MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Simeon Brown	**Portfolio**	Energy

List of documents that have been proactively released		
Date	**Title**	**Author**
16 April 2024	Regulatory Impact Statement: Offshore Renewable Energy Regime	MBIE

Information redacted **YES**

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Some information has been withheld for the reason of confidential advice to the Government.

Regulatory Impact Statement: Offshore Renewable Energy Regime

Coversheet

Purpose of Document	
Decision sought:	Agree to draft legislation to create the Offshore Renewable Energy Regime
Advising agencies:	Ministry of Business, Innovation and Employment (MBIE)
Proposing Minister:	Minister for Energy (Hon Simeon Brown)
Date finalised:	16 April 2024

Problem Definition

Offshore renewable energy (ORE) could make a significant contribution towards increasing the supply of renewable electricity needed to support New Zealand's transition away from emissions-intensive fuels. However, the existing regulatory settings do not provide potential developers with sufficient certainty to invest in developing projects and do not enable the selection of developments that best meet New Zealand's national interests.

There are also no mechanisms in place to ensure the safety of infrastructure and to place a legal obligation on permit holders to decommission infrastructure at the end of its life; and there is a lack of certainty around how transmission infrastructure will be developed to support ORE projects.

Executive Summary

This Regulatory Impact Statement (RIS) addresses the gap in the regulatory framework to support investment in offshore renewable energy (ORE) in New Zealand. The analysis in this RIS builds on a previous RIS prepared to support in-principle policy decisions on the feasibility stage of the proposed permitting process in July 2023, as well as two rounds of public consultation.

In December 2022, we released a first discussion document, *Enabling Investment in Offshore Renewable Energy*, which focused on the feasibility stage of ORE projects. Following in-principle decisions from the Government on the use of a feasibility permitting approach, we undertook a second consultation in late-2023, *Developing a Regulatory Framework for Offshore Renewable Energy,* focused on the regulatory design for the remaining stages of the project lifecycle.

To address the gap in the regulatory framework and leverage the ORE opportunity in New Zealand, we propose that a dedicated Offshore Renewable Energy regulatory regime should be created. The objectives of the regime are to:

i. give developers the **certainty to invest** in ORE projects, and
ii. enable the selection of developments that best meet New Zealand's **national interests**.

The preferred approach to meet these objectives is to establish a two-step (feasibility and commercial) permitting model that works alongside the existing environmental consenting regimes. This proposal is set out in Section 2 of this RIS. This approach will provide ORE developers with greater confidence to invest in costly feasibility studies, including the extensive and resource-intensive process needed to get environmental consents for ORE projects. The regulatory regime will also enable the Government to effectively assess potential ORE projects, taking into account energy system benefits and wider economic and social considerations. These are separate from environmental considerations, considered under consenting processes.

The proposed regime would also place a legal obligation on permit holders to decommission ORE infrastructure at the end of its useful economic life. In addition, the regime would provide for the establishment of safety zones to protect infrastructure from harm and ensure safety of navigation and include measures to provide certainty around the development of supporting transmission infrastructure (a hybrid model in which ORE developers work with Transpower, the national grid owner and operator, to deliver transmission infrastructure).

MBIE has considered a range of options for the detailed design of the ORE system, which will either be introduced in primary or secondary legislation. Options have been assessed based on:

a. enabling (whether they provide greater certainty to support investment in a timely way);
b. effectiveness (the ability to deliver better outcomes for New Zealand); and
c. ease of implementation (whether the option is straightforward to implement, aligns with the wider system, and will enable parties with relevant interests to participate in the process).

Public consultation underscored support for the proposed two-step permitting regime from a variety of stakeholder groups, including ORE developers, iwi and Māori organisations, local governments and regional development organisations.

The costs of administering the regime will be fully cost-recovered from applicants and permit-holders, who are the primary beneficiaries of the regime. Others who experience costs are those with an interest who engage in the application and development process (iwi, other marine users and the local community).

Structure of the RIS

Section 1 of this RIS identifies two problems with the existing regulatory settings:

- **Problem A:** The primary problem is that the existing regulatory settings do not provide developers certainty to invest in developing ORE projects; and do not enable the selection of developments that best meet New Zealand's national interests.
- **Problem B:** The lack of a specific regulatory system for ORE also means that risks are not sufficiently managed, i.e. there is no obligation on developers to decommission ORE infrastructure at the end of its life; no ability to establish safety zones around ORE infrastructure; and there is a lack of certainty around how transmission infrastructure will be developed to support ORE projects.

Section 2 identifies the preferred option to address Problem A.

Section 3 addresses the costs and benefits of that preferred approach.

Section 4 sets out the sub-options for the detailed design of the permitting system.

Section 5 addresses the problems identified with problem B, which have been considered in light of the preferred approach set out in Section 2.

Limitations and Constraints on Analysis

Due to the nascency of the ORE industry in New Zealand and limited international experience with key processes (e.g., decommissioning) we have included non-monetised cost and benefit impacts in our analysis drawn from submissions received during public consultation, and evidence-gathering from international jurisdictions and the Crown Minerals regime. We have also looked at these systems to determine the likely cost recovery fees for administering and enforcing the ORE regulatory regime.

The regime has been designed to complement, and not duplicate, environmental consenting processes. The proposed regime will require developers to obtain relevant environmental consents, as well as ORE permits. The Government is undertaking a range of reforms relating to consenting (such as the recently introduced Fast-track Approvals Bill), which partly limits our assessment of alignment of the proposals with wider consenting systems.

Responsible Manager

Privacy of natural persons

Melanee Beatson
Manager
Offshore Renewable Energy & Hydrogen Policy
Ministry of Business, Innovation and Employment

16 April 2024

Quality Assurance

Reviewing Agency:	MBIE
Panel Assessment & Comment:	The Ministry of Business, Innovation and Employment's Regulatory Impact Assessment Review Panel has reviewed the RIS and considers that it partially meets the quality assurance criteria. The panel was satisfied with the problem definition and the consultation process. To fully meet quality assurance criteria, it would be important to: • have a stronger evidence base on the costs and benefits of implementing the options, which we understand may not be possible on the current evidence base. • better articulation of the objectives and criteria, and the trade-offs between options.

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Section 1: Diagnosing the policy problem

What is the policy context?

Offshore renewable energy could be an important part of our future energy mix

1. New Zealand requires a significant and rapid increase in the supply of renewable electricity to support the transition from emissions-intensive fuels. The Government has a goal of doubling New Zealand's renewable electricity generation by 2050.

2. Offshore renewable energy (ORE) could make a significant contribution to the supply of renewable electricity. Fixed-bottom offshore wind farms are the most mature form of ORE generation, but floating offshore wind turbines are also beginning to be used overseas. New Zealand has promising conditions for offshore wind development, including high wind speeds, shallow water depths in certain locations and a large exclusive economic zone (EEZ). Other forms of generation, such as wave and tidal energy, may also emerge as viable options in future.

3. The global offshore wind market is growing quickly. The Global Wind Energy Council expects new offshore wind deployments to result in a seven-fold increase over the next decade. This is expected to bring the total offshore wind capacity internationally up to 447GW by the end of 2032[1]. This is expected to lead to intense international competition for supply chains, vessels, developer expertise and workforce skills.

4. New Zealand also has significant potential to develop onshore renewable energy infrastructure, including wind and solar, which is currently cheaper than offshore wind. The economics of offshore wind will depend on:

    a. New Zealand's future electricity demand, including the role of hydrogen (given the significant volume of new renewable electricity that would be required to produce 'green' hydrogen); and

    b. the potential for onshore renewable energy options to meet that demand.

5. Offshore wind may also offer advantages over onshore generation, e.g. it can offer large-scale electricity generation in one place, which could unlock opportunities to produce low-carbon fuels such as hydrogen, to reduce hard-to-abate emissions from transport and industry. It can also generate electricity for longer, and at different times to some onshore wind generation. Offshore wind may also have less direct impact on communities – some overseas jurisdictions have prioritised offshore wind for their energy transitions, given limited options or low social licence for development onshore (because of e.g. visual and noise impacts).

6. Enabling ORE in New Zealand maximises the options available to support our energy transition. The development of an ORE regime was an action under the first Emissions Reduction Plan. It was confirmed as a priority for the coalition Government under Electrify NZ.

[1] GWEC-Global-Offshore-Wind-Report-2023.pdf

There is early developer interest in offshore wind in New Zealand

7. While there is currently no ORE infrastructure in New Zealand, a handful of prospective developers have begun exploratory work in New Zealand waters. The interest is primarily in offshore wind developments in the EEZ where the energy potential is greater - specifically off the coasts of Taranaki, South Auckland/Waikato and Southland. Based on developer interest, there is an estimated 7GW of fixed-bottom offshore wind potential in New Zealand, and significant more potential for floating infrastructure. This compares to the total renewable electricity generation in New Zealand of around 10GW today.

8. There is also some interest in the territorial sea however the regulatory landscape and impacts on other users closer to shore makes development in the territorial sea more challenging.

9. Until recently, ORE developers have focused on European and Asian markets. However, the global shift to renewables, technological advancements and decreasing costs have pushed development interests to new markets with abundant renewable energy potential.

The Resource Management Act and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act are key elements of the existing regulatory environment

10. New Zealand does not currently have dedicated ORE regulation that can allocate space or assess competing projects, unlike many countries with developed ORE markets.

11. The Resource Management Act 1991 (RMA), and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), regulate activities in the coastal marine area and exclusive economic zone. Developers would require resource or marine consents under these Acts for activities related to the construction, operation, and decommissioning of ORE infrastructure. However, the purposes of these Acts are limited to ensuring sustainable management of the environment. They also operate on a first-come, first-served basis.

Iwi and hapū take a close interest in proposals to establish ORE and expect an approach that upholds their rights and interests

12. The moana (ocean) around Aotearoa New Zealand is of significant cultural and economic value to Māori. Māori have a broad range of interests in the development of an ORE industry, including under Te Tiriti o Waitangi.

13. Māori also have formally recognised customary interests, for example under the Marine and Coastal Area (Te Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (takutai moana legislation), and Treaty of Waitangi settlement legislation.

14. Any regulatory regime for developing and managing ORE needs to ensure that these interests can be effectively managed. Relevant Māori groups have sought for the regime to enable their participation, including in the permitting process.

What is the policy problem or opportunity?

15. The policy problems addressed by this RIS are as follows:

    a. The primary problem is that the existing regulatory settings for ORE:
        i. do not provide developers certainty to invest in developing ORE projects; and
        ii. do not enable the selection of developments that best meet New Zealand's national interests.
    b. The lack of a specific regulatory system for ORE also means that:
        i. there is no obligation on developers to decommission ORE infrastructure at the end of its life;
        ii. there is no ability to establish safety zones around ORE infrastructure; and
        iii. there is a lack of certainty around how transmission infrastructure will be developed to support ORE projects.

16. These problems are discussed separately below.

17. As set out above, enabling ORE in New Zealand maximises the options available to support our energy transition. In addition to supporting the transition, addressing these problems could also present an opportunity to unlock economic potential in New Zealand, including enabling new industry opportunities, high-quality jobs and building local supply chains.

A. Lack of investment certainty and not enabling selection of best developments for New Zealand's national interests

Developers need site exclusivity before they can invest

18. ORE projects have development cycles typically consisting of the following stages – feasibility, construction, operation, and decommissioning.

19. Due to the scale and complexity of offshore wind projects, even the first stage (feasibility) typically costs hundreds of millions of dollars (estimates suggest feasibility studies will cost around ~$40 million per year, or ~$200-250 million for one project in New Zealand of around 1GW). This early work comprises engineering studies, metocean assessments, seabed surveys, project management and environmental assessments. Developers consistently tell us that they cannot commit to this level of investment without a greater level of certainty that their development will progress to commercial operation.

20. We understand the minimum level of certainty needed to support investment in feasibility is 'site exclusivity'. By site exclusivity we refer to assurances that another offshore wind developer cannot also be actively seeking to develop in that same site.

21. In practice, developers could be provided sole rights relative to other developers by seeking a resource consent under the RMA for a development in the coastal marine area (which includes the territorial waters), or a marine consent under the EEZ Act to construct and operate ORE infrastructure. However, to obtain consents, developers need to demonstrate that the development would have acceptable levels of environmental effects. This would require developers to carry out resource intensive

and expensive studies, and a significant portion of the feasibility activities described above. Developers are unlikely to be willing to do this without having greater assurance of a return on their investment. As a result, we consider that there isn't currently a viable route for developers to obtain the site exclusivity they need to invest.

Limited opportunity to pick the best project for New Zealand's national interest

22. Currently any person can apply for consent under the RMA or the EEZ Act to construct ORE infrastructure. Existing consenting processes do not provide a good way to select projects that maximise potential outcomes for New Zealand.

23. The existing consenting frameworks under the RMA and EEZ Act focus primarily on environmental outcomes. However, there are other factors relevant to whether an offshore wind project should be taken forward, e.g., whether the developer has sufficient financial resources or technical capability or if project is a good fit with the New Zealand energy system. Without these considerations unsuitable projects could be progressed.

24. The resource management system's 'first come, first served' approach also means that earlier applications receive priority over stronger applications. This is relevant where developers' proposals cover overlapping areas, which is very likely in certain locations. This could result in New Zealand missing out on potential projects that could deliver greater benefit to the energy system, economy, local communities, and the environment.

B. The lack of a regulatory regime for ORE could lead to financial and safety risks and a lack of certainty for how supporting transmission infrastructure is developed

There is no legal obligation to decommission

25. Eventually all ORE projects will reach the point at which maintenance or repowering of infrastructure is not commercially viable. At this point, decommissioning of infrastructure is required. Decommissioning is the process of dismantling any turbines and removing the structures and supporting infrastructure of ORE projects.

26. There is a risk that, without a legal obligation to do so, developers may not decommission infrastructure, in which case the costs of decommissioning may fall to the Crown and, ultimately, the taxpayer. The risk of financial burden to the Crown has materialised recently in New Zealand with the abandonment of the Tui oil field. There is limited evidence on the costs of decommissioning ORE infrastructure because of limited international experience with decommissioning to date. However, we understand estimated costs could range up to as much as $500 million.

27. The EEZ Act restricts the demolition of structures or submarine pipelines on the seabed and the abandonment of pipelines, as well as the discharging and dumping of infrastructure through secondary legislation. However, decision-making authorities are only required to consider the environmental impacts of decommissioning and only at the point a marine consent to decommission is applied for. The EEZ Act does not impose an explicit obligation on applicants to decommission and the applicant's financial capability to decommission is not assessed.

There is no ability to establish safety zones for ORE activities

28. The scale of ORE activities may require the creation of areas such as safety or exclusion zones around the site at different times to protect the installations and other marine users from collisions resulting in harm to people, property, and the environment.

29. The right of coastal states to establish ‘exclusion zones’ of up to 500 metres from the outer edge of the installations within their EEZ is recognised under international law by the United Nations Law Convention on the Law of the Sea 1982 (UNCLOS).

30. Safety zones around offshore installations can be established via regulations under the Continental Shelf Act 1964 (covering the territorial sea and EEZ), but this does not include ORE infrastructure and would require amendments to be made to its definition of natural resources. Maritime protection rules created under the Maritime Transport Act 1994 also provide for the creation of similar precautionary areas within the territorial sea, but these are not created for the purposes of safety.

Lack of certainty around development of supporting offshore transmission infrastructure

31. Timely development of transmission infrastructure will be critical to informing key financial decisions for ORE projects. The energy generated offshore will need to be transmitted or conveyed through supporting infrastructure to either industrial users or the national grid.

32. If connecting to the national grid, new transmission infrastructure will be required to transport the electricity generated to the grid onshore. In practice, the funding and delivery of transmission infrastructure to serve onshore generation projects would generally be the responsibility of the developer. Once approved, the assets are typically built, owned, and operated by Transpower (a state-owned enterprise that owns and operates the national grid). This is primarily managed privately by Transpower through the connections process and the new connection would be delivered through a Transpower Works Agreement. However, Transpower and electricity distribution businesses are also subject to regulations under the Commerce Act and Electricity Industry Act, which prescribe standards to ensure that monopoly transmission services are provided in a fair and efficient manner and provide a framework for the regulation of the electricity industry.

33. This transmission planning approach for onshore generation projects presents greater challenges for the development of offshore transmission infrastructure which tend to be more complex and carry greater delivery risks. Firstly, Transpower is not currently equipped to deliver the full range of offshore transmission infrastructure that will likely be required under the regime. Secondly, the development of supporting infrastructure requires significant investment, access to marine areas and delivery risks that need to be carefully managed. There is also a risk that poor coordination on the timing of transmission infrastructure and the commencement of energy generation could lead to delivery delays, which would result in significant costs to developers and limit their investment certainty. Finally, decommissioning transmission assets needs to be carefully considered to ensure assets are not stranded or decommissioned too early.

34. Without regulatory intervention, there is a risk that the necessary supporting infrastructure is not built or, if it is built, private negotiations between Transpower and developers result in higher prices on end-users (i.e., consumers). While these risks

also apply to some extent to onshore developers, the size and complexity of offshore developments and the varying bargaining powers of the industry participants is likely to result in varying terms and different rates that are more favourable to some parties than others.

Who is affected and how?

35. We consider the main types of parties to be directly affected to include:

    a. **ORE developers** – Operators, investors or other participants directly involved in ORE developments will be the parties most directly impacted by the introduction and design of the regulatory regime. Developers will be responsible for delivering the infrastructure and a sector will not emerge without their participation. Given the scale and complexity of ORE projects, we expect most participants would be experienced, international developers. The design and timing of the regime, e.g., how investor friendly it is, and how soon it is implemented, will impact the level of interest and number of participants.

    b. **Iwi and hapū** – iwi and hapū have a strong interest in the moana, formally recognised customary interests under relevant treaty settlements and legislation and want opportunities to be involved in all aspects of the project lifecycle (from feasibility right through the decommissioning).

    c. **Other users of the marine space** – ORE is one of many possible uses of the marine space; others include shipping, fishing, aquaculture, petroleum, minerals and tourism. Choices made in the design of ORE legislation will have implications for how these other users are impacted.

    d. **Existing regulatory bodies** – the regulatory regime will require a regulator and this regulator will need to interact with other regulators such as the Environmental Protection Authority (EPA), WorkSafe, Maritime New Zealand, the Electricity Authority (EA) and the Commerce Commission. Interaction will be required to ensure coherence and consistency between different regulatory regimes. This will have time, cost and resourcing implications for these entities.

    e. **Consumers –** electricity system consumers, although impacted indirectly by the introduction and design of the regulatory regime, could benefit from a more sustainable and reliable power grid as a result of ORE being integrated into the New Zealand system.

    f. **Public –** there could be direct benefits created to regions where ORE is developed from the creation of jobs, and flow on indirect benefits to the general public from increases to GDP.

36. There will be a range of other stakeholders more indirectly impacted by the emergence of an ORE sector in New Zealand. For example, electricity sector stakeholders such as existing generators or retailer, distributors, and the Transmission System Operator (Transpower).

What consultation has already taken place?

37. We have conducted two rounds of public consultation on the development of a permitting regime for offshore renewables in New Zealand. In addition to this, we have

also consulted with the Legislation Design and Advisory Committee, relevant crown entities and other government agencies in the development of these policy options.

38. In December 2022, we released the discussion document "*Enabling investment in offshore renewable energy*" which sought feedback on approaches to enabling feasibility activities for ORE developments in New Zealand. The summary of submissions can be found here.

39. This was followed by a second public consultation from August 2023 "*Developing a regulatory for offshore renewable energy*". The discussion document explored the design of a regulatory framework for ORE including construction, operation and decommissioning, as well as issues relating to the economics of the regime, links with environmental consenting processes and development of transmission infrastructure. The summary of submissions for this discussion document are intended to be released and will be available on MBIE's website.

40. 59 written submissions were received on the first discussion document and 48 (plus three survey responses) were received on the second discussion document. Submissions were received from a wide range of stakeholders including, ORE developers currently exploring projects in New Zealand, iwi and iwi organisations in the regions offshore renewable projects are currently being explored, the wider energy industry, environmental advocacy groups, academics and local government.

41. During both rounds of consultation, we received oral feedback from iwi and ORE developers though a series of meetings and a cross-sector workshop held during the public consultation periods.

42. We also had a dedicated process with iwi on offshore renewables, to consider issues related to iwi and hapū participation in the delivery of the regime, and how to enable iwi and hapū to benefit from the establishment of an ORE industry.

43. Key themes from the submissions, and how consultation has affected the policy proposals are discussed in the Options identification section.

What objectives are sought in relation to the policy problem?

44. To address the problems, and to exploit the opportunity, the objectives of regulatory intervention are to:

    a. give developers the **certainty to invest** in ORE projects, and
    b. enable the selection of developments that best meet New Zealand's **national interests**.

What options are being considered?

45. Table 1 below provides an overview of the primary problems (described above), options considered to address these problems and the preferred approach.

Table 1 – Overview of primary problems and preferred approach

Primary problem	Options considered	Recommended option
The gap in the regulatory framework (Problem A) *(Section 2)*	Option 1 – Status quo (reliance on existing regulatory settings) Option 2 – One-step permitting model (feasibility only) Option 3 – Two-step permitting model (feasibility and commercial)	Option 3 – Two-step permitting model (feasibility and commercial)
The lack of a decommissioning obligation (Problem B) *(Section 5)*	Option 1 – Status quo (reliance on existing regulatory settings) Option 2 – Introduce a legal obligation to decommission Option 3 – Introduce a legal obligation to decommission and provide financial security (cost estimate, decommissioning plan, financial capability)	Option 3 – Introduce a legal obligation to decommission and provide financial security (cost estimate, decommissioning plan, financial capability)
The inability to create safety zones around ORE infrastructure (Problem B) *(Section 5)*	Option 1 – Status quo (no safety zones) Option 2 – Automatic safety zone of up to 500 metres, provided for by the regime Option 3 – Dynamic safety zones, provided for by the regime	Option 3 – Dynamic safety zones, provided for by the regime
The lack of certainty for supporting transmission infrastructure (Problem B) *(Section 5)*	Option 1 – Transmission system operator led model Option 2– Hybrid model Option 3 – Developer-led model	Option 2 – Hybrid model (Transpower and developers working together)

Structure of this Regulatory Impact Statement

46. For ease of reading, this Regulatory Impact Statement is structured as follows:

- **Section 2** outlines and identifies a preferred option to address Problem A – the lack of investment certainty and not enabling selection of best developments for New Zealand's interests.
- **Section 3** addresses the costs and benefits of the preferred approach to address this problem, as well as its implementation.
- **Section 4** provides details on sub-options of the regime around the implementation of the two-step permitting regime.

- **Section 5 –** options and sub-options to address Problem B, including:
    - The lack of a decommissioning obligation
    - An ability to impose safety zones
    - Certainty for supporting transmission infrastructure.

Section 2: Deciding on an option to address Problem A

47. This section outlines options to address Problem A – lack of investment certainty and not enabling selection of best developments for New Zealand's national interests (the gap in the regulatory framework), including an analysis of options and stakeholder feedback on those options.

What criteria will be used to compare options to the status quo?

48. We have assessed options against the following criteria:

- **Enabling** - Will the option provide greater certainty to support investment in a timely way? (this criteria assesses how well the option meets the first objective)
- **Effectiveness** - Will the option lead to better outcomes for New Zealand? (this criteria assesses how well the option meets the second objective)
- **Ease of implementation and administration** – is the option straightforward to implement? Is the option straightforward to administer? Does the option align with the wider system? Will the option enable parties with relevant interests to participate in the process?

What scope will options be considered within?

49. The proposals considered in this RIS focus on regulatory changes as directed by the Government and build on interim policy decisions made by Cabinet in 2023. In July 2023, we completed a Regulatory Impact Statement (RIS) where we recommended a preferred option of a permitting model to be delivered through bespoke legislation. To get to that point, we considered and discounted several options. We summarise those options and the reasons why we discounted them, below.

a. **Making regulations under existing legislation.** The option of making regulations under existing legislation was considered and discounted in the 2023 RIS. We considered whether existing legislation (including the EEZ Act, RMA and Territorial Sea and Contiguous Zone Act 1977 (TSCZ)) could be used to create an allocation mechanism to pick between developments. Use of RMA and EEZ Act mechanisms were likely to be slow and controversial. The most viable option appeared to be to use the Territorial Sea and Contiguous Zone Act 1977 to make regulations. However, we concluded that relying on any of these existing Acts was likely to be an inappropriate use of secondary legislation that would be open to challenge. Relying on existing legislation does not provide a reliable way to grant exclusivity or assess developer suitability. The development of an ORE regulatory regime is a matter of significant policy that is more appropriate for primary legislation. Submitters on the December 2022 consultation largely supported this approach.

b. **A collaborative approach** – we also considered whether developers could be encouraged to carry out feasibility activities without a form of site exclusivity,

e.g., by incentivising them to collaborate with one another to reduce the level of risk taken by any individual party. This approach, when tested during consultation, was not attractive to developers. It would also require a means to incentivise this form of collaboration, which would likely require government funding.

c. **A government-led approach** – internationally offshore wind regulatory regimes are typically on a spectrum of government-led to developer-led. In a fully government-led model, the Government is responsible for balancing different uses for marine space, identifying where development should take place and – sometimes – even carrying out early development work, environmental studies and consenting applications. In a developer-led model, the developer is responsible for a greater proportion of these activities. A government-led model, if successfully designed and implemented would address the problem with developers needing site exclusivity before they can invest. Our previous RIS explored and ultimately discounted these options. This was because it would require a spatial planning exercise that would take many years to execute, which would not be consistent with getting a regime in place within timeframes required to enable timely development and harness interest... The options below are therefore considered in the context of a developer-led model.

50. The 2023 RIS concluded permits will have a maximum duration of seven years and be subject to enforceable 'use it or lose it' provisions to mitigate the risk of land-banking behaviour. Our initial proposal, outlined in the December 2022 discussion document, was for feasibility permits to have a duration of five years, plus an option to extend for a further two years. Following public consultation, the duration was extended to seven years to balance the need to encourage timely development with allowing sufficient time for high quality feasibility studies to take place.

51. We have considered relevant experience from other countries in determining the scope of the options and sub-options to address the problem. An international comparison of key design features of ORE Regulatory regimes is set out in a table at Annex 1.

What options are being considered to address the gap in the regulatory framework?

Option 1 – Status Quo: rely on existing consenting frameworks

52. A developer can seek resource and marine consents (environmental consents) to build and operate ORE developments in the EEZ under the EEZ Act, and in the coastal marine area (which includes the territorial sea) under the RMA.

53. To successfully obtain environmental consents, offshore wind developers would need to invest in studies to inform consent applications. Without certainty of exclusive access to the site, developers are unlikely to invest the significant funds necessary to inform those studies. As outlined in the problem definition, developers with an interest in investing in New Zealand have indicated that the status quo provides insufficient certainty to support investment.

54. Furthermore, consents are on a 'first come, first served' basis and assessed on a set of criteria focussed on environmental protection. There is therefore no ability through

the consenting process to determine the projects that best meet New Zealand's national interest.

Option 2 – One-Step permitting model (feasibility permit)

55. Under this option, developers would be required to make a single application for an ORE feasibility permit. This point of application would be early in the typical development cycle of a project, prior to feasibility/site investigation activities taking place.

56. As outlined in the July 2023 RIS, areas for development will be selected by ORE developers. Given the scarcity of areas with development potential, permits will apply to specific contiguous areas proposed by the applicant and the applicant may not seek multiple permits within the same geographic area within a feasibility round. To avoid unduly constraining developments, there will be no prescribed maximum area. Rather, guidance on the geographic area of permits would be produced to support the application process, setting out that permit applications should be within 250 square kilometre contiguous blocks to accommodate projects between 500MW and 1GW (which aligns with our current understanding of New Zealand's expected electricity system needs). The decision-maker would have the ability to consider deviations from this where there is a clear case to do so and allocate areas if they are reasonable to the proposed development and do not overlap with other ORE developments.

57. Developers successful in this application process would obtain a permit giving exclusive rights for a seven-year period, over a defined area to give them investment certainty to conduct site investigation activities. The seven-year duration for the permit represents the maximum time we expect feasibility/site investigation studies to take to complete, with use-it or lose-it provisions to manage land-banking risks. (In this context, land-banking means securing a feasibility permit to limit competition by others, without the intention of completing genuine feasibility activities).

58. Data gathered as part of feasibility studies, would be provided to the regulator as a condition of the permit, and may be publicly released. This exchange of information for exclusivity will enable the industry to grow and build a more comprehensive baseline of studies which can inform future decisions.

59. The assessment of feasibility permit applications would consider the capability of the applicant to deliver projects and their impact on New Zealand's national interests, as set out in the considerations below. Applicants will be required to meet a minimum threshold and the assessment would be comparative where more than one application is submitted. A summary of the relevant considerations is set out below.

Considerations	What is being assessed
Energy system benefits	What impact the proposed energy generation will have on the overall network. Considerations would include the volume and location of generation, transmission plans, costs and where these costs are expected to fall, any impacts on system resilience, and whether generation is intermittent or comes with a firming solution.
Technical and financial capability	Applicant's technical and financial capability to install, operate, maintain and decommission offshore renewable infrastructure.

	Considerations would include evidence of financial position, financing arrangements for the project, a risk mitigation strategy with appropriate mitigations, and a clear management plan for the operational life of the project.
Wider economic benefits (including national, regional and local)	Number and quality of the jobs the project will create, community engagement, regeneration and investment, training and skills development opportunities, and investment in localised supply chains.
Decommissioning arrangements	Applicant's plan for decommissioning the assets at the end of their economic life, including a cost estimate and appropriate form and level of financial security.
Iwi and hapū engagement	Applicant's engagement and identification of relevant rights stemming from Treaty settlements.
Compliance record	Applicant's environmental record, including any previous incidents or prosecutions in New Zealand or overseas. Applicant's health and safety record, including any previous incidents or prosecutions in New Zealand or overseas.
Existing rights, interests or limitations	Applicant's approach to identifying, engaging with, and management of existing rights and interests in the area.
National security or public order risks	Whether an applicant or proposed development poses any risk to national security or public order.

60. These considerations have been informed by feedback on both rounds of public consultation, which generally support an assessment that considers both the capabilities of the applicant and the impacts on New Zealand's national interests more broadly. The key changes following consultation are set out below:

    a. Submissions urged the national interest consideration be refined to provide more clarity and certainty over how this criterion would be assessed. Accordingly, it has been limited as per the table above.

    b. Some submitters noted that environmental impacts should be explicitly considered and assessed in this regime, as an important consideration in selecting the best projects for New Zealand. We have subsequently included a criterion to consider environmental credentials of developers at the permitting stage (under compliance record).

    c. The consultation process raised the question of how competing uses, rights and interests are taken into account as part of the permitting regime. These matters are considered in detail through environmental consenting processes and are beyond the scope of the permitting regime to resolve. However, we included an additional criterion on management of existing rights, interests or limitations. This would require applicants to identify overlaps or potential conflicts with existing uses, rights and interests and provide information about how those will be managed as part of their application.

61. Once the permit is obtained, the developer would then be able to seek the appropriate resource and marine consents prior to construction or operation of ORE infrastructure. No further permits under this permitting regime would be required (i.e. regulatory oversight would be limited to the feasibility stage, and any obligations set out in the legislation.)

62. Permit holders would remain responsible for complying with all other relevant legislation when carrying out their feasibility activities, including relevant requirements under the RMA and EEZ Act, and the Health and Safety at Work Act 2015.

63. New legislation would be required to establish this permitting regime. The regime would be technology agnostic, but in the near term it would focus on offshore wind, given it is the most mature technology. Two limitations with this option are:

    a. permits are awarded very early in the project and therefore the full risks or benefits of a development may not be known.

    b. once feasibility permits lapse, the government may not have any ability to check that stated benefits have been retained over the life of the development and the risks appropriately managed.

Option 3 – Two-step permitting model (feasibility and commercial permit)

64. This option builds on Option 2, except in this option developers would also be required to apply for a second permit, i.e., a commercial permit, before being able to develop ORE infrastructure. Obtaining the commercial permit would not remove the requirement for the developer to also obtain the appropriate resource and marine consents. However, a developer would not be able to give effect to any consents until a commercial permit has also been granted.

65. The purpose of a commercial permit assessment is to provide a final check (complementing marine or resource consent assessments) to ensure projects meet the required standard and risks are managed before construction begins. This would involve an assessment of whether the necessary feasibility activities have been completed, the project plans have matured acceptably, risks have been appropriately managed, and the applicant has appropriate decommissioning arrangements in place.

66. Commercial permits may be awarded following an assessment of:

    a. Technical and financial readiness

    b. Decommissioning arrangements

    c. Iwi engagement

    d. National security and public order risks.

67. The assessment focuses on a smaller subset of considerations assessed at the feasibility stage and focus on risk-mitigation and ensuring the projects have matured and ready to progress to construction.

68. A feasibility permit holder would have the exclusive right to apply for the commercial permit for the area covered by their feasibility permit. This means that the assessment at the commercial permit stage is non-comparative (i.e., the decision maker would only assess the one application at a time). We considered and consulted on having a comparative assessment at the commercial permit stage, rather than just at the feasibility permit stage. Feedback from the public consultation indicated a strong preference for resolving competition when feasibility permits are awarded. Submitters, specifically ORE developers, said any comparative assessment at the commercial permit stage would create too much uncertainty, delay development, and undermine the exclusivity provided by feasibility permits. In light of this, we consider the commercial permit assessment should be non-comparative.

69. Commercial permits would be granted for a defined period, up to a maximum of 40 years. This maximum duration is consistent with other comparable regimes and accommodates the expected life of the infrastructure, refurbishment, and time for decommissioning. The decision-maker may grant a permit for a shorter period.

70. The size of area in the commercial permit application would be no larger than the size of the feasibility permit area, as this is the area that the developer would have gained rights over during the feasibility process. However, the developer would be able to apply for a commercial permit that is smaller than the feasibility permit area within the same spatial boundaries of their feasibility permit.

71. As with Option 2, new legislation would be required to establish this permitting regime. The regime would be technology agnostic, but in the near term focused on offshore wind, given it is the most mature technology.

How do the options compare?

Criteria	Option 1 – Status Quo	Option 2 – One-Step Permitting	Option 3 – Two-Step Permitting
Enabling – will it provide certainty to support investment	**0** No certainty to enable investment. Not having a mechanism to grant site exclusivity is a barrier to developers carrying out feasibility activities.	**+** Provides site exclusivity to developers, which should give the confidence needed to support investment.	**+** Provides site exclusivity to developers, which should give the confidence needed to support investment. Narrowly focused commercial permit assessment provides certainty and clear path for reassessing developments as they mature.
Effectiveness – better outcomes for New Zealand	**0** 'First in, first served' consenting processes, primarily focused on environmental effects, do not adequately allow for the selection of projects that will deliver the most benefits for New Zealand.	**0/+** Enables a comparative assessment to allow for the selection of projects that will deliver the most benefits for New Zealand. Does not provide for a holistic regime with oversight of complex projects and management of risks at all stages of the development cycle, including decommissioning.	**++** Enables a comparative assessment to allow for the selection of projects that will deliver the most benefits for New Zealand. Enables a holistic regime with oversight of material, complex projects at all stages of the development cycle including decommissioning.
Ease of implementation and administration – simple to implement and	**0** This involves taking no action and relying on existing consenting regimes, meaning it is not complex to implement.	**--** This option would require new, primary legislation. It would also need to be coordinated and aligned with environmental consenting regimes.	**-** This option would require new, primary legislation. It would also need to be coordinated and aligned with environmental consenting regimes.

administer / align well with system / will it enable parties with relevant interests to participate in the process?	Formal/mandated iwi and hapū involvement is limited to provisions under environmental consenting regimes.	Easier to implement with established precedence and processes. However, there will be significant unknowns at the feasibility stage. Therefore, effective implementation and administration of the system over the entire development cycle of a windfarm would be limited. Provides opportunity for iwi involvement in project development.	More complex implementation, due to the two application processes. However, this option enables regulatory oversight for the life of the project, providing a mechanism for imposing, monitoring, and enforcing key obligations over the operational life of the development. This will make implementation and administration of the system as a whole easier. Provides opportunity for iwi involvement in all stages of project development.

What option is likely to best address the problem, meet the criteria, and deliver the highest net benefits?

72. Option 1 does not address Problem A (lack of certainty for investment and lack of ability to select the best developments for New Zealand). Submissions from both public consultations largely supported introducing regulatory settings to manage the development of offshore renewables. Feedback from stakeholders, notably ORE developers, indicated broad support for a permitting model. However, a small minority of submitters expressed a preference to retain the status quo, stating offshore renewables were either not necessary in New Zealand or there were adequate mechanisms for managing development through the environmental consenting regimes (i.e., the RMA).

73. Both Options 2 and 3 address the problem of investor certainty by giving developers the early site exclusivity they need to invest. The first step – the feasibility permit – is necessary to provide certainty and enable the selection of developments (i.e., through providing site exclusivity).

74. However, Option 3 enables the most robust selection of projects when compared to the other options and provides the lowest risk to government.

75. The second step provided for in Option 3 – the commercial permit – is needed because it allows for an assessment by the regulator at a later stage when the impacts and benefits are fully defined and better understood, and the location of key infrastructure is confirmed. This is important as there will be significant unknowns at feasibility permit stage. Therefore, the commercial permit process acts as a gateway to ensure projects meet the required standards and risks are managed before projects go ahead, as well as to confirm the readiness of the project (including the status of environmental consent applications and the applicant's ability to fulfil decommissioning obligations). The assessment at this stage will exclude areas that will be assessed through other regimes following feasibility, e.g., environmental assessments.

76. Importantly, the inclusion of a second, later assessment in the overall permitting process may also change the behaviour of participants earlier on in the process. The fact participants know that they will be checked again may deliver two benefits. Firstly, it may create an incentive to provide a more accurate, realistic application at the feasibility assessment and as a result allow for a more accurate comparison between projects. Secondly, it creates an incentive for permit holders to make efforts to ensure the benefits they described at feasibility assessment, and were awarded a permit based on, are retained as their project matures. Option 3 also provides for an opportunity for iwi to be involved at every stage.

77. Option 3 also has the benefit of enabling long-term regulatory oversight to ensure developments continue to meet conditions imposed and minimise the risks to the Government, and therefore the public.

78. If not designed correctly, a risk of Option 3 is that this second assessment undermines the site exclusivity and investment certainty provided by the first feasibility step. We consider that this can be mitigated if designed correctly, including via close alignment between the permit assessments between stages, clear guidance for applicants, and a non-comparative allocation method at the commercial permit stage to support certainty of investment.

79. While Option 3 is more complex initially to deliver than the other presented options (i.e., because of the two-step permitting structure), it supports implementation through enabling long-term regulatory oversight to ensure developments continue to meet New Zealand's national interest, and to minimise the risks to the Government and public.

Alignment with environmental consenting

80. The proposed permitting regime is designed to work alongside, rather than duplicate, the existing environmental consenting regime, under the RMA 1991 and EEZ Act 2012. Under the permitting regime, to construct and operate any ORE development in New Zealand, a developer would need: a feasibility permit; a commercial permit; and any relevant environmental consents.

81. To ensure the permitting regime works alongside the consenting regime, we have considered:

    a. how any marine or resource consents for ORE (granted at the time the permitting regime comes into force) should be dealt with by the permitting regime

    b. how any applications for marine or resource consents for ORE (submitted but not decided at the time the permitting regime comes into force) should be dealt with by the permitting regime

    c. how future applications for marine or resource consents for ORE (not submitted by the time the permitting regime comes into force) should be dealt with by the permitting regime.

82. There is a risk that developers submit consent applications prior to the permitting regime coming into force, effectively land-banking preferred sites. This would undermine the objectives of the regime to provide certainty to developers and enable the selection and management of developments that best meet New Zealand’s national interests.

83. To address the risk of land-banking and ensure there is a level-playing field for all ORE developers, the regime would need to provide that only feasibility permit holders can be granted, or give effect to, a resource or marine consent for ORE developments.

84. While there are currently no marine or resource consents already granted for ORE developments, this will have implications for those with marine or resource consent applications submitted before the permitting regime comes into force. To date there has been one application for and RMA consent to develop ORE infrastructure. Most developers with a genuine interest in developing offshore wind have strongly supported the development of the regime and indicated they will not seek consents before it is in place.

85. Under the developer-led approach, the feasibility and commercial permits would not prevent other users (e.g., mining, aquaculture, and fisheries) from seeking an environmental consent in the same area. This means that other users could gain a consent, including through the fast-track approvals process, that prevents an ORE project from going ahead where competing uses cannot co-exist. This risk may be particularly prevalent in some highly contested areas of interest for ORE developers, including the South Taranaki Bight.

What are the marginal costs and benefits of the option?

86. The cost benefit analysis outlined below does not take into account the costs of developing the ORE infrastructure. This is because the system is voluntary and does not oblige permit holders to develop the infrastructure. Likewise, the benefits of building and utilising the infrastructure are not included.

87. The regime will be fully cost-recovered. The cost-recovery fees for administering and enforcing the system will be provided alongside the Cost Recovery Impact Statement (CRIS) for the regulations seeking to cost recover the system.

88. Further, the ORE regime is a permitting regime that is broadly comparable in purpose and design to other regimes such as the RMA, Crown Minerals Act 1991 (CMA) or EEZ Act. We have judged the level of impact partially in reference to existing regimes– e.g., whether the regulatory compliance costs are substantially higher or lower than comparable legislation.

89. We have assumed that where there are existing use rights or iwi interests' developers will be incentivised to address those parties concerns or to mitigate the risks of the development on those parties. The permit assessment process incentivises this by requiring developers, when submitting a feasibility application, to consider existing use rights and to provide information about iwi engagement. This will also be a matter for consideration by the decision-maker on the environmental consent.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offshore developers)	There are one-off costs of: • preparing for the application including research, modelling and including engaging with iwi, relevant marine users and local communities. Some of these costs may be incurred via the consents process, which would apply anyway • applying for permits. There are ongoing costs of: • complying with the conditions of the permit and legislation. • decommissioning infrastructure at the end of the project's life cycle (developers are also required to retain financial security during the life of the project). • annual fees if awarded a permit. Indirect costs from removing the ability of the first in first served approach to consenting (as it limits how the market can be accessed).	Medium to High	Medium Cost recovery fees for administering and enforcing the system are still to be determined. The final figures will be provided alongside the CRIS for the regulations seeking to cost recover the system. In other jurisdictions, the level of evidence, consultation and work required to submit an application has been significant. There are also significant costs associated with decommissioning infrastructure at the end of a project's lifecycle (i.e., this can range up to as much as $500 million).

Iwi	Ongoing cost of engaging with regulator and developer in feasibility and commercial permit application process (requirement of permit) and permit conditions. However, the regime may also facilitate engagement compared to not having it, e.g., through guidance on appropriate engagement.	Low-Medium	Medium. Iwi who have an interest in the proposed development site will expend time and resources engaging with both developers and the regulator to provide their views, which will also be in addition to various other regulatory process that iwi are required to engage in. This is likely to be intensive when a round is open and is estimated to have a low-medium cost in terms of time, money, and resources (relative to size).
Other marine users	One-off cost of engaging in feasibility consultation process. Ongoing costs through loss of access to areas due to safety zones and/or operation. Areas where commercial licences have been granted limit potential future uses of that area for life of permit where development commences (and potentially longer depending on decommissioning).	Low to Medium	High. Some marine users may have existing use rights that could be compensated for by developers if they choose to submit an application in respect of that area. Alternatively, consents may be granted alongside those existing use rights, potentially limiting the way the right can be used.
Others (public, local community)	One-off cost of engaging in feasibility consultation process	Low	High. Public may choose to submit information during the public consultation phase of the process. This would reflect the standard costs of choosing to engage in a public submissions process (i.e., costing time to prepare and present submissions).
ORE regulator	One-off set-up costs for initial products like website and supporting material. Ongoing costs to maintain these. Ongoing costs for administering, monitoring, compliance and enforcement of the regime.	Low	High. It is intended that the system is designed so that costs to the regulator are fully cost-recovered.
Transpower	One-off costs of acquiring offshore transmission infrastructure from developers. Ongoing costs to maintain and operate transmission infrastructure once ownership transfers to Transpower.	High	High

	Costs of decommissioning offshore transmission infrastructure. Costs of providing information that feeds into decision-making (electricity assessment).		
Regulators	Ongoing costs of providing information and inputting into decision-making as applicable. WorkSafe – ongoing costs in regulating work health and safety for worksites created by this system. Maritime NZ, NZDF and Police – potential operational involvement in implementing safety zones.	Low-Medium	Medium.
Total monetised & non-monetised costs	The system has high costs, but those are primarily experienced by developers who receive the benefits from the system (and Transpower who also receives a benefit). Others who have high costs are those with an interest who engage in the application and development process (iwi, other marine users and the local community).	High	Medium-High
Additional benefits of the preferred option compared to taking no action			
Regulated groups (offshore developers)	Provides exclusivity, which provides developers with assurances to make final investment decisions about whether to progress with permits. Removes ability to land bank (under consent process) ensuring an even playing field for developers to be awarded a permit. One-off benefit of being guaranteed compensation at set levels for costs of developing cables and substations for transmission.	High	High.
Iwi	Consultation requirements on proposed developments help protect impacts on Treaty settlements Indirect benefits– may enable economic participation and incentivise economic benefit-sharing.	Low	High.
Other marine users	Clear safety rules around high-risk periods should lead to better safety outcomes for marine users.	Small-medium	High.
Others (public, local community, taxpayer)	Enables greater options to support New Zealand's future energy needs (i.e., potentially more timely renewable energy). Non-monetised impacts of having a more sustainable and reliable power grid. Reduces risks to the government and taxpayer by creating decommissioning obligations and securing finance to meet those obligations.	Small-medium	High.
Transpower	Ongoing benefit if developers create transmission infrastructure for a more resilient power grid.	High	High.

Total monetised & non-monetised benefits	The system will likely have significant benefits for developers who receive investment certainty. Increases options for renewable energy to support New Zealand's future energy needs. Marine users have certainty about ORE impacts in the marine environment. Reduces risks to government and taxpayer (i.e. mitigates risks from developers failing to decommission).	Medium to high	High

Section 3: Delivering an option

How will the new arrangements be implemented?

MBIE should be responsible for administering and regulating the regime

90. To determine which entity would be best suited to regulating the ORE regime, we considered the following criteria:

    a. Has or can build the necessary capabilities, capacity, and systems to implement the regime (by 2025).

    b. Alignment with existing regulatory functions either in this regulatory system or other systems. Alignment is necessary to balance administrative efficiencies against mitigating judicial review risks.

    c. Resilience and ability to cope with variable workloads given the long-term nature and small scale of the industry.

    d. Ability to engage with policy functions and central government. Close proximity was critical to the establishment of the space agency to respond to an evolving and emerging industry.

91. Ultimately, our analysis and consultation with the various regulators across government suggested that housing this function within MBIE best meets the policy criteria. MBIE administers and regulates the Crown Minerals regime which the proposals for ORE regulation are loosely modelled on and share similarities with. As such, we consider it would have many of the capabilities and systems required to implement the regime and would be sufficiently close to, yet independent from, the policy team leading the development of the regime.

92. MBIE does not currently have capabilities to assess permit applications (e.g., consider energy system benefits, economic development, health and safety risks and national interest assessments). This would need to be bridged either through MOUs/cooperation with other regulators or relying on contractors with the necessary expertise to provide additional support during the permit decision-making process. MBIE has access to external experts that commonly provide support to decisions made under the Crown Minerals regime which can provide sector specific expertise.

93. In addition to MBIE, several other government agencies will need to be involved in supporting the decision-making functions and/or involved in managing other regulatory regimes that impact ORE development.[2] Key agencies and stakeholders that will need to be involved include: Worksafe, Electricity Authority, Te Arawhiti, Te Puni Kokiri, Transpower, Environmental Protection Authority, Maritime New Zealand, Overseas Investment Office, Department of Conservation, Government Communications Security Bureau, New Zealand Security Intelligence Service. These agencies will vary over time and will largely be to bridge the knowledge gap within the regulator and support decision-making on technical issues.

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2 A non-exhaustive list of ancillary regulatory systems that might impact ORE development include: health and safety, incident management, energy supply and market regulation, land allocation for onshore transmission assets, environmental management, maritime, corporate governance.

Compliance, monitoring and enforcement

94. The proposed two-step permitting regime will include a range of compliance and enforcement mechanisms to ensure participants are adhering to these requirements. These will be important to ensure the regime works and to minimise risks.

95. The existing regulatory settings are primarily focused on breaches that have resulted in, or may result in, damage to the environment. The additional types of breaches we have considered including in the regime are (non-exhaustive list):

    a. Failures to decommission or maintain appropriate financial securities;

    b. Any attempt to deceive, mislead or obstruct the regulator;

    c. Failures to comply with compliance notices or enforceable undertakings;

    d. Knowingly failing to decommission.

96. We consulted on aligning our approach to compliance with other regulatory regimes in New Zealand, in particular with the CMA. Public consultation underscored the need for a compliance regime that reflects the unique features of ORE activities as part of the overarching regulatory regime. Submitters generally agreed that the proposed VADE model was appropriate and emphasised the need for a combination of proactive and reactive tools.

97. The regulator would be provided with sufficient powers and a range of proactive and reactive enforcement tools to monitor and enforce compliance with the requirements of the ORE regulatory framework. These include the ability to:

    a. provide guidance and information to permit holders;

    b. impose conditions on permit holders and request information from regulated parties;

    c. conduct inspections of ORE project sites and investigations into confirmed or alleged non-compliance;

    d. impose changes to the agreed management plan and permit conditions; issue compliance notices and enter into enforceable undertakings;

    e. revoke permits in limited circumstances;

    f. pursue civil pecuniary penalties; and

    g. seek prosecution for offences.

98. The regulator would use the VADE (Voluntary, Assisted, Directed and Enforced) model to implement the regime and determine an appropriate response depending on the severity of breaches. Stakeholders, including the ORE industry, were generally supportive of using the VADE model for ORE.

Infringements

99. We considered including an infringement scheme in the compliance, monitoring and enforcement framework (as this is present in the CMA). However, we consider it is not appropriate in the context of the ORE regime because the standard maximum infringement fees ($1,000, as set out in Ministry of Justice and the Legislation Design and Advisory Committee guidelines) are not significant enough to deter non-

compliance given the financial capability of likely ORE permit holders. The ORE regime is likely to have a very small number of participants compared to other regulatory systems that rely on infringement to manage higher levels of non-compliance.

100. Instead, the regulator would use alternative regulatory mechanisms included in the VADE model (e.g., a formal written warning, followed by a compliance notice if the breach was not rectified) to achieve behaviour change for less serious breaches. We consider this approach to be more effective than a low infringement fee because it would provide a stronger incentive for a permit holder to comply, i.e., to avoid affecting its compliance record and in turn impact the ability to be awarded permits in future.

Penalties

101. The regime will include a combination of civil and criminal penalties. Criminal penalties are appropriate where the wrong-doing involves an element of moral blameworthiness, e.g., in the most egregious case of non-compliance, where a permit holder may 'knowingly' fail to decommission ORE infrastructure. Civil pecuniary penalties are appropriate when a monetary penalty would be successful in deterring breaches of the regime and the nature of the conduct does not warrant criminal conviction or imprisonment. Maximum penalties for offences will be determined based on the likelihood of the offence occurring and its consequences. This approach will enable the regime to assign penalties that are proportionate to the degree of harm they may cause. It is intended that the outer limits of the penalty regime (in terms of the highest penalties) will align with the CMA, particularly in relation to knowingly failing to decommission.

Assessing and monitoring financial securities for decommissioning

102. We consider regular monitoring and assessment of financial securities for decommissioning is necessary because the lack of international experience with decommissioning means the costs are likely to change over time for technical or financial reasons. Monitoring will include annual reviews during construction and in the period leading up to the decommissioning date. During periods of normal operation, there would be a longer review period of three to five years.

Intersection with other regulatory regimes

103. Ensuring the health and safety of ORE workers is critical. The Health and Safety at Work Act 2015 will apply to ORE activities. Any future assessment of the application of the Electricity Act and the Electricity (Safety) Regulations to ORE projects, as well as whether targeted health and safety regulations are needed for the sector would be led by MBIE.

104. The expectation is that the Ministry for the Environment would work with other agencies with stewardship roles in the same regulatory system to monitor, evaluate, and review the regulatory system - particularly MBIE as the regulator for the ORE regime. Engagement with other agencies involved in maritime security management will also be required to successfully manage safety zones around infrastructure.

105. The regime will allow for information sharing between MBIE and key agencies with a role in administering, monitoring, or enforcing the regime and related regulatory systems. Information will be shared for the purposes of MBIE or the other agencies' performance of their functions, duties, and powers.

Implementation is intended to occur at pace

106. Delivering this regime as soon as practicable to provide investment certainty has been a key policy objective. It is intended that the regime will come into effect as soon as possible to allow permits to be issued in a timely manner. Secondary legislation will be required for the detailed aspects of the system including in relation to permit conditions, cost recovery application and annual fees, transmission, decommissioning and safety zones.

107. The target is for the first round of feasibility permits to commence in 2025. To do so the regulatory expertise, guidance documents and systems need to be established in parallel with the enactment of legislation – early discussions with the proposed regulator suggest this could take up to one year to establish.

108. Potential participants in this regime are generally well informed about and engaged with the possibility of future regulation. MBIE will communicate with key stakeholders and interest groups following final Cabinet policy decisions, to ensure they are aware of what is being proposed and how the regime will impact them. We expect the ORE regulator will proactively communicate with regulated parties about any changes to the regime and processes for implementing the proposals once established. In the meantime, this will be carried out by the team leading the policy development.

How will the new arrangements be monitored, evaluated and reviewed?

109. These proposals, if agreed to, will establish a new regulatory system and become part of MBIE's regulatory stewardship obligations. In line with MBIE's regulatory stewardship obligations, MBIE intends to monitor, evaluate and review the regulatory framework in response to emerging issues and trends.

110. The impact of these proposals will take a number of years to materialise. In the short-term, we will evaluate the operation of the feasibility permit rounds and their effectiveness and efficiency in allocating permits. Longer-term, we will evaluate the progress of permit holders to the commercial permit stage and to construction and operation to determine if the regime is meeting its objectives.

111. MBIE takes a proactive approach to identifying any issues by periodically consulting with key stakeholders on the impacts of the proposals and monitoring overseas developments. Given the regulatory and policy functions will both sit within MBIE there will be opportunities for any implementation issues and unintended consequences of the system to be raised and addressed, through reporting and engagement with iwi and industry stakeholders. This offers a more flexible and pragmatic approach, compared to any planned or fixed review requirements – although permit rounds will offer a natural point for evaluation. MBIE will also be responsible for alerting relevant Ministers to any issues requiring a review of the legislation.

Section 4: Sub-options for the permitting regime

112. These sub-options are based on a preferred approach of a two-step permitting model and compare options for delivering the permitting model against each other (rather than a status quo of no permitting model).

113. We have assessed the sub-options in this section against the same criteria as in Section 2, namely:

- Enabling - Will the option provide greater certainty to support investment in a timely way?
- Effectiveness - Will the option lead to better outcomes for New Zealand?
- Ease of implementation and administration - Will the option be straightforward to implement? Will it be straightforward to administer? Will it reduce complexity and provide greater clarity around requirements? Will it align well with the wider system? Will it enable parties with relevant interests to participate in the process?

Award of permits

114. This section considers the following issues that typically impact how permits are awarded:

- How are spatial overlaps resolved?
- How is the feasibility permit assessment process initiated?
- How do Māori participate in the permitting regime?
- When should the public be involved in the permit process?
- Who makes the decision to award a permit?
- How can decisions be appealed?

How are spatial overlaps among ORE projects resolved?

115. It is very likely that developers will seek feasibility rights for overlapping areas. In most cases, multiple ORE developments would not be able to co-exist.

116. In the December 2022 consultation, most submitters supported resolving overlaps through a combination of negotiations and merit-based assessments. Submitters said this was a more pragmatic approach that could seek to maximise the number of permits awarded. However, some submitters questioned the usefulness of such a process and whether negotiations could occur in good faith.

117. Following further evaluation, we consider that resolving overlaps through negotiation between developers could give rise to anti-competitive behaviour by incentivising joint-ventures or speculative behaviour, where applicants propose areas larger than they necessarily require. This could also drive smaller developers or those with lower negotiating powers out of the market despite having a higher merit.

118. As such, we consider that **overlaps should be resolved by the decision-maker through the comparative assessment process at the feasibility stage**. This would better meet the objectives of the regime and result in more timely decision-making. It will also ensure applicants of the highest merit are awarded permits, rather than being subject to private commercial negotiations (which may not align with New Zealand's national interests).

	Enabling	*Effectiveness*	*Ease of implementation / administration*
Overlaps resolved through comparative assessment at feasibility	✓	✓	✓
Resolving overlaps through negotiation	*x*	*x*	*xx*

How is a feasibility permit assessment process initiated?

119. The feasibility permit application process could be initiated by the Government through set applications rounds, and/or by an application from the developer at any time.

120. In the August 2023 consultation, we indicated a preference to enable both processes to occur, as it provided the greatest flexibility to accommodate an emerging industry. This would involve running an initial feasibility round and then having both an open-door process and the option for the regulator to launch subsequent rounds in the future. We considered a hybrid approach would provide greater flexibility. In particular, it would prevent developers having to wait for application rounds, particularly at times when interest might be limited.

121. Most submitters agreed with including both an open-door process and the option for the regulator to launch subsequent rounds. However, several prospective developers noted that the inclusion of an open-door process with the option to comparatively assess applications could result in poor quality applications and a reactive environment, where competing applicants are 'put on the clock' to lodge an application. Developers also noted their businesses can more efficiently plan resource and investment decisions based on clear timelines for permitting processes. Ad hoc or open-door processes reduce the certainty with which they make these decisions, increasing cost. By contrast, some submitters said New Zealand is unlikely to sustain the level of development interest necessary to run subsequent rounds in the future.

122. On balance, we consider the **setting of feasibility application rounds** delivers better outcomes and meets the overarching policy objectives. The rounds-based structure would help to structure developer interest and provide greater certainty to the industry. It would also enable the Minister to impose limits on the round (i.e., generation capacity, spatial area, or technology type), where appropriate, which could drive competition and better outcomes. This would provide flexibility to the Minister to identify the parameters for a round (if any) to align with New Zealand's electricity system needs. When considered holistically, this option can better accommodate public consultation requirements and comparative assessment processes to award permits in a competitive and efficient manner. The implementation of this option could also allow for greater Māori participation.

123. In a practical sense, the rounds approach would also enable better planning and efficient use of resources by the regulator.

124. This approach would involve the Minister for Energy initiating a round, taking into account industry interest and New Zealand's needs – both from an energy system lens and economic development lens. In the interest of efficiency, we do not propose to require consultation before initiating a round.

	Enabling	*Effectiveness*	*Ease of implementation / administration*
Application rounds	✓✓	✓✓	✓✓
Open-door	*x*	✓	✓✓

How do Māori participate in the permitting regime?

125. Māori have close interests in ORE developments and the marine environment, including in relation to managing Treaty settlements and customary rights in the marine area.

126. To ensure that rights stemming from Treaty settlements are appropriately managed the Government has directed that the following features will be included in the regime:

    a. Applicants will be required to identify relevant rights stemming from Treaty Settlements as part of applications and must consult relevant iwi, hapū or Māori groups[3] on the proposed development/permit application before applying.

    b. Applicants' engagement and identification of relevant rights stemming Treaty settlements will be considered by the decision maker when granting permits.

    c. The decision-maker will be required to consult with relevant iwi on the impacts of applications on relevant rights stemming from Treaty settlements.

127. The Government also intends to include a clause reflecting the approach taken in Clause 6 of the Fast-track Approvals Bill 2024, which requires decision makers to act in a manner consistent with obligations under Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

128. During public consultation submitters almost unanimously supported iwi and hapū involvement in the regime. Submitters supported including an assessment of iwi involvement in project developments and economic opportunities for iwi in the permit assessment. Many ORE developers emphasised the importance of comprehensive engagement with iwi at the local level at the early stage of development and are already undertaking this engagement.

When should the public be involved in the allocation process?

129. At a minimum, information on applications for and decisions on both feasibility and commercial permits will be made public so that interested stakeholders can be aware that development is taking place. The national significance of permit decisions means

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3 Relevant iwi will include the relevant post-treaty settlement governance entity for the geographic region in which the ORE development is proposed.

it is appropriate that interested parties have an opportunity to express views and have concerns taken into account.

130. However, environmental consenting processes already include an opportunity for public submissions. Given developers are likely to seek a commercial permit and environmental consent at around the same time, it is important to avoid unnecessary duplication or repetition of these processes. Submitters largely agreed with this view. However, several submitters said some consultation with affected groups (like the fishing industry and local government) would be appropriate given their involvement in the environmental consents process may not adequately provide for opportunities to comment on the range of issues considered in this regime. Developers have expressed support for consultation, to enable community involvement and support social licence for projects.

131. Following the consultation process, we consider that **public consultation should occur as part of the feasibility permit** assessment because:

    a. it may yield information relevant for the decision-maker when undertaking a merits-based assessment of applications (which only happens at the feasibility permit assessment stage);

    b. without this process, the only opportunity for public comment on developments will be at the consent stage, when significant investments have already been made; and

    c. depending on the nature of the fast-track approvals process and whether offshore developments are included in this, consultation on the separate resource consents may be limited further.

	Enabling	*Effectiveness*	*Ease of implementation / administration*
Public consultation at feasibility stage	✓	✓✓	✓
Public consultation at both feasibility & commercial stages	*x*	✓	*xx*

Who makes the decision to award a permit?

132. The award of a permit comprises of assessing applications, prescribing conditions, and issuing notices. This decision is typically **Minister-led** if the decisions are based on policy judgements involving matters of wide discretion or the national or public interest, as the Minister holds the appropriate level of authority, expertise, and political accountability. The decision is more likely to be **regulator-led** if the decision is technical in nature and involves reasonably objective assessment within the defined purpose of the regime.

133. We consider that there are two viable options:

    a. **Option 1:** Minister deciding on the advice of an appropriately skilled regulator, with the ability to delegate decision-making (i.e., aligned to the Crown Minerals

regime, where New Zealand Petroleum & Minerals makes most decisions in practice, with reference to the Minister where relevant).

b. **Option 2:** a combination of the Minister and the regulator. This would involve the regulator being the primary decision-maker. However, where there is an issue relating to national security and public order, the application would be referred to the Minister for determination.

134. We consulted on a regulator-only approach in our second discussion document. However, given the potential national security implications, we have since discarded this as a viable option.

135. Stakeholder feedback was mixed. Submitters generally focused on emphasising the need for objective and clear decision-making processes. Some submitters, particularly developers, said this would be best achieved if decisions were made by the regulator. Māori preferred a Ministerial decision-making approach due to the significance and potential impacts on rights/interests of issuing permits.

136. The differences between the two options are finely balanced (as can be seen by our analysis table). Both options involve complex decision-making that will be supported by clear requirements and guidance on how the decision is to be made.

137. On balance, we consider that Ministerial oversight is warranted where decisions involve potentially significant policy or strategic considerations, or significant trade-offs among competing applications at the feasibility stage (Option 1). This approach is consistent with the Crown Minerals Act.

138. A delegated decision-making approach means that the regulator could determine applications where they have the technical expertise and can isolate technical assessments from policy considerations. **Decisions on strategic policy considerations or matters of national importance would be determined by the Minster, on advice from the regulator.** Section 3 of this RIS sets out who the regulator will be.

139. We consider that all other permit decisions would be made by the regulator to ensure the efficient operation of the regime. This includes compliance and enforcement decisions, assessing the suitability of financial security for decommissioning infrastructure and approving variations to permits.

140. We consulted on a regulator-only approach in our second discussion document. However, given the potential national security implications, we have since discarded this as a viable option.

	Enabling	*Effectiveness*	*Ease of implementation / administration*
Decision by Minister	✓	✓✓	✓
Combination of regulator and Minister	✓	✓✓	✓

How can decisions be appealed?

141. In addition to judicial review, we consider **all key permit decisions** (such as a decline of a commercial permit application or the revocation of a permit) **should be able to be**

appealed, except for the decision of whether to grant a feasibility permit, in line with the Crown Minerals tender process. Any right of appeal under the regime should be **limited to points of law and only available to the person who has applied for or holds the permit** to which the contested decision relates. Such appeals should be lodged within 20 working days of the decision being made and considered by the High Court.

142. Feasibility permit decisions should be excluded, because of the comparative nature of the process. If a person whose application overlapped with a successful applicant appealed the decline of their application, this would create uncertainty for the permit holder and could significantly delay their feasibility activities. Resource and marine consenting processes will provide an opportunity for any affected party to submit on and subsequently appeal consent decisions.

143. Given the nature of the industry and desire for timely decision-making, and therefore finality, we consider these limits to be justified.

144. During consultation a majority of submitters agreed that a limited right of appeal would be fair and reasonable, as similar mechanisms are standard practice in other regulatory regimes. However, some submitters said that either the judicial review process was adequate, or a more comprehensive appeal process should be provided for.

Changes to permits post-award

145. Once ORE developments are in operation, developers may want an opportunity to vary their permits, i.e. vary their permit area, extend the permit duration, transfer their permit or vary their project scope. Allowing some variations provides important flexibility and enables development of long-term projects, e.g. through enabling the industry to make changes to take advantage of technological advancements or accommodate the repowering or refurbishment of assets.

146. We therefore consider variations to permits should be permissible if the regulator considers the permit assessment considerations could still be met. This would involve a permit-holder making and application, an assessment by the regulator against a refined version of the permit assessment process and proportionate penalties for failing to obtain the prior approval. To ensure the regulator is not unnecessarily burdened by inconsequential changes, we consider the regime should focus on material changes – transfers of permits to non-participants, more than 25% change of control of a permit participant, significant changes to the electricity produced or proposed outcomes of development.

147. There are two scenarios in which we consider permit variations should not be permissible or limited:

    a. significant extensions to permit area

    b. extensions to permit durations.

148. Public consultation generally supported a flexible approach that is cognisant of the commercial realities of developments of this nature. Industry submitters in particular noted that variations will be necessary and pragmatic mechanisms to manage these will improve investment certainty (i.e., investors will not be willing to engage if variation requirements were overly stringent and uncertain).

Extensions to permit area

149. We considered whether a scenario in which a developer with an existing operation wishes to expand that operation beyond the geographic reach of the original permit should be treated as an extension of the original permit or a new permit application. Where a developer wishes to extend, we consider it important that:

    a. the regulator has an opportunity to consider these proposals against the same considerations as it would for a new development;

    b. the developer has the same obligation to engage with relevant Māori groups as it would for a new permit; and

    c. there is an opportunity, where competition exists, for the regulator to compare projects and choose the project that is the best project for New Zealand.

150. We consider that the best way to achieve this is to require **a new permit application for significant extensions to the geographic limits.**

151. Submitters in the consultation agreed with this approach as it would provide some flexibility to consider minor extensions without undermining the feasibility process. Significant expansions could have material impacts on competitors, electricity system and the deliverability of the expanded project, especially in relation to decommissioning arrangements. We also consider it important that the developer has the same obligation to engage with relevant iwi and/or hapū throughout the feasibility and commercial stages of development as they would for a new permit.

Extensions to commercial permit duration

Extensions to commercial permit durations may be important to accommodate the repowering or refurbishment of assets to extend their life and economic potential. Unlike geographic extensions, we do not consider it necessary for such requests to trigger a full feasibility and commercial assessment process. Rather, extensions to permit durations could be achieved through a simpler application process, that focuses on ensuring permit conditions can still be met. Extensions of up to 40 years would be available.

Financial costs arising from the permitting process

152. Public organisations should charge a fee or levy when the goods or services they provide deliver a specific group (and not the general population) with a direct benefit. Cost recovery is generally appropriate, because the developers (primary users of the regulatory system) are the direct primary beneficiaries of this private good (with flow-on indirect benefits to the wider public from potentially lower energy costs and a more reliable and sustainable energy resource).

153. In the absence of an explicit cost-recovery provision, the Government would need to cover the costs for administering this regime through Crown funding, which will disproportionately impact taxpayers who would not directly benefit from the grant of a permit.

154. We consulted on, and submitters almost unanimously supported, a proposal that the **costs be recovered through fees**. This is because a specific business will directly benefit if they are successful in their application. It is intended that the cost recovery fees will be paid by those developers who wish to submit a feasibility (and subsequent commercial) application under the regime. Where a permit is granted, the permit

holder will be subject to annual fees and application fees in relation to any subsequent changes requested to the permit.

155. A Stage 2 Cost Recovery Impact Statement will be produced at a later stage outlining the details of the cost recovery model and level of fees. At a high level:

- **Application cost recovery fees** would be payable to the regulator and reflect the cost to the regulator of receiving and assessing an application, making a recommendation between overlapping applications, and implementing the decision. An application fee would cover applications for a feasibility permit and a commercial permit, and to any subsequent variations, modifications, transfers, or other application requests in relation to the permit granted. An application fee which would be charged irrespective of the success of the application.

- **Annual fees** will cover costs to the regulator for administration of the permitting regime, including compliance, reporting, maintaining the register of permits, stakeholder engagement and provision of advice to the Minister. An annual fee would be charged only to applicants who have been granted and hold a permit. It is likely that the fee will differ based on the permit type, as the monitoring, compliance and stakeholder engagement requirements will differ at each stage.

Revenue-gathering

156. Internationally, some ORE regimes include a revenue flow to government. The purpose of revenue-gathering is to enable the taxpayer or wider population to share in the benefits of the development of the ORE infrastructure.

157. There are risks with establishing a revenue-gathering mechanism from the outset of the system. ORE projects are already expensive. Imposing a revenue-gathering mechanism could deter investment and undermine the ability for ORE projects to contribute to New Zealand's energy transition goals. Consumers could experience higher electricity costs to offset revenue-gathering. There is also an interplay between revenue gathering and revenue support (which is out of scope of this RIS).

158. It may also be challenging to establish the basis on which to impose a revenue-gathering mechanism, given neither the energy source nor the marine area is owned by the Crown (which is the common justification for charging royalties in comparable regimes, e.g., crown minerals).

159. Given that ORE would be a new industry, and the uncertainties surrounding the economics of development in New Zealand more broadly, revenue-gathering mechanisms are not appropriate at this stage. These risks were also highlighted during consultation, where most submitters argued against any revenue flow back to government, as the additional costs would largely flow back to consumers and such a mechanism could significantly deter investment in an emerging market. The Australian regime does not include a general revenue-gathering mechanism, meaning that including one could further deter investment in New Zealand.

Section 5: Options and sub-options to address Problem B

160. The options and sub-options in this section are based on a preferred approach of a two-step permitting model and have been assessed against the same criteria as in Section 2, namely:

- Enabling - Will the option provide greater certainty to support investment in a timely way?
- Effectiveness - Will the option lead to better outcomes for New Zealand?
- Ease of implementation and administration - Will the option be straightforward to implement? Will it be straightforward to administer? Will it reduce complexity and provide greater clarity around requirements? Will it align well with the wider system? Will it enable parties with relevant interests to participate in the process?

Options to address the lack of a decommissioning obligation

161. This section outlines the various options to provide for a legal obligation on permit holders to decommission ORE infrastructure and what the design of any such obligation should be.

What options are being considered?

Option 1: Status quo

162. The status quo would be to rely on the existing provisions of the EEZ Act to impose conditions on decommissioning in the same way the Act manages any activities that interact with the seabed (including demolition of a structure or the abandonment of pipelines). Decision-making authorities are only required to consider environmental impacts of decommissioning at the point a marine consent to decommission is applied for, and the EEZ Act does not impose an explicit obligation on applicants to decommission. There is no requirement to hold a financial security as security for the performance of decommissioning either.

163. The status quo would fail to address the policy problem because it would not provide any mechanism to ensure that ORE developers decommission infrastructure at the end of its useful economic life, and there is no requirement to hold a financial security as security for the performance of decommissioning either. Stakeholders were not asked to submit views on this option during consultation but did emphasise the importance of putting decommissioning obligations in place at the earliest stage of development.

Option 2: Introduce a legal obligation to decommission

164. This option would place a legal obligation on ORE permit holders to decommission disused infrastructure under the proposed ORE permitting regime, with associated offences and penalties for failing to do so. Internationally, imposing a legal obligation on permit holders to decommission is best practice, because it ensures that

decommissioning and relevant preparations are taken seriously and considered at the earliest stage possible in the development cycle of a project.

165. This option is an improvement on the status quo because it sets clear expectations for permit holders that they will be required to meet their legal obligation to decommission. However, it does not sufficiently mitigate the risk of permit holders not having the financial capability to decommission.

166. During consultation, ORE industry submitters generally expressed support for decommissioning obligations, and reiterated their view that decommissioning is an integral part of taking a responsible and sustainable approach to ORE management. They also emphasised that they recognise the importance of an effective partnership with iwi and hapū in fulfilling any decommissioning obligations.

Option 3: Introduce a legal obligation to decommission and provide financial security (cost estimate, decommissioning plan, financial capability)

167. Under this option, commercial permit holders would have a legal obligation to decommission and be required to put in place some form of financial security as security for the performance of their obligation to decommission. Commercial permit applicants would be required to provide an estimate for the total costs of decommissioning and a plan outlining how they intend to decommission, as well as providing sufficient information to assess their financial capability to do so. The cost estimate would contribute towards determining the financial security value. The Minister for Energy would determine the kind and amount of financial securities required.

168. Decommissioning plans and cost estimates would be based on the assumption that infrastructure would be fully removed, but preserve flexibility for partial removal, subject to the approval of the appropriate environmental consenting authorities, if that is deemed more appropriate. This approach aligns with international best practice, as well as guidance from the International Maritime Organisation.

169. This option would be more effective at delivering positive outcomes from decommissioning for New Zealand because the requirement to provide some form of financial security mitigates the risk of significant financial burden falling on the Crown if a permit holder failed to decommission. The aim of this option is to minimise the risks associated with decommissioning, rather than remove them completely.

170. Stakeholders strongly supported a decommissioning plan, cost estimate and financial security being provided at the commercial permit stage, citing the importance of developers having certainty on their decommissioning requirements at an early stage so they can be priced into the project and their familiarity with similar mechanisms in overseas jurisdictions. A few individual submitters proposed alternative approaches, such as remediation bonds like those used for Tiwai Point; a general decommissioning fund built up via a levy; and assessing the decommissioning plan as part of the environmental consents process instead. These options were not considered in detail due to the strong stakeholder support for commercial permit holders to have a legal obligation to decommission and be required to put in place some form of financial security. It is also standard practice internationally for ORE regimes to require permit holders to decommission and have financial security to do so. This is aligned with the approach taken in the Crown Minerals Act 1991.

How do the options compare to each other?

Criteria	Option 1 – Status quo	Option 2 – Introduce a legal obligation	Option 3 – Introduce a legal obligation and require financial security
Enabling – will it provide certainty to support investment	**0** Developers are subject to decommissioning requirements under other legislative frameworks, which impose conditions on decommissioning related activities (no legal obligation to decommission and no mechanism to assess financial capability to decommission)	**+** Gives prospective permit holders greater degree of certainty about decommissioning obligations than status quo.	**++** Gives prospective permit holders the greatest degree of certainty about what the legal obligation entails, and the actions required to fulfil their legal obligation, ultimately providing more certainty to support investment decisions.
Effectiveness – better outcomes for New Zealand	**0** The status quo fails to ensure that permit holders decommission and does not minimise any of the risks for the Crown associated with decommissioning.	**+** Improvement on status quo but still presents risks to the Crown as developers could default on their obligations to fund decommissioning activities.	**++** Affords the most protection to the Crown, ultimately leading to the best and most secure outcomes from decommissioning.
Ease of implementation and administration – simple to implement and administer / align well with wider system / Will it enable parties with relevant interests to participate in the process?	**0** No changes required. However, does not align with the approach taken in the wider New Zealand system and international jurisdictions.	**--** Initial implementation straightforward, aligns with the obligations imposed on permit holders in related domestic and international regulatory regimes. However, where the obligation is breached, implementation becomes very complex (as it's difficult to enforce without a financial security in place).	**-** More complex to implement at the outset. However, if obligation is breached, it's easier to implement (i.e., finances needed to decommission are in place). Most aligned with requirements in related regimes and therefore has the added benefit of consistency across domestic settings and international ORE systems.

What option is likely to best address the problem, meet the criteria, and deliver the highest net benefits?

171. MBIE's preferred option is **option three – introduce a legal obligation to decommission and provide financial security,** because it effectively addresses the policy problem and minimises decommissioning-related risks by ensuring that ORE permit holders are subject to decommissioning obligations and have the necessary financial security in place to both (i) meet the costs of decommissioning, and (ii) mitigate the financial risk to the Crown.

172. Option 3 also provides the greatest clarity around requirements for regulated parties and aligns with the approach taken by international jurisdictions, as well as New Zealand's petroleum sector.

173. The status quo does not provide adequate protections to minimise the financial risks associated with decommissioning and does not provide permit holders with a clear regulatory framework to comply with.

174. Option 2 does not sufficiently minimise the financial risks associated with decommissioning or align with established decommissioning regimes.

175. Stakeholders consulted during public consultation agreed with MBIE's preferred approach and supported the introduction of a legal obligation to decommission and provide financial security.

Alignment with environmental consenting regime

176. Under the EEZ Act and regulations, owners and/or operators of an offshore installation used in connection with petroleum production, or a structure, submarine pipeline, or submarine cable associated with the installation, are required to provide a decommissioning plan to the EPA providing background information on the planned decommissioning activities, the proposed approach to carrying these out, any consultation with key groups (including iwi authorities) and any post-decommissioning monitoring and maintenance.

177. There is value in a similar requirement being extended to apply to the owners and operators of ORE infrastructure, so that any potential environmental impacts of decommissioning can be assessed ahead of the marine consent application process by the appropriate authority. This would complement the decommissioning plan provided to the ORE regime regulator.

Design choices for preferred approach

178. This section considers the following issues that impact the scope and extent of decommissioning obligations:

- What should the cost estimate be based on?
- How should financial securities accrue over time?
- How should trailing liability be dealt with?
- How should residual liability be dealt with?

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How should financial securities accrue over time?

181. The regime will need to specify how financial securities for decommissioning accumulates over time and when it is lodged. This is a critical issue for developers as it will impact the amount of capital available to them to undertake development.

182. We considered and consulted on options for dealing with this as set out below. We concluded that **financial security should accrue to reflect key risk periods** (i.e., construction, when the asset is not earning any revenue, and in the final years of operation when projected revenues are likely to fall), but with the **ability for the regulator to impose different financial security requirements** depending on the risk profile of the developer and nature of the project. In practice, this means that financial securities will generally be required to be in place during construction, before being released (or partially released) to the permit holder at the point of commercial operation and then building up again over the asset's life. This approach is proportionate to the degree of risk across different stages of the project and will give permit holders a sufficient level of certainty about requirements.

183. Options consulted on:

    1. Requiring the full value of financial security to be lodged at the point of commercial permit grant. This option is not considered viable because the very material cost for applicants may deter investment by reducing the amount of capital available prior to the development being built and operational.

    2. Financial security accumulating gradually over the lifetime of the permit. This option received the most support from industry submitters during consultation, but it does not provide sufficient security during the high-risk construction period when capital costs are high and revenue has yet to be generated.

3. Financial security accrues to reflect key risk periods as set out in the preferred option, but there is no decision-maker flexibility to impose different requirements based on the risk profile of the developer.

	Enabling	*Effectiveness*	*Ease of implementation / administration*
Financial security required at point of commercial permit grant	*X*	✓	✓
Financial security accumulates gradually	✓✓	✓	✓
Financial security reflects key risk periods	✓✓	✓	✓
Financial security reflects key risk periods and the developer's risk profile	✓	✓✓	✓✓

How should trailing liability be dealt with?

184. If a permit is transferred to a new permit holder or an asset is sold to a different company, it will be important for the regime to ensure that the decommissioning plan for the project is still carried out. It is therefore appropriate that the Government should be able to:

    a. Require the new holder to decommission in line with the original decommissioning plan; and

    b. Require the new holder to provide financial security equivalent to that already in place or a higher security if the risk profile is different from that of the original permit holder.

    c. Require that the transfer is approved by the Minister.

185. We considered providing for trailing liability in the regime, where liability for decommissioning can revert to previous permit holders – in line with the CMA. We dismissed this option and concluded that **the regime should not provide for trailing liability**, as including trailing liability provisions in the regime may disincentivise investment in New Zealand's industry (a concern strongly emphasised by developers). The risk to the Crown is already minimised by requirements for transferees to prove their financial capability to decommission before the transfer takes place. Therefore, we do not consider the benefits of trailing liability outweigh the risks.

186. During consultation, submitters expressed that decommissioning obligations should apply to the new permit holder, with the Government undertaking financial capability assessments and ensuring financial security lodgement as part of the transfer process. ORE industry submitters agreed that commercial permit transfers should only occur if the transferee accepts the decommissioning plan obligations and submits financial security (option one).

	Enabling	*Effectiveness*	*Ease of implementation / administration*
Trailing liability	*X*	✓	✓
No trailing liability	✓✓	✓	✓✓

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Options to create safety zones around ORE infrastructure

191. This section outlines the various options to provide for the establishment of safety zones around ORE infrastructure and what the design of these safety zones should be.

What options are being considered?

Option 1: Status quo

192. Under the status quo, there is no existing legislative framework through which safety zones around ORE infrastructure in the EEZ could be established. As a result, the decision-maker would be unable to declare safety zones around the infrastructure at any point over the lifetime of an ORE project.

193. The status quo provides the maximum level of freedom for navigation for other marine users, but it presents serious risks to the health and safety of individuals navigating

those areas and/or working on ORE projects. It also does not provide for the protection of ORE infrastructure.

Option 2: Automatic safety zone of 500 metres at all times, provided for by the regulatory regime

194. This option would enable the ORE regulatory regime to provide for the establishment of safety zones around infrastructure. Safety zones would automatically be 500 meters in size (the maximum size allowed under UNCLOS) and be in place around ORE infrastructure at all times through the project lifecycle.

195. The benefits of this option are that it provides the highest level of protection for health and safety for regulated parties (ORE permit holders and their employees) and other marine users, as well as the infrastructure itself. Ultimately, this would be most effective at limiting the health and safety risks and economic loss that could arise from entering a safety zone and / or interfering with ORE infrastructure. However, there is a risk that this option would significantly impact the existing rights of other users of the sea and navigation rights. This risk was highlighted by the fisheries industry and iwi and hapū during public consultation, in comparison to the other options.

Option 3: Dynamic safety zones, provided for by the regulatory regime

196. This option would enable the regime to provide for the establishment of safety zones and for the decision-maker to produce guidance on the appropriate size of these zones during different stages of development of ORE projects. Guidance would likely stipulate the safety zones should be 500 meters during high-risk periods (e.g., construction) and 50 meters during low-risk periods, such as normal operation. The decision-maker would have the ability to consider applications for other amounts from permit holders.

197. This option ensures the maximum controls are in place during high-risk periods to ensure better safety outcomes than the status quo while not limiting other marine users' access to the area.

198. This option aligns with the United Kingdom's approach to establishing safety zones around ORE infrastructure.

How do the options compare to each other?

Criteria	Option 1 – Status quo	Option 2 – Automatic safety zones of 500 metres	Option 3 – Dynamic safety zones
Enabling – will it provide certainty to support investment	**0** Does not provide certainty to permit holders that their infrastructure will be adequately protected from intentional or accidental harm.	**+** Both options two and three provide a comparable level of certainty to developers about their safety zone requirements and safety of infrastructure to support investment.	**+** Both options two and three provide a comparable level of certainty to developers about their safety zone requirements and safety of infrastructure to support investment.
Effectiveness – better outcomes for New Zealand	**0** Does not provide any mechanism to ensure safety of navigation or infrastructure but has least impact on other users. Inconsistent with international best practice and provisions in New Zealand's offshore petroleum exploration sector.	**0 / +** Maximises safety outcomes. However, limits access to other marine users beyond what is necessary to protect safety and does not provide the same opportunities for iwi and hapū considerations to be taken into account.	**++** Ensures maximum controls in place during high-risk periods to promote safety, without unnecessarily infringing on other users of the marine space, including iwi and hapū, and fisheries.
Ease of implementation and administration – simple to implement and administer / align well with wider system / Will it enable parties with relevant interests to participate in the process?	**0** No implementation. Would be out of step with the approach taken by international ORE regimes.	**-** Adopting a standardised, automatic approach would be straightforward to implement.	**--** Not as straightforward to implement as option 2 but aligns with approach taken by international jurisdictions (i.e., the UK).

What option is likely to best address the problem, meet the criteria, and deliver the highest net benefits?

199. On balance, MBIE's preferred option is **Option 3 – dynamic safety zones provided for by the ORE regulatory regime**. Option 3 effectively addresses the policy problem by creating safety zones to protect public and navigational safety and infrastructure from intentional or accidental harm, while also balancing the existing rights and interests of other marine users (including iwi and hapū). In this regard, option three will deliver better outcomes from safety zones than either the status quo (which would not protect infrastructure or other marine users from harm or damage) and option two (which imposes the greatest limitations on other uses of the marine environment).

200. Option 3 received the greatest level of support from stakeholders during public consultation. Various stakeholder groups (including other marine users, iwi and hapū and the ORE industry) agreed the status quo was insufficient and that there was a need for safety zones to be variable over the life of a project (i.e. larger during construction and smaller during operation where the risks are low to reduce the impact on other marine users). The ORE industry, iwi and hapū, and other marine users in favour of Option 3 noted that a flexible approach to safety zones would provide the necessary protection for safety of navigation and infrastructure, while also enabling ORE projects to potentially co-exist with other uses of the marine environment (e.g., aquaculture) during normal periods of operation.

Options to provide certainty for supporting offshore transmission infrastructure

201. This section sets out options to address the lack of certainty around development of supporting offshore electricity transmission infrastructure for connection assets[4].

202. In New Zealand, responsibility for developing offshore transmission infrastructure is unclear as offshore connection assets do not currently exist. For renewable energy developments onshore, Transpower manages the development of connection assets on a case-by-case basis through Transpower Works Agreements and grid connection processes.

203. This approach does not provide sufficient certainty for renewable energy developments offshore. Early consideration and timely delivery of suitable infrastructure will be integral to the delivery of ORE. Offshore transmission infrastructure carries larger delivery risks as it can be harder to build and more expensive than onshore equivalents.

204. Changes to the broader transmission regulatory system, including increasing the capacity of the onshore electricity grid (interconnection assets), are out of scope of this RIS.

What options are being considered?

Option 1: Transmission system operator (TSO) led model

205. Under this option, Transpower would be expressly authorised, in legislation, to develop all offshore transmission assets (i.e. a regulated monopoly over all aspects of such infrastructure). Transpower would lead all five stages of development (design, construction, operation and maintenance, and decommissioning). Access to assets developed by Transpower would be managed through the existing Transpower Works Agreement processes and any relevant regulatory requirements under the Electricity Industry Act and the Commerce Act. ORE developers could potentially be required to fund some or all of the costs through leases or fees.

206. A TSO-led approach can be beneficial because it provides for a strategic and centralised development of infrastructure that can be shared and better integrated to the onshore grid. However, this option places delivery risk on the TSO and developers, which could have material impacts on the overall investment certainty for developments and potentially disincentivise development all together. Internationally, this risk is particularly elevated in countries where the TSO is overburdened with supporting significant energy system transitions or grid upgrades. Delivery risks are commonly managed by implementing penalties if transmission assets are not made available by a pre-agreed date.

Option 2: Hybrid model

207. This option would involve Transpower and developers working together to deliver offshore connection infrastructure. Under this approach, the roles and responsibilities

[4] Connection assets provide a one-way flow between the generation asset and the national grid. For ORE projects, it generally comprises of inter-array cables, an offshore substation, export cables and an onshore substation. Interconnection assets comprise of the national grid which are mostly onshore.

of Transpower and developers would be defined in primary legislation and apply to all ORE developments. Internationally, this approach typically involves the private sector leading the design and construction of offshore transmission infrastructure development and the system operator leading the operation, maintenance, and decommissioning.

208. Given the shared responsibilities, this option would require a mechanism to manage and delineate the roles, e.g., a transfer or permit process which prescribes set asset valuation methodologies, standard clauses for breaches and dispute resolution mechanisms.

Option 3: Developer-led model

209. This option would introduce a developer-led model, in which developers of the generation assets or other third parties are responsible for all five stages of offshore transmission infrastructure development. In a developer-led model, developers commonly recover the costs from consumers through the sale of electricity generated.

210. This option reduces delivery risk and provides for more flexibility and innovation than Option 2. The downside is that individual ownership of infrastructure could over time overcrowd the marine area and create inefficiencies where infrastructure is not shared.

How do the options compare to each other?

Criteria	Option 1 – TSO-led model	Option 2 – Hybrid model	Option 3 – Developer-led model
Enabling – will it provide certainty to support investment	**0** Defined roles provide certainty. However, developers want control over delivery costs and timeframes, which they may not get under this option.	**++** Roles distributed based on capabilities which minimises delivery risks, and ensures roles are delineated and clearly defined in advance of developments beginning.	**+** Defined roles provide certainty for developers and control over managing delivery risks.
Effectiveness – better outcomes for New Zealand	**+** TSO is well-placed to ensure infrastructure delivers secure supply of electricity but has limited capabilities to build infrastructure offshore within the desired timeframes. May enable future developments to plug-in to existing infrastructure more easily. However, likely to be more inefficient and expensive, with costs flowing through to the consumer.	**++** A hybrid model has been proven to lead to more efficient outcomes internationally and better outcomes for the security and reliability of the electricity system.	**+** Provides flexibility and accelerated project development to support better outcomes. Operation and maintenance may be inconsistent with system resilience.
Ease of implementation and administration – simple to implement and administer / align well with wider system / Will it enable parties with relevant interests to participate in the process?	**-** Requires legislative changes and would be a significant departure from existing processes.	**- / 0** May require legislative changes which may be analogous to existing processes or create some administrative burden on all parties.	**-** Requires legislative changes and would be a significant departure from existing processes. Transpower has less certainty/control over delivery.

What option is likely to best address the problem, meet the criteria, and deliver the highest net benefits?

211. MBIE's preferred option is Option 2 – hybrid model where the developer leads the design and construction of offshore transmission infrastructure development and the system operator leading the operation, maintenance, and decommissioning.

212. During consultation, most submitters, including Transpower and ORE developers, supported this option. ORE developers asserted a hybrid model would provide developers with greater control over the quality, functionality, durability, and timely delivery of the assets. Transpower was supportive of a hybrid approach, provided it is involved in the design and planning of the offshore grid to ensure assets are built to the appropriate standard and the configuration of the offshore assets is efficient.

213. The hybrid model minimises delivery risks, providing greater investment certainty for developers and supporting better outcomes for the security and reliability of the electricity system. It does this by establishing a model that leverages the respective strengths of Transpower and developers to deliver transmission infrastructure, i.e.:

    - **Commercial permit holders are responsible for planning, building, and funding new offshore transmission infrastructure**: Developers have the technical expertise for design and construction of offshore infrastructure. During consultation there was strong support, including from Transpower and developers, for permit holders being responsible for these areas. This model gives developers greater control over delivery timeframes, quality, and costs, and therefore supports greater investment certainty. Permit holders could choose to contract with Transpower to plan and build offshore transmission infrastructure, noting it must connect with the onshore transmission system operated by Transpower.

    - **Transpower are responsible for owning, operating, and decommissioning offshore transmission infrastructure:** As the transmission system operator for New Zealand, Transpower is well-resourced to carry out these functions and can capitalise on the economies of scale of its existing asset bases and operating functions. Regardless of who builds the infrastructure, Transpower is best placed to own and operate these assets. Consultation feedback emphasised that a having a single, consistent asset owner across the entire network is important and likely to lead to better outcomes for our energy system. Transpower already carries out all these functions in relation to the interisland HVDC cable. The costs for decommissioning these assets would follow the same processes Transpower adopts for existing offshore infrastructure.

214. Option 1 also considered whether Transpower should be responsible for funding and building the offshore transmission infrastructure. From a broader system outcomes perspective, some degree of Transpower involvement in the design of the transmission routes and assets could have the added benefit of positively impacting long-term coordination and system resilience. However, these benefits could be facilitated in other ways through the hybrid model, e.g., through Transpower being involved in setting any standards or criteria for the permitting process.

215. The implementation of this option requires further consideration and consultation with key regulators and industry as part of next steps to ensure regulatory intervention is necessary and aligned with existing requirements under the Commerce Act 1986 and the Electricity Industry Act 2010.

Decommissioning of transmission infrastructure

216. We also considered whether developers should be responsible for decommissioning transmission infrastructure, i.e., Transpower or the permit-holder. On balance, given Transpower would have owned the assets for over 30 years, it would not be appropriate or practical to require developers to decommission these assets or provide financial security to cover decommissioning costs. Transpower, as a state-owned organisation which has previously decommissioned offshore assets (e.g., the interisland HVDC cable), is heavily regulated by government and therefore poses a much lower risk. This is consistent with the rationale for not imposing trailing liability for generation assets. This may also enable transmission assets to remain after generation assets have been decommissioned.

Annex 1 – International Comparisons of Offshore Renewable Energy (ORE) Regulatory Regimes

	New Zealand (proposed)	Australia	United Kingdom	Scotland	Netherlands	Denmark – Tendered process	Denmark – Open door process
Does the country have **bespoke legislation** for ORE?	Currently under consideration.	Yes Offshore Electricity Infrastructure Act 2021	No ORE is covered under the Energy Act 2004 and managed via the Crown Estate (UK) and ScotWind (Scotland).		Yes Offshore Wind Energy Act 2015	No The Act on the Promotion of Renewable Energy 2015 promotes the production of renewable energy sources on land and offshore areas. The Danish system provides for two processes – an open-door process and a tendered process – both of which are covered in this table.	
How **mature** is the regime?	In development.	Still in development.	Established.	Recent.	Established.	Established.	
Who determines where developments should go?	Developer Developers will submit proposals for sites to the regulator.	Hybrid The Government assesses and designates suitable areas; developers propose specific sites within those areas.	Government The Government proposes broad areas for development and conducts preliminary analysis of specific sites. Leases are granted to developers for further investigations of these sites.		Government The Government uses spatial planning to designate areas and specifies conditions for construction and operation in these areas.	Government The Government uses spatial planning to identify and assess eligible sites.	Developer The developer applies for a license to carry out preliminary investigations in an area. No specific sites are designated for these applications.
How is the process run and **who** initiates it?	Government rounds Rounds for feasibility permit applications will be initiated by the regulator.	Government rounds The Minister issues an invitation to submit a feasibility licence application (within a specified time period).	Government rounds The Government initiates rounds to award leases to developers.		Government rounds A competitive tender process is initiated by the Government after its spatial planning decisions have been made.	Government rounds Tender invitations (including specifications for developers to follow) are issued by the Government.	Developer applications Developers may, at any time, apply to carry out initial investigations. No prompt from the government is required.
What are the broad types of **criteria** used to select a project?	Delivery and capability – YES Broader outcomes – YES Price - NO	Delivery and capability – YES Broader outcomes – YES Price - NO	Delivery and capability – YES Broader outcomes – YES Price - NO		Delivery and capability – YES Broader outcomes – YES Price - YES	Delivery and capability – YES Broader outcomes – YES Price - YES	
When are projects **assessed** against the criteria?	Pre-feasibility permit grant, pre-commercial permit grant.	Pre-feasibility licence grant, pre-commercial licence grant.	Pre-tender process, during tender process, assessment of successful tender bids prior to construction.		Pre-construction.	Pre-feasibility licence grant, pre-construction, pre-electricity production licence grant.	
How **long** do commercial permits (or equivalents) last?	40 years	40 years	60 years		40 years	25 years, with the possibility of extension upon agreement.	
What is the **maximum size** of a project, and how is it defined?	250km2 (in guidance)	700km2 (in regulations)	850km2 (in guidance)	Government spatial planning sets out a ratio for output to geographic area that tender offers are based on.	Variable approach, depending on the government's spatial planning. Tender offers are based on project outputs (MW).	Government spatial planning identifies sites of specific sizes, and the project application process is based on output (MW).	Applications are made based on sites identified via government spatial planning processes.

	New Zealand (proposed)	Australia	United Kingdom	Scotland	Netherlands	Denmark – Tendered process	Denmark – Open door process
Is **transmission** developer led or Transmission System Operator (TSO) led?	Hybrid Developers design and build transmission infrastructure, then transfer ownership to Transpower (as TSO).	Hybrid Government is involved in the design phase, but developers hold the transmission licence. Guidelines yet to be written.	Hybrid Developers of new projects can choose to either design and build transmission infrastructure themselves or opt for the TSO to do so.		Hybrid Developer is responsible for costs up to connection point, after which ownership is transferred to the TSO.	TSO TSO is responsible for development, construction, and operation of transmission assets.	Developer Developer is responsible for the development, construction, and operation of the offshore transmission assets.
Does the country have a **decommissioning regime** – with financial security and trailing liability?	Yes Financial security – YES Trailing liability - NO	Yes Financial security – YES Trailing liability – NO	Yes Financial security – YES Trailing liability – YES, subject to Ministerial decision-making		Yes Financial security – YES Trailing liability – No detailed framework	Yes Financial security – YES, depending on licence conditions and regulator's decisions Trailing liability – No detailed framework	
Are cost recovery or revenue gathering mechanisms in place?	**Cost recovery** only, with a combination of relatively moderate pre-set application and annual fees.	**Cost recovery** only, with a combination of relatively moderate pre-set application and annual fees.	**Revenue gathering**, including significant royalties based on annual production volumes (competitively allocated).	**Revenue gathering,** including significant pre-set ongoing fees based on production volumes.	**Revenue gathering**, including moderate ongoing fees at a fixed rate based on production volumes.	**Cost recovery** only, with successful applicants covering previous costs incurred by the Government.	