



# Office of Hon Simon Bridges

MP for Tauranga

Minister of Energy and Resources

Minister of Labour

Associate Minister for Climate Change Issues

10 JUN 2013

ERSB12-13/332

Alex Harris

fyi-request-806-606cabbd@requests.fyi.org.nz

Dear Alex

Thank you for your email of 3 May 2013, requesting, under the Official Information Act 1982 (OIA):

*"All advice and communications received on the proposed mining protest ban. I am particularly interested in finding out where this idea came from, so I am seeking not just communications from within government, but particularly those from outside government at the beginning of the policy process."*

I attach the following document which is released in full:

Paper title	Date
Cabinet Paper	20/3/13

I attach the following documents which are released in part, with sections withheld because they are out of scope, or in order to protect the privacy of natural persons (section 9(2)(a) OIA), or in order to maintain the confidentiality of advice tendered by Ministers of the Crown and officials (section 9(2)(f)(iv) OIA), or to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty (section 9(2)(g)(i) OIA):

Paper title	Date
Email from Minister Joyce's office to my office regarding Minister's Joyce's meetings with PEPANZ and Shell, and attached Shell document	4/9/12
Email correspondence between the Ministry of Business, Innovation and Employment (the Ministry) and my office, referring to an attached draft Cabinet Paper, "Protection of offshore petroleum and mineral activity from unlawful	15/10/12



Paper title	Date
interference" (the draft Cabinet Paper is withheld under section 9(2)(f)(iv) and 9(2)(g)(i) OIA)	
Email correspondence between the Ministry and my office, referring to an attached draft Cabinet Paper, "Protection of offshore petroleum and mineral activity from unlawful interference" (the draft Cabinet Paper is withheld under section 9(2)(f)(iv) and 9(2)(g)(i) OIA)	22/11/12
Email from the Ministry to my office	7/12/12
Cabinet Minute of Decision	4/3/13
Briefing from the Ministry to me: "Meeting with Greenpeace"	21/3/13
Email from the Ministry to my office	26/3/13
Email from the Ministry to my office	27/3/13
Email from the Ministry to my office	2/4/13
Email correspondence between the Ministry and my office attaching briefing on SOP205	5/4/13
Email from the Ministry to my office attaching Regulatory Impact Statement	11/4/13
Email from the Ministry to my office attaching suggested SOP ministerial response	12/4/13
Email from the Ministry to my office	17/4/13
Email from the Ministry to my office	24/4/13
Email from the Ministry to my office	24/4/13

You have the right under section 28(3) of the OIA to complain to the Ombudsman about my decision not to disclose some of the information you have requested.

Yours sincerely



Hon Simon Bridges  
**Minister of Energy and Resources**



OFFICE OF THE MINISTER  
OF ENERGY AND RESOURCES

The Chair  
Cabinet Legislation Committee

**Protection of offshore petroleum and mineral activity from  
unlawful interference – Supplementary Order Paper to Crown  
Minerals (Permitting and Crown Land) Bill**

**Proposal**

1. I propose tabling a Supplementary Order Paper to the Crown Minerals (Permitting and Crown Land) Bill introducing new offences, penalties, and enforcement powers to protect offshore petroleum and mineral activity from unlawful interference.

**Policy**

2. The Crown Minerals (Permitting and Crown Land) Bill (the Bill) is the culmination of a review of the Crown Minerals Act regime, designed to improve the operation and effectiveness of the regime. It will provide New Zealanders will greater confidence in how the government is allocating rights to Crown-owned minerals, and how it is managing and regulating those rights. In addition to the Bill, amendments are proposed to the minerals programmes and regulations that make up the regime.
3. On 4 March 2013, Cabinet agreed to create two offences, and associated penalties, under the Crown Minerals Act 1991 (the Act) [CAB Min (13) 6/12] as follows:
  - a. an offence of intentional damage to, and interference with, mining structures and vessels, and interference with their activities being carried out under a Crown Minerals Act permit, with a penalty of imprisonment of up to 12 months or a fine not exceeding \$50,000, or in the case of a body corporate, a fine not exceeding \$100,000, and
  - b. an offence of strict liability of contravention of a notified minimum non-interference distance, with a penalty of a fine of up to \$10,000.
4. Cabinet also agreed that a New Zealand Police officer, or officer in command of a New Zealand Defence Force vessel (and any person under his or her command):
  - a. shall be enforcement officers, and
  - b. can board ships without a warrant, detain and arrest a person who is found committing an offence, and detain a vessel
5. Cabinet invited the Minister of Energy and Resources to issue drafting instructions to Parliamentary Counsel Office to amend the Bill to implement the above decisions. A Supplementary Order Paper (SOP) has been prepared and is attached. I propose to table this SOP as soon as possible, subject to minor or technical changes.



6. The SOP also contains minor or technical amendments to the Bill as reported back by the Commerce Committee.

### **Regulatory Impact Analysis**

7. Regulatory Impact Analysis requirements applied to these proposals and a Regulatory Impact Statement was prepared.

### **Consultation**

8. The intention to consider additional legal measures to protection offshore petroleum and mineral activity from unlawful interference was made clear in the first reading speech on the Crown Minerals (Permitting and Crown Land) Bill.
9. The Ministry of Business, Innovation and Employment, consulted with the Ministry of Transport, Ministry of Foreign Affairs and Trade, Maritime New Zealand, New Zealand Defence Force, the Ministry of Justice, Ministry for the Environment, Land Information New Zealand, New Zealand Police Legal Services, and Crown Law Office on the development of the policy and on this paper.
10. The upstream oil and gas industry has sought a more robust government response to threats of, and actual, direct protest action, but has not been consulted about these proposals.
11. There has been no public consultation.

### **Binding on the Crown**

12. The Act is binding on the Crown, neither the Bill nor the SOP change this provision.

### **Creating new agencies or amending the law relating to existing agencies**

13. The legislation will not create any new agencies.

### **Allocation of decision making powers**

14. The Bill amends the sections of the Act that set out the functions of the Minister and the functions of the chief executive.
15. The SOP gives the New Zealand Police and New Zealand Defence Force enforcement functions that they do not currently have under the Crown Minerals Act.
16. The consent of the Attorney-General is required before proceedings for an offence created by the SOP can be brought against a person on a foreign ship.

### **Associated regulations**

17. Regulations will not be needed to bring the Bill into operation. However it is intended that amended regulations and minerals programmes, made under the Act, will be commenced at the same time as the amended legislation.
18. The amended regulations will primarily update the provisions relating to fee payments, royalty payments, and reporting requirements for permit holders.
19. The SOP does not change these provisions.





## Definition of Minister/department

19. The Bill includes definitions of Minister and chief executive as follows:
- Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act.
  - Chief executive means the chief executive of the department that, with the authority of the Prime Minister, is responsible for the administration of this Act.
20. The SOP does not change these provisions.

## Commencement of legislation

21. The legislation will come into force by Order in Council. This is appropriate as the timing of the commencement will need to be coordinated with the commencement of the amended regulations and minerals programmes. It is expected that enactment will occur around the time the 2013 petroleum block offer is opened for bidding, currently scheduled for late April 2013.

## Parliamentary Stages

22. The Commerce Committee reported the Bill back to the House on 18 March 2013. I intend that the Bill be passed by the end of April.
23. The SOP should be tabled as soon as possible and prior to the Committee of the whole House stage for the Bill.

## Recommendations

24. The Minister of Energy and Resources recommends that the Committee:
- Note** that the Crown Minerals (Permitting and Crown Land) Bill was reported back to the House by the Commerce Committee on 18 March 2013;
  - Note** that the intended timeframe for enactment of the Bill is late April 2013;
  - Note** that the Bill is designed to improve the operation and effectiveness of the Crown Minerals Act regime;
  - Note** that the attached Supplementary Order Paper will introduce new offences, penalties, and enforcement powers to protect offshore petroleum and mineral activity from unlawful interference;
  - Approve** the attached Supplementary Order Paper, subject to the final approval of the government caucus;
  - Authorise** the Minister of Energy and Resources to make minor or technical changes to the attached Supplementary Order Paper prior to tabling.



Hon Simon Bridges  
Minister of Energy and Resources

18 / 3 / 2013



House of Representatives  
**Supplementary Order Paper**

**Tuesday, 26 March 2013**

**Crown Minerals (Permitting and Crown Land) Bill**

*Proposed amendments*

Hon Simon Bridges, in Committee, to move the following amendments:

*Clause 2*

In *clause 2(2)(b)*, replace “day” (line 15 on page 7) with “date”.

*Clause 8*

In *clause 8(1)*, after the new definition of consent authority (after line 16 on page 9), insert:

“continental shelf has the same meaning as in section 2(1) of the Continental Shelf Act 1964

Delete *clause 8(3)* (lines 28 and 29 on page 11).

Replace *clause 8(4)* (lines 30 to 33 on page 11) with:

(4) In section 2(1), replace the definition of enforcement officer with:

“enforcement officer,—

“(a) other than for the purposes of sections 101A to 101C, means a person appointed under section 99A:

“(b) for the purposes of sections 101A to 101C, has the meaning given by section 101C(6)”.

*Clause 15: new section 21*

In *clause 15, new section 21(2)(a)*, replace “19(1)” (line 3 on page 25) with “19(1)”.

*Clause 16: new section 25*

In *clause 16, new section 25(3)(c)*, replace “name” (line 22 on page 29) with “names”.



*Clause 17: new section 27A*

In *clause 17, new section 27A(3)*, replace “and this Act,” (line 1 on page 31) with “, this Act, and the regulations,”.

*Clause 21: new section 33AA*

In *clause 21, new section 33AA(1)*, replace “under a permit” (lines 6 and 7 on page 35) with “and the activity is an activity of a type authorised under a permit”.

In *clause 21, new section 33AA(2)*, replace “The” (line 8 on page 35) with “Despite the activity being authorised under a permit, it”.

In *clause 21, new section 33AA(2)(a)*, replace “consent” (line 10 on page 35) with “consent (in respect of the requirements of the Health and Safety Employment Act 1992 or the regulations made under that Act)”.

*Clause 29: new section 53(3)*

In *clause 29, new section 53(3)(a)*, delete “, as defined in section 2(1) of the Continental Shelf Act 1964” (lines 4 and 5 on page 56).

*Clause 30: new section 54(3)*

In *clause 30, new section 54(3)(a)*, delete “, as defined in section 2(1) of the Continental Shelf Act 1964” (lines 19 and 20 on page 56).

*Clause 38: new section 90*

In *clause 38, new section 90(7)(b)*, after “tender process” (line 33 on page 68), insert “for exploration permits”.

*Clause 44: new section 99CA*

In *clause 44, new section 99CA*, after “this Act” (line 34 on page 79), insert “by enforcement officers”.

*New clause 45A*

After *clause 45* (after line 17 on page 35), insert:

**45A New sections 101A to 101C inserted**

After section 101, insert:

**“101A Interpretation**

**In sections 101B and 101C,—**

“**exclusive economic zone** has the same meaning as in section 2(1) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

“**foreign ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994

“**master** has the same meaning as in section 2(1) of the Maritime Transport Act 1994

“**offshore area** means any area within the territorial sea or exclusive economic zone that is on or above the continental shelf



“permitted prospecting, exploration, or mining activity means an activity authorised under a prospecting, exploration, or mining permit

“ship has the same meaning as in section 2(1) of the Maritime Transport Act 1994

“specified non-interference zone means a zone specified by the chief executive in accordance with **section 101B(6) to (8)**.

“structure—

“(a) means any fixed, moveable, or floating structure or installation; and

“(b) includes a petroleum pipeline, petroleum pumping station, petroleum tank station, or petroleum valve station.

“101B Interfering with structure or operation in offshore area

“(1) A person commits an offence if the person intentionally engages in conduct that results in—

“(a) damage to, or interference with, any structure or ship that is in an offshore area and that is, or is to be, used in mining operations or for the processing, storing, preparing for transporting, or transporting of minerals; or

“(b) damage to, or interference with, any equipment on, or attached to, such a structure or ship; or

“(c) interference with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or ship.

“(2) A person commits an offence if—

“(a) the person is the master of a ship that, without reasonable excuse, enters a specified non-interference zone for a permitted prospecting, exploration, or mining activity; or

“(b) the person leaves a ship and, without reasonable excuse, enters a specified non-interference zone for a permitted prospecting, exploration, or mining activity.

“(3) In prosecuting an offence against **subsection (2)**, it is not necessary for the prosecution to prove that the person intended to commit the offence.

“(4) A person who commits an offence against **subsection (1)** is liable on summary conviction—

“(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000;

“(b) in the case of a body corporate, to a fine not exceeding \$100,000.

“(5) A person who commits an offence against **subsection (2)** is liable on summary conviction to a fine not exceeding \$10,000.





- “(6) For the purposes of **subsection (2)**, the chief executive may specify a non-interference zone by notice published in a fortnightly edition of the *New Zealand Notices to Mariners* (under the Maritime Rules Part 25).
- “(7) A notice must specify—
- “(a) the permitted prospecting, mining, or exploration activity to which the non-interference zone relates; and
  - “(b) the locality of the activity; and
  - “(c) the area of the non-interference zone to which the activity relates (which may be up to 500 metres from any point on the outer edge of the structure or ship to which the activity relates, or if there is any equipment attached to the structure or ship, 500 metres from any point on the outer edge of the equipment);
  - “(d) the period (which may be up to 3 months) for which the notice has effect;
- “(8) The chief executive, when determining the area of a non-interference zone for the purposes of a notice, must take into account the nature of the activity, including the size of any structure or ship to which the activity relates and any equipment attached to the structure or ship necessary for the carrying out of the activity.
- “(9) No proceedings for an offence against this section may be brought in a New Zealand court in respect of a contravention of this section on board, or by a person leaving, a foreign ship without the consent of the Attorney-General.

#### 101C Powers of enforcement officers

- “(1) An enforcement officer who has reasonable cause to suspect that a person is committing, has committed, or is attempting to commit an offence against **section 101B** may do 1 or more of the following things:
- “(a) stop a ship within a specified non-interference zone and detain the ship;
  - “(b) remove any person or ship from a specified non-interference zone;
  - “(c) prevent any person or ship from entering a specified non-interference zone;
  - “(d) board a ship (whether within a specified non-interference zone or otherwise), give directions to the person appearing to be in charge, and require the person to give his or her name and address;
  - “(e) without warrant, arrest a person.
- “(2) If an enforcement officer described in **subsection (3)(b)** or **(c)** arrests a person under **subsection (1)(e)**, the enforcement



- officer must cause the person to be delivered into the custody of a constable as soon as practicable.
- “(3) An enforcement officer who exercises a power under this section may be accompanied by any person or persons reasonably necessary to assist the enforcement officer to exercise the power.
- “(4) A person who provides assistance under **subsection (3)** may exercise the powers provided to an enforcement officer under **subsection (1)(a) to (d)**.
- “(5) No enforcement officer or person called upon to assist an enforcement officer, who does an act, or omits to do an act, when exercising a power under this section is under any civil or criminal liability in respect of the act or omission, unless the person has acted, or omitted to act, in bad faith.
- “(6) For the purposes of this section, the following persons are enforcement officers:
- “(a) every constable;
  - “(b) every person in command of a ship of the New Zealand Defence Force;
  - “(c) every person acting under the command of a person described in **paragraph (b)**.”

*Clause 71*

In *clause 71(1E)*, after “and (4)” (line 21 on page 108), insert “replace”.

*Schedule 1A*

In *Schedule 1A*, new *Schedule 1*, heading to *clause 6*, delete “or change to permit” (line 28 on page 114).

In *Schedule 1A*, new *Schedule 1*, replace *clause 3(6) and (7)* (lines 1 to 14 on page 113) with:

- (6) Any valid action taken in anticipation of, or as part of, offering a permit for allocation by public tender under an old minerals programme (including any consultation) must be treated for all purposes as complying with any requirements imposed in relation to those actions by—
- (a) the principal Act (as amended by the Amendment Act) in respect of those action; or
  - (b) any minerals programme approved under new **Part 1A** in place of the old minerals programme.
- (7) If the Minister has offered permits for allocation by public tender under an old minerals programme, that process must be continued and completed under the principal Act (as amended by the Amendment Act) and any minerals programme approved under new **Part 1A** in place of the old minerals programme.



*Schedule 4*

In *Schedule 4*, item relating to the Search and Surveillance Act 2012, item relating to **99C**, after “118 and 119” (page 136), insert “in the case of an enforcement officer”.

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**Explanatory note**

This Supplementary Order Paper amends the Crown Minerals (Permitting and Crown Land) Bill in 2 respects. First, it makes minor or technical amendments to the Bill to correct errors or clarify provisions. Secondly, it inserts a *new clause 45A* that establishes 5 new offences against the Crown Minerals Act 1991 as follows:

- damaging or interfering with a structure or ship that is in an offshore area and that is used or is to be used in mining operations or for the processing, storing, preparing for transporting, or transporting of minerals;
- damaging or interfering with any equipment on, or attached to, such a structure or ship;
- interfering with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or ship;
- being a master of a ship entering an area specified by notice published in a fortnightly edition of the *New Zealand Notices to Mariners* as an area into which a ship must not enter, without reasonable excuse;
- leaving a ship and entering such an area without reasonable excuse.

The last 2 offences listed are strict liability offences (a strict liability offence being one where it is not necessary for the prosecution to prove that the person concerned intended to commit the offence).

Section 603 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Australia), contains an offence provision that covers both fixed platforms and mobile exploration facilities (for example, survey vessels and drilling rigs). This provision has been used as a basis for the new offences.

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OUT OF SCOPE

**From:** Withheld under s 9(2)(a) OIA  
**Sent:** Monday, 22 April 2013 8:51 a.m.  
**To:** Withheld under s 9(2)(a) OIA  
**Subject:** FW: Minister Joyce's meetings with PEPANZ & Shell  
**Attachments:** SL7.2-copie12090411210.pdf

At last I have the attachment for you ☺

Kind regards

Withheld under s 9(2)(a) OIA

EA to Bruce Parkes | General Manager – Resources, Energy and Communications Branch | Infrastructure & Resource Markets | Ministry of Business, Innovation & Employment

Withheld under s 9(2)(a) OIA

33 Bowen St, PO Box 1473, Wellington

Think before you print: 1 ream of paper = 6% of a tree!

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**From:** Jane Cameron [<mailto:Jane.Cameron@parliament.govt.nz>]  
**Sent:** Tuesday, 4 September 2012 11:30 a.m.  
**To:** David Binnie; Bruce Parkes; s 9(2)(a); David Simel  
**Cc:** Jamie Gray; Andrew Falloon (MIN); s 9(2)(a)  
**Subject:** Minister Joyce's meetings with PEPANZ & Shell

Dear All,

Minister Joyce had back to back meetings with David Robinson from Pepanz and then Rob Jager and Chris Kilby from Shell this morning. To follow a general overview of issues canvassed and a key action arising relating to the BGA Resources Progress Report.

- At a high level the meetings touched on a range of issues relating to the growth of the industry in NZ (see scanned document tabled by Shell attached). At both meetings reps reiterated the industry's desire to interact closely with "senior Ministers" on a forward path.
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OUT  
OF  
SCOPE

Thanks,  
Jane.

Jane Cameron | Private Secretary

Office of Hon Steven Joyce | Minister for Economic Development

7.2 Beehive, Parliament Buildings, Private Bag 18041, Wellington 6160, New Zealand | T: 04 817 9893 | M: 029 771 0966 | F: 04 817 6513 | E: [jane.cameron@parliament.govt.nz](mailto:jane.cameron@parliament.govt.nz) | W: <http://www.beehive.govt.nz> and <http://www.parliament.nz>

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- o It is also perceived that there appears to be insufficient legal authority to enforce rights in the courts if illegal activity takes place – Petrobras case as a case in point.

OUT OF

**Our Proposal**

SCOPE

Thought be given to ensuring that practice meets words to ensure that legitimate rights outside of 12 nautical miles can be protected in law and demonstrative evidence that there is sufficient physical capacity to protect legitimate rights.

OUT  
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SCOPE

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Out of scope

From:  
Sent:  
To:  
Subject:  
Attachments:

Out  
of  
Scope

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From: Withheld Under s 9(2) (a) OIA  
Sent: Monday, 15 October 2012 2:02 p.m.  
To: Jamie Gray  
Cc: Withheld Under s 9(2)(a)  
Subject: FW: Protection for offshore resource exploration/exploitation

Jamie,

This is the paper seeking Cabinet agreement on the proposal to protect seismic vessels from disruptive activities. Couple of points to consider:

- Adding a new offence into the CMA is the recommended approach. This creates an offence to "interfere" with a structure or vessel. It doesn't require specification of an exclusion zone and is a more flexible tool.
- MoT are very reluctant to do this through the Maritime Legislation Bill (it's already highly complicated, and well advanced). This is not to say that it couldn't be done, but it will be easier (and defensible) to use the CMA.
- The Minute agreeing that this work go ahead specified that the Minister of Transport would report back. Since it is recommended that the CMA be changed, the Minister of Energy and Resources should sign the paper. Do we need to check with Cabinet office on the protocols with changing the Minister responsible for the report back?
- The weekly report indicates EGI consideration on 24 October (TBC). This is to get it in front of the Commerce Committee as soon as possible. This would require the Minister to submit this week. We will have the paper and RIS ready (just) close of business tomorrow but this may not leave enough time for Ministerial consultation. The RIS will not have been considered by the panel. Could you check what timing we should realistically aim for?

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From: Withheld Under s 9(2) (a)  
Sent: Friday, 12 October 2012 4:46 p.m.  
To: Withheld Under s 9(2) (a)  
Cc: [redacted]  
Subject: Protection for offshore resource exploration/exploitation

All,

Thanks for your various contributions.

I attach a first draft of the Cabinet paper which the Minister of Transport is to take to Cabinet. Grateful for any comments - ideally in tracked changes - by close on Monday 15<sup>th</sup>.

We discussed a possible meeting on the Tuesday to finalise the paper - happy to arrange that if you would find that helpful, or to proceed through further correspondence. We will work to produce an accompanying RIS and circulate that as soon as possible.

I'm assuming that MoT will arrange the lodging of the paper with the various Committees. We will discuss the draft with our Minister early next week and suggest he discuss it with Minister Brownlee.

Regards

Withheld under s 9(2)(a)

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OUT OF SCOPE

**From:** WITHHELD UNDER S9(2)(a) OIA  
**Sent:** Thursday, 22 November 2012 6:12 p.m.  
**To:** Jamie Grav  
**Cc:** Withheld under s 9(2)(a); Alice Hume  
**Subject:** FW: Protection for offshore resource exploration/exploitation

Jamie,

Withheld under

Sections 9(2)(f)(iv)

and

9(2)(g)(i) OIA

Happy to discuss further, of course.

Withheld under s9(2)(a) OIA

| Acting Principal Advisor, Resources Group | Energy & Communications Branch

Ministry of Economic Development | Level 9, 33 Bowen Street | PO Box 1473 | Wellington

DDI: Withheld under  
Mobile: s 9(2)(a)  
Fax: 04 473 7010 OIA  
Email: ---



Ministry of Business,  
Innovation & Employment

Web: [www.med.govt.nz](http://www.med.govt.nz)



Out of scope

**From:** Withheld under s 9(2)(a)  
**Sent:** Friday, 7 December 2012 3:50 p.m.  
**To:** Jamie Gray  
**Cc:** Withheld under s 9(2)(a) Alice Hume  
**Subject:** interference zones for seismic vessels

Jamie,

At Tuesday's meeting we discussed the seismic vessel interference Cabinet paper. The Minister asked about the distance we're proposing to introduce for the interference zone (this had been one of the main points of conversation at EGI). The below clarifies the proposal.

The proposal is to provide for establishment a specified non-interference distance of up to 500 metres. The distance would be established on a case by case basis by NZP&M – a smaller distance is allowed if considered appropriate. The distance, and the period and area of the activity to be protected, would be notified in the "New Zealand Notice to Mariners".

An offence would be committed when:

1. a ship comes within the minimum distance, without reasonable excuse; or
2. any person that leaves a ship comes within the minimum distance, without reasonable excuse.

This distance is the same as provided in UNCLOS Article 60, which provides for coastal states to establish exclusion zones around fixed offshore installations of a distance not exceeding 500 metres.

Withheld  
under s 9(2)(a)

... Acting Principal Advisor, Resources Group | Resources, Energy and Communications Branch  
Ministry of Business, Innovation and Employment | Level 9, 33 Bowen Street | PO Box 1473 | Wellington

DDI: 0  
Mobile:   
Fax: 04 473 7010  
Email:   
Web: [www.med.govt.nz](http://www.med.govt.nz)

Withheld  
under  
s 9(2)(a)



Ministry of Business,  
Innovation & Employment

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# Cabinet

CAB Min (13) 6/12

Copy No: 20

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Protection of Offshore Petroleum and Mineral Activity from Unlawful Interference

Portfolio: Energy and Resources

On 4 March 2013, Cabinet:

- 1 **noted** the risks of attempts to interfere with lawful activities which have been granted permits under the Crown Minerals Act 1991 (the Act);
- 2 **noted** the gaps and ambiguities in the current legal framework which prevent the protection of such lawful activities;
- 3 **agreed** to create two offences under the Act, as follows:
  - 3.1 one of intentional damage to, and interference with, mining structures and vessels, and interference with their activities being carried out under an Act permit;
  - 3.2 one of strict liability of contravention of a notified minimum non-interference distance;
- 4 **agreed** that:
  - 4.1 the penalties for the first offence be imprisonment of up to 12 months or a fine not exceeding \$50,000 or, in the case of a body corporate, a fine not exceeding \$100,000;
  - 4.2 the penalty for the second offence be a fine of up to \$10,000;
- 5 **agreed** that in relation to the two offences, a New Zealand Police officer or officer in command of a New Zealand Defence Force vessel (and any person under his or her command):
  - 5.1 shall be enforcement officers;
  - 5.2 can board ships without a warrant, detain and arrest a person who is found committing an offence, and can detain a vessel;
- 6 **noted** that because these powers might be exercised in relation to a foreign vessel, clear operational guidelines will be developed to ensure compliance with international law;



- 7 invited the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to amend the Crown Minerals (Permitting and Crown Land) Bill (the Bill) to implement the above decisions;
- 8 noted that the amendments will be included in the Bill through a Supplementary Order Paper tabled at the committee of the whole House stage.

*for* Withheld under s 9(2)(a) OIA  
 Secretary of the Cabinet

Reference: CAB (13) 107

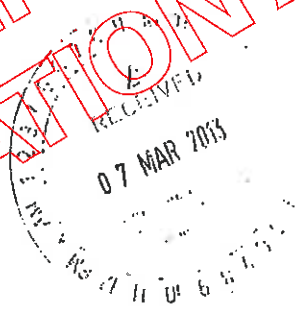
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OR

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In-confidence

### Meeting with Greenpeace

To	Hon. Simon Bridges	Priority	Medium
Date	21 March 2013	Deadline	27 March 2013

OUT

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# OUT OF SCOPE

## Offshore activities under CMA permits - protection from interference

- 18 The Cabinet agreed on 4 March to establish new offences of unlawful interference with offshore petroleum and mineral activities, and damage to structures and vessels used for these activities. The offences will be implemented by amending the Crown Minerals Act 1991 via inclusion in the Crown Minerals (Permitting and Crown Land) Bill.
- 19 At the time of preparing this briefing, it is not yet clear whether the SOP that will give effect to these proposals will have been introduced to the House prior to your meeting with Greenpeace. Therefore, it is up to your discretion whether to mention these proposals at the meeting.

## Background

- 20 The Government has recognised the current and potential value of responsible development of Crown mineral and petroleum resources, and has undertaken a range of actions to facilitate such development, including the introduction of the Crown Minerals (Permitting and Crown Land) Bill to amend the Crown Minerals Act 1991 (CMA).
- 21 There have been attempts to disrupt lawful mining and related activities with the aims of generating publicity through protest and of preventing in particular the exploration and drilling phases of development. Such protests through direct action can impose significant costs on companies carrying out activities under permits, and can bring health and safety and environmental risks. Assurance that lawful activities can be carried out without interference is a necessary part of establishing a predictable investment climate without avoidable risks.

In-confidence

- 22 Recent events have demonstrated gaps in New Zealand's legal framework in particular in protecting the undertaking of lawful activities beyond the 12 nautical mile (nm) limits of the territorial sea and within our Exclusive Economic Zone (EEZ) and above the continental shelf. In this area, rights and obligations are governed by the United Nations Convention on the Law of the Sea (UNCLOS) and other international agreements.
- 23 There is no intention to stifle legitimate protest action, but rather to prevent dangerous and disruptive actions which would prevent lawful activities which have received a permit under the Crown Minerals Act (CMA) following due process.
- 24 There will be two new offences. The first offence would relate to intentional interference with offshore<sup>7</sup> petroleum and mineral activities, and damage to structures or vessels used in such activities. It would be similar to a current Australian offence provision in section 603 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006.
- 25 A person will commit this offence if he/she intentionally:
- damages, or interferes with, any structure or vessel that is in an offshore area and that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum or minerals; or
  - damages, or interferes with, any equipment on, or attached to, such a structure or vessel; or
  - interferes with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or vessel.
- 26 The proposed penalty is imprisonment of up to 12 months or a fine not exceeding \$50,000, or in the case of a body corporate, a fine not exceeding \$100,000.
- 27 The second offence is a strict liability offence applying to ships and individuals interfering with petroleum and mineral activities by coming within a specified non-interference distance to ships or structures engaged in these activities.
- 28 Once MBIE, which administers permits granted under the CMA, has ensured that the activity is notified in the "New Zealand Notice to Mariners", setting out:
- the time period of the activity (of up to 3 months)
  - which area is covered by the activity, and
  - a minimum non-interference distance (of up to 500 metres), determined by NZP&M, from the structure or vessel and any attachment to it;
- then:
- any master of a ship which comes within the minimum distance, without reasonable excuse, will commit an offence,
  - Any person that leaves a ship and then comes within the minimum distance, without reasonable excuse, will commit an offence.

<sup>7</sup> Offshore includes the territorial sea, the EEZ and the continental shelf.

In-confidence

- 29 Fortnightly notices (New Zealand Notices to Mariners) advise mariners of important matters affecting navigational safety and are the authority for correcting New Zealand nautical charts. The New Zealand Hydrographic Authority is authorised to produce the NZ Notices to Mariners under Maritime Rules Part 25. Licensed mariners and other parties covered by Maritime Rule 25 are required to keep their nautical publications corrected using Notices to Mariners.
- 30 The penalty for the strict liability offence will be a fine of up to \$10,000.
- 31 Given the possibility that these powers might be exercised in relation to a foreign vessel, clear operational guidelines will be developed to ensure compliance with international law.
- 32 Under the CMA, the MBIE Chief Executive can appoint enforcement officers. Appointed enforcement officers do not have powers to arrest.
- 33 In relation to these two offences, the CMA will provide that a police officer or officer in command of a New Zealand defence force vessel (and any person under his or her command):
- (a) shall be deemed to be an enforcement officer; and
  - (b) such deemed enforcement officers can board ships without a warrant, detain and arrest a person who is found committing an offence, and detain a vessel.
- 34 Any prosecution of a foreign flagged vessel will occur only with the consent of the Attorney-General.



OUT OF SCOPE

From: Withheld under s 9(2)(a) OIA  
Sent: Tuesday, 26 March 2013 5:45 p.m.  
To: Jamie Gray  
Cc: Alice Hume; Withheld under s 9(2)(a)  
Subject: RE: Protection of offshore petroleum and mineral activity from unlawful interference

Jamie,

We asked Justice for specific comments on BORA issues.

This response is broadly their position during the working up of the proposed offences, that is no particular grounds for concern.

Regards  
Withheld under s 9(2)(a)

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From: Withheld under s 9(2)(a)  
Sent: Tuesday, 26 March 2013 2:21 p.m.  
To: Withheld under s 9(2)(a)  
Cc: Withheld under s 9(2)(a)  
Subject: Re: Protection of offshore petroleum and mineral activity from unlawful interference

Hi Withheld under s 9(2)(a)

Withheld under sections  
9(2)(f)(iv) and  
9(2)(g)(i) OIA

Happy to discuss,

- Withheld under s 9(2)(a)

| Senior Adviser | Rights and Regulatory Team  
Ministry of Justice | Tāhū o te Ture | DDI  
The Vogel Centre | 19 Aitken Street | PO Box 180 | Wellington

>>: Withheld under s 9(2)(a) 3/03/2013 3:57 p.m. >>>

This is the latest version of the SOP which has been considered by LEG Committee and is ready for tabling.

Our Minister has asked for assurance that there are no Bill of Rights Act issues arising, so grateful if you could have a quick look at this version and let us know.

Regards

Withheld under s9(2)(a)

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- (2) do not act on this email in any other way.

Thank you.

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**Subject:**

FW: IMPORTANT: Hon Simon Bridges pencilled for TVNZ Q&A this Sunday

**From:** Withheld under s 9(2) (a)

**Sent:** Wednesday, March 27, 2013 02:38 PM

**To:** Jamie Gray

**Cc:** Andrew Crisp (DBH); Janice Rodenburg (B&H); David Binnie; Bruce Parkes; Vanessa Rawson (MIN) <Vanessa.Rawson@parliament.govt.nz>; Fiona Weightman <Fiona.Weightman@parliament.govt.nz>; Andrew Annakin

**Subject:** RE: IMPORTANT: Hon Simon Bridges pencilled for TVNZ Q&A this Sunday

Hi Jamie

Please find attached:

1. One pager – with key messages on the proactive agenda
2. OUT OF SCOPE
3. Three background documents:
  - Aide memoir on intervention SOP (CMA Review)
  - Aide memoir on intervention SOP (CMA Review)
  - OUT OF SCOPE

OUT OF SCOPE

Thanks and regards

Withheld under s 9(2) (a)

, Senior Advisor – Communications

Economic Development Group | Ministry of Business, Innovation and Employment  
33 Bowen Street | P O Box 1473 Wellington 6140 | [www.mbie.govt.nz](http://www.mbie.govt.nz)

withheld under s 9(2) (a)



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## High level key messages on proactive agenda

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- Protecting offshore activities from intentional interference.

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## **Aide memoir: Interference with vessels engaged in offshore petroleum and activities**

### **Issue**

- 1 The enforcement powers to protect offshore petroleum and minerals activities from intentional interference by an individual or vessel need to be strengthened to provide permit holders with assurance that they will be able to undertake lawful activities.
- 2 An amendment to the Crown Minerals Act will be made to establish new offences.

### **Costs of interference**

- 3 Interference with activities permitted under Crown Minerals permits can impose direct costs to companies by disrupting operations, and can pose health and safety risks.
- 4 New Zealand's reputation for having a predictable and stable regulatory and investment environment may be damaged by this type of interference. The status quo may discourage petroleum and mineral exploration companies to invest and explore in New Zealand.
- 5 The operational cost of seismic data acquisition can range upwards from USD1200 per km for a 2D seismic survey, to USD7000 for a 3D seismic survey.
- 6 A seismic vessel cannot immediately stop if something is in its path and will have to veer off-course in order to avoid the individual or vessel. If the company decides to postpone its operations due to repeated interference, stand-by rates of between 20 and 50% of the cost per km of seismic line will be incurred.
- 7 A deep-water semi-submersible rig can cost up to USD1 million per day. A shallow water rig will cost up to USD500,000 per day. Protest action that directly interferes with rigs will require the company to halt operations and incur stand-by costs.
- 8 The estimated costs to Police and Defence Force during the Elvis Teddy incident were over \$1 million.
- 9 Protest action on drilling rigs (as well as survey vessels) may not only risk the safety of the protesting individuals, but also the safety of workers on-board the seismic vessel or rig.

### **The Elvis Teddy case**

- 10 On 23 April 2011, Elvis Teddy was arrested by Police for operating his fishing vessel in an unsafe manner as part of a flotilla protesting against an underwater seismic survey being conducted by Petrobras off the East Coast.
- 11 Police charged Mr Teddy under the Maritime Transport Act for operating a ship in a manner that caused unnecessary risk both to his own vessel and the Petrobras survey vessel.
- 12 In July 2012, the Tauranga District Court dismissed the charge, finding that the provisions of the Maritime Transport Act do not apply outside the territorial sea. The case was appealed to the High Court, which overturned the decision by concluding that the Maritime Transport Act applies and the Police had jurisdiction to board Mr Teddy's ship, and arrest him.

- 13 The extended legal proceedings emphasise the need for a clearer legal framework and policing and other enforcement powers. Further, the provisions under the Maritime Transport Act do not cover all types of interference that might occur that also result in costs through delays and damage affecting companies carrying out lawful activities, e.g. interfering with seismic streamers.

#### Proposed offences

- 14 The offences to be introduced into the Crown Minerals Act are modelled on those in Australian Offshore Petroleum and Greenhouse Gas Storage Act 2006.
- 15 A person will commit an offence and be liable for imprisonment of up to 12 months or a fine not exceeding \$50,000 (or \$100,000 in the case of a body corporate) if they intentionally:
- damage, or interfere with, any structure or vessel that is in an offshore area and that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum or minerals; or
  - damage, or interfere with, any equipment on, or attached to, such a structure or vessel; or
  - interfere with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or vessel.
- 16 It will also be an offence to, without reasonable excuse, come within a specified non-interference distance of up to 500 metres of ships or structures engaged in petroleum or minerals-related activities. The penalty will be a fine of up to \$10,000.

#### Freedom of expression

- 17 The proposals paper have the potential to limit the freedom of expression affirmed in the New Zealand Bill of Rights Act 1990 as they may discourage individuals from exercising their legitimate right to protest.
- 18 The proposal seeks to balance the right to protest with the right of others to go about their lawful business without interference. In particular, the offence of interference will require the prosecution to prove the intention to interfere with a lawful activity, and the non-interference zone cannot extend more than 500 metres from the vessel.
- 19 The Ministry of Justice and Crown Law have been fully involved in the development of these proposals.

**From:**  
**Sent:**  
**To:**  
**Subject:**

OUT  
OF  
SCOPE

**From:** Withheld under s 9(2)(a)  
**Sent:** Tuesday, 2 April 2013 3:49 p.m.  
**To:** Jamie Gray (MIN) ([Jamie.Gray@parliament.govt.nz](mailto:Jamie.Gray@parliament.govt.nz))  
**Cc:** 'Withheld Under s 9(2)(a)'  
**Subject:** Queries

Jamie,

On the first point, the following is a brief summary from our contact at Defence Forces:

'...a lot of operational support can normally be provided without requiring NZDF personnel to exercise statutory enforcement powers. In such cases we are usually providing platforms from which other agencies can exercise their powers.

There are however cases where legislation empowers NZDF personnel to exercise specific powers. In the context of counter-terrorism, section 9 of the Defence Act contemplates Defence personnel exercising "any power of a member of the Police".

Section 12 of the International Terrorism Emergency Powers Act contemplates Defence personnel exercising emergency powers under that Act "as if that member of the Armed Forces were a constable".

Similarly s 196 of the Fisheries Act deems the officer in command of any NZDF aircraft or vessel to be a fisheries officer for the purposes of duties under that Act, and section 6(1) of the Customs and Excise Act allows the CE of Customs to appoint any person "to perform or exercise any power or function" under that Act, a role which NZDF has the capability to perform.

Defence has also historically undertaken enforcement duties under the Antarctic Marine Living Resources Act.

So there are by no means a shortage of examples whereby Defence personnel can, and have, undertaken an autonomous exercise of enforcement powers (Police or otherwise) in respect of existing statutory provisions...'

On the second, this is the relevant section of the cab paper:

- 1 UNCLoS Article 60 provides for coastal states to establish exclusion zones around offshore installations, extended to a distance not exceeding 500 m from each point of the outer edge of the installation. New Zealand has jurisdiction under s7(1)(a) of the Continental Shelf Act 1964 (CSA) for acts done by all persons "on, under, or above or about any installation or device". This can, at least in principle, provide a basis to apply general New Zealand legislation, including any applicable criminal offences, to those on and around any installation or device. It is possible, but not settled, that this could provide a basis for enforcement against foreign ships.

- 2 In addition, under the CSA, New Zealand can establish safety zones around fixed installations and associated mobile facilities. However, the establishment of such zones requires a fairly lengthy process. Entry into safety zones is prohibited to all but authorised vessels, with a fine of up to \$1,000. The exclusion zones for fixed structures are introduced to aid navigation, i.e. so they can be marked on charts for boats to avoid. There is no provision to establish such zones for vessels undertaking seismic surveys and other petroleum exploration and development activities that do not involve fixed installations.
- 3 The CSA does not provide for establishing zones around vessels. Although in principle there is nothing to prevent the establishment of a safety zone around a device that is connected to a vessel, for example, the seismic hydrophone devices that are pulled behind a survey vessel, this would be unworkable in practice. It would be difficult for a moving safety zone to meet the requirements of legal specificity for an offence to be created, or to meet the requirements of the Continental Shelf Act and UNCLOS that the safety zone "shall not exceed a distance of 500 metres around them, measured from each point of their outer edge". The problem arises due to the need to specify geographical coordinates defined in relation to the sea-bed - so as to allow a position to be marked on a chart - rather than distances in relation to a vessel which may be in motion. It would also only cover vessels that were connected with a "device" and that may not, for example, cover vessels undertaking other exploration activities that did not require such devices.

Let me know if you need anything else.

Regards

Withheld under s 9(2)(a)

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**From:** Withheld under s 9(2)(a) OIA  
**Sent:** Friday, 5 April 2013 9:35 a.m.  
**To:** Jamie Gray  
**Subject:** RE: Crown Minerals (Permitting and Crown Land) Bill  
**Attachments:** Briefing\_for\_the\_Minister\_for\_the\_Committee\_Stage\_of\_the\_Crown\_Minerals\_(Permitting\_and\_Crown\_Land)\_Bill.docx; Clause-by-clause\_summary\_on\_Crown\_Minerals\_(Permitting\_and\_Crown\_Land)\_Bill.docx; Clause-by-clause\_summary\_on\_Supplementary\_Order\_Paper\_205.docx

Hi Jamie

The pack for COWH is ready now. Would you like me to walk it over now or put it in the 11.30 bag?

The 3 attached documents, plus the Bill and SOP 205 are in the pack (available here: <http://legislation.govt.nz/bill/government/2012/0070/latest/versions.aspx>)

Regards

Withheld under s 9(2)(a)  
Senior Policy Advisor, Resource Markets Policy; Resources, Energy and Communications Branch, Infrastructure and Resource Markets Group; Ministry of Business, Innovation & Employment  
DDI + Withheld under s 9(2)(a)

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**From:** Jamie Gray (MIN) [mailto:Jamie.Gray@parliament.govt.nz]

**Sent:** Friday, 5 April 2013 9:23 a.m.

**To:** Alice Hume; Withheld under s 9(2)(a)

**Cc:** I

**Subject:** Crown Minerals (Permitting and Crown Land) Bill

**Importance:** High

Good morning

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Thanks in advance.

Jamie Gray | Private Secretary – Energy and Resources  
Office of Hon Simon Bridges | Minister of Energy and Resources

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## **SOP 205 - Protection from Interference**

The enforcement powers to protect offshore petroleum and minerals activities from intentional interference by an individual or vessel need to be strengthened to provide permit holders with assurance that they will be able to undertake lawful activities.

An amendment to the Crown Minerals Act will be made to establish new offences.

### **Costs of interference**

Interference with activities permitted under Crown Minerals permits can impose direct costs to companies by disrupting operations, and can pose health and safety risks.

New Zealand's reputation for having a predictable and stable regulatory and investment environment may be damaged by this type of interference. The status quo may discourage petroleum and mineral exploration companies to invest and explore in New Zealand.

The operational cost of seismic data acquisition can range upwards from USD1200 per km for a 2D seismic survey, to USD7000 for a 3D seismic survey.

A seismic vessel cannot immediately stop if something is in its path and will have to veer off-course in order to avoid the individual or vessel. If the company decides to postpone its operations due to repeated interference, stand-by rates of between 20 and 50% of the cost per km of seismic line will be incurred.

A deep-water semi-submersible rig can cost up to USD1 million per day. A shallow water rig will cost up to USD500,000 per day. Protest action that directly interferes with rigs will require the company to halt operations and incur stand-by costs.

The estimated costs to Police and Defence Force during the Elvis Teddy incident were over \$1 million.

Protest action on drilling rigs (as well as survey vessels) may not only risk the safety of the protesting individuals, but also the safety of workers on-board the seismic vessel or rig.

### **The Elvis Teddy case**

On 29 April 2011, Elvis Teddy was arrested by Police for operating his fishing vessel in an unsafe manner as part of a flotilla protesting against an underwater seismic survey being conducted by Petrobras off the East Coast.

Police charged Mr Teddy under the Maritime Transport Act for operating a ship in a manner that caused unnecessary risk both to his own vessel and the Petrobras survey vessel.

In July 2012, the Tauranga District Court dismissed the charge, finding that the provisions of the Maritime Transport Act do not apply outside the territorial sea. The case was appealed to the High Court, which overturned the decision by concluding that the Maritime Transport Act applies and the Police had jurisdiction to board Mr Teddy's ship, and arrest him.

The extended legal proceedings emphasise the need for a clearer legal framework and policing and other enforcement powers. Further, the provisions under the Maritime Transport Act do not cover all types of interference that might occur that also result in costs through

delays and damage affecting companies carrying out lawful activities, e.g. interfering with seismic streamers.

### **Proposed offences**

The offences to be introduced into the Crown Minerals Act are modelled on those in Australian Offshore Petroleum and Greenhouse Gas Storage Act 2006.

A person will commit an offence and be liable for imprisonment of up to 12 months or a fine not exceeding \$50,000 (or \$100,000 in the case of a body corporate) if they intentionally:

- damage, or interfere with, any structure or vessel that is in an offshore area and that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum or minerals; or
- damage, or interfere with, any equipment on, or attached to, such a structure or vessel; or
- interfere with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or vessel.

It will also be an offence to, without reasonable excuse, come within a specified non-interference distance of up to 500 metres of ships or structures engaged in petroleum or minerals-related activities. The penalty will be a fine of up to \$10,000.

### **Freedom of expression**

The proposals paper have the potential to limit the freedom of expression affirmed in the New Zealand Bill of Rights Act 1990 as they may discourage individuals from exercising their legitimate right to protest.

The proposal seeks to balance the right to protest with the right of others to go about their lawful business without interference. In particular, the offence of interference will require the prosecution to prove the intention to interfere with a lawful activity, and the non-interference zone cannot extend more than 500 metres from the vessel.

The Ministry of Justice and Crown Law have been fully involved in the development of these proposals.

Supplementary Order Paper 205 – Clause-by-clause summary

This Supplementary Order Paper amends the Crown Minerals (Permitting and Crown Land) Bill. It inserts a new clause 46A which inserts new sections 101A to 101C to the Act

46A	New sections 101A to 101C inserted	<p><b>101A</b></p> <p>New section 101A defines some new terms that are used in new sections 101B and 101C including exclusive economic zone, foreign ship, master, offshore area, permitted prospecting, exploration, or mining activity, ship, specified non-interference zone, and structure.</p> <p><b>101B</b></p> <p>New section 101B establishes 5 new offences against the Crown Minerals Act 1991 as follows:</p> <ul style="list-style-type: none"> <li>damaging or interfering with a structure or ship that is in an offshore area and that is used or is to be used in mining operations or for the processing, storing, preparing for transporting, or transporting of minerals;</li> <li>damaging or interfering with any equipment on, or attached to, such a structure or ship;</li> <li>interfering with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with such a structure or ship;</li> <li>being a master of a ship entering an area specified by notice published in a fortnightly edition of the New Zealand Notices to Mariners as an area into which a ship must not enter without reasonable excuse;</li> <li>leaving a ship and entering such an area without reasonable excuse.</li> </ul> <p>The last 2 offences listed are strict liability offences (a strict liability offence being one where it is not necessary for the prosecution to prove that the person concerned intended to commit the offence).</p> <p>Section 603 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Australia) contains an offence provision that covers both fixed platforms and mobile exploration facilities (for example, survey vessels and drilling rigs). This provision has been used as a basis for the new offences.</p> <p><b>101C</b></p> <p>New section 101C sets out powers of enforcement officers in relation to offences, or suspected offences against new section 101B. It provides that an enforcement officer may:</p> <ul style="list-style-type: none"> <li>stop a ship within a specified non-interference zone and detain the ship</li> <li>remove any person or ship from a specified non-interference zone</li> <li>prevent any person or ship from entering a specified non-interference zone</li> <li>board a ship (whether within a specified non-interference zone or otherwise), give directions to the person appearing to be in charge, and require the person to give his or her name and address</li> <li>without warrant, arrest a person.</li> </ul>
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**From:** Alice Hume  
**Sent:** Thursday, 11 April 2013 10:03 a.m.  
**To:** Jamie Gray  
**Cc:** Withheld under s 9(2)(a) OIA  
**Subject:** SOP 205 RIS  
**Attachments:** Regulatory\_Impact\_Statement\_-\_Protection\_of\_offshore\_petroleum\_and\_mineral\_acti  
vity\_from\_unlawful\_interference\_-\_FINAL\_for\_publishing.docx

Hi Jamie,

It is normal practice for us to make Regulatory Impact Statements available on our website. Treasury has already been in touch to ask where this one is. I think that it would be beneficial to get this out there given the large number of PQs received on this issue.

It is our intention to publish this without redactions. We would like to draw your attention to the Consultation section re. industry, but as discussed with you before, we can support this with the material that PEPANZ provided.

Please confirm that you are comfortable with us proceeding on this basis.

Regards,  
Alice.

Dr Alice Hume | Manager, Resource Markets Policy  
Resources, Energy and Communications Branch | Infrastructure and Resource Markets Group  
Ministry of Business, Innovation & Employment | Level 9, 33 Bowen Street | PO Box 1473 | Wellington

DDI: C Withheld  
Mobile: Under s 9(2)(a)  
Fax: 04 473 7010  
Email:  Ministry of Business,  
Innovation & Employment  
Web: [www.mbie.govt.nz](http://www.mbie.govt.nz)

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# Regulatory Impact Statement

## Protection of offshore petroleum and mineral activity from unlawful interference

### Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE).
- 2 It provides an analysis of options to protect offshore petroleum and minerals activities granted permits under the Crown Minerals Act (CMA) from unlawful interference by an individual or vessel.
- 3 Analysis has been undertaken by MBIE, in consultation with the Ministry of Transport (MoT), Ministry of Foreign Affairs and Trade (MFAT), Land Information New Zealand (LINZ), Maritime New Zealand (MNZ), New Zealand Defence Force (NZDF), the Ministry of Justice (MoJ), New Zealand Police Legal Services (NZPLS) and Crown Law Office (CLO). This consultation has sought to ascertain what legislative framework is best suited to introduce an enforcement power applicable to interference with lawful activities in New Zealand waters, including the territorial sea, the Exclusive Economic Zone (EEZ) and above the continental shelf. There has been no public consultation which limits the information available to feed into the analysis.
- 4 Recent events have demonstrated gaps in New Zealand's legal framework which these changes seek to address. Providing legislative certainty that lawful activities can be carried out without interference will avoid unnecessary risks and ensure a predictable investment climate for industry. No additional costs will be imposed on businesses, or override common law principles. Nor will the changes override or conflict with international law.

Alice Hume

Manager

Resources, Energy and Communications Branch  
Ministry of Business, Innovation and Employment

## Status Quo and Problem Definition

- 5 There are no clear enforcement powers in New Zealand's legal framework to effectively protect offshore<sup>1</sup> petroleum and minerals activities, permitted under the Crown Minerals Act (CMA) regime, from intentional interference by an individual or vessel, that occurs beyond the 12 nautical mile (nm) limits of the territorial sea and within our Exclusive Economic Zone (EEZ) and above the continental shelf.
- 6 Offshore mining and exploration activities for petroleum and minerals are carried out under permits issued through the CMA regime. Intentional interference with activities permitted under the CMA can impose unnecessary costs to companies by disrupting their operations, and can also pose health, safety and environmental risks.
- 7 There have been attempts to disrupt such activities with the aims of generating publicity through protest and of preventing the exploration and drilling phases of development. Protests at sea are more difficult to address and monitor than on-shore, given the nature of the environment as well as the distance from response and emergency infrastructure.

### ***Interference with offshore petroleum and mineral activities***

- 8 Interference with offshore petroleum and mineral activities permitted under the CMA recently occurred off the East Coast of New Zealand, in April 2011. A flotilla protesting against an underwater survey being conducted by oil company Petrobras in the Raukumara Basin, in the EEZ, managed to disrupt the company's activities. The company called-off their survey for 1 - 2 days.
- 9 The actions of the flotilla included several individuals in survival suits entering the water approximately 200 metres in front of the seismic vessel's path, and to the port side. The vessel had to veer starboard in order to avoid the individuals. The individuals were then collected by their boat and the action repeated.
- 10 Elvis Teddy was part of the flotilla, and was arrested by Police on 23 April for operating his fishing vessel in an unsafe manner. He was charged with an offence under section 65(1)(a) of the Maritime Transport Act 1994 (MTA), in that he had operated a ship in a manner that caused unnecessary risk, both to his own vessel and the Petrobras survey vessel.
- 11 In July 2012, the Tauranga District Court dismissed the charge. The Court found that the provisions of section 65(1)(a) of the Maritime Transport Act do not apply in the EEZ, as there is nothing in legislation that confers jurisdiction of that particular section outside the territorial sea.<sup>2</sup> This decision is under appeal. The Raukumara protest also emphasised the practical benefit of establishing clearer policing and other enforcement powers.
- 12 New Zealand's reputation for having a predictable and stable regulatory and investment environment may be damaged by this type of interference, particularly if it continues in the context of the legal uncertainty discussed above. This situation can discourage petroleum and mineral exploration companies to invest and explore in New Zealand waters. It also poses an unnecessary risk to the Government's objectives to attract overseas investment (in what is a competitive market for international capital) and encourage the responsible development of our petroleum resources.

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<sup>1</sup> Offshore includes the territorial sea, the EEZ and the continental shelf.

<sup>2</sup> *Police v Teddy* CRI-2012-470-31



### **Cost of interference**

- 13 There are costs to a company from intentional and unlawful interference with their operations. Such impacts are not the focus of legislation that pertains to maritime health, safety and environmental risks.
- 14 Costs of survey acquisition, as an example, will vary depending on whether it is 2D or 3D seismic lines being acquired (3D is more expensive than 2D) and what the size of the ship and technical equipment on board are. Seismic streamers for instance, that are pulled behind the ship, can be up to 10 km long. The operational cost is calculated per km of seismic line acquired and can range upwards from USD1200 per km for a 2D seismic survey, to USD7000 for a 3D seismic survey.
- 15 Companies would incur costs if:
  - i. Interference causes them to veer off course,
  - ii. the company postpones their operations,
  - iii. the vessel or its technical equipment is damaged.
- 16 A seismic vessel cannot immediately stop if something is in its path - due to the seismic streamers - and will have to veer off-course in order to avoid the individual or vessel. If it veers too far it has to continue to arc and loop back around onto its seismic acquisition trajectory. This can take up to 4 hours and delay activity, which incurs a stand-by cost. Stand-by rates can vary between 20 – 50% of the cost per km of seismic line.
- 17 If the company decides to postpone its operations due to repeated interference the costs will be greater, depending on how many days the vessel is inactive. Stand-by rates will apply.
- 18 Seismic streamers cost up to USD3 million per streamer. Damage to the streamers can occur naturally at sea, for instance from a shark bite, which will have a 6 – 12 hour down time to repair. Stand-by rates apply for this operation. If any damage is caused to the streamers by an act of intentional interference the same costs will apply.
- 19 Drilling rigs are major operations and could be a target of protest action future. A deep-water semi-submersible rig (likely to be used for mining activities in the EEZ) can cost up to USD1 million per day. A shallow water rig will cost up to USD500,000 per day. Protest action that directly interferes with the rig will require the company to render the well safe and stop operations. For example, in the Netherlands a jack-up rig operated by Shell was boarded by protesters. Operations stopped for one day in order for police to arrive and the protesters safely retrieved. This incurred stand-by costs: one-day of stand-by will be approximately half the cost of the rig per day i.e. USD500,000 stand-by per day for a deep-water rig at USD1 million. Additional stand-by costs will incur for the supply boats, personnel and contract staff. These stand-by rates are generally higher for deep-water, and for personnel can be full-rates or 90%.
- 20 Protest action on drilling rigs (as well as survey vessels) may not only risk the safety of the protesting individuals, but also the safety of workers on-board the seismic vessel or rig.
- 21 The deployment of enforcement personnel i.e. the police and NZDF, to an incident of interference with offshore petroleum and minerals activities in the EEZ has significant costs. As an example, the estimated costs to police during the Elvis Teddy are given below in Table 1. The operation lasted 40-60 days, including 12 staff at sea for continuous duty for 42 days.

**Table 1: Estimated police costs for the Teddy case<sup>3</sup>**

Operation	Staff/duration/cost per hr	Total (NZD)
Operations Group	18hrs x \$45,20	813
Intelligence Group	2 staff @ 4hrs per day x 8 weeks	2,892
	1 staff @ 8hrs per day x 6 weeks	10,448
District Intel and liaising	1 staff @ 8hrs per day x 5 days	1,808
Operation Tauranga and Wellington	20 staff x 8hrs	14,464
Operation Deep Sea	12 staff @ 24hrs per day x 42 days x \$45,20	546,739
Accommodation	12 staff x \$120 per night x 6 occasions	8,640
		<b>\$585,804</b>

- 22 NZDF were also involved in the Elvis Teddy case, deploying two Inshore Patrol Vessels (IPVs) for 'Operation Deep Sea.' Costs are given below in Table 2. NZDF personnel crew would be paid regardless of the operation, so additional costs as a result of the Teddy case is the IPV operating cost.

**Table 2: Estimated NZDF costs for Operation Deep Sea**

Inshore Patrol Vessel (IPV) x 2	Duration/cost per day	Total
IPV operating cost	40 sea days x \$8,000 per sea day in ship expenditure x 2	640,000
IPV personnel cost	40 sea days x \$5,500 per sea day in personnel crew cost x 2	440,000
		<b>\$1,080,000</b>

**Existing legislation and regulations**

- 23 There is a lack of clarity around the ability authorities have to ensure the safety of persons and to protect property and the environment in the EEZ. There are two gaps in New Zealand's existing legislation and regulations:
- i. A clear legal framework applicable to vessels or individuals who interfere with lawful activities in the EEZ;
  - ii. The MTA safety related offences in the EEZ/on the continental shelf do not apply to foreign flagged vessels.
- 24 Ordinary New Zealand law and powers of enforcement do extend to actions taken within New Zealand's territorial sea. They do not apply to activities or incidents that take place in the EEZ.

<sup>3</sup> The costs estimated here are restricted to those costs directly involved in the operation and do not consider the cost in terms of having staff deployed at sea and unavailable for normal duties.

- 25 The Maritime Transport Act 1994 (MTA) applies to New Zealand registered vessels, and contains specific criminal jurisdiction with respect to maritime safety and the marine environment. The MTA can apply to offences where dangerous activity involving ships or maritime products takes place, or where there is unnecessary danger caused by holder of a maritime document.
- 26 It is not clear whether the MTA applies to incidents in the EEZ. The offences under the MTA focus on safety in the context of navigation, or are environmentally focussed, and are not necessarily applicable to all incidents of intentional interference with lawful activities. Ascertaining liability for intentional interference is also difficult in terms of maritime legislation, which must be consistent with the "rules of the sea". This includes the requirement that a ship under power (e.g. a survey ship) give way to a ship under sail (e.g. a 'protest' ship) or a fishing vessel.
- 27 There is no 'easy fit' option under the MTA to address (with legal certainty) the actions of individuals who are not immediately associated to a vessel, and who do not clearly endanger another vessel or individual. The provisions in the MTA have an overriding safety purpose and are not designed for situation where an individual enters the water or ascends a rig as an act of intentional interference, in which they first and foremost endanger themselves rather than others.
- 28 There are no provisions to establish exclusion zones for vessels undertaking seismic surveys and other petroleum exploration and development activities that do not involve fixed installations. For offshore installations, the United Nations Convention on the Law of the Sea (UNCLOS) Article 60 provides for coastal states to establish exclusion zones extending to a distance not exceeding 500 m from each point of the outer edge of the installation. Under New Zealand's Continental Shelf Act 1964 (CSA) New Zealand can establish safety zones around fixed installations and associated mobile facilities. Entry into safety zones prohibited to all but authorised vessels, with a fine of up to \$1000.
- 29 In the Teddy case, police had set an exclusion zone around the survey vessel for the safety of the survey and protesters. This had no effect in deterring the defendant from entering this zone. There are no clear penalties (as there would be for an exclusion zone around a fixed installation) or enforcement powers by police. As noted before, the incident took place in the EEZ, where the police do not have ordinary criminal jurisdiction.

## Objectives

- 30 The objectives are to provide an effective, clear deterrent and readily workable operational powers, to act against unlawful interference with lawful offshore petroleum and mineral activities in our EEZ from individuals and from vessels, whether New Zealand or foreign-flagged. It would be consistent with international law and it would cover both temporarily fixed installations and moving vessels. Furthermore, any compliance costs that arise would be minimised.

## Regulatory Impact Analysis

- 31 The Regulatory Impact Analysis identified three options. The options have been assessed against the objectives above, in consultation with MoT, MFAT, LINZ, MNZ, NZDF, MoJ. New Zealand Police Legal Services and CLO.

### ***Option 1: Continuing to use existing safety provisions in the Maritime Transport Act***

- 32 The first option is to use the safety provisions already in the Maritime Transport Act (MTA). This option is the status quo.
- 33 The MTA only applies to New Zealand registered vessels, not individuals, and is concerned with health, safety and environmental risks. The MTA would not apply to foreign vessels. This would mean that a foreign vessel interfering in a lawful activity in the EEZ would be exempt from offences set in the MTA.
- 34 There is uncertainty in this option on whether authorities have the ability to ensure the safety of persons and to protect property and the environment in the EEZ. Addressing this may require changes to the MTA through the Maritime Legislation Bill. It is uncertain whether changes could be made that would encompass all types of intentional interference, as the provisions in the MTA have an overriding safety purpose and are not designed for situation where an individual enters the water.

### ***Cost and benefits***

- 35 As the option is the status quo, costs to permit holders and enforcement agencies set out in paragraphs 13 to 22 could re-occur and be as prolonged.

### ***Risks***

- 36 There is a risk that ambiguity in the legal framework persists under this option. The penalties under the MTA would not necessarily or clearly apply to intentional interference with lawful offshore petroleum and mineral activities. Penalties under the MTA can apply to an individual, operating a New Zealand registered vessel, who commits an offence of a dangerous activity that involves ships or maritime products. This means also, that the act of interference would have to be deemed a health and safety risk.
- 37 The option does not include foreign vessels, and there is a risk that this would provide little deterrence for continued interference. An individual can use a foreign vessel to disrupt lawful activities and not be subject any liability under criminal jurisdiction.

### ***Option 2: Creating exclusion zones around vessels and structures***

- 38 The second option is to create exclusion zones around survey vessels and structures not fixed to the sea-bed. Safety zones already exist for fixed structures through the CSA (for the area beyond the outer limit of the territorial sea to the outer limit of the continental shelf and the EEZ).
- 39 Existing provisions in the CSA apply to fixed installations and vessels connected with the "device." These provisions would be extended to apply to moving vessels that are not associated with a fixed installation, and clarified in regards to temporary structures not fixed to the sea-bed.
- 40 The existing provisions are primarily for navigational purposes and designed to ensure the safety of the structure and other vessels. These zones are clearly demarcated on navigational charts. The fine for entering these zones is low and set at \$1000.

41 From a practical perspective it would be difficult for a moving safety zone to meet the requirements of legal specificity for an offence to be created, or to meet the requirements of the Continental Shelf Act and UNCLOS that the safety zone "shall not exceed a distance of 500 metres around them, measured from each point of their outer edge." A seismic vessel is particularly problematic, given it includes the long seismic streamers towed behind it and is constantly moving. Temporary structures will also be problematic.

### **Cost and benefits**

42 Even if the technical and practical difficulties were surmountable, there would likely be additional administrative burden on companies and government. Companies would have to apply for an exclusion zone to be established and this could be unnecessarily cumbersome and costly. The application process is lengthy and is set in place on a case-by-case by way of regulation. The timeframe is at least 6 months.

### **Risks**

43 The legislation focuses on navigational risks and would not be suitable for incidents of intentional interference. For instance, if a vessel or individual interferes with a vessel with an exclusion zone, there is a risk that the zone would be largely ineffective as a deterrent. It could be argued that the interfering vessel could not reasonably avoid entering the exclusion zone. Or that the boundaries of the exclusion zone could not be reasonably discerned by either party.

44 There is a risk that an exclusion zone would be perceived as interfering with navigation and other rights and freedoms of other States as provided for by UNCLOS. This could occur through accidental breaches, due to the practical difficulties in specifying where an exclusion zone would exist.

45 Under the UNCLOS, fines for entering an exclusion zone are too low to act as deterrence for interference. Entry into safety zones is prohibited to all but authorised vessels, with a fine of \$1,000.

### **Option 3: Creating a new offence**

46 This option would create two new offences. The first offence relates to intentional interference with offshore petroleum and minerals activities and damage to structures or vessels used in such activities. This offence is similar to a current Australian offence provision in s 603 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Commonwealth).

47 A person will commit this offence if they intentionally:

- a. damage or interfere with, any structure or vessel that is in an offshore area and that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum or minerals; or
- b. damage or interfere with, any equipment on, or attached to, such a structure or vessel; or
- c. interfere with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or vessel.

- 48 The proposed penalty is imprisonment of up to 12 months or a fine not exceeding \$50,000, or in the case of a body corporate, a fine not exceeding \$100,000.
- 49 The second offence is a strict liability offence of ships interfering with petroleum and mineral activities through coming too close to activities.
- 50 Once New Zealand Petroleum & Minerals (NZP&M) have ensured that the activity is notified in the "Notice to Mariners", setting out:
- a. the time period of the activity (of up to 3 months)
  - b. which area covered by the activity, and
  - c. a minimum non-interference distance (up to 500 metres), determined by NZP&M, from the structure or vessel and any attachment to it;
- then:
- a. any master of a ship which comes within the minimum distance, without lawful excuse, will commit an offence.
  - b. any person that leaves a ship and then comes within the minimum distance, without reasonable excuse, will commit an offence.
- 51 Fortnightly notices (New Zealand Notices to Mariners) advise mariners of important matters affecting navigational safety and are the authority for correcting New Zealand nautical charts. The New Zealand Hydrographic Authority is authorised to produce the NZ Notices to Mariners under Maritime Rules Part 25.
- 52 Licensed mariners and other parties covered by Maritime Rule 25 are required to keep their nautical publications corrected using Notices to Mariners.
- 53 The penalty for the strict liability offence will be a fine of up to \$10,000.
- 54 The CMA is a suitable legislative vehicle to create the new offences. It does not have predefined legal parameters that make it difficult to incorporate 'interference' that may not involve health, safety or environmental risks. The offences would only apply to offshore mining and exploration activities for petroleum and minerals that are carried out under permits issued through the CMA regime.
- 55 The penalties are consistent with relevant offences in the MTA. Under the MTA, an individual who commits an offence of a dangerous activity that involves ships or maritime products is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000, or in the case of a body corporate, to a fine not exceeding \$100,000.
- 56 This option would establish legal clarity on enforcement officers and their powers, and allow designated enforcement officers in the EEZ to operate effectively. The MBIE Chief Executive can appoint enforcement officers. Appointed enforcement officers do not have powers to arrest.
- 57 In relation to these two offences, the CMA will expressly provide that a police officer or officer in command of a New Zealand defence force vessel (and any person under his or her command):
- a. shall be deemed to be an enforcement officer; and

- b. such deemed enforcement officer can board ships without a warrant, detain and arrest a person, and detain a vessel. [Note: cf s196 (2) and (3) of the Fisheries Act 1996.]
- c. any prosecution of a foreign flagged vessel could occur only with the consent of the Attorney-General (as required under the Submarine Cables and Pipeline Protection Act 1996).

58 These offence provisions have been discussed with the relevant Ministries and agencies. This consultation is elaborated on in the cost, benefits and risk analysis below.

### **Cost and benefits**

- 59 The option introduces clear legal certainty and a penalty regime that may help deter individuals from disrupting offshore petroleum and mineral activities permitted under the CMA. This is desirable as it would reduce the likelihood of interference, or reduce the duration of interference through clear enforcement powers, thereby reducing costs of delay on companies (paragraphs 13 – 22).
- 60 Police face significant costs in deploying officers at sea for a long period of time (paragraph 21, table 1). The status quo does not guarantee that the same disruptive interference, with similar costs, will not reoccur. While the option to create a new offence will not guarantee disruptive interference will not reoccur either, it may act as a deterrent and reduce the number of incidences that would have occurred under the status quo and allow enforcement powers to more efficiently address disruptive interference and reduce the amount of time spent at sea.

### **Risks**

- 61 This option is based on the Australian model which is viewed as UNLCOS-compliant. There would not be a risk of challenge under international law.
- 62 The proposal includes search and seizure provisions. The provisions should align with the Search and Surveillance Act. This would mitigate the risk that provisions of search and seizure under the CMA are inconsistent with the right to be free from unreasonable search and seizure affirmed in s 21 of NZBORA.
- 63 In regards to enforcement action against foreign flagged vessels, the threshold would have to be high and should not be exercised lightly (because it involves the interests of other States). This requires clear operational safeguards to be established and adhered to. Operational guidelines should require, if circumstances allow, communication with the relevant flag State in advance of boarding. This kind of pre-emptive engagement with a flag State would reduce the chance of bilateral or diplomatic "fall out" from New Zealand boarding a foreign vessel. Enforcing this offence against foreign flagged vessels is consistent with our rights under UNCLOS. There is a real benefit (particularly diplomatically) in NZ being able to show due diligence in communicating with the other State concerned.
- 64 The above political and legal risk is addressed by requiring consent of the Attorney General (provided for in the CSA as a standard check to ensure compliance with international obligations in any particular case) before any legal proceedings are carried out against foreign flagged vessels subsequent to any offence. This is an appropriate safeguard against the rights of innocent passage under the UNCLOS risk being unnecessarily impinged upon under a criminal offence.

- 65 There may be a risk that domestic vessels accidentally interfere with a vessel by crossing the minimum non-interference distance. The risk that this would escalate to a strict liability offence is low, as they would have to be deemed as intentionally interfering. The "Notice to Mariners" (paragraph 50) advise mariners of the activity taking place. Should a domestic vessel enter the minimum non-interference zone regardless, then standard maritime practice would deem it appropriate for the Master of the Ship to communicate with the domestic vessel that they are too close and should correct their vessel's path. Should the vessel have a mechanical break-down then it is likely they would have lawful excuse for their interference (paragraph 50).
- 66 There is a risk that creating new offences, specifically for a vessel operating under a mining or exploration permit, will have implications on human rights. The primary concern from a human rights perspective would be that the proposal could limit the right to freedom of expression affirmed in s 14 of NZBORA. A new offence could create apprehension (real or imagined) on the part of the individual, seeking to exercise their right to protest, that they will be prosecuted. This risk would be mitigated if a minimum distance in the definition of 'interference' is included. Protesters may exercise their right to freedom of expression beyond the minimum distance while not interfering in the vessel's right to conduct lawful activities in the EEZ and avoid endangering themselves by operating their vessel in an unsafe manner or entering the water in the path of the on-coming vessel.

## Consultation

- 67 Analysis has been undertaken by the Ministry of Business, Innovation and Employment (MBIE), in consultation with the Ministry of Transport (MoT), Ministry of Foreign Affairs and Trade (MFAT), Land Information New Zealand (LINZ), Maritime New Zealand (MNZ), New Zealand Defence Force (NZDF), the Ministry of Justice, New Zealand Police Legal Services and Crown Law Office.
- 68 The upstream oil and gas industry has sought a more robust government response to threats of, and actual, direct protest actions, but has not been consulted about these proposals. It is not anticipated that industry will have an adverse reaction to the proposed changes.
- 69 There has been no public consultation.

## Conclusions and Recommendations

- 70 Analysis and inter-agency consultation has concluded that *Option 3: creating a new offence* will meet the objectives to provide an effective, clear deterrent and readily workable operational powers, to act against unlawful interference with lawful offshore petroleum and mineral activities in our EEZ from individuals and from vessels, whether New Zealand- or foreign-flagged. It is also consistent with international law and would cover both fixed installations and moving vessels. Furthermore, any compliance costs that arise would be minimised.
- 71 The recommendation is to implement *Option 3: Create a new offence*.

## Implementation

- 72 The Crown Minerals (Permitting and Crown Land) Bill is currently before the Commerce Committee.
- 73 If the changes are accepted they would take effect as soon as the Bill is enacted.



## Monitoring, Evaluation and Review

- 74 Evaluating the effectiveness of the new changes will not come to pass until an incident has occurred and the provisions of the new offence are applied. It will also be difficult to ascertain the extent to which the new offence has acted as a deterrent.
- 75 Monitoring and evaluation of the changes will be on-going between the relevant departments and agencies.

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OUT OF SCOPE

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**From:** .Withheld under s 9(2)(a)  
**Sent:** Friday, 12 April 2013 12:40 p.m.  
**To:** Jamie Gray  
**Cc:** Alice Hume; , withheld under s 9(2)(a)  
**Subject:** SOP response



SOP  
response.docx

Jamie,

We suggest the attached as a basis for response to Ministerials on SOP 205 issues.

Grateful for any comments on the text.

Regards

Withheld under s 9(2)(a)

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Thank you for your letter of [...].

The Government's Energy Strategy published in 2011 makes clear that we see an important role for responsible oil and gas development as well as renewable energy sources, both for the economic benefits the sector can bring to New Zealand as well as ensuring security of energy supply. (This can be found at: <http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/energy-strategies/nz-energy-strategy-lr.pdf> )

The measures that have been introduced in the amendments to the Crown Minerals Act 1991 - to prevent damage or interference to activities carried out through permits under the Act - are not intended in any way to prevent legitimate protest activity.

The offences relate to actions involving damage or physical interference with lawful operations in environments where such actions can be extremely dangerous, and go well beyond presenting views opposed to exploration or mining.

The government has, through the EEZ Act (2013) introduced requirements for marine consents for activities outside the territorial sea, and tightened standards for offshore drilling under changes to Health and Safety regulations. I am sure that the overall regime that is now in place, with strict environmental controls and standards for all aspects of the sector's operations, will facilitate valuable use of New Zealand's resources while respecting the values we all share.

Yours etc.

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OUT OF SCOPE

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**From:** Alice Hume  
**Sent:** Wednesday, 17 April 2013 4:19 p.m.  
**To:** Jamie Gray; Withheld under s 9(2)(a)  
**Cc:** Withheld under s 9(2)(a)  
**Subject:** RE: SOP response

Thanks Jamie.

Nick is back on Friday are you OK for us to keep letters on hold until he has had a chance to review?

Thanks.

Alice.

---

**From:** Jamie Gray (MIN) [mailto:withheld under s 9(2)(a)]  
**Sent:** Wednesday, 17 April 2013 4:17 p.m.  
**To:** Alice Hume; Withheld under s 9(2)(a)  
**Cc:** Withheld under s 9(2)(a)  
**Subject:** FW: SOP response  
**Importance:** High

Hi all

Please see the attached reply which we have amended.

If there are any comment then let us know. If not, then let's start sending the replies back to this office.

Thanks,

Jamie Gray | ~~Private Secretary – Energy and Resources~~  
Office of Hon Simon Bridges | Minister of Energy and Resources  
Level 4.1 Beehive, Parliament Buildings, Wellington 6160, New Zealand  
T: withheld under s 9(2)(a)

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**From:** Withheld under s 9(2)(a)  
**Sent:** Friday, April 12, 2013 12:40 PM  
**To:** Jamie Gray (MIN)  
**Cc:** Alice Hume; Withheld under s 9(2)(a)  
**Subject:** SOP response

Jamie,

We suggest the attached as a basis for response to Ministerials on SOP 205 issues.

Grateful for any comments on the text.

Regards

Withheld Under s 9(2)(a)

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Any opinions expressed in this message are not necessarily those of the Ministry of Business, Innovation and Employment. This message and any files transmitted with it are confidential and solely for the use of the intended recipient. If you are not the intended recipient or the person responsible for delivery to the intended recipient, be advised that you have received this message in error and that any use is strictly prohibited. Please contact the sender and delete the message and any attachment from your computer.

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**Subject:** FW: Written PQs - Moana Mackey - SOP 205  
**Attachments:** RE: Written PQs - Moana Mackey - SOP 205

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**From:** Withheld under s 9(2)(a) OIA  
**Sent:** Wednesday, April 24, 2013 5:32 PM  
**To:** Jamie Gray (MIN)  
**Cc:** PQS; s 9(2)(a) Alice Hume  
**Subject:** FW: Written PQs - Moana Mackey - SOP 205

Word copies for Moana Mackey PQs, in case you haven't received them. Note my email below.

Thanks,

Withheld under  
s 9(2)(a) OIA

Policy Advisor | Resource Markets Policy | Infrastructure and Resource Markets Group

DDI + Withheld under s 9(2)(a) OIA



**Ministry of Business,  
Innovation & Employment**

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**From:** Withheld under s 9(2)(a)  
**Sent:** Tuesday, 16 April 2013 2:44 p.m.  
**To:** Jamie Gray (MIN)  
**Cc:** s 9(2)(a) Alice Hume; Withheld under s 9(2)(a) OIA  
**Subject:** Written PQs - Moana Mackey - SOP 205

Hi Jamie,

Attached are copies of the responses to PQs submitted by Moana Mackey, all regarding SOP 205. Please note PQ 04344 for response from the Minister's office, as the answer relates to decisions made by Ministers.

In addition we advise the following:

Withheld under sections  
9(2)(f)(iv) and  
9(2)(g)(i) OIA

Withheld under sections  
9(2)(f)(iv) and  
9(2)(g)(i) OIA

Regards,

Withheld under s 9(2)(a) OIA

Policy Advisor | Resource Markets Policy | Infrastructure and Resource Markets Group

DDI+ Withheld under s. 9(2)(a) OIA



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Innovation & Employment**

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**Subject:** Written PQ due Monday

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**From:** Withheld under s. 9(2)(a) OIA  
**Sent:** Wednesday, April 24, 2013 6:16 PM  
**To:** Jamie Gray (MIN)  
**Subject:** RE: Written PQ due Monday

And second, I can't confirm whether the Ministry has checked all correspondence to assess if this issue has been mentioned. Assuming this issue broadly relates to questions regarding SOP 205 (?). I am not sure whether Alice has actioned this. To note, nothing has come through my desk apart from a Ministerial that made general reference to it.

I'll follow it up.

Regards,

Withheld under s 9(2)(a) OIA

Policy Advisor | Resource Markets Policy | Infrastructure and Resource Markets Group

DDI Withheld under s 9(2)(a) OIA



**Ministry of Business,  
Innovation & Employment**

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**From:** Jamie Gray (MIN) Withheld under s 9(2)(a)  
**Sent:** Wednesday, 24 April 2013 5:37 p.m.  
**To:** Withheld under s 9(2)(a) OIA  
**Subject:** RE: Written PQ due Monday

See other email just now.

Is that what you meant?

Regards,

Jamie Gray | Private Secretary – Energy and Resources  
Office of Hon Simon Bridges | Minister of Energy and Resources  
Level 4.1 Beehive, Parliament Buildings, Wellington 6160, New Zealand  
T: Withheld under s 9(2)(a) OIA

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**From:** Withheld under s 9(2)(a) OIA  
**Sent:** Wednesday, April 24, 2013 5:30 PM  
**To:** Jamie Gray (MIN)  
**Subject:** FW: Written PQ due Monday  
**Importance:** High

Hi Jamie,

See below, just checking – did you receive my email with the copies of PQs for Moana Mackey? I'm away on Friday, so apologies for the spam but I am going to send it through again just to be sure.

Regards,

Withheld under s 9(2)(a)

Withheld under s 9(2)(a) OIA

Policy Advisor | Resource Markets Policy | Infrastructure and Resource Markets Group

DDI Withheld under s 9(2)(a)



Ministry of Business,  
Innovation & Employment

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**From:** Withheld under s 9(2)(a)  
**Sent:** Wednesday, 24 April 2013 5:11 p.m.  
**To:** Withheld under s 9(2)(a)  
**Subject:** FW: Written PQ due Monday  
**Importance:** High

FYI

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**From:** Withheld under s 9(2)(a) OIA  
**Sent:** Wednesday, 24 April 2013 5:03 p.m.  
**To:** Withheld under s 9(2)(a)  
**Cc:** Withheld under s 9(2)(a)  
**Subject:** Written PQ due Monday  
**Importance:** High

Dear all

Just a reminder that these PQs are due on Monday 29<sup>th</sup>. I can send them all by Monday but if anyone is here Friday can you please send them to Jamie, (word copy) and cc [pgs@med.govt.nz](mailto:pgs@med.govt.nz)

WPQ 04878 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4286156>

WPQ 04877 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4286559>

WPQ 04876 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4286437>

WPQ 04875 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4290061>

WPQ 04874 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4289963>

WPQ 04873 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4286949>

WPQ 04782 (2013) Moana Mackey - due 29 Apr 13  
<http://mako.otcs/lisapi.dll/properties/4289767>