

Stage 2 Cost Recovery Impact Statement

Proposed changes to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013.

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry for the Environment (MfE). It addresses the problem that the charge-out rates in the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the EEZ Fees Regulations) do not reflect the direct and indirect costs of the Environmental Protection Authority (EPA). As a result, the EPA is not meeting its statutory requirement to take all reasonable steps to recover its costs for certain functions and services, nor is it meeting Cabinet's intentions for cost recovery.

Other factors are also contributing to under-recovery by the EPA and these are briefly identified in this CRIS. However, out-of-date charge-out rates are a significant contributing factor, and the focus of this CRIS is on reviewing the charge-out rates only. It is estimated that if charge-out rates reflecting the EPA's direct and indirect costs had been in place in the 2021/22 financial year, there would have been an additional \$292,000 cost recovery, or 70 per cent more than the charge-out rates collected for EPA staff time in 2021/22.¹

The EEZ Fees Regulations provide for variable hourly charge-out rates depending on the EPA staff category carrying out the work. They also provide for actual and reasonable recovery of other expenses (such as expert advice). This approach to cost recovery was determined by Cabinet in 2012 following an assessment of who benefits from the functions and services the EPA delivers under the EEZ Act. The policy is for 100 per cent recovery of the costs of consenting functions and 80 per cent recovery of the costs of monitoring functions. This recognises that consenting and monitoring costs predominantly arise from marine consents held for private benefit, and there is also some public benefit from compliance monitoring. Some other functions provide mainly public benefits and are 100 per cent Crown-funded. This review does not revisit the policy around full and partial cost recovery.

The 2012 analysis and policy decisions are the basis for the EPA receiving an appropriation to cover the costs of its functions and services under the EEZ Act that have a public benefit.

MfE has reviewed the charge-out rates set by the EEZ Fees Regulations. The review considered both the type and level of cost recovery charges. The review considered the cost recovery provisions in the EEZ Act, including the principles of cost recovery at section 143 of the EEZ Act: equity; efficiency; justification; and transparency. It also considered the guidance on cost recovery from the Controller and Auditor-General August 2021 and the Treasury, April 2017.

As cost recovery policy is a specialist area, MfE commissioned specialist advice from the consultancy firm MartinJenkins in 2020. The advice received followed a robust

¹ This has been calculated using the EPA's cost-recovered staff time for 2021/22 and then applying an average of the proposed 2023/4 charge-out rates to that cost-recovered staff time.

methodology and underwent both a MartinJenkins peer review process and review from the EPA and MfE. Comments made were taken into account.

Using the MartinJenkins analysis as a base, charge-out rates have been updated taking into account the latest information on expected wage and salary growth, the addition of a new statutory public holiday (Matariki) and the EPA's current staff categories.

Consultation occurred on proposals between 1 December 2022 and 20 January 2023. Iwi authorities, councils, and EEZ Act regulated parties were contacted directly for feedback and a discussion document was made available on the MfE website. Feedback identified support for the policy objective and cost recovery principles, and no significant impacts from the proposed changes were raised. Changes suggested by submitters would lead to lower fees and less cost recovered. As a result, they did not perform as well as the proposals against the policy objective and principles, and no changes have been made to proposals as a result of consultation.

Changes to the EEZ Fees Regulations need to occur by 29 May 2023 in order for new charge-out rates to be implemented from 1 July 2023. This is in order to allow for a minimum of 28 days before the changes come into effect, and to meet the requirements in section 145 of the EEZ Act that any charge that applies in any financial year must have been made before the start of the financial year.



Hayden Johnston, **Director, Water and Land Use Policy**

7 March 2023

Executive summary

The Environmental Protection Authority (EPA) is responsible for various functions and services under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) related to management of the natural resources of the Exclusive Economic Zone (EEZ) and the extended continental shelf.

Under the EEZ Act, the EPA must take all reasonable steps to recover as much of the direct and indirect costs of its functions and services that are not already funded by the Crown.² In broad terms, those functions and services can be characterised as deciding whether proposed activities are allowed (consenting functions) and monitoring activities in the EEZ to make sure they are being done lawfully (monitoring functions).

In 2012, Cabinet agreed that consenting functions are for private benefit so should be fully cost-recovered, and monitoring functions have mixed benefit so EPA staff time should be cost-recovered at a rate of only 80 per cent. Other functions and services provide public benefits and are fully Crown funded.³

The Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the EEZ Fees Regulations) set hourly charge-out rates for given staff roles. The EPA must also charge the actual and reasonable costs for any expenses that it incurs while providing consenting and monitoring functions (such as the costs of contracted expert advice).

The EPA's cost recovery is currently significantly lower than the actual costs incurred. Over the last four financial years the EPA's expenditure on EEZ Act functions and services have exceeded revenues (Crown and cost recovered) by more than \$3m. This means that the EPA is not meeting its statutory requirement to take all reasonable steps to recover certain costs, and nor is it meeting Cabinet's intentions for cost-recovery.

One cause of under-recovery is that the charge-out rates in the EEZ Fees Regulations are out-of-date. Most of the charge-out rates have not been updated since 2013, so they have not kept up with the EPA's costs which have increased over the last ten years. There is now good information about the EPA's costs and activities that was not available in 2013, including up-to-date salary data and staff categories.

There are other factors which also contribute to the EPA's under-recovery, such as variable demand for consenting functions, difficulties in recovering incidental liaison time, and, in recent years, COVID interruptions to monitoring functions. The focus of this CRIS is on reviewing the EEZ Fees Regulations only. While this review alone will not address all of the EPA's under-recovery; out-of-date charge-out rates are a significant contributing factor.

We have reviewed both the type and level of cost recovery charges. An independent report from MartinJenkins was commissioned to support this review.

We assessed three options for the type of charge: Option A the current variable fee (hourly rate), Option B a fixed fee, and Option C a hybrid fee (involving both a fixed fee component

² [Exclusive Economic Zone and Continental Shelf \(Environmental Effects\) Act 2012, s 143\(1\)](#).

³ Cabinet Economic Growth and Infrastructure Committee. 12 December 2012. *Briefing note on Permitted Activities Proposals for EEZ Environment Effects Regulations (Reference number EGI (12) 29/14)*. Retrieved from <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/reference-number-egi-min-12-2914/> (22 September 2022).

and an hourly rate component). We consider that a variable fee (hourly rate) is still the most suitable charging method. We are not proposing to change the current hourly basis for charging.

MartinJenkins has verified that the current charge-out rates are not set to recover all relevant direct and indirect costs. Maintaining the current charge-out rates would result in Crown funding intended for other purposes being used to pay for functions and services that should be cost recovered because of the private benefits they generate. Therefore, the Crown is effectively subsidising the activities (and private benefit) of applicants and consent holders.

This Cost Recovery Impact Statement (CRIS) provides analysis of three options for updated charge-out rates. These are based on the analysis undertaken by MartinJenkins.

The preferred option (Option One – refer Table 1) sets separate charge-out rates for each of the following three financial years (2023/24, 2024/25, and 2025/26), with the final year continuing to be charged in future periods until the EEZ Fees Regulations are revised again.

The proposed 2023/24 charge-out rates are an increase of between 47 and 82 per cent compared with the current rates, depending on the staff category. The impact on applicants and consent holders is expected to be lower than these percentage increases, because the total charges often include third party costs which are passed on in full and are not affected by these proposed changes.

	1 July 2023-30 June 2024		1 July 2024-30 June 2025		From 1 July 2025	
	Consenting \$/hour (ex GST)	Monitoring \$/hour (ex GST)	Consenting \$/hour (ex GST)	Monitoring \$/hour (ex GST)	Consenting \$/hour (ex GST)	Monitoring \$/hour (ex GST)
EPA staff role						
Principal advisor/officer/investigator and team leader	301.00	240.80	310.00	248.00	319.00	255.20
Project leader/senior advisor 1/ compliance officer/investigator	251.00	200.80	259.00	207.20	266.00	212.80
Senior advisor 2/ officer/investigator	211.00	168.80	218.00	174.40	224.00	179.20
Advisor/officer/investigator	181.00	144.80	186.00	148.80	192.00	153.60
Administrator	143.00	114.40	148.00	118.40	152.00	121.60

Table 1: Proposed new hourly charge-out rates and staff categories

The other options assessed to update the hourly charge-out rates would remove the aspect of increasing the rates over a three-year period. Option Two would use only the 2023/24 rates in Table 1. Option Three would use only the 2024/25 rates in Table 1. Under all options, charge-out rates for monitoring functions would be 80 per cent of the full rates.

While options Two and Three allow for the effective recovery of costs, they do not perform as well as Option One on the criteria of equity (some cross-subsidisation will likely occur), accountability (Option Two results in under-charging after one year) and justification (Option Three may overcharge in the first year).

Consultation on the proposals ran from 1 December 2022 to 20 January 2023. Iwi authorities, councils, and EEZ Act regulated parties were contacted directly for feedback and

a discussion document was made available on the Ministry for the Environment (MfE) website. Three written submissions were received, and one of these submitters met with officials. Feedback received showed general support for the policy objective and cost recovery principles used to assess policy options. Suggestions from submitters to amend the proposals would have led to lower fees and less costs recovered. As a result, they did not perform as well as the proposals when considered against the policy objective and criteria. No changes were made in response to the consultation process.

This document supports the final policy decisions sought from Cabinet. It is intended that amended EEZ fees Regulations will be in force in time for them to apply in the 2023/24 financial year.

Status quo

Purpose of the regulatory system

Under the United Nations Convention on the Law of the Sea, Aotearoa New Zealand has certain rights and obligations with respect to the exclusive economic zone and extended continental shelf. The EEZ Act is the main law managing environmental effects in this marine area. Its purpose is to promote the sustainable management of the natural resources of the EEZ and the extended continental shelf, and to protect the environment from pollution by regulating or prohibiting discharges and dumping of waste and other matter.

The EEZ Act provides for people to apply for permission (marine consents) to undertake activities related to accessing resources, placing structures and cables on the seabed and dumping on the seabed.⁴ Marine consents take into account environmental effects of the activity and include conditions to prevent, mitigate, or avoid negative environmental impacts. Some activities can be done without a marine consent, provided regulatory conditions are met (permitted activities).

Activities in the EEZ include drilling for and extraction of oil and gas, exploration and prospecting activities (for example, seismic surveying), dumping dredged materials and laying, maintaining and removing seafloor cables. In future years, activities in the EEZ might include new developments such as aquaculture or offshore energy generation.

Functions and services undertaken by the EPA

The EPA is responsible for various functions and services under the EEZ Act, including deciding applications for marine consents, monitoring compliance with the EEZ Act, enforcement, promoting public awareness of the requirements of the EEZ Act and providing advice and secretarial support to boards of inquiry.

Statutory authority to charge

Section 143(1) of the EEZ Act provides that “the EPA must take all reasonable steps to recover so much of the direct and indirect costs incurred in performing its functions and providing services under this Act as are not provided for by money appropriated by Parliament for the purpose”.

Section 143(2) of the EEZ Act specifies that cost-recoverable functions and services include, but are not limited to, assistance with preparation of marine consent applications, reviewing, processing and deciding marine consent applications, administering, monitoring and supervising marine consents, certifying whether activities are compliant, and advice and information functions in relation to permitted activities.

Charges under the EEZ Act must be prescribed in regulations.

⁴ Permits under the Crown Minerals Act 1991 are also required.

Rationale for cost recovery

In 2012, Cabinet confirmed that fees and charges for EEZ Act functions and services should take into account where the benefit of a function or service falls.

Cabinet determined that those using EPA functions and services related to marine consents, permitted activities, rulings, and receiving and reviewing impact assessments do so to extract private benefits. For example, marine consents that allow extraction drilling for oil, and discharges related to the drilling, lead to valuable resource extraction and sale. There is a strong and clear relationship between the users of the EPA's functions and services and the private benefits received.

Consideration of who creates the costs was also taken into account. Applicants and duty holders undertaking regulated activities in the EEZ (such as extracting petroleum or dumping materials) are deemed to exacerbate risk. This means that their activities carry environmental risks that are assessed and managed through the functions and services of the EPA. Given that their activities drive the need for these functions and services, it is fair that they should fully or partially pay for the costs of delivering them.

Cabinet identified three categories of activity— namely, functions and services that confer:

- private benefits, and should therefore be paid for by those undertaking activities in the EEZ (applicants and duty holders)
- a mixture of public and private benefits, and should therefore be paid for partly by applicants and duty holders and partly by the Crown
- mainly public benefits and should therefore be paid for only by the Crown.⁵

Appendix 1 sets out which functions and services fall into each category. The rest of this document uses the terms:

- 'consenting functions' for functions and services which Cabinet agreed should be 100 per cent paid for by applicants and duty holders
- 'monitoring functions' for functions and services which Cabinet agreed should be 80 per cent paid for by applicants and duty holders.

The EEZ Fees Regulations

The EEZ Fees Regulations were put in place taking into account the benefits analysis set out above. The EEZ Fees Regulations stipulate the EPA must charge for any function or service it provides under the EEZ Act, except for those for which there is specific funding appropriated by Parliament. Table 2 notes the current charge-out rates for EPA staff.⁶

⁵ Above, n 3.

⁶ [Exclusive Economic Zone and Continental Shelf \(Fees and Charges\) Regulations 2013, cls 4\(1\)\(a\) and 5\(1\)](#)

EPA Staff Role	\$ per hour (ex GST)	
	Consenting functions	Monitoring functions
Principal technical advisor	290.00	232.00
Authority to accept decommissioning plan (new in 2021)	257.04	N/A
Project leader	140.80	112.64
Senior advisor	116.12	92.90
Advisor	103.75	83.00
Administrator	97.43	77.94

Table 2: EEZ Fees Regulations current charge-out rates

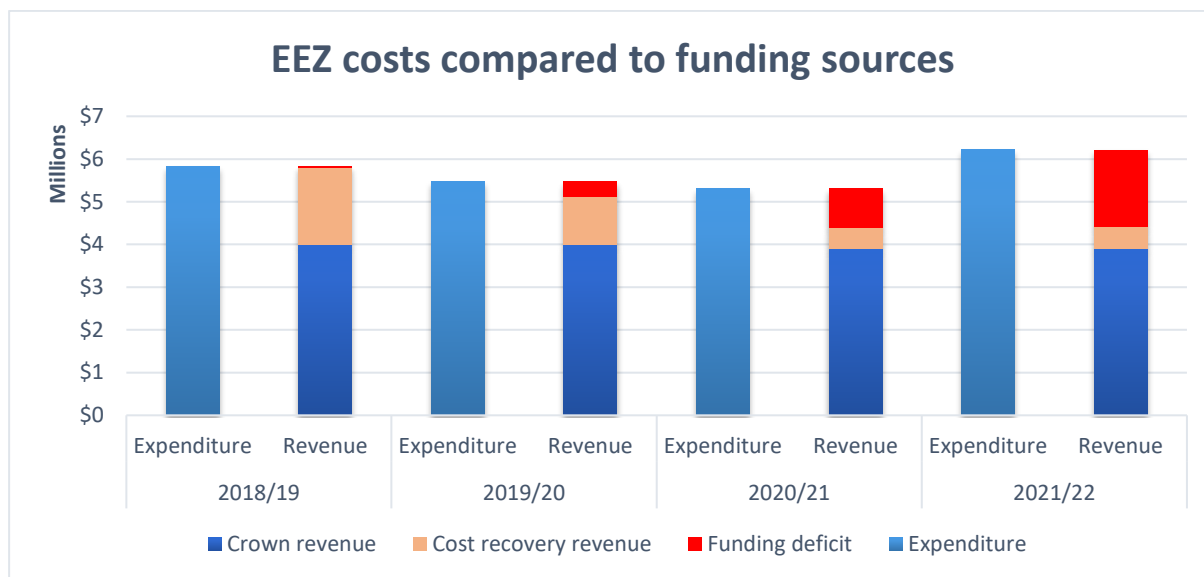
The EPA must also charge the actual and reasonable costs for any expenses that it reasonably incurs while performing consenting and monitoring functions (for example, travel and accommodation costs, hire of rooms for hearings, contracted expert advice).⁷

⁷ [Exclusive Economic Zone and Continental Shelf \(Fees and Charges\) Regulations 2013, cl 4\(1\)\(b\)](#).

Review of cost recovery charges

Reason for the review

The cost of EEZ functions and services exceeds the EPA's combined Crown funding and cost recovered revenue. As a result, the EPA has been using cash reserves and running a deficit model since 2018 to help fund its programme of work and operational activities. This places pressure on its ability to deliver on statutory responsibilities and Ministerial expectations. Graph 1 below shows that under-recovery has increased over the last three years.



Graph 1: Comparison of costs to funding sources

Out-of-date charge-out rates are one factor contributing to under-recovery of the EPA's EEZ costs. The EEZ Fees Regulations have not been updated since they were established in 2013.⁸ During that same period, EPA salary rates have increased by an average of 14 per cent, with no corresponding increase in the charge-out rates despite salary costs being a key driver of cost for the EPA. The MartinJenkins review verified that the current charge-out rates are not set to recover all relevant direct and indirect costs.

There is now good information available about the EPA's costs and activities, which was not available in 2013. The current rates were set using benchmarks rather than EPA cost information, because there was uncertainty around the inputs and costs that would be required by the EPA to perform its functions and services under the EEZ Act. Appendix 2 describes how the 2013 rates were set in more detail.

Treasury's *Guidelines for Setting Charges in the Public Sector* (April 2017)⁹ (Treasury guidance) notes that cost recovery regimes should be reviewed regularly to ensure they are

⁸ Except for a new EPA staff category that was brought about as a result of the new regulations being developed for decommissioning plans (the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Decommissioning Plans) Regulations 2021).

⁹ The Treasury | Te Tai Ōhanga. 28 April 2017. *Guidelines for Setting Charges in the Public Sector [2017]*. Retrieved from <https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector-2017-html> (22 September 2022).

operating efficiently, and that over-recovery and under-recovery is minimised. The Treasury guidance recommends that cost recovery regimes be reviewed every three to five years. The EEZ Fees regulations are therefore 'overdue' for review.

There are also other causes of low recovery of costs in recent years. For example, a lower number of marine consent applications means reduced revenue, while EPA's costs remain fixed due to the need to maintain capacity. COVID restrictions have also had an impact on inspections, which has reduced cost recovery for monitoring functions in recent years. However, out-of-date charge-out rates are a significant contributing factor.

The focus of this review is updating the EEZ Fees Regulations. While this review alone will not resolve all of the EPA's funding issues, up-to-date charge out rates will help support the EPA to remain financially sustainable long-term. Charge-out rates which reflect EPA's costs will also ensure that EPA is able to meet its statutory obligations to recover certain costs, and to meet Cabinet's intentions about who should pay for EPA functions and services.

The problem with maintaining the status quo (the counterfactual)

The current charge-out rates in the EEZ Fees Regulations do not allow the EPA to deliver the policy intent set by Cabinet in 2012 or to meet its statutory requirement to take all reasonable steps to recover the costs of its functions and services that are not Crown funded.

The EPA is required to accept and process applications under the EEZ Act. When these cost the EPA more than it is able to recover, Crown funds that were intended for other purposes must be redirected, which affects the EPA's delivery of other programmes. This use of Crown funds also acts as a subsidy from the Crown for the activities of applicants and consent holders who are receiving private benefits from EPA functions and services.

If the EPA's costs continue to increase and updates to the charge-out rates in the EEZ Fees Regulations are delayed, the gap between the amount charged and the cost to deliver the functions and services will continue to grow. A delayed review could also mean a more significant 'step-change' cost increase for industry later if EPA costs have continued to increase in the interim.

Objectives for this review

The primary objective in setting the charge-out rates under the EEZ Fees Regulations is to enable the EPA to continue to provide functions and services at a level of quality which supports the EPA's regulatory objectives, while recovering the costs of those functions and services in line with the EPA's statutory obligations and Cabinet's intentions about who should pay.

The EPA's underlying regulatory objectives are reflected in the purpose of the EEZ Act: sustainable management of the natural resources of the EEZ and protecting the environment from pollution by regulating or prohibiting discharges and dumping of waste and other matter.¹⁰

¹⁰ Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 10.

The benefits analysis underlying Cabinet's 2012 determination as to who should pay for EEZ functions and services is still considered sound. This review does not revisit that policy.

Cost recovery principles that must be considered

Sections 143-147 of the EEZ Act provide the EPA's authority to charge for functions and services which are not Crown-funded. The EEZ Act sets out the following principles that the Minister must have regard to in setting cost recovery fees:¹¹

Equity: costs should generally be recovered from those who benefit from the function or service, or whose action or inaction gives rise to the exercise of an EPA function. These should be at a level that is proportional to the benefit attained, or to the party's contribution to the costs of the action or inaction.

Efficiency: costs should generally be allocated and recovered to ensure that maximum benefits are delivered at minimum costs.

Justification: costs should be collected only to meet the actual and reasonable costs of the relevant function or service.

Transparency: costs should be identified and allocated as closely as practicable in relation to a function or service for the recovery period in which it was performed.

Criteria to assess options for this review

Taking into account the principles that the Minister must have regard to, and the objectives articulated above, the Treasury guidance and guidance from the Auditor-General,¹² we have used the following criteria to assess the cost recovery options considered in this CRIS.

Equity: costs are recovered from those who the function or service benefits, or whose action or inaction gives rise to the exercise of an EPA function. The charge or fee is fair and just. A charge, fee, or charge-out rate applies equally to every person or applicant who may be charged for work.

Efficiency: cost recovery supports the efficient use of resources, functions and services. Functions and services are delivered to derive maximum benefits at minimum cost. Recovering costs should be administratively simple and cost effective.

Justification: costs recovered reasonably relate to the functions and services being charged for.

Transparency: fee payers have enough information to understand the methodology used for setting the charge-out rates, whether they have been set fairly, and that revenue generated is correctly accounted for.

¹¹ [Exclusive Economic Zone and Continental Shelf \(Environmental Effects\) Act 2012, s 143\(3\)](#).

¹² The Controller and Auditor-General | Tumuaki o te Mana Arotake. August 2021. *Setting and administering fees and levies for cost recovery: Good practice guide*. Retrieved from <https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf> (22 September 2022).

Effectiveness: cost recovery supports the EPA's regulatory objectives and enables the cost-recovered service to be delivered to a level of quality that is appropriate for the circumstances.

Simplicity: the cost recovery regime is straightforward and understandable. The cost of participation is kept low and evasion opportunities are mitigated to an acceptable level.

Accountability: the EPA is able to recover the costs for the delivery of its functions and services that are not covered by Crown appropriations in accordance with government policy.

Consultation identified that there was general support for the policy objective and cost recovery principles used to assess the cost recovery options.

What charging method is most appropriate?

Section 144 of the EEZ Act enables costs to be recovered via a number of different fee methods, including fixed charges, scales, formulas or hourly rates, estimated charges and deposits.

The current rates are hourly rates (Option A), which vary according to the staff category carrying out the work. They are ‘variable fees’ in that the total charge depends on the amount of EPA staff time used.

We identified two alternative charging methods for consideration: a fixed fee (Option B) and a hybrid fee structure (Option C, which would involve a base fee with variable rates applying in addition to the base fee after a certain level of hours). Table 3 sets out our assessment of each option.

	Option A - Variable fee (Hourly rate)	Option B - Fixed fee	Option C - Hybrid fee (Fixed fee and hourly rate)
Equity	++ Fees are recovered from those benefiting from function or service.	- Fees are recovered from those benefiting from function or service. However, due to variation in activity complexity it is very difficult to set a fixed fee in an equitable way, and therefore likely that cross-subsidisation will occur.	+ Fees are recovered from those benefiting from function or service. Cross-subsidisation can be minimised through the hourly fees being used for the complex/variable aspects.
Efficiency	+ Maintains a high level of administrative effort for time recording and invoicing. Variable charges based on time can also create the perception that the EPA may not be operating as efficiently as it could. It can also lead to costs being queried which adds to administrative costs. This is mitigated by the EPA publishing an EEZ cost recovery policy on its website which provides policies to address any efficiency concerns.	++ This method requires less administrative effort related to time recording and invoicing.	+ Administrative effort is still required as time recording and reporting is still needed. Variable charges based on time can also create the perception that the EPA may not be operating as efficiently as it could. This is mitigated by the EPA publishing an EEZ cost recovery policy on its website which provides policies to address any efficiency concerns.
Justification	++ Cost to EPA of providing functions and services is directly related to the hours of staff time, so using	+ Due to variability of activities, fees for functions and services would need to be conservatively set to the level of the simplest	++ Standard (low variability) functions and services can be charged at fixed rates, with hourly rates used to recover costs beyond this.

	Option A - Variable fee (Hourly rate)	Option B - Fixed fee	Option C - Hybrid fee (Fixed fee and hourly rate)
	hours as a base to charge is appropriate.	activity. Setting fees higher (based on an average) would not be justified and could be deemed to be taxation.	
Transparency	+ Methodology, inputs, assumptions and policies have been made transparent through consultation, publishing the interim CRIS, and the EPA's published cost recovery policy.	+ Methodology, inputs, assumptions and policies have been made transparent through consultation, and publishing the interim CRIS. However, judgements are required to set fixed fees for different services.	+ Methodology, inputs, assumptions and policies have been made transparent through consultation and publishing the interim CRIS. However, judgements are required to set the fixed fee component (although less than for fully fixed fees).
Effectiveness	++ Can be set to allow for most related costs to be recovered, allowing the EPA to deliver quality functions and services.	- Difficult to recover full costs (see Justification comment above), therefore may impact delivery of functions and services.	++ Can be set to allow for most costs to be recovered, allowing the EPA to deliver quality functions and services.
Simplicity	+ Hourly charging is easy to understand for applicants, although there can be lack of certainty over what a user will pay for a service. This is mitigated by the EPA publishing an EEZ cost recovery policy on its website which provides for operational processes to provide transparency about total costs (discussed below).	++ Simple for users to identify the fees that apply and to have certainty over their costs.	- Complexity added to system by having two fee types that apply in different circumstances.
Accountability	++ The EPA is able to recover the costs for the delivery of its functions and services that are not covered by Crown appropriations in accordance with government policy.	- Some questions about whether would enable cost recovery in accordance with government policy.	++ The EPA is able to recover the costs for the delivery of its functions and services that are not covered by Crown appropriations in accordance with government policy.
Total	11	6	9
<p>++ - Aligns with criteria + - Somewhat aligns with criteria - - Does not align with criteria</p>			

Table 3: Assessment of cost recovery options against cost recovery objectives

Two submitters from the energy sector preferred a hybrid fee. They considered that variable charging is too open ended and did not support efficient or cost-effective decision-making. These perceptions are common with variable charging methods and are addressed by the EPA in its cost recovery policy (detailed below). The cost recovery policy helps to ensure the EPA's use of time and resources is transparent, efficient and cost effective.

Our assessment concluded that a variable fee by way of hourly charge is still the most suitable charging method. Variable charging allows fees to account for the wide and varied size and complexity of the applications the EPA considers, and best enables it to recover costs in line with statutory requirements (policy objective). We are therefore not proposing any change to the current fee method.

EPA's cost recovery policy can mitigate concerns about variable charges

The key disadvantages associated with the hourly charge are the potential for unpredictability of total costs for the applicant or duty holder. Hourly rates can also create perceptions that the EPA may not be operating as efficiently as it could. These potential concerns are lessened as much as possible by the EPA following an EEZ cost recovery policy which it publishes on its website.¹³

The EEZ cost recovery policy includes processes to provide applicants and duty holders with transparency about likely total costs. If requested, the EPA gives cost estimates to applicants and duty holders (or those intending to make an application), who can also request progress reports, and/or meetings with the EPA to discuss costs. The EEZ cost recovery policy also notes how time recording is undertaken, and that invoices are sent monthly - broken down by project phase with detailed descriptions of line items. There is a process for dispute resolution and for applicants and duty holders to make formal objections about costs.

The EEZ cost recovery policy also says that, as far as is practicable, the EPA will use staff who are appropriate to the task being undertaken. It also outlines matters the EPA will have regard to when charging for staff time, including whether the hours involved were reasonable for the task required. Before invoicing an applicant or duty holder, project/team leaders and/or managers are required to check that the time charged is in accordance with the cost recovery policy. Cost recovery processes are also subject to external financial audit.

¹³ Environmental Protection Authority | Te Mana Rauhi Taiao. July 2021. *EPA policy for recovering costs: For Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 functions*. Retrieved from <https://www.epa.govt.nz/assets/Uploads/Documents/Marine-Activities-EEZ/Policies/EEZ-cost-recovery-policy.pdf> (22 September 2022).

The level of the proposed fee and its cost components (cost recovery model)

The proposed cost recovery rates

The proposed charge-out rates reflect updated information about the EPA’s costs, based on the findings from the MartinJenkins review. Staff categories have also been amended to reflect up-to-date staff roles that the EPA now uses to deliver its consenting and monitoring functions. The methodology used to calculate the proposed charge-out rates is described later in this section.

The proposed cost recovery charge-out rates set separate hourly charge-out rates for relevant staff categories over three financial years (2023/24, 2024/25, and 2025/26). The rates for 2025/26 would continue to apply after 30 June 2026 until the EEZ Fees Regulations are reviewed again.

In line with status quo, actual and reasonable expenses (such as third-party costs) will also continue to be recovered.

Table 4 sets out the proposed new hourly charge-out rates and staff categories.

	1 July 2023-30 June 2024		1 July 2024-30 June 2025		From 1 July 2025	
	Consenting \$/hour (ex GST)	Monitoring \$/hour (ex GST)	Consenting \$/hour (ex GST)	Monitoring \$/hour (ex GST)	Consenting \$/hour (ex GST)	Monitoring \$/hour (ex GST)
EPA staff role [and salary band level]						
Principal advisor/officer/investigator and team leader [18]	301.00	240.80	310.00	248.00	319.00	255.20
Project leader/senior advisor 1/ compliance officer/investigator [17]	251.00	200.80	259.00	207.20	266.00	212.80
Senior advisor 2/officer/investigator [16]	211.00	168.80	218.00	174.40	224.00	179.20
Advisor/officer/investigator [15]	181.00	144.80	186.00	148.80	192.00	153.60
Administrator [12 and 13]	143.00	114.40	148.00	118.40	152.00	121.60

Table 4: Proposed charge out rates

The proposed increases over the three years are based on expected annual growth in salary costs of 3.0 per cent (based on expected growth in the labour cost index). This will enable the charge-out rates to reflect the EPA’s salary costs for longer and to remain more relevant until they are next reviewed. It is intended that the EEZ Fees Regulations be reviewed after three years.

Feedback on the hourly rate calculation from submitters during consultation is discussed and addressed below in the section entitled “Methodology supporting the proposed new charge-out rates”.

Proposed changes to staff categories

The proposed rates also update the staff categories set out in the EEZ Fees Regulations to reflect the current EPA staff categories and salary bands. Appendix 3 sets out the EPA salary bands in more detail.

The proposed changes are to delete the category of Principal Technical Advisor¹⁴ and add a new category of principal advisor or principal officer or principal investigator or team leader (aligns with EPA salary band 18). Project Leader is expanded to Project Leader or senior advisor 1 or senior compliance officers and senior compliance investigators (EPA salary band 17); and senior advisor is expanded to senior advisor 2 or senior officer or senior investigator (EPA salary band 16 – note the senior officer and investigator roles in band 16 differ to those in band 17, which are compliance focused). Advisor is expanded to advisor or officer or investigator (EPA salary band 15). These changes to the cost categories will make the EPA's charges more transparent for fee payers.

We are also proposing to remove the rate charged for those with the delegated authority to determine whether to accept a decommissioning plan. This rate was established to allow the EPA to adequately recover costs of new functions introduced in the Exclusive Economic Zone and Continental Shelf (Environmental Effects-Decommissioning Plans) Regulations 2021. Once the other charge-out rates are brought up to date, a specific rate will not be required for accepting decommissioning plans.

Table 5 shows how the proposed rates for consenting functions compare with current rates for consenting functions (as a percentage increase between the current rates and the proposed 2023/24 rates). Table 5 also provides a comparison of the current staff categories with the proposed staff categories.

Current staff categories	Proposed staff categories	Current \$ per hour	2023/24	Percentage increase
Principal technical advisor	<i>Category removed</i>	290.00		
Delegated authority to accept decommissioning plan	<i>Category removed</i>	257.04		
	Principal Advisor/officer/investigator and team leader	-	301.00	
Project leader	Project leader/senior advisor 1/ compliance officer/investigator	140.80	251.00	78%
Senior advisor	Senior advisor 2/officer/investigator	116.12	211.00	82%
Advisor	Advisor/officer/investigator	103.75	181.00	74%
Administrator	Administrator	97.43	143.00	47%

Table 5: Comparison of 2023/4 rates vs current rates and staff categories

No concerns were raised by submitters during consultation over the proposed changes to staff categories.

Since consultation, the proposed staff categories have had a minor change. The senior advisor role has been split across two categories. This reflects that some senior advisors are remunerated at the same level as project leaders (senior advisor 1). This change is

¹⁴ The EPA no longer employs a Principal Technical Advisor. Because of the highly technical nature of this role, the EPA has found it more efficient to contract complex technical advice rather than keeping a range of technical staff on the payroll.

consistent with the intent expressed in the discussion document to align the staff categories with current EPA practices.

How the proposed cost-recovery rates compare to current rates

The proposed 2023/24 charge-out rates are an increase of between 47 and 82 per cent over current rates, depending on the staff category (refer to Table 5). The impact on applicants and duty holders is expected to be lower than these percentage increases, because the total charges often include third party costs which are generally passed on in full and are not affected by these proposed changes.

Methodology supporting the proposed new charge-out rates

The proposed new charge-out rates are based on the following formula:

$$\text{Hourly charge out rate} = \frac{\text{Salary costs} + \text{other direct costs} + \text{overheads}}{\text{Annual total hours}}$$

The key drivers for the proposed charge-out rates are EPA salary costs, overhead costs and staff time.

Each element of the formula is discussed in more detail below.

Salary costs

To set the 'salary costs' element of the formula we have:

- identified the EPA's salary band midpoints (as of May 2022) for the roles of administrator, advisor, senior advisor, project leader, and principal advisor. Appendix 3 sets out the relevant salary band midpoints used for each staff category.
- adjusted each salary band midpoint in line with the expected salary increases for each financial year (2023/24, 2024/25, and 2025/26).

The salary growth expectations we have used are as follows:

2022/23	2023/24	2024/25	2025/26
3.4%	3.0%	3.0%	3.0%

Source: [220314-BusinessNZ-Planning-Forecast-March-quarter-2022.pdf](#) ¹⁵

Although the current charge out rates were not based directly on EPA salaries in 2012, it is useful context to consider how much EPA salaries have increased since 2013. From 2013 to 2021, the EPA's salary bandings have increased on average 14 per cent. For comparison,

¹⁵ BusinessNZ. March 2022. *Planning Forecast*, p 19. Retrieved from [220314-BusinessNZ-Planning-Forecast-March-quarter-2022.pdf](#) (22 September 2022).

over the same period the Labour Cost Index, which is the Statistics New Zealand time series measurement of changes in wages and salaries, has increased 16 per cent.

Other direct costs

MartinJenkins recommended that the charge out rates should also cover additional direct staff costs such as Kiwisaver, ACC and training (the cash costs of training courses).

These costs are captured in the 'other direct costs' element of the formula and have been set at 5 per cent of the relevant salary cost.

One submitter considered that such cost should not be recovered (no explanation provided). We consider these costs to be a necessary cost to employ staff to undertake EEZ functions and services. We agree with MartinJenkins' recommendation to include these direct costs.

Overheads

MartinJenkins reviewed the EPA's overhead costs for EEZ activities (including the cost of the general manager and managers of teams) for the 2017/18 and 2018/19 financial years. This showed that overhead costs were 60.8 per cent of the EPA's total costs.

MartinJenkins reviewed the EPA's overhead cost allocation model and did not identify any improvements needed.

Following consultation with the EPA, a slightly lower percentage of 60 per cent of total costs was recommended. The effect of this in the formula is that the 'salary costs' and 'other direct costs' elements are multiplied by 2.5.

One submitter noted that overheads appear to be high and may double count costs (such as IT support and responding to Official Information Act requests). IT support time is not directly charged to applicants and duty holders and is accounted for only in the overhead calculation (ie, an hour of IT support time required on an application is not charged out at an hourly rate, but such costs are covered by the inclusion of overheads in the hourly rate calculation). While responding to Official Information Act requests is not a cost recoverable function and is Crown funded. We agree with MartinJenkins' inclusion of overhead costs in the calculation and note that it is consistent with how the EPA calculated hourly rates for its cost-recovery charges under the COVID-19 Recovery (Fast-track Consenting) Act 2020.¹⁶

Annual total hours calculation

The 'annual total hours' element of the formula translates the total relevant costs (salary plus other direct costs plus overheads) into an hourly rate.

In order to recover staff time spent directly on consenting and monitoring functions, this element identifies the total working hours in a year, minus potential leave days and public holidays, to calculate the workable hours in a year.

MartinJenkins observed that EPA staff spend time on activities which indirectly contribute to consenting and monitoring functions. A time in motion survey of EPA's applications and

¹⁶ [Cost Recovery Policy COVID Fast Track Consenting FINAL \(epa.govt.nz\)](https://www.epa.govt.nz/cost-recovery-policy-covid-fast-track-consenting-final)

compliance teams was undertaken over two-weeks. This identified that on average 10 per cent of staff time was spent on development and training, and 17.5 per cent was spent on meetings and general admin. These are all activities that indirectly contribute to the performance of consenting and monitoring functions. MartinJenkins also recommended that staff time spent on activities which indirectly contribute to consenting and monitoring functions should be taken into account in the calculation of the charge-out rates. MartinJenkins accounted for this time by reducing the annual total hours denominator.

This approach is consistent with section 143 of the EEZ Act which allows for charges to be set using an average of costs or potential costs, and/or taking into account costs that do not directly benefit the person who pays the charge but that are indirect costs arising from performing the service.

Because it is difficult to directly assign these costs to an activity (and therefore to cost-recover these activities directly via invoicing at the hourly rates), they are included in the formula by reducing the annual total hours.

Table 6 shows the calculation of annual total hours. The calculation results in annual total hours of 1,276, which is a utilisation rate of 72.3 per cent. MartinJenkins advises that some public agencies have a much lower utilisation rate of 65 per cent, whereas professional service firms may have a higher rate, around 80 per cent for some staff.

Days per year	260
Hours per day	8
Starting hours	2,080
Less 4 weeks annual leave	(160)
Less 3 EPA Board days leave	(24)
Less statutory holidays (12)	(96)
Less allowance for sick and domestic leave (5)	(40)
Workable hours	1,760
Less activities that should be loaded into the hourly rate payable by fee-payers	
Staff development and training (average)	(176)
Meetings and general admin (average)	(308)
Annual total hours	1,276

Table 6: Annual total hours calculation

Submitters suggested either lowering the hours attributable to training, general meetings and administration (based on private sector benchmarks), or not deducting any time at all. These actions would increase the annual total hours, and therefore decrease the hourly charge-out rates. These activities cannot be apportioned and charged directly to individual applicants, but they benefit all applicants. Therefore, the above calculation charges all applicants and duty holders indirectly. EPA staff remain competent and qualified through participating in the training and meetings, and the EEZ Act enables indirect costs like these to be cost recovered. We agree with the MartinJenkins approach to account for time spent on indirect activities in the above calculation.

Options considered

Option One (proposed) follows the methodology explained above.

Option Two was for new charge-out rates that apply from 1 July 2023 until the EEZ Fees Regulations are next reviewed. The rates would not increase over three years. Option Two would set rates at the level that the preferred option (Option One) uses for 1 July 2023 to 1 July 2024 (refer Table 4).

The disadvantage of Option Two is that the rates would under-recover the EPA's staff costs from 1 July 2024. Option Two performs less well than Option One on the equity criteria and does not meet the accountability criteria.

Option Three was also for new charge out rates that apply from 1 July 2023 until the EEZ Fees Regulations are next reviewed. Option Three would set rates at the level that Option One uses for 1 July 2024 to 1 July 2025 (refer Table 4).

Option Three would reduce under recovery of the EPA's costs but would mean some over-recovery of costs in 2023/24. Option Three does not meet the equity criteria and performs less well on justification criteria than Option One.

Table 7 sets out our assessment of the options considered.

	Option One (Proposed) - increases over three years from 1 July 2023	Option Two - 2023/24 rates apply from 1 July 2023	Option Three - 2024/25 rates apply from 1 July 2023
Equity	++ Allows functions and services provided over three years to be accurately costed. EPA salary increases will not be cross-subsidised via public funding.	+ Beyond the first year, EPA salary increases are not covered by the rates, therefore public funding is likely to be needed, resulting in cross-subsidisation.	- Those paying for functions and services in the 2023/24 financial year will be paying more than they cost the EPA, and those in the 2025/26 financial year will be paying less than they cost the EPA. This will result in cross-subsidisation via the use of public funds, but also an additional layer of cross-subsidisation between applicants and duty holders in different financial years.
Efficiency	+ Variable charging and EPA cost-recovery policy support efficient allocation of EPA resources.	+ Variable charging and EPA cost-recovery policy support efficient allocation of EPA resources.	+ Variable charging and EPA cost-recovery policy support efficient allocation of EPA resources.
Justification	++ Costs relate to the functions and services being supplied.	++ Costs relate to the functions and services being supplied.	+ Costs relate to the functions and services being supplied, but may overcharge in the first year.
Transparency	++ Fee methodology, inputs, and assumptions have been made clear in the published interim CRIS, the public consultation document, and reflected in the EPA's cost recovery policy.	++ Fee methodology, inputs, and assumptions have been made clear in the published interim CRIS, through the public consultation document, and reflected in the EPA's cost recovery policy.	++ Fee methodology, inputs, and assumptions have been made clear in the published interim CRIS, through the public consultation document, and reflected in the EPA's cost recovery policy.

	Option One (Proposed) - increases over three years from 1 July 2023	Option Two - 2023/24 rates apply from 1 July 2023	Option Three - 2024/25 rates apply from 1 July 2023
Effectiveness	++ Rates will provide a level of funding that supports the delivery of the EPAs functions and services.	++ Rates will provide a level of funding that supports the delivery of the EPAs functions and services.	++ Rates will provide a level of funding that supports the delivery of the EPAs functions and services.
Simplicity	+ Hourly rates are easy to understand, but some complexity is introduced for functions services and delivered over multiple financial years.	++ Hourly rates are easy to understand.	++ Hourly rates are easy to understand.
Accountability	++ The EPA is able to recover the costs for the delivery of its functions and services that are not covered by Crown appropriations in accordance with government policy.	- Some questions about whether would enable cost recovery in accordance with government policy past 2023/24.	++ The EPA is able to recover the costs for the delivery of its functions and services that are not covered by Crown appropriations in accordance with government policy.
Total	12	10	10
Overall	++	+	+
++ - Aligns with criteria + - Somewhat aligns with criteria - - Does not align with criteria			

Table 7: Assessment of cost recovery options against cost recovery objectives

Two submitters preferred Option Two, identifying that it would provide more predictability for applicants when consents span different financial periods. We consider that the current approach and all options have the same level of predictability. We intend the Regulations to contain all three years of charge-out rates as proposed, so they will be very visible and can be used by applicants to forecast their costs. Furthermore, the EPA will be able to account for the rate changes in the cost estimates they provide.

The other submitter preferred that a consumer price index adjustment is made annually. This is slightly different to the proposed approach (Option One), as the step adjustments are based on price inflation (not salary growth expressed by the labour cost index) and are not limited to two step increases. This approach would allow the charge-out fees to reflect inflationary pressures for longer. However, they would add a level of complexity as the hourly rates would not be immediately identified in the Regulations, and it is unclear whether this approach would be possible under the EEZ Act.

Alternative options to improve cost recovery without changing user charges

The MartinJenkins review identified that the EPA is recovering less monitoring costs than it should. One reason for this was a tendency to not charge for incidental work, such as a 10-minute phone call or responding to an email. MartinJenkins suggested that if the EPA had recovered all direct monitoring activity and up to 50 per cent of liaison time, the EPA could

have recovered an additional \$272,840 in 2018/19.¹⁷ MfE notes that time that MartinJenkins identified as 'potentially chargeable' is different to and therefore not part of the staff time spent on activities that indirectly contribute to consenting and monitoring functions that is included in the 'annual total hours' calculation in the methodology formula.¹⁸

This 'potentially chargeable' time is not accounted for in the hourly charge-out rate calculation. The EPA has been improving its efforts to record and charge for monitoring time since the MartinJenkins report. However, it does not consider there is scope to increase cost recovery to the extent suggested by MartinJenkins. It is difficult to allocate general administration costs related to inspections and monitoring, liaison, and education to specific duty holders. Also, if particular tasks are below a minimal level, it is not always cost efficient to raise an invoice.

The forecasts set out in the Impact Analysis below assume the EPA is continuing to apply its best endeavours to recording and charging for time.

¹⁷ MartinJenkins. October 2020. *The EPA's Cost Recovery Arrangements – Final Report prepared for the Ministry of the Environment*, p 20.

¹⁸ Pages 23 and 24 and Appendix 2 of the MartinJenkins Report provide the relevant breakdown of staff time.

Impact analysis

A summary of this impact analysis is set out in Appendix 4.

Who will pay the charges

At present, these charges are mainly paid by petroleum companies and companies dumping dredging and other material that are seeking or already hold marine consents or are undertaking permitted activities.

The number of affected organisations is small. For example, there are currently five marine consent holders each holding multiple consents relating to particular activities. The current consent holders are: Beach Energy, OMV, Marina Consultants Limited, Ports of Auckland, and the Ministry of Business, Innovation and Employment (responsible for decommissioning the Tui oil field). Currently, University of Canterbury, Rocket Lab and NZ Offshore Wind Development Ltd pay fees under the EEZ Fees Regulations in respect of permitted activities they undertake.

In future, there may be new companies undertaking activities in the EEZ such as aquaculture and offshore energy production, that may seek to or hold marine consents.

Who pays for consenting functions (100 per cent cost-recovered)

Table 8 outlines the types of business lodging applications over the last four years. The revenue recovered from these applications is summarised in Table 9. Table 10 shows the type of activities that applications relate to, and the range of associated costs invoiced.

The tables show that the bulk of consenting function charges are borne by oil and gas companies and that new consent applications incur the greatest costs. Total costs can vary widely with complexity.

Number of applications	2018/19	2019/20	2020/21	2021/22
Business type				
Dumping	2	2	2	5
Oil and gas	15	21	24	17
Total	17	23	26	22

Table 8: Types of business who have lodged applications under the EEZ Act¹⁹

¹⁹ Note that businesses make multiple consent applications so the number of businesses making applications is fewer than the numbers of applications.

Application cost \$000s Business type	2018/19	2019/20	2020/21	2021/22
Dumping	\$683	\$71	\$42	\$14
Oil and gas	\$1,012	\$836	\$326	\$348
Total	\$1,695	\$906	\$369	\$361

Table 9: Cost recovery revenue from EEZ Act applications 2018/19 to 2021/22²⁰

Activity	2018/19	2019/20	2020/21	2021/22	Cost range (000s)
Certification			2	12	\$3 - \$35
Change of consent conditions	2	5	6		\$0.5 - \$50
Emergency Spill Response Plan	6	10	14	6	\$0.3 - \$20
Rulings	2	2	3	1	\$5 - \$25
Notified marine consent	3	1	1	1	\$180 - \$630
Non-Notified marine consent	4	5		2	\$10 - \$300
Total	17	23	26	22	

Table 10: Type of EEZ Act applications 2018/19 to 2021/22 and cost range

Who pays for monitoring functions (80 per cent cost-recovered)

Charges for monitoring functions are mainly paid by existing consent holders. Permitted activities also require lodging of advice and compliance monitoring. There are also some categories of permitted activity (such as publicly-funded research) for which EPA monitoring is considered to be mainly for the public benefit and therefore do not incur any cost-recovery charges (refer to Appendix 1 for full details).

Examples of the potential impact on applicants and duty holders from the proposed changes

Table 11 shows a case study which applies the proposed 2023/24 rates to the cost estimate for a notified marine consent and marine discharge consent application. The impact on the applicant is an increase in costs of \$171,000 or 27 per cent. Note that a significant portion of the total costs of the application relate to external suppliers. These external supplier costs are passed on in full, so the total increase in costs to the applicant is less (as a percentage) than the proposed percentage increase in the EPA charge out rates.

²⁰ Note that whilst an application may straddle multiple years, the data in Table 9 shows the full costs of the application attributed to the year in which it was first lodged.

Cost Type (\$000s)	Current Rate	Proposed Rate 2023/24	Increase	
Staff Costs	\$228	\$400	\$171	75%
External suppliers	\$398	\$398	Nil	0%
Total Costs	\$626	\$798	\$171	27%

Table 11: Impact estimate for a notified marine consent and marine discharge consent application (proposed 2023/24 rates)

Table 12 shows a case study applying the proposed 2024-25 rates to a typical invoice for a non-oil and gas permitted activity. The impact on an applicant is an increase of \$96.13 or 68 per cent.

Role	Rate (100%)	Rate (80%)	Hours	Amount	2024/25 Rates (80%)	Amount
Administrator	\$97.00	\$77.96	0.75	\$58.47	\$118.40	\$88.80
Advisor	\$104.00	\$83.00	1.00	\$83.00	\$148.80	\$148.80
				\$141.47		\$237.60

Table 12: Impact estimate for a non-oil and gas permitted activity typical invoice (proposed 2024-25 rates)

Table 13 shows a case study applying the proposed 2023/24 rates to an example of certification of a dredging sampling plan. The impact on an applicant is an increase of \$2,420 or 80 per cent.

Role	Hours	Current Rate	Proposed Rate 2023/24	Increase	
Project Leader	1.50	\$141	\$251	\$165	78%
Senior Advisor	23.00	\$116	\$211	\$2,182	82%
Advisor	0.50	\$104	\$181	\$39	74%
Administrator	0.75	\$97	\$143	\$34	47%
Total	25.75	\$3,007	\$5,427	\$2,420	80%

Table 13: Impact estimate for certification of a dredging sampling plan (proposed 2023/24 rates)

Expected change in EPA revenue by using proposed rates

Forecasting revenues out three years is difficult because the number and complexity of new activities that will require EPA functions and services is uncertain. The EPA may not be notified of an applicant's intention to submit a marine consent application until a few months before the EPA functions and services are required.

Two estimates below illustrate how the new rates may change the costs recovered. These indicate potential revenue increases from the new charge-out rates of \$292,000 to \$377,000 per year, using the level of activity in the 2021/22 financial year and the forecast level of activity for the 2022/23 financial year.

Estimate 1: 2021/22 financial year restated with proposed rates

Using data from the 2021/22 financial year, the EPA estimates an increase in total revenue across the consenting and monitoring functions of \$292,000. This is a 70 per cent increase in the revenue recovered for staff time. We note that it is only a 56 per cent increase in total cost-recovery revenue, because a significant proportion of the EPA's cost-recovery revenue is due to the EPA being reimbursed for external supplier costs that it has incurred in providing functions and services (for example, for expert advice). This estimate has been

determined by applying an average of the proposed 2023/24 rates to actual cost-recovered staff time in 2021/22.

Restated 2021-22 cost-recovery revenue				
Cost Type (\$000s)	Current Rate	Proposed Rate	Revenue Increase	
Staff Costs	\$417	\$709	\$292	70%
External suppliers	\$108	\$108	Nil	0%
Total Costs	\$525	\$817	\$292	56%

Table 14: Restated 2021-22 cost-recovery revenue

Estimate 2: 2022/23 financial year forecast using proposed rates

Using data from the 2022/23 budget, the EPA estimates an increase in total revenue across the consenting and monitoring functions of \$377,000. Once again, this is a 70 per cent increase in the revenue recovered for staff time. It is only a 37 per cent increase in total cost-recovery revenue, because a significant proportion of the EPA's cost-recovery revenue is due to the EPA being reimbursed for external supplier costs. This estimate has been determined by applying an average of the proposed 2023/24 rates to budgeted staff time for cost-recoverable functions and services and estimating anticipated external supplier costs.

Forecast 2022-23 cost recovery revenue				
Cost Type (\$000s)	Current Rate	Proposed Rate	Revenue Increase	
Staff Costs	\$539	\$916	\$377	70%
External suppliers	\$482	\$482	Nil	0%
Total Costs	\$1,021	\$1,398	\$377	37%

Table 15: Forecast 2022-23 cost recovery revenue

Downstream impacts

In consultation, one submitter (which is not consented to undertake regulated activities in the EEZ) noted that the resulting increase in costs from the proposals could flow through to customers. No supporting evidence was provided to support this assertion, but we consider that this would have negligible effect on prices. We understand that marine consent application costs can be small in comparison to the total cost of complex marine projects (circa one per cent), and to the private benefits they allow applicants to extract. For example, the Chatham Rock Phosphate marine consent application (although refused) cost \$2.7m in fees. An NZIER economic assessment in that application identified that the activity had potential to return \$230m per annum in export revenues.²¹ As a result, we consider the flow on impact on extractive customers as a result of the proposals to be insignificant (and subsequently has not been included in the impact analysis summary table in appendix 4).

Estimates of EPA expenses for the activities

The EPA's forecast expenditure for EEZ Activities for 2022/23 is \$5,140,882.

²¹ NZIER, September 2012. [Economic impact of Chatham Rock Phosphate – a general equilibrium analysis](#), p 2.

Using the forecast revenue for 2022/23 if the proposed new charge-out rates were in place it would result in cost-recovery revenue of \$1,398,000 plus Crown revenue of \$3,400,000.

We note this forecast implies a deficit for the EPA of \$343,000. This is consistent with the observation earlier in this CRIS that there are several factors contributing to the EPA under-recovering its costs, with out-of-date charge-out rates being one contributing factor.

Impact of changes in assumptions on forecasts

Future cost-recovery revenues will be impacted by the number of activities taking place that require the EPA's functions and services. If the number of activities is lower or higher than expected, the changes in total costs recovered will also be lower or higher than expected.

While total cost-recovery revenue will change in line with the amount of activity, the change to the EPA's expenditure will not be as strongly correlated, as it is not as variable. The EPA needs to maintain a certain level of capacity to deliver its functions and services, and this means that a large portion of the EPA's FTE costs are static year on year. It is important that the EPA continues to monitor its resourcing needs to ensure that it is not maintaining more capacity than is reasonably required. However, no forecast of demand will be certain, so there will always be potential for capacity to exceed demand over a given year.

This potential variability of revenues exists under the status quo and may be contributing to the EPA's funding deficit in recent years. Potential variability of revenues will remain under the proposed changes. However, the proposed changes will mitigate the effects of that variability by ensuring that the cost-recovery charges better reflect the EPA's costs than under the status quo.

Revenue forecasts have been based on the overall level of demand for EPA functions and services being driven by factors other than the level of the cost-recovery charges, such as regulatory settings and economic conditions. They do not consider any changes in behaviours or incentives of applicants and duty holders in response to the proposed changes. As changes in behaviours or incentives could impact the efficiency or effectiveness of the EPA's delivery of its functions and services, we used the consultation process to explore whether the proposals would change how applicants and duty holders apply for marine consents or otherwise engage with the EPA,

Submitters from the energy sector (an oil and gas company that holds marine consents for oil and gas operations in the EEZ, and the oil and gas/energy sector industry organisation) identified that the proposals would impact behaviour by increasing their scrutiny of charges and invoices, and by lessening the voluntary (ad hoc) interactions they have with the EPA. This potential behaviour change, which is difficult to quantify, may not be in the best interests of applicants. While the EPA does charge for time spent engaging with those who are intending to make an application and for reviewing draft documents, the EPA has found that voluntary pre-engagement on consent applications can be a positive contribution to the consent process. It can ensure that an applicant provides all the necessary information with an application, which minimises the costs associated with requesting further information.

Domestic comparison

Table 16 shows the cost recovery rates applied by other regulators and regional councils. The average of the proposed charge-out rates for 2023/24 is \$217.40, so falls within the range presented here.

Direct comparison is difficult, as the differences may result from:

- regulators and Councils needing different levels of capability to the EPA – the type and cost of the roles are not the same
- some organisations use blended rates, that are averaged across a number of roles
- the hourly rates are set in different years
- varied approach to the percentage of costs that are cost-recovered (public: private split)
- other fixed fees and levies being used in conjunction to recover funds.

	\$ per hour (ex GST)	Year set
Financial Markets Authority*		2014
Board member	200	
Staff	155	
<i>(a base fee of \$6,975 applies and the above hourly rates for applications taking longer than 52 hours)</i>		
Civil Aviation Authority*, **	247	2017
Maritime New Zealand*	245	2019
Greater Wellington Regional Council		2021
Technical or science expert	150	
Consent processing	130	
Administration of services	115	
Otago Regional Council		2022
Manager	165	
Team Leader/Principal	148	
Senior Technical	130	
Technical	113	
Field Staff	113	
Administration	87	

* also uses fixed fees and/or annual levies

** 2020 review suspended due to COVID – proposed \$260

Table 16: Comparison to other domestic charge-out rates

Consultation

Public consultation ran from 1 December 2022 to 20 January 2023. On behalf of the Minister for the Environment, MfE informed the following of the public consultation and invited their feedback: iwi authorities, regional authorities, and other parties with existing interests.²² This is consistent with the consultation requirements under section 32 of the EEZ Act.²³

Written submissions were received from OMV New Zealand Limited (an oil and gas company), Energy Resources Aotearoa Limited (who also met with officials), and Ngarara Exploration Limited (a company that identified it had an interest in the EEZ, but which currently holds no marine consents). Officials have considered feedback (key points have been raised and addressed above), and no changes have been made to the proposals as a result.

Conclusions and recommendations

This CRIS contains proposals that will increase the hourly charge-out rates for the EPA's cost-recoverable EEZ functions and services and refine the number and naming of staff categories to which the charge-out rates apply. The current charge-out rates in the EEZ Fees Regulations do not reflect the direct and indirect costs of the EPA and are not delivering the policy intention for EEZ cost recovery determined by Cabinet in 2012.

We recommend updating the EEZ Fees Regulations charge-out rates as set out in Tables 1 and 4.

These proposals will allow the EPA to charge-out its consenting and monitoring functions at rates that closely reflect the costs it incurs in providing them. The two years of rate increases in line with forecast salary increases will allow charge-out rates to closely reflect costs for longer. This will allow the EPA to:

- meet the requirements in the EEZ Act to take all reasonable steps to recover as much of the direct and indirect costs incurred in performing its functions and providing services that are not provided for by Crown funding
- deliver the EEZ cost recovery policy intentions determined by Cabinet in 2012
- avoid using Crown funding for services that are for private benefit and should be cost-recovered
- continue to provide functions and services at a level of quality which support its regulatory objectives.

²² Other parties with existing interests included current EEZ marine consent holders, those undertaking regulated activities in the EEZ, and the energy/oil and gas industry organisation Energy Resources Aotearoa.

²³ [Exclusive Economic Zone and Continental Shelf \(Environmental Effects\) Act 2012, s32.](#)

Implementation plan

It is intended that the changes to EEZ Fees Regulations and the passing of the 28-day rule will occur prior to 30 June 2023. This will enable the EPA to charge the new rates from 1 July 2023.

Work completed up to (and including) 30 June 2023 will be charged at the current rates.

Work from 1 July 2023 will be charged at the new rates, including with respect to applications made before 1 July 2023 and still in progress. For example, for an application received in May 2023 the EPA will charge the rates in the current EEZ Fees Regulations for all work done up to (and including) 30 June 2023. This would include any pre-application work done by the EPA. From 1 July 2023, if the application is still active, the new charge-out rates will apply.

For work that straddles future financial periods, the rates will be charged to the period to which they relate. For example, for an application received in May 2024,

- the work done up to (and including) 30 June 2024 will be charged at 2023/24 rates
- any work performed from 1 July 2024 until (and including 30 June 2025) will be charged at the 2024/25 rates.

Since the EPA invoices monthly, this should be efficiently and transparently managed.

To minimise compliance costs, potential fee payers will be given plenty of advance notice of the fee increases. The EPA Cost Recovery Policy published on the EPA website will also be updated.

Monitoring and evaluation

MfE is responsible for monitoring the EPA's performance, including its financial performance. The EPA provides regular ongoing monitoring of third-party revenue and direct costs incurred. After the changes take effect, the EPA will continue to consider the impact of the proposed changes to the EEZ Fees Regulations charge-out rates on the EPA's cost recovery and the EPA's overall operations.

The EPA's revenue from EEZ cost recovery is recorded in the financial statements in its Annual Report. The financial statements are audited by Audit New Zealand on behalf of the Auditor General. The Annual Report is also examined by a Select Committee of Parliament.

Review

It is intended that the EEZ Fees Regulations be reviewed after the three years. This matches the Treasury's expectations of review and will coincide with the final proposed annual increase in the charge-out rates.

The review process should consider:

- how the rates have performed (comparison of costs to revenues, how fees may have impacted behaviours or service and function delivery), and how they would continue to perform over the next three years if they remain unchanged
- how the salary growth expectation built into the charge-out rates have matched actual growth
- updating this stage 2 CRIS document.

The review should be undertaken jointly by the EPA and the Ministry, with the findings reported to the Minister for the Environment.

Appendix 1: Who should pay for EPA functions and services

Table 17 sets out Cabinet's 2012 determination about who should pay for the EPA's EEZ functions and services.²⁴

Functions and services requiring full cost recovery of actual and reasonable costs of the EPA (consenting functions)	Functions and services requiring 80 per cent cost recovery, with the remaining 20 per cent funded by the Crown (monitoring functions)	Functions predominantly for the public benefit, which are Crown funded.
<ul style="list-style-type: none"> • All marine consent functions and services, including pre-application assistance, processing and deciding marine consents, transfer, review, cancellation • Permitted activity functions and services, including receiving, reviewing and certifying information (excluding foreign marine scientific research and government-funded domestic marine scientific research) • EPA rulings required under the grandfathering arrangements in the EEZ Act • EPA receiving and reviewing impact assessments, or any other documentation required under the transitional arrangements 	<ul style="list-style-type: none"> • Monitoring of marine consent conditions and permitted activities 	<ul style="list-style-type: none"> • Education and raising public awareness • Internal government and international reporting • Enforcement action, including investigations (Crown will seek to have costs awarded if enforcement is successful) • Investigation which does not lead to enforcement (including those initiated by the public and any scheduled compliance checks by the EPA) • Additional monitoring (eg, of cumulative effects) or planned monitoring • Permitted activity processing for submarine cabling, foreign marine scientific research and government funded domestic marine scientific research • Monitoring of submarine cabling, foreign marine scientific research and government funded domestic marine scientific research • Business system and process development

Table 17: Cabinet's assessment about who should pay for EPA's EEZ functions and services.

²⁴ Above, note 2.

Appendix 2: Background information on the current EEZ Fees Regulations

The charge-out rates set in 2013 were based on the rates charged for proposals of national significance under the Resource Management Act 1991 (RMA) and were adjusted for inflation. Rates under the RMA were used as a base, because there was uncertainty around the inputs that would be required by the EPA to perform its functions and services under the EEZ Act.

The rates under the RMA were calculated using the following inputs and assumptions:

- average salaries for each category of employee (project administrator, advisor, senior advisor, project leader)
- overheads (personnel costs of support staff and corporate overheads)
- average of 1,352 working hours per employee per annum.

The rate for the principal technical advisor was based on the rates paid by the Australian federal petroleum industry regulator at the time.

The rate for those with authority to accept decommissioning plans was calculated on the following inputs and assumptions:

- average mid-point of the manager and general manager salary bands
- overheads and indirect allowances are 2.5 times the average mid-point salary
- average of 1,720 working hours per employee per annum.

Appendix 3: EPA Salary bands

Table 18 shows the salary bands which have been used to set the “salary costs” element of the formula for calculating the proposed charge-out rates.

Role	Band	80% of Band (\$)	100% of Band (\$)	120 % of Band (\$)
Principal advisor/officer/investigator and team leader	18	109,930	137,412	164,894
Project leader/senior advisor 1/compliance officer/investigator	17	91,712	114,640	137,568
Senior advisor 2/officer/investigator	16	77,115	96,394	115,673
Advisor/officer/investigator	15	65,978	82,472	98,966
Administrator*	12	47,218	59,022	70,826
	13	52,312	65,390	78,468

*The administrator midpoint is \$62,206, the average of Bands 12 and 13

Table 18: EPA Salary bands effective 26 May 2022

Appendix 4: Impact analysis summary

Affected groups	Comment	Impact \$000's	Evidence Certainty
Additional <u>costs</u> of the preferred option compared to taking no action (status quo)			
<p>Regulated groups:</p> <p>Petroleum industry</p> <p>Dumping consent holders</p> <p>Permitted activities</p>	<p>Regulated groups can expect to pay more for the functions and services they receive because of the proposed increased charge-out rates. The increase in total fees paid by organisations undertaking extractive activities is likely to be insignificant compared to total project costs and expected annual revenues.</p> <p>An estimate of the cost of a notified consent application has been reworked using the 2023/24 proposed charge-out rates (Estimate 1 in main body of this CRIS). This shows an increased cost of \$171,000 or 27 per cent. The per cent increase in cost is significantly below the average increase in the charge-out rates. This reflects that more than half of the costs of the worked example are actual and reasonable costs which are passed through in full and are not affected by this proposal.</p> <p>An example of a permitted activity is the deposit of material on the seabed from launch of a space vehicle. Based on a review of invoices over the last few years a reworked example showed an increased cost would be incurred from \$141 to \$238. This is a \$97 increase (68 per cent).</p> <p>An example of the cost of a certification is for a dredging sampling plan. Based on reworking an example using 2023/24 proposed charge-out rates, the cost would be \$5,427, an increased cost of \$2,420 (80 per cent).</p> <p>In total, based on past (2021/22) and forecasted activities (2022/23), regulated groups could end up paying an additional \$0.292 to \$0.377m more per annum.</p>	<p>Low</p>	<p>Medium</p> <p>There is no typical notified consent application. However, notified consent applications typically incur high actual and reasonable costs recovery (not affected by the proposed changes to the EEZ Fees Regulations).</p> <p>High certainty in the financial information informing the cost recovery rates.</p>
<p>Regulators:</p> <p>EPA</p>	<p>The EPA will need to inform regulated groups of the charge-out rate increases, and update its website and cost-recovery policy. These will be one-off costs.</p>	<p>Low</p>	<p>High</p>
<p>Total monetised costs</p>		<p>Low</p>	<p>Medium</p>

Additional <u>benefits</u> of the preferred option compared to taking no action (status quo)			
Regulators: EPA	<p>Increased charge-out rates will allow the EPA to better recover the costs that are not funded through an existing appropriation. The expected total increase in revenue matches the expected increase in costs to fee payers.</p> <p>Based on past (2021/22) and forecasted activities (2022/23), the EPA could expect to recover an additional \$0.292 to \$0.377m of costs per annum based on current levels of activity.</p>	Medium	Medium
Total monetised benefits		Medium	Medium
Total non-monetised benefits: EPA and Users	<p>Improved costs recovered will:</p> <ul style="list-style-type: none"> place less pressure on EPA cash reserves and less diversion of funds meant for other programmes lessen the Crown subsidisation of functions and services delivering private goods. <p>The staff roles stated in the EEZ Fees Regulations would accurately match the roles used by the EPA. The additional detail on the staff categories provides additional transparency and clarity to users.</p>	Low	Medium