the sea or into or onto the seabed of the exclusive economic zone.

This marine discharge consent authorises the discharge of the harmful substances AS-5, CLEANBORE B, LIME, NUOSEPT 78, SHELL GTL SARALINE 185V, and trace amounts of hydrocarbons into the marine environment from the Māui Platform Alpha for drilling activities authorised by marine consent EEZ000010.
SCHEDULE 2: OMV TARANAKI LIMITED MARINE
DISCHARGE CONSENT EEZ300012 CONDITIONS

DEFINITIONS

Terms used in this Schedule of Conditions shall have the following meanings:

Consent Holder
As defined in section 4 of the EEZ Act.

Discharge activity[ies]
Means discharge activities authorised by this marine discharge consent only.

D&D Regulations
Means the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015.

Drill cuttings
Means the rock and sand that is removed from the well bore during drilling.

Drilling Campaign
The drilling activities as described in OTL’s application document entitled “Crestal Infill Drilling – Impact Assessment to Support Non-notified Marine Discharge Consent Application” (dated 20 December 2019).

EEZ Act

EPA
Environmental Protection Authority

ERA
Environmental Risk Assessment

ERM
Environmental Resources Management

ESRP
Emergency Spill Response Plan

Harmful substance
As defined in regulation 4 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015.

IA
Impact Assessment

Maximum volume
Means the maximum volume of a harmful substance to be discharged at any drilling site as specified in Table 1, Schedule 2 of this marine discharge consent.

MPA
Māui Platform Alpha

NADF
Non-Aqueous Drilling Fluid

OTL
OMV Taranaki Limited (the applicant)

Working days
Has the meaning given in section 4 of the EEZ Act.
CONDITIONS

1. The Consent Holder shall notify the EPA as soon as practicable if it becomes aware that it has not complied with any of the conditions of this Marine Discharge Consent.

2. Subject to compliance with these consent conditions, the activities authorised by this Marine Discharge Consent shall be undertaken in accordance with the following documents:
   b) Supporting documents, including Appendices A to E, submitted as part of the application lodged on 24 October 2019;
   c) The responses by OTL to further information requests issued by the EPA under section 54 of the EEZ Act received on 5 December 2019, 19 December 2019, 20 December 2019, 7 January 2020, and 14 February 2020.

3. Where there is any actual or apparent conflict between these documents and any of the conditions of this consent, the conditions shall prevail.

4. This Marine Discharge Consent shall expire on 24 February 2023.

5. The Consent Holder shall ensure that a copy of this Marine Discharge Consent, and any variations of it, is available for inspection at the Consent Holder’s head office in New Zealand, and on Māui Platform Alpha during the works authorised by this Marine Discharge Consent.

6. The Consent Holder shall ensure all personnel, including any contractors, involved in undertaking any of the activities authorised by this Marine Discharge Consent are fully informed with respect to these conditions, and their duty to comply with the consent and its conditions.

7. The Consent Holder shall keep a record to show that the personnel, including contractors, referred to in Condition 6 have been informed of their obligations, required actions and responsibilities under this Marine Discharge Consent. The Consent Holder shall provide a copy of this record to the EPA upon request.

8. The Consent Holder shall, at least 20 working days prior to first commencing the activities authorised by this Marine Discharge Consent, or any other timeframe agreed to by the EPA, provide to the EPA, in writing, the name and contact details of the person who has delegated responsibility for compliance management, collating information, and reporting in accordance with the requirements of this Marine Discharge Consent. In the event that the responsible person changes, the Consent Holder shall advise the EPA, in writing, of the name and contact details of the new person within 20 working days of the change.

9. The Consent Holder shall advise the EPA, in writing, of the date the drilling campaign will first commence at least 10 working days before such commencement, or at any other timeframe agreed to by the EPA.

10. This Marine Discharge Consent authorises the discharge of the harmful substances listed in Table 1, Schedule 2 of this Marine Discharge Consent.
11. When carrying out discharge activities at a drilling site the Consent Holder shall ensure that the discharges authorised by this Marine Discharge Consent do not exceed the total maximum volume, or total maximum mass (as applicable), specified for each harmful substance listed in Table 1, Schedule 2 of this Marine Discharge Consent.

12. The Consent Holder shall maintain an electronic record of the discharge of the harmful substances outlined in Table 1, Schedule 2 in a form approved by the EPA. The record must include for each harmful substance, the following:

   a) The name, position and contact details of the person undertaking the discharge activity.
   b) The geographical coordinates and name of the offshore installation from which discharges take place.
   c) The name of each well, and the start and end dates on which each well was drilled.
   d) The total volume, or mass, as applicable, of harmful substances discharged per well.
   e) A description of the discharges, including for each substance discharged:
      i. The brand name.
      ii. The HSNO ecotoxicity classification.
      iii. The purpose and use of each substance.
      iv. An explanation of how the total volume, or mass, as applicable, of the harmful substance discharged to sea was calculated.
   f) The total volume of cement discharged to the sea per well, including the date and time when each discharge occurred.

13. The Consent Holder shall maintain an up-to-date record of the above information in order to make it available to the EPA upon request. The record must be submitted to the EPA for each three month period (or any part thereof) ending 31 March, 30 June, 30 September and 31 December each year within 15 working days after the end of each period for the duration of the consent.

14. The Consent Holder shall not discharge any harmful substances adhered to drill cuttings where the oil-on-cuttings exceeds 6.9% oil by weight.

15. The Consent Holder shall measure, at a minimum of once per 12 hour period, the percentage of oil by weight of oil-on-cuttings during drilling activity.

16. The Consent Holder shall provide to the EPA upon request all measurements required by Condition 4.

17. The Consent Holder shall notify the EPA, as soon as reasonably practicable but not later than 24 hours, after a spill into the sea of any harmful substance, described in regulation 4(a) of the D&D Regulations, becomes known to the Consent Holder.

18. In the event of a spill of any harmful substances, described in regulation 4(a) of the D&D Regulations 2015, into the sea:

   a) The Consent Holder shall provide information to the EPA that includes whether monitoring is likely to detect any environmental effects and what duration of monitoring may be necessary.
   b) The EPA shall determine whether monitoring is necessary, taking into account information provided under a) and whether any other relevant authorities should be notified.
c) The results of the monitoring shall be provided to the EPA on request and a written summary report shall be provided to the EPA within three months of the Consent Holder receiving the results of testing from the laboratory.

19. Subject to compliance with the conditions of this Marine Discharge Consent, the activities authorised by this Marine Discharge Consent shall be undertaken in accordance with the ESRP as approved by the EPA. Where there is any actual or apparent conflict between the ESRP and any of the conditions of this consent, the conditions shall prevail.
Table 1: Harmful substances consented for discharge.

<table>
<thead>
<tr>
<th>Harmful substance</th>
<th>HSNO Approval</th>
<th>HSNO classification</th>
<th>Discharge stream and use</th>
<th>Total maximum volume/mass m³/kg</th>
</tr>
</thead>
<tbody>
<tr>
<td>AS-5</td>
<td>HSR002495</td>
<td>9.1A</td>
<td>Anti-sludging agent in spacer fluid</td>
<td>0.1869 m³*</td>
</tr>
<tr>
<td>CLEANBORE B</td>
<td>HSR002530</td>
<td>9.1D</td>
<td>Surfactant in spacer fluid</td>
<td>0.7413 m³*</td>
</tr>
<tr>
<td>LIME</td>
<td>HSR002925</td>
<td>9.1D</td>
<td>pH control in NADF</td>
<td>2.6008 m³*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Component of cement</td>
<td>27.3 m³**</td>
</tr>
<tr>
<td>NUOSEPT 78</td>
<td>HSR002503</td>
<td>9.1D</td>
<td>Biocide in NADF</td>
<td>2.2 kg*</td>
</tr>
<tr>
<td>SHELL GTL SARALINE 185V</td>
<td>HSR100066</td>
<td>Oil</td>
<td>Synthetic base fluid in NADF</td>
<td>220.065 m³*</td>
</tr>
<tr>
<td>Trace amounts of hydrocarbons</td>
<td>NA</td>
<td>Oil</td>
<td>Entrained in drilling fluids if hydrocarbons are encountered</td>
<td>Trace amounts***</td>
</tr>
</tbody>
</table>

*Maximum volume refers to the maximum amount of a harmful substance that is authorised to be discharged across seven wells.

**Maximum volume refers to the maximum amount of LIME that is authorised to be discharged as a component (up to 65% by weight) of cement.

***Trace amounts refers to the very small amounts of hydrocarbons that could become entrained in drilling fluids and be adhered to drill cuttings that are discharged from the MPA once passing through the cutting treatment process.
EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS) ACT 2012

OMV Taranaki Limited: EEZ300012

Reasons for Decision on Application for Marine Discharge Consent
Executive Summary

i. Pursuant to section 62(1)(a) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act), the application for a non-notified marine discharge consent by OMV Taranaki Limited (NZBN 9429040947921) (OTL) to undertake restricted discretionary discharge activities under section 20B of the EEZ Act is GRANTED subject to conditions (listed in Schedule 2 of the consent).

ii. The reasons for granting the marine discharge consent are set out in this decision as required under section 69 of the EEZ Act. In making my decision, I have acted as an independent decision maker under delegated authority from the Chief Executive of the Environmental Protection Authority (EPA). I have applied the decision-making criteria set out in sections 59 and 60 of the EEZ Act and I have also applied the information principles set out in section 61 of the EEZ Act.

iii. On 24 October 2019, OTL lodged an application for a non-notified marine discharge consent to discharge AS-5, CLEANBORE B, LIME, NUOSEPT 78, SHELL GTL SARALINE 185V, and trace amounts of hydrocarbons into the marine environment from the Māui Platform Alpha (MPA) as part of drilling activities authorised by Marine Consent EEZ000010.

iv. The proposed discharges are classified as non-notified activities under the following regulations as set out in the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015 (D&D Regulations):

a. Regulation 20 of the D&D Regulations – Discharge of harmful substances described in regulation 4(a) from mining activities; and

v. Overall, I consider the environmental effects of the proposed activity are likely to be minor or less than minor.

vi. After considering all the information available to me, I am satisfied any unlikely adverse effects of the discharges on the marine environment is likely to be temporary and limited to an area within close proximity to the MPA, with effects lessening further from this point within OTL’s Petroleum Mining Licence (PML) 381012.

vii. I have considered the effects of the proposed discharges on existing interests, and find some existing interests including those undertaking lawfully established activities such as fisheries interests and navigation by other marine vessels will be affected to a minor degree by the proposed discharges.

viii. I also acknowledge cultural interests within the Taranaki area in my discussion addressing any other matters the EPA considers relevant and reasonably necessary to determine the application under section 59(2)(m) of the EEZ Act.

ix. After considering all the information provided by OTL and taking into account the matters listed in sections 59 and 60, and applying the information principles in section 61 of the EEZ Act, I consider that granting this marine discharge consent will meet the purpose of the EEZ Act, as set out in section 10 of the EEZ Act.
x. I acknowledge that the application will generate some adverse effects, but I consider that they can be appropriately avoided, remedied, or mitigated through the conditions I have decided to impose pursuant to section 63 of the EEZ Act (and the requirements of other marine management regimes).

xi. I have found that the conditions proffered by OTL were a good starting point in assessing management and mitigation options. However, I have amended some of the proffered conditions, where necessary or appropriate, so there is some necessary consistency with other consents issued by the EPA for similar discharge activities, while ensuring the facts and circumstances of this application are properly addressed.

xii. I consider that the suite of conditions I have imposed on the marine discharge consent will ensure that any adverse effects are appropriately managed to a level that is no more than minor.

xiii. Finally, having considered the requirements of sections 59, 60, 61, and 73 of the EEZ Act, and in light of the purpose of the EEZ Act, I have determined that the marine consent should expire on 24 February 2023.
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## Glossary of Abbreviations and Terms

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<tr>
<td>AOI</td>
<td>Area of Interest</td>
</tr>
<tr>
<td>Consent Holder</td>
<td>As defined in section 4 of the EEZ Act.</td>
</tr>
<tr>
<td>Discharge activity[ies]</td>
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<tr>
<td>Drill cuttings</td>
<td>Means the rock and sand that is removed from the well bore during drilling.</td>
</tr>
<tr>
<td>EPA</td>
<td>Environmental Protection Authority</td>
</tr>
<tr>
<td>ESRP</td>
<td>Emergency Spill Response Plan</td>
</tr>
<tr>
<td>Harmful substance</td>
<td>As defined in regulation 4 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015.</td>
</tr>
<tr>
<td>Maximum volume</td>
<td>Means the maximum volume of a harmful substance to be discharged at any drilling site as specified in Table 1, Schedule 2 of this marine discharge consent.</td>
</tr>
<tr>
<td>MPA</td>
<td>Māui Platform Alpha</td>
</tr>
<tr>
<td>MPB</td>
<td>Māui Platform Bravo</td>
</tr>
<tr>
<td>NADF</td>
<td>Non-Aqueous Drilling Fluid</td>
</tr>
<tr>
<td>PML</td>
<td>Petroleum Mining Licence</td>
</tr>
<tr>
<td>Precautionary Area</td>
<td>An extended area off the Taranaki coast has been declared a Precautionary Area by the International Maritime Organization in 2006 with effect from 2007. The area covers a high level of offshore petroleum operations including two floating production, storage and offloading facilities serviced by offtake tankers. All ships should navigate with particular caution in order to reduce the risk of a maritime casualty and resulting marine pollution.</td>
</tr>
<tr>
<td>Protection Area</td>
<td>The Submarine Cables and Pipelines Protection Area in place under the Submarine Cables and Pipelines Protection Act 1996 for STOS’ three existing submarine pipelines.</td>
</tr>
<tr>
<td>Safety Zones</td>
<td>The 500 metre safety zones surrounding MPA and MPB established under the Continental Shelf (Māui A Safety Zone) Regulations 1975 and Continental Shelf (Māui B Safety Zone) Regulations 1991.</td>
</tr>
<tr>
<td>SDS</td>
<td>Safety Data Sheet</td>
</tr>
</tbody>
</table>
1. Introduction

1.1 The Applicant

1. The Petroleum Mining Licence (PML) 381012, within which the Māui Field is located, was granted to Shell BP and Todd Oil Services Ltd in 1973 for an initial term of 42 years. In 2015, the mining licence was renewed for a further period of 21 years and OMV New Zealand Limited acquired 100 percent ownership of PML 381012 and the Māui assets in 2018.

2. The Māui Field encompasses the existing structures Māui Platform Alpha (MPA), Māui Platform Bravo (MPB), the submarine pipelines between the platforms and to shore, and all associated structures on and under the seabed. These existing structures are collectively referred to as the Māui facilities and are located within the Area of Interest (AOI). The AOI is located within the South Taranaki Basin and covers the same area as PML 381012 (Figure 1).

3. Under Marine Consent EEZ000010 OTL has consent to drill up to twelve (12) side-track wells from MPA and remove a total volume of 4,200 cubic metres (m³) of drill cuttings. The total volume of up to 1,000 m³ of rock that is expected to be removed during the development drilling activities is within the amount authorised by EEZ000010.

4. Additionally, OTL has authorisation to deposit cement on the seabed that is discharged during tank and equipment cleaning, excess cement returned from the well, dispersal of stored dry cement by wind, and the deposit of material removed from wells on or under the seabed under marine consent EEZ100014.

1.2 The Application

5. On 24 October 2019, OTL lodged an application for a non-notified marine discharge consent to discharge harmful substances as part of its drilling activities consented under marine consent EEZ000010. These drilling activities involve drilling side-track\(^1\) wells from up to seven (7) (six planned wells and one contingency well) existing wells at MPA located within PML 381012.

6. The EPA staff evaluation report states the development drilling activities will take place from MPA using a platform mounted rig and, according to OTL’s Impact Assessment (IA), the expected duration of the activities is up to 18 months, including contingency time for weather or equipment delays.

7. The EPA staff evaluation report outlines that OTL’s IA provides drilling will be undertaken at each well over a period ranging from approximately 18 to 31 days and the discharge of drill cuttings are expected to cease for a period of 21 to 30 days between drilling each well.

8. The five (5) substances subject to this marine discharge application are necessary for OTL to carry out its consented drilling activities from MPA and are listed in Table 1, Schedule 2 of the consent.

\(^1\) Side-track wells are wells that re-enter from the surface location, before deviating from the existing well bore to achieve production from an alternate zone or bottom-hole location.
1.2.1 Māui Platform Alpha

9. The Māui Field was discovered in 1969 with production from MPA commencing in 1979. It is situated approximately 35 kilometres (km) offshore of Taranaki and sits in approximately 110 metres (m) of water. MPA comprises a four-legged steel tower pinned to the seabed (jacket), upon which is fixed a platform (topside). The topside includes three main decks, six hydrocarbon production modules, two utility modules (containing power generation facilities, fire pumps, sea water pumps, workshops and a control room), living quarters for up to 70 personnel, water and waste treatment facilities, and life support / communications facilities.

10. The jacket weight of MPA is 11,800 tonnes (t) and the topside weight is 9,000 t. The topside is approximately 80 m by 50 m, and the upper deck is situated approximately 35 m above the water surface. The vent stack for emergency de-pressurisation of the production facilities rises 60 m above the upper deck on the north-eastern corner of the platform.

11. Figure 1 shows the location of MPA and Māui Platform Bravo (MPB) within OTL’s AOI, PML 381012 in the Taranaki Basin.

1.2.2 Consented discharges

12. The discharges of harmful substances for which a marine discharge consent is sought will take place from MPA by use of a platform rig to drill up to seven (7) side-track wells authorised by marine consent EEZ000010. The harmful substances will be discharged in the following streams:

   a) Discharge of SHELL GTL SARALINE 185V, LIME, and NUOSEPT 78 in Non-Aqueous Drilling Fluid (NADF).

      i. NADF will be used due to the requirement for directional drilling and the characteristics of the geology at the drill site, and will be discharged adhered to drill cuttings.

      ii. SHELL GTL SARALINE 185V is a synthetic hydrocarbon that will make up to 65% of the volume of NADF.

      iii. SHELL GTL SARALINE 185V is not ecotoxic to the aquatic environment according to the HSNO\(^2\) classification, although it is classified as a harmful substance under regulation 4(b) of the D&D Regulations.

      iv. The highly alkaline LIME is used for pH control within the NADF to ensure that the NADF performs optimally down-well.

      v. Calcium hydroxide, the sole constituent of LIME, is an inorganic, partly-soluble substance. LIME is slightly harmful to the aquatic environment (HSNO classification 9.1D) and it is on the PLONOR\(^3\) list.

      vi. NUOSEPT 78 is a contingency product used for the prevention of bacterial growth. NUOSEPT 78 is slightly harmful to the aquatic environment (HSNO classification 9.1D).

      vii. If used, NUOSEPT 78 will make up a small proportion of the drilling fluid being dosed at concentrations of 0.02 mg/kg of the total drilling fluid.

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\(^2\) Hazardous Substances and New Organisms Act 1996.

\(^3\) OSPAR Commission’s list of substances used and discharged offshore which are considered to pose little or no risk to the environment (PLONOR). This is a list of substances which have been proven through studies to have ecotoxic characteristics that do not need to be tightly regulated.
b) Discharge of AS-5 and CLEANBORE B in spacer fluids.

i. Spacer fluids will be used to displace the NADF from the wellbore and prepare it for cementing.

ii. The anti-sludging agent AS-5 will be used as part of the spacer fluids at a concentration of approximately 0.24% by volume.

iii. The EPA has assessed AS-5 and classified it as very ecotoxic (HSNO classification of 9.1A) based on the toxicity of the main component of the product.

iv. The surfactant CLEANBORE B will also be used as part of the spacer fluids at a concentration of approximately 0.95% by volume.

v. CLEANBORE B is slightly harmful to the aquatic environment (HSNO classification of 9.1D).

C) Discharge of LIME in cement.

i. Cement will include a proportion of LIME as a component of up to 65% by weight of the cement mixture.

ii. OTL’s IA describes that a single cementing job will only be necessary for each of a maximum of five (5) wells where there is more than one well section.

d) Discharge of trace amounts of hydrocarbons.

i. The discharge of trace amounts of hydrocarbons from gas condensate that may occur when drilling through the hydrocarbon-bearing rocks.

13. The harmful substance components of NADF and spacer fluid, and trace amounts of hydrocarbons will be discharged adhered to drill cuttings once they have been put through the cutting treatment process to remove a proportion of drilling fluid and oil before they are discharged. The EPA staff evaluation report provides it will use a series of screens and shakers and, according to OTL’s IA, is designed to leave not more than 10% in total of drilling fluid by weight and 6.9% oil by weight, which includes both the oil-like components of the drilling fluid (e.g. SARALINE 185V) and any residual gas condensate.

14. The harmful substance LIME to be discharged as a component of cement is likely to be discharged where a premixed volume exceeds the requirements of the well, in cement slurry from washing machinery after cementing jobs, as a contingent discharge from either an error in the cement mixing process, or mechanical failure during cement pumping, and if small amounts of cement dust are blown into the water during activities.

15. Tables 1 and 2 list all the harmful substances that are consented for discharge, including maximum volume/mass, aquatic ecotoxicity classification and Risk Quotient (RQ) results.
Figure 1: MPA & MPB within PML 381012, the Area of Interest (AOI).

4 Page 2 of OTL’s IA submitted in support of this application (EEZ300012).
**Table 1:** Environmental risk assessment results (volume of substance discharged per well).

<table>
<thead>
<tr>
<th>Harmful substance</th>
<th>Use and discharge stream</th>
<th>Maximum volume/ mass of substance to be discharged per well</th>
<th>Relevant D&amp;D Regs.</th>
<th>Aquatic ecotoxicity classification</th>
<th>Risk Quotient (RQ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AS-5</td>
<td>Anti-sludging agent in spacer fluids</td>
<td>0.0267 m³</td>
<td>21</td>
<td>9.1A*</td>
<td>Low (56.15)</td>
</tr>
<tr>
<td>CLEANBORE B</td>
<td>Surfactant in spacer fluids</td>
<td>0.1059 m³</td>
<td>21</td>
<td>9.1D*</td>
<td>Low (30.4)</td>
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<td>LIME</td>
<td>pH control in NADF</td>
<td>0.3715 m³</td>
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<td>Low (50.7)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Component of cement (most likely)</td>
<td>1.3 m³</td>
<td>20</td>
<td>9.1D*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Component of cement (worst case)</td>
<td>6.5 m³</td>
<td>20</td>
<td>Low (76.48)</td>
<td></td>
</tr>
<tr>
<td>NUOSEPT 78</td>
<td>Biocide in NADF</td>
<td>0.3142 kg</td>
<td>21</td>
<td>9.1D*</td>
<td>Negligible (0.000000824923)</td>
</tr>
<tr>
<td>SHELL GTL SARALINE 185V</td>
<td>Synthetic base fluid in NADF</td>
<td>16.8478 m³</td>
<td>21</td>
<td>Not a 9.1**</td>
<td>Negligible (0.0000540598)</td>
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<td>Trace amounts of hydrocarbons</td>
<td>Discharged on drill cuttings</td>
<td>Trace amounts</td>
<td>20</td>
<td>Not a 9.1**</td>
<td>Negligible</td>
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</table>
Table 2: Environmental risk assessment results (total volume of substance discharged).

<table>
<thead>
<tr>
<th>Harmful substance</th>
<th>Use and discharge stream</th>
<th>Maximum volume/ mass of substance to be discharged in total</th>
<th>Relevant D&amp;D Regs.</th>
<th>Aquatic ecotoxicity classification</th>
<th>Risk Quotient (RQ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AS-5</td>
<td>Anti-sludging agent in spacer fluids</td>
<td>0.1869 m3</td>
<td>21</td>
<td>9.1A*</td>
<td>Low (70.41)</td>
</tr>
<tr>
<td>CLEARNBORE B</td>
<td>Surfactant in spacer fluids</td>
<td>0.7413 m3</td>
<td>21</td>
<td>9.1D*</td>
<td>Low (38.12)</td>
</tr>
<tr>
<td>LIME</td>
<td>pH control in NADF</td>
<td>2.6008 m3</td>
<td>21</td>
<td></td>
<td>Negligible (0.037904193)</td>
</tr>
<tr>
<td></td>
<td>Component of cement (most likely)</td>
<td>6.5 m3</td>
<td>20</td>
<td>9.1D*</td>
<td>Low (76.48)</td>
</tr>
<tr>
<td></td>
<td>Component of cement (worst case)</td>
<td>27.3 m3</td>
<td>20</td>
<td></td>
<td>Medium (132.34)</td>
</tr>
<tr>
<td>NUOSEPT 78</td>
<td>Biocide in NADF</td>
<td>2.2 kg</td>
<td>21</td>
<td>9.1D*</td>
<td>Negligible (0.00000577446)</td>
</tr>
<tr>
<td>SHELL GTL SARALINE 185V</td>
<td>Synthetic base fluid in NADF</td>
<td>220.065 m3</td>
<td>21</td>
<td>Not a 9.1**</td>
<td>Negligible (0.000378419)</td>
</tr>
<tr>
<td>Trace amounts of hydrocarbons</td>
<td>Discharged on drill cuttings</td>
<td>Trace amounts</td>
<td>20</td>
<td>Not a 9.1**</td>
<td>Negligible</td>
</tr>
</tbody>
</table>

*Classified according to the Hazardous Substances and New Organism Act 1996 (HSNO) – 9.1A = very ecotoxic to the marine environment, 9.1B = ecotoxic to the marine environment, 9.1C = harmful to the marine environment, 9.1D slightly harmful to the aquatic environment

**These substances are not ecotoxic to aquatic organisms, but are oils and so are considered to be harmful substances under Regulation 4(b) of the D&D Regulations.
2. Activity Status and Processing Pathway

16. Section 20B(1) of the EEZ Act states that no person may discharge a harmful substance from a structure into the sea or into or onto the seabed of the exclusive economic zone. However, section 20B(3) provides for such discharge to occur if authorised by a marine consent.

17. Section 29D of the EEZ Act provides that regulations may describe any discretionary activity as non-notified or provide that an application for a marine consent for an activity is not to be publicly notified.

18. The proposed discharges are classified as non-notified activities under the following regulations as set out in the D&D Regulations:
   a) Regulation 20 of the D&D Regulations – Discharge of harmful substances described in regulation 4(a) from mining activities; and
   b) Regulation 21 of the D&D Regulations – Discharge of harmful substances contained in drilling fluids.

19. Under the EEZ Act a ‘non-notified activity’ includes a discretionary activity that is described as non-notified.

2.1 Serving copies under section 45

20. Although the proposed discharge activities are classified as non-notified, and the application is not to be publicly notified, section 45 of the EEZ Act requires the EPA to serve a copy of non-notified applications (and their IAs) on specified parties.

21. EPA staff have advised me that letters/emails were sent electronically to 13 parties on 9 January 2020 advising them that OTL had lodged its application.

22. I acknowledge that there is a discrepancy between the number of iwi that OTL have engaged with and the number of iwi that the EPA served copies of the application. I understand that the EPA took a liberal approach to service, and out of an abundance of caution identified a greater number of iwi. I am satisfied that the engagement process undertaken by OTL has identified the relevant iwi that have cultural values or existing interests in the area (based on OTL’s current activities in the area). The EPA staff evaluation report also notes these were identified within OTL’s IA. Accordingly, I consider sufficient information is available for me to understand the cultural values within the area.

23. The parties were served by way of email with a link to the application documents on the EPA website. These parties consisted of:
   a) 10 iwi authorities, Māori organisations or groups;
   b) Maritime New Zealand;
   c) The Minister of Conservation;
   d) The Minister for the Environment.

5 Te Kāhui o Taranaki Trust; Te Korowai o Ngāruahine Trust Trust; Ngāti Tara Hapū; Te Rūnanga o Ngāti Ruanui; Te Kotahitanga o Te Atiawa; Te Rūnanga o Ngāti Mutunga; Te Rūnanga o Ngāti Tama; Te Kaahui o Rauru; Ngāti Maru (Taranaki) Fisheries Trust; Te Rūnanga o Ngāti Maru (Taranaki).
3. The Decision-maker and Decision-making process

3.1 The Decision-maker

24. The Environmental Protection Authority (EPA) is the marine consent authority for certain activities that are restricted within New Zealand’s exclusive economic zone and in or on, the continental shelf. One of the EPA’s functions, pursuant to section 13(1)(a) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the ‘EEZ Act’), is to decide applications for marine consents. This includes applications for marine discharge consents.

25. The Chief Executive of the EPA has delegated the exercise of powers and functions under the EEZ Act, including the decision-making for non-notified marine discharge consents to me, as the Acting General Manager Climate, Land & Oceans. This is my written record of decision pursuant to section 69 of the EEZ Act.

26. There are several sections of the EEZ Act which outline the duties that I have as decision-maker. I do not propose to present a detailed discussion on those in the main body of this decision but I have provided that information in Appendix 1 of this decision.

27. In considering and deciding the application for marine discharge consent by OTL, I have exercised independent judgement within the statutory framework for determining applications for marine discharge consent under the EEZ Act.

28. I am satisfied that I have made full use of my powers to request and access information, and taken into account any uncertainty or inadequacy in the information available. I am satisfied that I have the best available information to make my decision. I therefore consider I have met my responsibilities under section 61 of the EEZ Act.

29. The matters covered by sections 59 and 60 of the EEZ Act form the basis of my assessment and findings as detailed in section 5 of this decision. The following sections outline the information that was considered when determining this application.

3.2 Documents supporting this decision

30. In my consideration of this application I have taken into account the findings from the EPA Staff Evaluation Report which has two appendices: the EPA staff Evaluation of OMV Taranaki Limited’s marine discharge consent application (staff evaluation report) which includes the Environmental risk assessment for chemicals in application EEZ300012 (ERA), and an assessment of the application against the relevant matters under section 59 of the EEZ Act.

31. The EPA staff evaluation report has taken into consideration the material provided in OTL’s IA, the appendices to the IA, the Harmful Substance Inventory and the further information received under section 54 of the EEZ Act by the EPA from OTL on 5 December 2019, 19 December 2019, 20 December 2019, 7 January 2020, and 14 February 2020.

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6 Excluding the power to decide whether or not to hold a hearing under s 50(2).
32. The EPA staff evaluation report notes updated versions of the IA were provided in draft to the EPA on 5 December 2019, 19 December 2019, and 20 December 2019, and 7 January 2020. I have been informed that the version of the IA received on 7 January 2020, was the final version provided to the parties mentioned in section 2.1 of this decision report.

33. In the respect that I have taken into account the findings of the staff evaluation report, I have considered all material provided as part of this application. I am satisfied that I have fulfilled my duty under section 61 of the EEZ Act to ensure I have the best available information on which to base my decision.

3.3 Adoption and cross-referencing of material

34. The EEZ Act does not contain any specific directions regarding the contents of a decision on an application for a marine consent except for section 69 which states it must be in writing and include the reasons for the decision.

35. In this case I do not consider it necessary or appropriate to repeat material that is contained in the IA and the reports prepared by EPA staff in this decision. Instead, where relevant, in this decision I have cross-referenced and/or adopted parts of the reports in front of me where stated.

36. I take this approach to avoid unnecessary duplication. This approach aligns with decisions made on resource consents under the Resource Management Act 1991 (RMA) and I consider this approach to be entirely appropriate for this non-notified marine discharge consent application.

37. However, taking the approach of cross-referencing and/or adopting material from the reports does not mean that I have glossed over or ignored any matters.

3.4 Requests for further information under section 54

38. The EPA staff evaluation report outlines that further information was received by the EPA from OTL under section 54 of the EEZ Act on 5 December 2019, 19 December 2019, 20 December 2019, 7 January 2020, and 14 February 2020 in relation to:

   a) The ecotoxicity of SARALINE 185V due to discrepancies between the initially provided Safety Data Sheet (SDS) and test reports;

   b) Further information to explain the use of NADF rather than Water Based Muds (WBM);

   c) Clarification of the number of wells where cement may be used;

   d) Further information on gas condensate that may be discharged as trace hydrocarbons released from hydrocarbon-bearing rocks;

   e) Further information to explain the measurements or tests carried out to determine the amount of oil-on-cuttings after the cutting treatment process;

   f) Further information to clarify comments made by OTL on the draft proposed conditions, that not all cuttings generated would be discharged offshore, as they were not included in the IA.
39. The information provided for a) to d) was considered by EPA staff when producing the Environmental Risk Assessment (ERA) and staff evaluation report. The information for e) and f) was provided to the EPA on 14 February 2020, after I had considered the EPA staff reports. An updated staff evaluation report that included this information was provided to me on 18 February 2020.

3.5 Obtaining advice or information under section 56

40. I did not consider it necessary to seek external technical advice or commission any additional reports under section 56 of the EEZ Act in order to determine the application. However, the EPA staff ERA has been independently reviewed by an expert in ecotoxicology.

41. I concur with the conclusion reached in the staff evaluation report that the primary source of environmental effects from the existing activities will be the already consented drilling activities (specifically the deposition of cuttings on the seabed). I note that a report from Ngā Kaihautū Tikanga Taiao (the Māori Advisory Committee) was commissioned by the EPA when considering Marine Consent Application EEZ000010 which authorises the drilling activities. As discussed in the decision for EEZ000010, the Māori interests in commercial and customary fishing were carefully considered and condition 6 of that consent was imposed to require the Consent Holder to inform and seek to engage with iwi on an annual basis in respect of their planned activities. I also note that it is expected that the proposed discharge activities will add in some way to the effects of these existing activities.

42. On 18 February 2020, I received feedback on the Maori perspective of the effects of this application from the EPA’s Māori policy and operational team Kaupapa Kura Taiao (KKT). The feedback provided by KKT identified several general matters that may be of concern to Māori/iwi based on the key effects that are expected to arise on the environment from proposed discharge activities. Those matters are the introduction of harmful substances into the natural environment, adverse effects on native, important and customary significant fauna, and adverse effects on coastal and offshore waters from the harmful substances. I note that OTL received no comments from iwi with specific reference to any customary significant fauna (i.e., taonga species) as part of their engagement. However, my findings in this decision broadly cover effects on native, important and customary significant fauna. Section 5.3 of this decision considers effects on the integrity of marine species (including native species), and rare and vulnerable ecosystems and the habitats of threatened species. Section 5.2.2 of this decision covers effects on those lawfully established existing interests that hold customary fishing quota.

43. I am satisfied that these environmental effects have been adequately discussed throughout this decision and that the advice from KKT provides me with sufficient information to inform the decision with a Māori perspective.

44. As provided in the feedback by KKT, I acknowledge the importance of whakapapa and the interconnectedness of all living and non-living things is central to Māori/iwi life, Māori worldview and hence mātauranga. Any activity with an overarching environmental impact on this whakapapa relationship, and therefore to Māori identity, will be of concern to Māori.

45. The EPA staff evaluation report notes section 1.4 of OTL’s IA states that Te Kāhui o Taranaki Trust was provided an engagement form on which the following mitigation measured were listed:

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Page 67 of OTL’s IA submitted as part of the application for Marine Discharge Consent EEZ300012.
46. Side-track drilling of existing wells minimises the volume of cuttings and drilling fluids generated during the project, compared to drilling of new wells.

47. Selection of products to be used in the drilling fluids has prioritised use of the lowest toxicity substances that are fit for purpose. This is evidenced by the very small number of harmful substances to be included in the drilling fluids.

48. Treatment of drill cuttings prior to discharge to remove a high proportion of the residual fluids, in accordance with good industry practice.

49. Pre and post-drilling benthic monitoring surveys will be conducted to monitor any potential environmental effects from the discharge of cuttings.

50. In their feedback, KKT noted that Te Kāhui o Taranaki Trust asked that the mitigation measures are adhered to and stated that they support this request. I consider that OTL’s application is consistent with these mitigation measures, including the measure to undertake benthic monitoring surveys which is a condition of marine consent EEZ000010.

51. I consider that the feedback from KKT provided me with a sufficient understanding of the effect of the application from a Maori perspective.

3.6 Hearings for non-notified activities under section 50

52. Section 50 of the EEZ Act enables the EPA to conduct a hearing for a non-notified application for a marine consent (this includes a marine discharge consent) if the EPA considers it necessary or desirable, even if the applicant does not request one.

53. A hearing was not requested by the applicant, and, the Chief Executive of the EPA determined that a hearing was unnecessary as he did not consider it would provide any additional value to my consideration of this application.

4. Activities subject to EEZ Act authorisation

54. The details of the discharge activities that are subject to this consent under section 20B of the EEZ Act are set out in Table 1, Schedule 2 of the consent.

5. Assessment of this application

5.1 Context for consideration and evaluation

55. As discussed in section 3.1 and Appendix 1 of this decision, I must apply the decision-making criteria and information principles set out in the EEZ Act. Specifically, this requires me to apply section 59 which sets out a decision-making framework; section 60 which lists matters to be considered in deciding the extent of effects on existing interests; and section 61 which lists certain information principles.
56. I record here that, pursuant to section 59(5) of the EEZ Act, I have not given regard to:
   a) Trade competition or the effects of trade competition;
   b) The effects on climate change of discharging greenhouse gases into the air;
   c) Any effects on a person’s existing interest if the person has given written approval to the
      proposed activity.

57. I consider the most efficient and effective way for me to present findings on the various matters that I
    am required to turn my mind to in making my decision is to assess each of the subsections of
    section 59 of the EEZ Act. I note and record that, in accordance with 59(2A)(a), subsection (c) of
    section 59 does not apply to marine discharge consents, and I must consider the effects on human
    health of the discharge of harmful substances in accordance with 59(2A)(b) of the EEZ Act.

58. I present my findings on the relevant matters of section 59 of the EEZ Act in the following sections. I
    adopt the description of the existing environment provided in the staff evaluation report, which
    outlines that the existing environment will be modified by the preceding consented drilling and
    discharge activities, and other lawfully established activities.

5.2 Section 59(2)(a) and 59 (2)(b) of the EEZ Act

59. When considering whether to grant or refuse this application, I must, under section 59(2)(a) of the
    EEZ Act, take into account any effects on the environment or existing interests including cumulative
    effects and effects in the waters above or beyond the continental shelf beyond the outer limits of the
    exclusive economic zone.

60. The ERA characterised the environmental risk to the marine environment and informs the EPA staff
    assessment of the effects on the environment and existing interests, and assessment of cumulative
    effects. I have used the staff assessment as the basis of my decision on the matters set out in
    sections 59(2)(a) and 59(2)(b) of the EEZ Act.

5.2.1 Effects on the marine environment

61. The ERA sets out a detailed analysis of the potential environmental risks of each proposed
    discharge and takes into account the volume, concentration and ecotoxic characteristics of each
    harmful substance to be discharged. Based on the results of the ERA carried out for this application,
    I agree that the overall ecotoxic risk posed to the environment by the proposed discharges will be no
    more than low at 1,784 m³ from the point of discharge.

62. I note that the highest ecotoxic risk level produced was medium at 1,784 m³ from the point of
    discharge and this was calculated in a worst case scenario (described in the ERA) discharge of the
    total volume of LIME used as a component of cement across five wells at once. I agree with the
    conclusion reached in the ERA that this worst case scenario is highly unlikely to occur and that this
    result provides the most conservative risk level possible.

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8 Risk Quotients are calculated at a distance of 1,784 m from the point of discharge for batchwise discharges and
500m from the point of discharge for continuous discharges as these are the distances at which a dilution factor is
applied in the CHARM equations. The overall ecotoxic risk at 1,784 m is provided as this the further distance from
the point of discharge.
63. I concur with the conclusion reached in the staff evaluation report that the worst effects will predominantly occur within the immediate area around the point of discharge and that they will dissipate as distance increases from the point of discharge, although it is worth noting that any areas around the point of discharge in which environmental effects occur will be non-uniform and will occur in the direction of the ambient hydrodynamic conditions at the time of discharge. This means that environmental risk will not occur in the entire area around MPA. Instead, it is expected that the environmental effects will occur in more restricted areas that follow the ambient flow axis at the point of discharge.

64. I also agree that the proposed discharges will occur over a relatively short duration, up to 18 months in total with 18 to 31 days taken to drill each well, and the activities will occur within a relatively localised area around MPA as all wells will be drilled from MPA.

65. I find it reasonable to expect the overall pelagic environment around each drilling location will begin recovery from the proposed discharge activities within a very short time of activities ceasing as the discharges rapidly dilute in the marine environment. The benthic environment may take longer to recover, particularly areas nearer to the point of discharge at MPA.

66. The nature of the overall effects of the proposed discharges on the marine environment can be broken down into acute\(^9\) and chronic\(^10\) effects. I agree with the conclusion reached in the ERA that any effects on the pelagic environment from the harmful components in each discharge of NADF, spacer fluids, and trace amounts of hydrocarbons will largely be acute as residual harmful substances will be adhered to the drill cuttings and, depending on the particle size, rapidly sink to the sea bed or disperse in the water column.

67. I acknowledge that acute effects on pelagic species could result in the mortality of small species of plankton or fish that come into contact with a concentrated discharge plume. Mortality of smaller marine species is only likely to occur in close proximity to the point of discharge at MPA as the discharge is occurring. Mortality will only occur in larger pelagic species such as fish, if they come in contact with an ecotoxic concentration of a substance for an extended period of time. I consider this to be unlikely as the ecotoxicological data used to predict environmental risks of discharges in the ERA represents the effects on aquatic species after a minimum of 24 hours exposure to a given concentration of a substance and that mobile pelagic species such as fish are transient by nature.

68. The EPA evaluation staff report notes the predictive modelling report within Appendix D of OTL’s IA, provides the majority of residual harmful substances from NADF would remain on the settled cuttings and not be released from the rock fragments into the water column during the period prior to settling on the seabed as drill cuttings have undergone the cutting treatment process to remove residual NADF that is not tightly bound to the rock. Additionally, drill cuttings with NADF are prone to clumping and so are expected to settle rapidly rather than forming turbid plumes in the water column and all cuttings will eventually settle on the seabed, with the majority settling close to the point of discharge.

\(^9\) Short term and likely to cease immediately after discharges are stopped, or very shortly after an individual is no longer in contact with a discharge plume.

\(^10\) Long term effects that could last for extended periods, from weeks to months, depending on the volume and ecotoxicity of the substance driving the effects.
69. Effects on the benthic environment were not assessed in the ERA due to lack of ecotoxicity data for sediment reworkers, although I agree with the inferences made in the ERA and staff evaluation report. These are that heavier substances will be more concentrated in the sediment than in the water column, and drill cuttings that are discharged from MPA will have some effect on the benthic environment as they settle on the sea floor. I note that only the effects of harmful substances on the environment are considered here as the effects of drill cuttings deposition has already been considered in marine consent EEZ000010.

70. The EPA staff report identifies these chronic effects could result in mortality of benthic invertebrates and potentially some benthic fish species, although it is less likely that benthic fish species will suffer mortality, as they are more mobile than benthic invertebrates and could avoid ecotoxic levels of a substance. It would not be unexpected for recovery of benthic community diversity and abundance to near background levels to occur within the order of months to years once this activity ceases.

71. Despite this, I agree with the conclusion in the staff report that the ecotoxic risk of harmful substance components of NADF on the benthic environment is not likely to be materially greater than that of the risk to the pelagic environment due to the limited area around each discharge point (<500 m) expected to receive NADF at environmentally meaningful concentrations. Additionally, I consider that the ecotoxic risk of harmful components of spacer fluids will be localised to the area around the point of discharge from MPA.

72. In line with the staff evaluation report, I find that the effects of the drilling activities and deposit of drill cuttings consented under Marine Consent EEZ000010 will be the greater cause of effects and the harmful substances discharged will slow recolonization of benthic species to areas where drill cutting deposits occur around the point of discharge at MPA.

73. I note that, as provided in the ERA, the majority of LIME that will be used as a component of cement will sink and be deposited onto the seabed. Effects on the benthic environment were not assessed due to lack of ecotoxicity data for sediment reworkers, although it can be inferred that heavier substances will be more concentrated in the sediment than in the water column. Therefore, I agree with conclusions made in the staff evaluation report that there may be a higher probability that relatively immobile benthic invertebrate species could come into contact with a substance for sufficient periods to cause ecotoxic effects.

74. I also concur with the conclusions that although there may be acute effects for a short time after discharge, there may also be chronic effects from the discharge of cement as the high density of cement may mean that it disperses less readily and may take longer to degrade in the benthic environment particularly below the point of discharge at MPA. This may result in some chronic effects in the benthic environment adjacent to the discharge point, although the likelihood of chronic effects decreases and the recovery is expected to occur as distance increases from the point of discharge at MPA. The EPA staff evaluation report notes it is expected that the overall ecotoxic effects will be localised to the area around MPA, and as provided in OTL’s IA, there will be at least one month between cementing tasks which would provide time for any effects to dissipate before the next discharge.
75. Overall I consider that effects on the marine environment from discharges of these harmful substances will be temporary resulting in no more than minor effects. I agree with the conclusion reached in the staff evaluation report that the environmental effects associated with the proposed discharges can be adequately managed by conditions that limit the discharge volumes and concentration to at most those levels assessed in the ERA, place controls around recording and reporting of all the proposed discharge activities, and prescribe requirements for the testing of oil-on-cuttings that have passed through the cutting treatment process.

5.2.2 Effects on existing interests

76. The ERA provides results that enabled EPA staff to make an assessment of the likely spatial and temporal effects of the discharge activities. I have based my findings of the effects on existing interests on the conclusions reached by EPA staff in the staff evaluation report.

77. Overall, provided the short duration of the proposed discharge activities, the relatively localised area around MPA within which the activities will occur, and the short to moderate term expected recovery, I have found that effects on some existing interests may be minor.

78. I note that I have not determined a consequence level associated with effects on persons / entities that may also have cultural interests in the area. I have discussed some cultural interests separately under section 59(2)(m) of the EEZ Act, any other matter the EPA considers relevant and reasonably necessary to determine the application.

Lawfully established activities

79. I consider that fisheries interests, including commercial fisheries interests and customary fishing rights, and navigation by other marine vessels are lawfully established activities that hold existing interests in the area around PML381012.

80. I do not consider that existing coastal activities such as coastal recreation and aquaculture that occurs close to shore will be affected by the proposed discharges. The reasons for this determination are the relatively localised area around MPA within which the activities will occur, the distance of MPA approximately 35 km from shore, and the distance of MPA approximately 16 km from the Coastal Marine Area (CMA).

81. I consider that navigation of the area around MPA within PML 381012 by other marine vessels will not be adversely affected by the discharges and related development drilling activities due to localised area around MPA within which the activities will occur and in light of the safety areas that are already in place in the area. These areas are the 500 m safety zones\(^{11}\) that are in place around the Māui facilities, the Protection Area\(^{12}\) above the submarine pipelines, and the Precautionary Area\(^{13}\) for the west coast of the North Island.

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\(^{11}\) Established under the Continental Shelf (Maui A Safety Zone) Regulations 1975 and Continental Shelf (Maui B Safety Zone) Regulations 1991.

\(^{12}\) Established under the Submarine Cables and Pipelines Protection Act 1996.

\(^{13}\) This includes the Māui Field and was established in 2006 due to the increased potential for a collision between shipping and offshore installations in the area.
82. Overall I concur with the conclusion reached in the staff evaluation report that the overlap of shipping with the proposed discharges and the modified environment will be insignificant and result in negligible effects on existing interests of shipping in the area around MPA. The EPA staff evaluation report found that the proposed discharges are unlikely to lead to a displacement of fish allowing quotas to be attained and concludes that the effects on fish and therefore commercial fisheries and existing interests of fishing quota holders may be minor. I agree with the reasons for this which are the distance of MPA 35 km from shore, the highly transient nature of commercial fish species making an ecotoxic response unlikely and the 500 m safety exclusion zones around the Māui facilities which limits the potential for human health effects to arise from the consumption of contaminated seafood.

Effects on marine consents granted under the EEZ Act

83. The EPA staff evaluation report provides that OTL’s IA identified there are other offshore mineral exploration and production facilities in the South Taranaki Bight that may potentially be engaged in a range of offshore activities including marine surveys, seismic seabed surveys, drilling and production, although these facilities are operating outside the AOI.

84. The nearest consented activities are within the Tui field in Petroleum Mining Permit 38158, located approximately 23 km from MPA, while the Maari, and Kupe facilities are also located nearby in the South Taranaki Basin. The EPA staff evaluation report provides that OTL’s IA noted these facilities are operating outside the AOI and it does not interact with the operators or their activities, other than the OMV New Zealand Limited interests in PML 381012.

85. I concur with the conclusion reached in the EPA staff evaluation report that other marine consents outside PML 381012 are unlikely to be affected by the proposed discharges. This is due to the nature of the proposed discharge activities, their relatively short duration, the relatively localised area around MPA within which the activities will occur, and the distance of at least 23 km or further from MPA.

Effects on resource consents granted under the RMA

86. Any activity being undertaken under the authority of a resource consent granted under the RMA is considered an existing interest under the EEZ Act and resource consents can only be granted within 12 nautical miles of the coastline within the CMA.

87. I note that, as discussed in the staff evaluation report, no resource consents under the RMA by South Taranaki and New Plymouth District Councils or the Taranaki Regional Council have been identified within PML 381012.

88. I concur with the conclusions reached in the staff evaluation report that effects on the existing interests of the holders of resource consents will be negligible. This is due to the relatively localised area around MPA within which the discharge activities will occur, the distance of the proposed discharge activities approximately 16 km from any existing resource consents in the CMA, and the relatively short duration of the discharge activities.
Effects on any historical claims under the Treaty of Waitangi Act 1975

89. The Taranaki Iwi Claims Settlement Act 2016 records and gives effect to the matters addressed in the Taranaki Iwi Deed of Settlement between Taranaki Iwi and the Crown. Claims settle by the Deed include a number of statutory acknowledgement areas, one of which relates to the Taranaki Iwi’s Coastal Marine Area\(^{14}\), which overlaps with the area covered by PML 381012.

90. I concur with the conclusion drawn in the staff evaluation report that effects on these existing interests that have a historical claim under the Treaty of Waitangi Act are difficult to quantify and may be tied to cultural interests that I have addressed separately in my discussion under section 59(2)(m) of this decision.

Effects on contemporary claims under the Treaty of Waitangi Act 1975

91. I agree with the determination made in the EPA staff evaluation report (which agrees with OTL’s IA) that, given the nature of the proposed activities, the review of settlements for contemporary claims should be limited to claims relevant to the area of PML 381012. The EPA staff evaluation report suggests in the IA, OTL provides that under the Māori Fisheries Act 2004, 57 recognised iwi across the country were allocated fisheries assets including fishing quota. In addition, each recognised iwi is allocated income shares in Aotearoa Fisheries Limited, which is managed and overseen by Te Ohu Kai Moana (Māori Fisheries Commission).

92. In addition to their commercial fisheries interests provided for under the Māori Fisheries Act, Te Kāhui o Taranaki Trust, Te Korowai o Ngāruahine Trust, Ngāti Tara Hapū and other iwi and hapū within New Zealand have customary fishing rights, which are provided for under the Fisheries (Kaimoana Customary Fishing) Regulations 1998\(^{15}\). These customary fishing rights are separate, and in addition to, the commercial fisheries assets and the above Māori fishing interests are considered to be existing interests for the purposes of the EEZ Act.

93. I concur with the conclusion reached in the staff evaluation report that effects on fishing quota holders are likely to be minor due to the distance of MPA 35 km from shore and the 500 m safety exclusion zones around the Maui facilities which limits the potential for human health effects to arise from the consumption of contaminated seafood. I also agree that the highly transient nature of commercial fish species will make an ecotoxic response unlikely and that the proposed discharges are unlikely to lead to a displacement of fish allowing for fishing quotas to be attained.

Effects on any protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011

94. The EPA staff evaluation report notes that although there are no protected customary rights or customary marine titles recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 in the immediate vicinity of PML 381012, OTL’s IA provides that, in the general vicinity of the Māui facilities, several applications have been lodged with the Crown for customary marine title and protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (“MACA Act”).

\(^{14}\) OTS-053-55.

\(^{15}\) These Regulations were made under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
95. I understand that an application for customary marine title and protected customary rights near the PM 381012 has been submitted by Te Kahui o Taranaki Trust and Te Korowai Ngāruahine Trust. These applications relate to areas within 12 nautical miles from shore and are not within the EEZ. A claim under the MACA Act is not an existing interest that must be considered here, but any cultural values that may be present in the area can be, and have been, considered under s 59(2)(m).

5.2.3 Cumulative effects

96. I consider that in assessing the cumulative effects of these discharges I need to acknowledge that the discharge activities will take place concurrently with the drilling activities consented under EEZ000010 (which account for the deposition of drill cuttings) and other discharges, including the deposit of cement that is consented under EEZ100014. In addition to the proposed discharges that are the subject of this consent application (EEZ300012), the lawfully established activities that I have considered in my assessment are:

a) Commercial fisheries and fishing quota holders;
b) Navigation by other vessels;
c) Existing consented drilling activities;
d) Existing consented discharge activities; and
e) Consented activities at nearby permit areas within the South Taranaki Basin.

97. In addition to the list above, I note that the Māui field has been operating for over 40 years with production from MPA commencing in 1979. Collectively, this forms the baseline environment against which I assessed the effects of the discharges. The complexity of the effects of the activities above and the long history of the Māui field make it difficult to quantify cumulative effects of the proposed discharges.

98. As detailed in the staff evaluation report, the proposed discharges associated with development drilling activities will occur within the AOI, in PML 381012, where other discharges including production and deck drainage discharges from MPA and MPB, and authorised discharges from marine vessels occur\(^\text{16}\). The EPA staff evaluation report notes OTL’s IA describes the AOI has been subject to historic impacts from the discharge of drill cuttings and drilling-related harmful substance discharges including residual gas condensate and NADF, spacer fluids and cementing products. Although, the most recent drilling event from MPA was undertaken in 2014 and post-drill surveys undertaken in 2015 identified minor localised effects attributed to the 2014 drilling.

99. I consider that, as discussed in the staff evaluation report, the discharges will be occurring while some of these other activities are on-going and that some of the discharges are tightly coupled with the already consented activities (e.g. harmful substances will be adhered to drill cuttings). I concur with the conclusion reached in the staff evaluation report that the concentration of any discharge would be expected to dilute to less than the reported ecotoxic level near to the point of discharge, and acknowledge that there will be a separation between the discharge of drill cuttings, occurring at 43 m of water depth, and other production and deck drainage discharges that are at or near the surface.

\(^{16}\) Page 66 of OTL’s submitted IA provides the examples treated black-and greywater, and treated machinery space waste as discharges from marine vessels.
100. I agree with the approach taken in the staff evaluation report to assess cumulative effects. I also agree that there will be cumulative effects that cannot be quantified and that the primary source of environmental effects that will arise from the existing activities will be the already consented drilling activities (specifically the deposition of cuttings on the seabed), although it is expected that the discharge activities will add in some way to these effects. I also consider that, to some degree, the consented deposit of cement (EEZ100014) will also contribute to the overall level of cumulative effects within PML 381012.

101. I note that the consented drilling activities and the proposed discharge activities will be temporary with the entire operation taking up to 18 months with between 18 to 31 days provided to drill each individual well, and the activities will occur within a relatively localised area around MPA.

102. The staff evaluation report and ERA provided that it is reasonable to expect that the pelagic environment will begin recovery within a very short time of activities ceasing as the discharges rapidly dilute in the marine environment. The effects on pelagic species are expected to be acute and localised around the point of discharge at MPA.

103. Recovery of benthic communities near the discharge location that are adversely affected by the deposition of drill cuttings may potentially be prolonged by the addition of residual harmful substances adhered to drill cuttings. As the harmful substances are largely readily biodegradable it would not be unexpected for recovery of benthic community diversity and abundance to near background levels to occur within the order of months to years, although, as discussed under effects on the environment, the effects may dissipate to undetectable levels in the order of months.

104. I concur with the conclusion reached in the staff evaluation report that the effects of navigation by other vessels within the AOI can be assumed to be transient as shipping is excluded from the 500 m safety zones around the Māui facilities and, therefore, will not occur within the area that the discharge activities and majority of effects are expected to occur. Where effects do occur, they may present from excess noise, discharge oil in water from ballasts, and physically displace species from the water surface and top of the water column. I find that, as concluded in the staff evaluation report, these effects will be temporary and highly localised and will reduce to undetectable levels within a short period of time after a ship has passed through an area.

105. I note that fishing is also excluded within 500 m of the Māui facilities and concur with the conclusion reached in the staff evaluation report that fishing activities are expected to result in similar effects to shipping in terms of displacement and noise. In addition to these effects, the removal of species from the water column continuously over time will impact on the populations of pelagic commercial and bycatch fish species. I also note that bottom trawling will impact the populations of demersal and benthic fish species, and will also leave a physical impact on the seafloor. I find that, pursuant to the conclusion reached in the staff evaluation report, the environmental consequence of the impact of bottom trawling on the benthic environment will depend on the sensitivity of the environment to physical disturbance.

106. As discussed in my assessment of effects on existing interests of granted marine consents, the nearest consented activities are located approximately 23 km from MPA. I concur with the conclusion reached in the staff evaluation report that, as the discharges associated with the development drilling activities will occur at least 23 km or further from the site of any operations associated with existing marine consents, it is expected that any cross-over of effects from existing consented activities with the proposed discharge activities within PML 381012 will be negligible.
107. I consider that, in line with the conclusions reached in the staff evaluation report, the cumulative effects on the marine environment and existing interests posed by the discharges occurring concurrently with existing consented activities and lawfully established activities in the vicinity of PML381012 and wider Taranaki Basin will be no more than minor. This is due to the relatively short duration of the proposed activities, the relatively localised area around MPA within which the activities will occur, and the short to moderate term expected recovery. I consider that the proposed discharges will contribute to a level of cumulative effects that can be adequately managed through conditions.

108. I concur with the conclusion reached in the staff evaluation report that the discharges will add to the effects on the marine environment arising from other existing lawfully established activities to a minor degree.

5.2.4 Effects of other activities

109. I agree with the conclusion reached in the staff evaluation report that no other activities have been identified as occurring in the area affected by the discharges other than those that have already been discussed in this decision and in the staff evaluation report. I also agree that, as the proposed activities will take place within a localised area around MPA within PML 381012 which covers an area of approximately 784.7 km², the discharge activities are not expected to affect any environments or existing interests in New Zealand waters outside of the application area, or beyond the continental shelf beyond the outer limits of the EEZ.

110. I consider that other relevant activities that are not regulated under the EEZ Act are navigation by other vessels and fishing and agree with the conclusion reached in the staff evaluation report that effects on the marine environment or existing interests of these activities will be negligible. In addition, I do not consider that any other activities have been identified as occurring in the area affected by the discharges other than navigation by other vessels and fishing.

5.3 Sections 59(2)(d) and 59(2)(e) of the EEZ Act

111. Section 59(2)(d) of the EEZ Act requires me to take into account the importance of protecting the biological diversity and integrity of marine species, ecosystems and processes.

112. Section 59(2)(e) of the EEZ Act requires me to take into account the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species.

113. I concur with the EPA staff evaluation report’s and OTL’s IA determination, that the biological diversity and integrity of marine species, ecosystems and processes should be considered at the scale of PML381012 which is an area of approximately 784.7 km².

114. I concur with the conclusion reached in the EPA staff evaluation report that the discharge activities will have a minor effect on the integrity of marine species and ecosystems of the marine environment within PML 381012 as it is not expected that enough individuals of any species will be affected to endanger the entire population of that species.

115. I also agree that although there will be temporary localised disturbance during the consented drilling activities and discharge of drill cuttings which may lead to reductions in biodiversity, the effect on the biodiversity of the marine ecosystem as a whole within PML381012 will be minor.
116. I acknowledge that the Taranaki Basin provides habitat for some threatened species. The EPA staff evaluation report notes OTL’s IA has determined no protected or managed marine areas or habitats of threatened species are located within PML 381012.

117. I concur with the conclusion reached in the EPA staff evaluation report that there may be transient marine mammal, seabird and fish species, some of which may be threatened species, present in the wider region. I consider the effects of the discharge activities will, at most, impact a very small part of the natural habitat range of these species, and the overall effects on rare and vulnerable ecosystems and the habitats of threatened species will be minor.

5.4 Sections 59(2)(f), (g), (h), and (i) of the EEZ Act

118. Section 59(2)(f) of the EEZ Act requires me to take into account the economic benefit to New Zealand of allowing the application for marine discharge consent. I agree with the staff evaluation report’s acknowledgement that these discharge activities are necessary in order for OTL to exercise its marine consent EEZ000010 to undertake drill side-track wells at MPA.

119. I concur with the conclusion reached in the staff evaluation report that the economic benefit of allowing this application is closely related to the economic benefit of the drilling activities authorised in marine consent EEZ000010. As discussed in the decision report for marine consent EEZ00001017, the Decision-Making Committee (DMC) found that the granting of the marine consent would result in ongoing and substantial economic benefits to New Zealand, and to the Taranaki Region. I adopt that finding on the basis that this discharge consent enables OTL to undertake the consented drilling activities and to realise those economic benefits.

120. Section 59(2)(g) of the EEZ Act requires me to consider the efficient use and development of natural resources. I agree with the conclusion reached in the staff evaluation report that marine consent EEZ000010 was consented by a DMC that found that the continued operation of the Māui facilities, and the consented drilling activities, is an efficient use and development of natural resources18. The findings of the DMC responsible for consenting marine consent EEZ100014 were consistent with those of the DMC on Marine Consent EEZ000010. I find that the proposed discharge activities are necessary in order for OMV to carry out the development drilling activities that have already been consented by the EPA.

121. Section 59(2)(h) of the EEZ Act requires me to take into account the nature and effect of other marine management regimes. I concur with the conclusion reached in the staff evaluation report that the effect on human health of using harmful substances on board offshore installations is regulated under the Health and Safety at Work Act 2015. I do not consider the nature and effect of any other marine management regimes are relevant to this activity.

122. Section 59(2)(i) of the EEZ Act requires me to consider best practice in relation to an industry or activity. I agree with the conclusion reached in the staff evaluation report that the operational processes that OTL proposes to follow in its application, in combination with the recommended conditions for this consent, and the controls and safety measures that will be placed on OTL’s operations via the Emergency Spill Response Plan, will ensure that the discharge activities are carried out to an acceptable standard relative to industry best practice.

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17 Pages 78-79 of the DMC decision on Marine Consent EEZ000010.
18 Pages 80-81 of the DMC decision on Marine Consent EEZ000010.
5.5 Section 59(2)(j) of the EEZ Act

123. Section 59(2)(j) of the EEZ Act requires me to take into account the extent to which imposing conditions under section 63 of the EEZ Act might avoid, remedy, or mitigate the adverse effects of the activity. I have done so, and I have imposed the conditions contained in Schedule 2 of this consent.

124. In Table 1, Schedule 2 I have restricted the total volume of harmful substances that can be discharged. This will limit the level of effects of the activity to those anticipated by the EPA, and outlined in this report.

125. I have prescribed, in condition 13, that the no harmful substances adhered to drill cuttings should be discharged where the percentage of oil exceeds 6.9% by weight. I have also prescribed, in conditions 14 and 15, that the percentage of oil by weight of oil-on-cuttings should be measured at least once per 12 hour period during drilling activity and that these measurements shall be provided to the EPA upon request.

126. I agree with the conclusion reached in the staff evaluation report that the adverse effects of the drilling activities can be appropriately mitigated through the imposition of conditions. I am satisfied that the conditions I have imposed on this consent will adequately manage the effects associated with the discharges to the levels that were assessed in the ERA.

5.6 Section 59(2)(k) and (l) of the EEZ Act

127. Section 59(2)(k) of the EEZ Act requires me to take into account relevant regulations other than EEZ policy statements, while section 59(2)(l) of the EEZ Act requires me to consider any other applicable law other than EEZ policy statements.

128. I concur with the conclusions reached in the staff evaluation report that no other legislation or law is applicable or relevant to this decision aside from the Health and Safety at Work Act 2015 with which OTL must abide for the handling of harmful substances on MPA.

5.7 Section 59(2)(m) of the EEZ Act

129. Section 59(2)(m) of the EEZ Act is commonly referred to as the ‘catch-all’ provision. It provides the potential for me to consider anything that I consider relevant and reasonably necessary to determine the application, and which is not otherwise covered by the other matters referenced in section 59 of the EEZ Act.

130. Section 59(2)(m) of the EEZ Act does not provide me with unlimited scope. I cannot expand on (or take a different approach to) a specific requirement that Parliament has chosen to confine or regulate in a particular way. I have therefore considered section 59(2)(m) of the EEZ Act in the context of the specific matters required to be taken into account by section 59(2) of the EEZ Act, and related matters which have a bearing on my decision. Importantly, I have been careful to consider whether a matter has been expressly addressed by another section of the EEZ Act, and therefore whether it could be capable of consideration under section 59(2)(m) of the EEZ Act.
131. The EPA staff evaluation report notes that OTL has provided the below comment within their IA:\(^1\)

“Although a cultural interest/kaitiaki role on its own is not an ‘existing interest’ within the meaning of the EEZ Act, the kaitiaki role of Te Kāhui o Taranaki Trust (Taranaki Iwi) and Ngāti Tara Hapū as tangata whenua of the rohe (area) where the Māui Field is located, alongside Te Korowai o Ngāruahine Trust, has also been considered in the assessment.”

132. I therefore take the opportunity in this section to address OTL’s above statement and consider cultural values and interests within the scope of this application.

133. I recognise that iwi with settlement claims have cultural interests in the marine environment that extend beyond legal and statutory boundaries across the EEZ. The EPA staff evaluation report notes OTL’s IA identifies that one of the claims settled by the Taranaki Iwi Deed of Settlement and given effect to in the Settlement Act relates to the Taranaki Iwi’s Coastal Marine Area which extends to the outer most extent of the EEZ and overlaps with the area covered by PMP 381012.

134. The EPA staff evaluation report notes OTL identified eight iwi groups are located in the Taranaki region, including Ngātī Tama, Ngātī Mutunga, Ngātī Maru, Te Atiawa, Taranaki, Ngāruahine, Ngātī Ruanui, and Ngaa Rauru Kiitahi\(^2\). The coastal areas from Waikato to Wellington contain a number of features and resources of value to iwi and the importance of these areas reinforces the identity of the local iwi who hold mana whenua and mana moana over these areas, and provides a continuous connection between their ancestors that once occupied and utilised these areas.

135. The EPA staff evaluation report notes OTL’s IA acknowledges that any degradation of the environment can be described as a degradation of the connection and relationship of Taranaki Iwi with the environment. The EPA staff evaluation report also notes OTL’s IA states they will continue to engage with iwi and hapū regarding this application and associated drilling programme as part of its broader engagement programme.

136. Throughout this decision I have drawn conclusions that the discharges will occur in a relatively localised area around MPA, over a relatively short period (up to 18 months), and at a distance of approximately 16 km from the CMA. I also concluded that the discharges effects on the marine environment will be minor and, although the discharges will add to the cumulative effects on the marine environment, these will also be minor.

137. Additionally, I concluded that the discharges are unlikely to lead to a displacement of fish allowing quotas to be attained and the effects on fish and therefore commercial fisheries and existing interests of fishing quota holders will be minor. This is due to the distance of MPA 35 km from shore, the highly transient nature of commercial fish species making an ecotoxic response unlikely and the 500 m safety exclusion zones around the Māui facilities which limits the potential for human health effects to arise from the consumption of contaminated seafood.

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\(^{19}\) Page 7 of OTL’s IA submitted as part of the application for Marine Discharge Consent EEZ300012.

\(^{20}\) Page 7 of OTL’s IA submitted as part of the application for Marine Discharge Consent EEZ300012
138. I acknowledge the cultural interests within the Taranaki region and although this is difficult to quantify, I expect there may be some impact on the mauri of the application area as there may be temporary environmental effects at some level. I am satisfied with OTL’s commitment to ongoing engagement with iwi and note that no comment was received from iwi or hapū in response to OMV’s efforts to engage.

5.8 Section 59(2A)(b) of the EEZ Act

139. Section 59(2A)(b) of the EEZ Act requires me to take into account the effects on human health of the discharge of harmful substances if consent is granted. I have taken into account the effects on human health of the activities.

140. My finding on this matter is closely linked to my decision on the matter of the effects of the discharges on commercial fisheries and fishing quota holders. This is because the primary way for human health to be affected by the activities would be via the consumption of contaminated fish.

141. The results of the ERA provide that the effects on pelagic species will most likely be no more than low and it is expected that, as the majority of commercial fish species caught for human consumption are highly transient, they will not present in PML381012 for the extended periods of time required to illicit an ecotoxic response or significant bioaccumulation of toxicants in an individual. I also note that, as provided in the ERA, no harmful substance proposed to be discharged is bioaccumulative, aside from SHELL GTL SARALINE 185V which is not aquatic ecotoxic. Additionally, most harmful substances proposed to be discharged are not persistent, aside from LIME which is partly-soluble in the marine environment and on the PLONOR21 list.

142. I note that, as described in the ERA, there is an inbuilt conservatism in the assessment as all the ecotoxicological data on which the findings are based presents effects on aquatic species after a minimum of 24 hours of exposure to a given concentration of the substance being assessed. I therefore agree with the conclusion reached in the ERA that, as transient pelagic species are extremely unlikely be in the vicinity of any discharge activities for that length of time, it is highly unlikely that any individual fish will be affected, and in turn affect human health.

143. I concur with the conclusion reached in the staff evaluation report that the effects on human health are likely to be negligible due to the distance of MPA 35 km from shore, the highly transient nature of commercial fish species making an ecotoxic response unlikely, and the 500 m safety zones that are in place around the Māui facilities which prevents fishing vessels from getting too close further limiting the potential for human health effects to arise from the consumption of contaminated seafood.

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21 OSPAR Commission’s list of substances used and discharged offshore which are considered to pose little or no risk to the environment (PLONOR). This is a list of substances which have been proven through studies to have ecotoxic characteristics that do not need to be tightly regulated.
6. Overall determination and reasons for decision

144. Pursuant to section 10(3) of the EEZ Act, I have applied section 61, taken into account decision-making criteria in section 59 and had regard to the matters in section 60 of the EEZ Act. I have turned my mind to whether granting or refusing consent best achieves the purpose of the EEZ Act, as set out earlier in this decision and the relevant statutory provisions set out in Appendix 1.

145. Having considered the decision-making matters described in section 5 of this decision, I present a summary of my key findings below:

a) The potential adverse effects of the discharge activity on the biological environment including on any rare or vulnerable ecosystems, and the habitats of any threatened species that may be present, may be minor in the immediate vicinity around MPA and the effects will dissipate with distance from MPA.

b) Overall, provided the short duration of the proposed discharge activities, the relatively localised area around MPA within which the activities will occur, and the short to moderate term expected recovery, I have found that adverse effects on some existing interests may be minor.

c) I note that I have not determined a consequence level associated with effects on other existing interests that may also be tied together with cultural interests.

d) As any adverse effects will be confined to within the PML 381012, or in the immediate vicinity of MPA, I am satisfied that the biological diversity or marine species, ecosystems and processes in and around the Maui facilities will be affected to a minor degree.

e) OTL is required to comply with a number of other legislative regimes, including those that relate to health and safety. While I acknowledge that not all of these legislative requirements are relevant to this application, these additional measures and approval requirements provide further environmental protections.

146. After considering all the information in front of me, taking into account the matters listed in section 59, having regard to the matters in section 60, and applying section 61 of the EEZ Act, I find that, subject to the conditions of the consent I have imposed, granting a marine discharge consent for this activity meets with the purpose of the EEZ Act.

7. Section 63 – Conditions of marine consents

7.1 Introduction

147. Section 62(3) of the EEZ Act states that a marine consent may be issued subject to conditions. The ability to impose conditions on a marine consent is governed primarily by sections 63 – 67 of the EEZ Act.
148. Section 63(1) of the EEZ Act states:

“A marine consent authority 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.”

149. While the wording of section 61(1) appears to provide me with a very wide scope in terms of conditions that may be imposed on marine consents, there are two restrictions specified in sections 63(3) and 63(4).

150. I have not imposed any condition that would be inconsistent with the EEZ Act, or any regulations (section 63(3)).

151. Section 63(4) does not prevent me imposing conditions which duplicate requirements in relation to the activity by another marine management regime (MMR) where such a condition relates to a matter (including environmental effects or effects on existing interests) that I must take into account under section 59 of the EEZ Act.

152. I consider that the imposition of conditions which duplicate other MMR requirements should generally be avoided provided I have satisfied myself that the processes and approvals under those MMRs are robust and adequately deal with the relevant environmental effects or effects on existing interests. In such situations, requiring the EPA to provide an additional approval/certification is in my view unnecessary.

153. I have not imposed any condition that would conflict with a measure required in relation to the activity by another MMR, or the Health and Safety at Work Act 2015.

154. Sections 63(2)(a)(i) and (ii) allows me to impose conditions which requires the consent holder to provide a bond for the performance of any one or more conditions of the consent and to obtain and maintain public liability insurance of a specified value, respectively. Section 65 provides additional guidance on bond conditions. In this case I do not consider it necessary to impose a bond for performance of any condition, or for OTL to obtain public liability insurance as I do not consider that the potential worst case effects are of a magnitude to necessitate a bond.

155. Section 63(2)(a)(iii) and (v) allows me to impose conditions that require a consent holder to undertake monitoring, and to provide information to the EPA for audit, respectively. Section 66 provides additional guidance on monitoring conditions.

156. I have not imposed any other conditions that prescribe monitoring in the environment as some monitoring has already been conditioned in related consents. Condition 13 does however prescribe that OTL cannot discharge harmful substances adhered to drill cuttings where the percentage of oil exceeds 6.9% by weight measure the percentage of oil by weight of oil-on-cuttings.

157. Section 63(2)(a)(iv) allows me to impose conditions that require a consent holder to appoint an observer to monitor the activity and the effects on the environment. Section 67 provides additional guidance on observer conditions and requires that any such condition must specify in detail the observer’s duties in relation to the activity. Any observer must be ‘approved’ by the EPA for that purpose and section 67 outlines the circumstances under which such approval must be given by the EPA. In this case I do not consider it necessary to impose any such condition as I do not consider the potential risks presented by the activities warrant an observer, nor that there are aspects of the activity that would require direct observation.
7.2 Commentary on conditions

158. EPA Staff circulated a set of draft proposed conditions (hereafter referred to as the ‘draft conditions’) to OTL on 5 February 2020 for comment. The draft conditions were provided to OTL on the basis that they did not imply a determination on the application, and were still subject to legal review and possible further input.

159. OTL provided comments on draft conditions on 11 February 2020 which were then discussed with the EPA. A further change was made to condition 17 and provided to OTL for comment on 12 February 2020. The reason for the change was in response to comments received from OTL on 11 February 2020 that they would like to be able to actively share information and suggest an approach to monitoring, including whether it would be practicable or useful in detecting anything in the event of a spill. Ultimately, condition 17 enables OTL to provide information to the EPA and the EPA to determine whether monitoring is necessary, taking into account the information provided by OTL.

160. I consider that the monitoring requirements in Condition 18 of the marine consent EEZ000010 will suffice in detecting any potential effects of the discharge activities on the benthic environment. I also note that OTL must have a certified benthic and sediment monitoring plan under condition 22 of marine consent EEZ100014, and a certified Water Column Monitoring Plan (WCMP) under condition 23 of marine discharge consent EEZ300009.

161. Although these consents authorise different activities, for example marine discharge consent EEZ300009 authorises discharge of harmful substances from deck drains and in produced water from the Maui facilities, I consider that these monitoring requirements are sufficient to determine whether any effects that are arising from the activities authorised under this consent are beyond what is anticipated in the application. I do not consider additional monitoring is necessary to understand the effects of the activity after the consent commenced.

8. Section 73 – duration of consent

162. Section 73 of the EEZ Act sets out the matters relevant to determining the duration of the consent. It states:

“(1A) The duration of a marine discharge consent or a marine dumping consent is –

(a) The term specified in the consent, which must not be more than 35 years; or

(b) If no term is specified, 5 years after the date of the granting of the consent.

(2) When determining the duration of the consent, a marine consent authority must –

(a) Comply with sections 59 and 61; and

(b) Take into account the duration sought by the applicant; and

(c) Take into account the duration of any other legislative authorisations granted or required for the activity that is the subject of the application for consent.”
163. Pursuant to section 73(2)(b) of the EEZ Act, in determining the duration of the consent, I must take into account the duration sought by OTL. OTL did not seek a duration for this marine discharge consent, however they have communicated that the staff report’s proposed three (3) year duration is acceptable. One main reason was that if the activities were not carried out within the next three years, the products authorised for use by this consent may need to be changed.

164. The marine consent EEZ000010 that authorises the drilling activities was granted in June 2015 for a period of 35 years from the date consent was granted. I concur with the EPA staff evaluation report view that the expiration of this consent does not need to align with that of EEZ000010. The EPA staff evaluation report notes that OTL’s IA provides the proposed drilling and related discharge activities will be undertaken in early 2020 and are expected to take up to 18 months, including contingency time for weather or equipment delays.

165. I concur with the determination made in the EPA staff evaluation report that it appropriate in the circumstances that a period of three (3) years will allow sufficient time for OTL to conduct the proposed drilling and related discharge activities at MPA.

Appendix 1: Details of the EEZ decision-making matters

Section 10 of the EEZ Act - Purpose

166. Consideration of applications for marine discharge consents are made according to the requirements of the EEZ Act. The EEZ Act outlines the relevant matters that I must consider in making my decision and the information principles in respect of analysing the information provided to me. In making my decision on this application my overall duty is to determine whether granting or refusing the application best achieves the purpose of the EEZ Act.

167. Section 10 of the EEZ Act states:

"10 Purpose:

(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 under section 27, 29A, 29B, or 29E and the consideration of applications for marine consent."

Section 11 of the EEZ Act – International obligations

168. Section 11 of the EEZ Act deals with New Zealand’s international obligations and confirms that New Zealand’s major international obligations are given effect to by the EEZ Act. Section 11 of the EEZ Act states:

“11 International obligations:

This Act continues or enables the implementation of New Zealand’s obligations under various international conventions relating to the marine environment, including –

(a) the United Nations Convention on the Law of the Sea 1982:

(b) the Convention on Biological Diversity 1992:

(c) the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL):

(d) the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention).”

169. I consider that section 11 confirms that New Zealand’s international obligations have been taken into account in the drafting of the EEZ Act.

Section 12 of the EEZ Act – Treaty of Waitangi

170. Section 12 of the EEZ Act deals with the Treaty of Waitangi and outlines the specific actions that the EPA must undertake in order to recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi. Section 12 of the EEZ Act states:

“12 Treaty of Waitangi:

In order to recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act, -

(a) section 18 (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise marine consent authorities so that decisions made under this Act may be informed by a Māori perspective; and

(b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and
(c) sections 33 and 59, respectively, require the Minister and a marine consent authority to take into account the effects of activities on existing interests; and

(d) section 46 requires the Environmental protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them."

171. As discussed in section 3.5 of this decision, I am satisfied that the advice from KKT provides me with sufficient information to inform the decision with a Māori perspective.

Section 59 of the EEZ Act – Matters to be taken into account

172. Section 59(2) of the EEZ Act set out matters I “must take into account”, and section 59(3) of the EEZ Act states I “must have regard to” any submissions or evidence given to me, any advice or reports I have sought, and any advice from the Maori Advisory Committee in making my decision.

173. However, for a marine discharge consent section 59(2A)(a) of the EEZ Act directs me to specifically exclude the matters described in section 59(2)(c) from my consideration, which relates to:

(c) The effects on human health that may arise from effects on the environment;

174. I must not have regard to the matters in section 59(5): trade competition or the effects of trade competition, the effects on climate change, and effects on existing interests if written approval has been given.

175. The EEZ Act establishes no hierarchy in the matters that must be taken into account and those that I must have regard to under section 59 of the EEZ Act. The importance of all of the matters listed in all of the subsections depends on the facts and circumstances of the proposed activities.

176. The matters covered by section 59 of the EEZ Act are the basis of my assessment of the application as detailed in section 5 of this decision.

Section 61 of the EEZ Act - Information Principles

177. I am required to make full use of my powers to seek out information, base my decision on the ‘best available information’, and consider any uncertainty or inadequacy in the information available. Section 61 of the EEZ Act states:

*61 Information Principles:

(1) When considering an application for a marine consent, a marine consent authority must –

(a) Make full use of its powers to request information from the applicant, obtain advice, and commission a review or a report; and

(b) Base decisions on the best available information; and

(c) Take into account any uncertainty or inadequacy in the information available.

(2) If, in relation to making a decision under this Act, the information available is uncertain or inadequate, the marine consent authority must favour caution and environmental protection.
If favouring caution and environmental protection means that an activity is likely to be refused, the marine consent authority must first consider whether taking an adaptive management approach would allow the activity to be undertaken.

Subsection (3) does not –

(a) Apply to an application for –

(i) A marine dumping consent; or

(ii) A marine discharge consent; or

(iii) A marine consent in relation to an activity referred to in section 29(2)(ba); or

(b) Limit section 63 or 64.

In this section, best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time."

Full use of powers

I am required to make full use of my powers to seek out information, base my decision on the best available information and consider any uncertainty or inadequacy in the information available. The concept of best available information is defined by section 61(5) of the EEZ Act. It means the best available information that, in the circumstances, is available without unreasonable cost, effort, or time.

In addition to the information lodged with the application, the EPA requested further information from OTL during the assessment period. These requests covered the matters discussed in section 3.4 of this decision.

I am satisfied I have made full use of my powers to request and access information and I consider I have met my responsibilities under sections 61(1)(a) of the EEZ Act.

Best available information

It is important to note that best available information is not necessarily ‘all information’. I have exercised my judgement to obtain the best available information and the EPA has sought additional advice where necessary.

I have had the benefit of the further information provided by the applicant as outlined in section 3.4 of this decision, and I did not consider it necessary to seek any further information or expert advice beyond this.

I have exercised my judgment about what information is the best available information for this application, having regard to issues of cost, effort and time. I am satisfied that I have been able to make my decision based on the best available information in accordance with section 61(1)(b) of the EEZ Act.
Certainty and caution

184. Section 61(2) of the EEZ Act requires me firstly to consider whether the information put before me is uncertain or inadequate. If I consider that it is uncertain, then the same section requires me to favour caution and environmental protection in making my decision.

185. In making that judgement, I have followed section 61(2) of the EEZ Act by favouring caution and applying environmental protection to the extent I consider necessary.

186. The Consent Holder will have to conduct the consented activities in such a way that it avoids adverse effects, remedies adverse effects, or mitigates them. I have imposed conditions which manage the potential for effects on the environment in these ways.

187. My decision acknowledges that the effects will be temporary, concentrated around MPA, and that the overall effects on the broader marine environment will be minor.

Section 62 of the EEZ Act – Decisions on applications

188. Section 62 of the EEZ Act enables me to either grant or refuse the application. Section 62(2) allows me to refuse an application if I consider that I do not have adequate information to determine the application.

189. As outlined in paragraphs 106 to 108 of Appendix 1 of this decision, I consider that I have had the best available information against which to make my determination on the application.

190. If I decide to grant the application, section 62(3) states that I may issue the consent subject to conditions under section 63 of the EEZ Act.

Section 63 of the EEZ Act – Conditions

191. Section 59(2)(j) of the EEZ Act requires me 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) I may grant a marine consent on any condition that I consider appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests.

192. Section 63(2) provides examples of the types of conditions which may be imposed, and sections 65 to 67 (bonds, monitoring, observers) give further detail regarding the type of conditions outlines in section 63(2).

193. As states under section 64(1AA)(b) of the EEZ Act, 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 the OTL consent is to be granted.

194. I have not imposed any condition that on its own, or in association with any other condition, amounts to, or contributes to, adaptive management.
195. Sections 63(3) and 63(4) of the EEZ Act provide 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) of Health and Safety at Work Act 2015.*

I have not imposed any condition that would be inconsistent with the EEZ Act, or any regulations (section 63(3)), and I have not imposed any condition that would conflict with a measure required in relation to the activity by another MMR, or the Health and Safety at Work Act 2015.