

Decision on change of condition of deemed marine dumping consent

Shell Taranaki Limited

EEZ700002

JANUARY 2018



**Environmental
Protection Authority**
Te Mana Rauhi Taiao

New Zealand Government

CHANGE OF CONDITION CONSENT EEZ700002

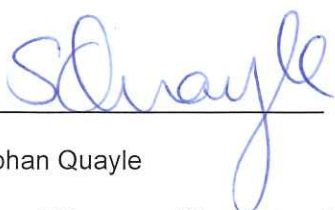
Pursuant to s 87(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act), the request by Shell Taranaki Limited to change condition 3 of their deemed marine consent EEZ900010, is **GRANTED**.

Condition 3 is amended so that it reads (emphasis added):

Shell Taranaki Limited (Shell) will commission a minimum of three surveys of the ground wires ("the surveys") with a minimum of three years between each survey within the 2018 calendar year, and a third and final survey within the 2021 calendar year.

This deemed marine dumping consent expires at the earliest of either 2 December 2023 or the date of issue of a marine consent or marine dumping consent for the final decommissioning of Maui B.

Dated this 10th day of January, 2018



Siobhan Quayle

General Manager, Climate Land & Oceans

SCHEDULE 1:

CHANGE TO DEEMED MARINE DUMPING CONSENT CONDITION

CONDITION

3. Shell Taranaki Limited (Shell) will commission a minimum of three surveys of the ground wires ("the surveys") with a minimum of three years between each survey within the 2018 calendar year, and a third and final survey within the 2021 calendar year.

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DECISION ON CHANGE OF CONDITION APPLICATION

Background

1. The Environmental Protection Authority (EPA) is the consent authority for activities within the Exclusive Economic Zone (EEZ) and continental shelf beyond the 12 nautical mile limit from New Zealand's coastline. One of the EPA's functions, pursuant to section 13(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), is to decide applications for marine dumping or discharge consents.
2. Under section 87(1) of the EEZ Act, the holder of a marine dumping consent can make a request to the EPA to change or cancel one or more conditions of their consent. If the EPA considers the request is not limited to minor matters the request will be dealt with under the marine consent process. If the change to one or more conditions is limited to minor matters the EPA will decide the request.
3. On 31 October 2015, the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015 (the D&D Regulations) came into effect and all dumping permits issued by Maritime New Zealand (MNZ) were transferred to the EPA as deemed marine dumping consents under s 164A of the EEZ Act.

The Application

4. The original dumping permit No. 565A was granted by MNZ and commenced on 2 December 2011. Following the commencement of the D&D Regulations on 31 October 2015, permit No. 565A was transferred to the EPA as deemed dumping consent EEZ900010.
5. Condition 3 of EEZ900010 required a minimum of three surveys to be undertaken with a minimum of three years between each survey. The first survey was completed in April 2015.
6. Shell Taranaki Limited (Shell) have contracted a specialist vessel with Remotely Operated Vehicle (ROV) equipment to undertake a portfolio of ROV activities in the Maui Field. The vessel and equipment used for this work would be suitable to undertake a survey of the ground wires however the timing would be less than the three years required by the current conditions by approximately two months. Shell were advised by EEZ Compliance on 21 November 2017 that they would be in breach of the condition 3 if the ground wire survey was conducted before April 2018. Hence, Shell are applying for a change of condition so they remain compliant and are able to utilise the specialist equipment already committed to work in the Maui Field during this summer season.
7. On 18 December 2017, Shell submitted an application to the EPA to change condition 3 of its deemed consent EEZ900010 (Appendix 1) under s 87(1) of the EEZ Act, to achieve compliance with the EEZ Act.
8. On 9 January 2018, the EPA informed Shell that its application for a change of condition to their deemed dumping consent was determined to comply with section 38 of the EEZ Act, and that the application is likely to be limited to minor matters under s 87(3)(b) of the EEZ Act.

Request subject to approval

9. The following table describes the requested change of condition within deemed consent EEZ900010.

Table 1 - Requested condition changes

Reference Number (from original consent)	Marine consent conditions to be changed	
	Original condition	Condition proposed by Shell
Condition 3	<i>Shell Todd Oil Services (“STOS”) will commission a minimum of three surveys of the ground wires (“the surveys”) with a minimum of three years between each survey.</i>	<i>Shell Taranaki Limited will commission a survey within the calendar year 2018, and a third and final survey within the calendar year 2021.</i>

10. Shell Todd Oil Services (STOS) was the permit holder at the time permit was granted by MNZ in 2011. In August 2017 the STOS company name was changed to Shell Taranaki Limited. It is appropriate to reflect this change when the consent is updated.

Statutory Framework

11. The purpose of the EEZ Act is to promote the sustainable management² of the natural resources of the exclusive economic zone and the continental shelf and 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.
12. Section 20 of the EEZ Act restricts certain activities from being undertaken in the EEZ or in, or on, the continental shelf unless they are authorised under the EEZ Act. Section 20G restricts the dumping of waste or other matter (including ships, aircraft, or structures) into the sea within the EEZ or above the continental shelf beyond the outer limits of the EEZ or onto the continental shelf.
13. Section 87(1) of the EEZ Act enables the holder of a marine consent to request the EPA to change or cancel a condition of the consent. If a request is received, then sections 38-71 (with all necessary modifications) and sections 87(3) to (6) apply to the request.
14. The decision is made under s 62 having regard to the requirements of s 80 of the EEZ Act.
15. Section 87(3) provides that if the EPA considers that the requested change or cancellation is likely-
(b) to be limited to minor matters, it may deal with the request under section 83.
16. Section 83 provides for a process for dealing with minor changes to conditions without public notification and provides that s 79 (which applies various provisions in relation to further information, advice, submissions, and hearing) does not apply.

² Section 10 of the EEZ Act. “Sustainable management” is defined in section 10(2).

17. The consent holder has a right to object to the EPA under s 101 to a decision to refuse the request under section 87(6). Any decision by the EPA on an objection may then be appealed to the High Court on a question of law under section 104.
18. The consent holder alternatively may appeal the decision to refuse a minor change request directly to the High Court under section 105(3).
19. There is no statutory timeframe for a decision on a minor change review / request.

Decision-making criteria

20. Sections 59(2B) and 61 of the EEZ Act set out the matters that must be considered in coming to a decision on an application for a marine consent.
21. Section 59(2B) states that the EPA must take into account for a marine dumping consent:
 - (a) *“the matters described in section 59(2), except paragraphs (c), (f), (g), and (i); and*
 - (b) *the effects on human health of the dumping of waste or other matter, or the abandonment of the pipeline, if consent is granted; and*
 - (c) *any alternative methods of disposal of the waste, other matter, or pipeline that could be used; and*
 - (d) *whether there are practical opportunities to reuse, recycle, or treat the waste, other matter, or pipeline.”*
22. *“Section 59(3) also applies to the application for a marine discharge consent or a marine dumping consent.”*
23. Pursuant to the relevant sections 61-62 of the EEZ Act, the EPA must make its decision based on the best available information and take into account any uncertainty or inadequacy in the information available. It is important to note that best available information does not include all information and that the EPA must exercise judgement having regard to issues of cost, effort or time.

Assessment

24. On 8 January 2018, the EPA determined Shell’s application (to change a condition of their deemed dumping consent) complied with s 38 of the EEZ Act. The EPA also concluded that the requested changes are likely to be limited to minor matters under s 87(3)(b) of the EEZ Act and this assessment of the application is taken in that context and under the requirements of s 83 of the EEZ Act.

Section 59 matters

25. The applicant has provided a description of the existing environment, in the application form and accompanying documents, (see Appendix 1), appropriate to the scale of the application. We consider this description appropriate for this application.
26. The impact assessment in section 3 of the application form, and original impact assessment submitted to MNZ, provided a suitable basis on which to assess effects of the proposed change of condition.

27. Under section 59(2)(a) of the EEZ Act, the EPA must take into account any effects of the change of condition 3 on the environment or existing interests, including cumulative effects and effects in the waters above or beyond the continental shelf. I consider that the requested change does not change the effects of the survey activities using an ROV given the relative scale and significance of those effects on the existing environment and existing interests.
28. There are likely to be no effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity that should be considered under 59(2)(b).

Conditions 3

29. Condition 3 requires a minimum of three surveys of the ground wires with a minimum of three years between each survey. One survey was completed in April 2015. At least two more surveys are required to be undertaken. The intent of the condition is to monitor the ground wires at appropriately spaced intervals. Changing the condition to specify that the next two surveys are commissioned in the 2018 and 2021 calendar years achieves the original intent of the condition.
30. I have considered the matters in sections 59(2B) and 61 of the EEZ Act and find there is nothing in those matters that are affected by the proposed changing of condition 3.

Section 59(2B)(b): Effects on Human Health

31. Any effects on human health were considered in the original application which was assessed by MNZ and granted in 2011. The change in condition 3 is a change to the timing of the surveys and therefore I conclude it is very unlikely to have any effect on human health.

Section 59(2B)(c) : Any alternative disposal methods

32. Alternative disposal methods and options to reuse, recycle or treat the waste were analysed in the original permit application which MNZ granted in 2011. Revisiting those options and alternatives is not relevant to this application.

Section 59(2B)(d): Practical opportunities to reuse, recycle, or treat the waste

33. I do not consider this matter has any relevance to making my decision to grant or refuse this application.

Section 59(3)

34. When making my decision I must have regard to—

“(aa) EEZ policy statements; and

(a) any submissions made and evidence given in relation to the application; and

(b) any advice, reports, or information it has sought and received in relation to the application; and

(c) any advice received from the Māori Advisory Committee.”

35. As the changes sought in Shell’s application have been considered likely to be limited to minor matters³ and are being considered under the provisions of s 83 of the EEZ Act, the request has been dealt with

³ Decision made 8 January 2018 under s 87(3)(b)

without public notification of the application. No submissions, or reports from the Māori Advisory Committee, have been sought in relation to the application.

Section 62

36. I have turned my mind to s 62 and consider there are no grounds on which to refuse the application.

Section 80

37. I have considered the requirements of s 80 of the EEZ Act and record that I have;

- (a) considered the relevant matters in sections 59 and 60,
- (b) complied with section 61,
- (c) concluded that the activity allowed by the consent will continue to be viable after the proposed change of condition.

Conclusion

38. I have considered all the information provided by Shell and taken into account the matters under sections 59(2B) and 61 of the EEZ Act. I am satisfied that this decision is based on the best available information in accordance with section 61 of the EEZ Act.

39. I have formed the view that there is no basis on which to refuse the application under s 62.

40. I conclude that the request may be granted and that:

- (a) There are no significant effects on existing interests arising from the request.
- (b) All relevant matters under sections 59(2B) and 61 have been considered.
- (c) The effects of changing condition 3 is unlikely to change the existing effects of the activities authorised by Shell's deemed marine dumping consent. The effects of the change of condition is therefore considered to be less than minor.

41. I have decided to **GRANT** the request by Shell, to change condition 3 of the deemed marine dumping consent, EZZ900010.

42. The changes are detailed in Schedule 1.

43. Deemed dumping permit EEZ900010 expires at the earliest of either 2 December 2023 or the date the issue of a marine consent or marine dumping consent for the final decommissioning of Maui B. The request to change condition 3 does not affect the original duration of the consent.

APPENDIX 1- APPLICATION



Request to change and/or cancel conditions of a marine consent

Under section 87 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Section 1: Applicant Details

Applications can only be made by authorised consent holders of marine consents, including marine discharge or marine dumping consents

Organisation name: Shell Taranaki Limited	
Postal address: Private Bag 2035, New Plymouth 4342	
Phone: 027 442 4268	Email: bruce.colgan@shell.com
Key Contact name: Bruce Colgan	
Phone: 027 442 4268	Email: bruce.colgan@shell.com
Permit/license number: PML 381012	
Consent (including deemed consents) number: Dumping Permit 565A (Deemed Dumping Consent)	

I understand that the EPA will recover its actual and reasonable costs associated with processing this application.

Bruce Colgan

15/12/2017

Signed

Date

Lodge application:

- By post to: **Environmental Protection Authority, Private Bag 63002, Wellington 6140**
- In person at: **Environmental Protection Authority, Level 10, 215 Lambton Quay, Wellington**
- By email to: eez.info@epa.govt.nz.

OFFICE USE ONLY

Application Number

Date received

EPA Contact

Completing this application form

Use this application form if you intend to apply for a change or cancellation of consent conditions under section 87 of the Exclusive Economic Zone and Continental Shelf Act 2012 (the EEZ Act).

All notified and non-notified discretionary activities requiring a marine consent are described in the EEZ Act, which can be viewed at: <http://www.legislation.govt.nz/act/public/2012/0072/latest/DLM3955428.html?src=gs>

Your application must fully describe the proposal and include an impact assessment prepared in accordance with section 39 and any regulations, including the Exclusive Economic Zone and Continental Shelf (Environmental Effects Discharge and Dumping) Regulations 2015.

Please also include information that addresses the matters the decision-maker will take into account (in addition to the impact assessment) listed in section 59 of the EEZ Act. You may attach additional information to supplement and support your application.

We recommend that you discuss these information requirements with EPA staff before lodging the application. Contact details are: 0800 208 338 (from within New Zealand) and +64 04 916 2426 (from overseas), or you can email the EEZ Consenting Team at EEZ.Info@epa.govt.nz.

You are requested to send the EEZ Consenting Team an electronic copy of your application. Please separate large documents into smaller files of no more than 5 MB. Please ensure you have referenced all attached documents in Section 6: Attachments.

Section 2: Description of proposal

Please describe your proposal to enable the EPA and any reader to understand what conditions you are proposing to change or cancel and why. Note that this description may be used on the EPA website to identify your proposal.

This application proposes to amend condition 3 of the Deemed Dumping Consent (Dumping Permit 565A), which is currently worded as follows :

3. Shell Todd Oil Services (“STOS”) will commission a minimum of three surveys of the ground wires (“the surveys”) with a minimum of three years between each survey.

The condition was intended to ensure monitoring was appropriately spaced to document any changes over the period of the permit. Such surveys require specialist equipment to ensure repeatability and allow comparison to previous events. As these resources are often mobilized from other countries (such as vessels and remotely operated vehicles (ROVs)), and these types of activities are generally undertaken within a relatively short window over the summer, it makes sense to take the opportunity to combine work-scopes with other planned activities from a risk reduction, cost and timeliness perspective. This provides benefits in aspects such as reduced mobilization costs and exposure.

In January/February 2018 Shell Taranaki Limited have a portfolio of planned ROV activities in the Maui Field, which includes structural and pipeline inspections for example. The vessel and ROV used for this work would be suitable to undertake a survey of the ground wires, however the timing would be less than the three years required by the current condition by approximately 2 months.

Undertaking the survey at such a time does not materially affect the intent of ensuring there is appropriate spacing between each event through the life of the permit, and has no environmental effect.

It is therefore proposed to reword the consent condition to allow some flexibility in timing, while still meeting the intent of “spacing” the surveys.

Section 3: Impact assessment

Please complete the tables below. Your answers must contain information in such detail as corresponds to the scale and significance of the effects that the change or cancellation to the condition(s) of consent may have on the environment and existing interests, and in sufficient detail to enable the EPA and people whose existing interests are or may be affected to understand the nature of the change or cancellation to the condition(s) effects on the environment and existing interests.

You may attach additional information to support or supplement your answers. Clearly describe all attachments in Section 6. If a section is considered not relevant to your application to change or cancel a condition(s) of consent please note the rationale.

The EPA must be satisfied that you have made a reasonable effort to identify both the persons whose existing interests are likely to be affected and the effects of the activity on the environment and existing interests.

39(1)(a)

Describe the change or cancellation of each condition for which consent is sought (list each condition separately)

Change of condition	
Condition number	3
Original wording	<i>3. Shell Todd Oil Services ("STOS") will commission a minimum of three surveys of the ground wires ("the surveys") with a minimum of three years between each survey.</i>
Proposed wording	<i>3. Shell Taranaki Limited will commission a survey within the calendar year 2018, and a third and final survey within the calendar year 2021</i>
Rationale for change	To allow the surveys to be undertaken in alignment with other planned activities using the same or similar resources required to undertake the activity (which provides cost, risk reduction and scheduling benefits), at a frequency which does not have a material impact with respect to the intent of spacing surveys through the life of the permit.

Cancellation of condition	
Condition number	
Rationale for cancelling	

39(1)(b)

Describe the current state of the area where your consented activity is undertaken and the environment surrounding the area

Refer to original Dumping Permit Application

39(1)(c) Identify persons whose existing interests are likely to be adversely effected by the change or cancellation of condition(s)	None identified
39(1)(d) Identify the effects the change or cancellation of condition(s) on the environment and existing interests (including cumulative effects and effects that may occur in New Zealand or in the sea above or beyond the continental shelf beyond the out limits of the EEZ)	None identified
39(1)(e) Identify the effects of the change or cancellation of condition(s) on the biological diversity and integrity of marine species, ecosystems, and processes	None identified
39(1)(f) Identify the effects of the change or cancellation of condition(s) on rare and vulnerable ecosystems and habitats of threatened species	None identified
39(1)(g) Describe any consultation undertaken with people described in 39(1)(c) and specify those who have given written approval to the change or cancellation of condition(s)	N/A
39(1)(h) Include copies of any written approvals to the change or cancellation of condition(s)	<input type="checkbox"/> Attached <input checked="" type="checkbox"/> Not applicable
39(1)(i) Specify any possible alternative locations for, or methods for undertaking, the activity that may avoid, remedy, or mitigate any adverse effects arising from the change or cancellation of condition(s)	N/A
39(1)(j) Specify the measures that you intend to take to avoid, remedy, or mitigate the adverse effects identified arising from the change or cancellation of condition(s)	N/A
39(2) Describe the effects: <ul style="list-style-type: none"> of the activity on human health (for a marine discharge or dumping consent) on human health that may arise from the effects of the activity on the environment (for any other application) 	Refer to original Dumping Permit Application
39(5) Specify any measures required by other marine management regimes or the HSE Act 2015 that may have the effect of avoiding, remedying or mitigating the adverse effects	N/A
Reg 36(b) Describe any alternative method of disposal that could be used	N/A
Reg 36(c) Specify any practical opportunities to reuse, recycle, or treat the waste	N/A

Section 4: Information required by section 59 of the EEZ Act

Please provide information relevant to your application to assist the decision-makers assess your application against the matters described in section 59(2) of the EEZ Act. This will minimise the need for the EPA to request further information. If the application is for a marine discharge consent, section 59(2A) needs to be taken into account. If the application is for a marine dumping consent, section 59(2B) needs to be taken into account.

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Section 5: Associated applications, consents, permits and/or licences

List **all** associated authorisations issued or required to perform the activities subject to this application.

Activity	Consent authority with reference if applicable	Authorisation granted? (Yes / No)
ROV inspection	EPA – Maui Marine Consent EEZ000010	Yes

Section 6: Attachments

List **all** documents submitted with the application.

No.	Document name	Relevant Section/page reference
1		
2		



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