

COMPLAINT NUMBER	17/438
COMPLAINANT	Climate Justice Taranaki Inc.
ADVERTISER	Petroleum Exploration and Production Association of NZ (PEPANZ)
ADVERTISEMENT	PEPANZ, Website
DATE OF MEETING	27 February 2018
OUTCOME	Settled – Advertisement amended

SUMMARY

The website www.seismicsurvey.co.nz from the Petroleum Exploration and Production Association of New Zealand (PEPANZ) provides information on the industry. Headings include seismic survey overview, data, environment, seismic survey guidelines, Maui’s dolphin, and noise.

The Complainant, Climate Justice Taranaki Inc, said claims on the website were misleading.

Jurisdiction

As a preliminary matter, the Authority requested comment from parties on whether the information subject to complaint was advertising. The Complainant considered the website to be within the ASA’s jurisdiction and covered by the ASA definition of “advertisement”. PEPANZ did not consider that its website met the definition and said in part: “While we do aim to advocate for our industry and increase public favourability, our websites (including www.pepanz.com and www.energymix.co.nz) are designed to be educational. Their purpose is to provide background information on how our industry works so that people can make up their own minds on topical issues.”

The Complaints Board confirmed the ASA definition of advertising:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Complaints Board agreed the website www.seismicsurvey.co.nz met the definition of advertisement as it promoted the interest of the Advertiser, in this case the petroleum exploration and production industry.

Complaint determination

Turning to the matters raised in complaint, the Complaints Board noted two statements on the website were challenged by the Complainant. The Complainant said the website did not include a reference to the use of explosives in onshore seismic surveys. The Complainant also challenged the statement about the scientific acceptance of offshore seismic surveying.

The Advertiser confirmed it had taken the opportunity presented by the complaint to review its website and update some content as part of a general review.

The Advertiser amended the two statements subject to complaint on its website and provided sufficient substantiation for the amended wording in Statement 2.

In light of the self-regulatory action by the Advertiser to amend the advertising, the Complaints Board said the matter was settled.

Accordingly, the Complaints Board ruled to Settle the complaint.

[Advertisement amended]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 3 and Rule 2 of the Code of Ethics and Principle 2 of the Code for Environmental Claims which require advertisements to be truthful and not contain any statement or create an overall impression which directly by implication, omission, ambiguity or exaggerated claim is misleading or deceptive. Rule 1(e) requires that environmental claims not overstate the level of scientific acceptance and Rule 2(a) requires environmental claims to be accurate and substantiated. Basic Principle 4 of the Code of Ethics and Principle 1 of the Code for Environmental Claims require all advertisements to be prepared with a due sense of social responsibility to consumers and to society.

Jurisdiction

As a preliminary matter, the Complaints Board discussed whether the material on the website met the definition of advertisement under the ASA Codes of Practice.

The ASA definition is:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

Comment from the Complainant

The Complainant said in it’s view the ASA definition did apply and stated in part:

“This is a very wide definition. The material on the seismic survey website is clearly controlled by PEPANZ which explicitly seeks to encourage people to support seismic surveys for oil and gas exploration.

According to PEPANZ’S home website <http://www.pepanz.com/> , PEPANZ is “*the industry association of the upstream oil and gas sector, representing the companies that explore for, and produce, New Zealand’s oil and gas resources*”. The association’s website headline is “*ADVOCATE EDUCATE SUPPORT*”. PEPANZ describes itself as an organisation that aims to lead the discussion about oil and gas, advocate on behalf of members and promote the view that developing the industry enriches New Zealand’s future.”

In many ways, PEPANZ's seismic survey website is similar to the alcohol industry-funded Cheers.org.nz website. In 2015, the ASA Board processed a complaint (15/209) on the Cheers website without any question re 'editorial' content or jurisdiction. In our view, the Board would be acting inconsistently if it decides to decline our complaint on the seismic survey website."

Comment from the Advertiser

The Advertiser did not consider the content and purpose of its website met the ASA definition of advertising and said in part:

"We question whether our website www.seismicsurvey.co.nz meets the ASA definition of an advertisement as being a *"message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."*

While we do aim to advocate for our industry and increase public favourability, our websites (including www.pepanz.com and www.energymix.co.nz) are designed to be educational. Their purpose is to provide background information on how our industry works so that people can make up their own minds on topical issues.

This is reflected in our three key objectives as an organisation: to advocate, educate and support on behalf of our members. As our website states: *"We also seek to increase community and government understanding of the industry by publishing information about the sector's activities and its economic importance to New Zealand..."* (<http://www.pepanz.com/about-us/our-priorities/>)

As part of this educational role we aim to:

- Increase public knowledge, favourability and trust in the sector.
- Promote evidence-based discussions about the sector and its role in providing energy and reducing emissions.

Similarly, we don't believe as an organisation we meet the definition of an 'advertiser' for following reasons:

- There appears to be no legal basis upon which any organisation is subject to the ASA's jurisdiction unless they choose to be covered.
- The ASA's self-regulating model is committed to and funded by advertisers and media organisations as it is those organisations who it is intended to have jurisdiction over. The focus of the ASA's jurisdiction (such as the Code of Conduct for Environmental Claims) seems to be more towards the trading of goods and services to consumers which we are not involved in.
- We are not a commercial organisation, advertiser or media organisation. Instead, we are a not-for-profit industry group representing the upstream oil and gas industry in New Zealand.
- The precedent this would create for ASA. It would mean your jurisdiction would cover any comment on the internet, including blogs, tweets, Facebook posts, advocacy websites, opinion pieces on Stuff, etc. For example – we could make similar complaints about the websites of Climate Justice Taranaki and their

portrayal of our industry. It could mean a huge workload for the ASA and take away from your core roles.”

Complaints Board Discussion on Jurisdiction

The Complaints Board took into account the views of both parties to the complaint and acknowledged their willingness to engage in the discussion. The Complaints Board said the current ASA definition of advertising is very broad in response to the breadth of platforms that are now used by advertisers to promote their products, services and interests.

The Complaints Board noted that Decision 15/196 had been sent to parties with a request to comment on jurisdiction. The Complaints Board said this Decision had also involved an advertiser website for Coastal Systems, <http://coastalsystems.co.nz/>. The Decision said in part:

“Looking at the website at the centre of the complaint before her, the Chairman noted it contained numerous sections; some of which were commercial in nature and promoted the Advertiser’s services while others provided information such as reports. She said those that promoted the Advertiser’s services could be considered advertising while the content of those sections that were informational could be classified as editorial.

When considering the section that was subject to the Complainant’s concerns, the Chairman noted it contained information about the dispute between Kapiti Coast Ratepayers and Coastal Systems Ltd about the Advertiser’s report regarding erosion of the coastline that was adopted by the Kapiti Coast District Council. The section also included information about the Panel’s conclusions and the problems it identified with the Advertiser’s reports.

The Chairman said the material in this section did not meet the definition of an advertisement for the purposes of the Advertising Codes as the information was editorial content and not an advertisement. Therefore, the Chairman said the complaint fell outside the jurisdiction of the Advertising Standards Complaints Board.

Given this finding, along with the Chairman’s concerns about the complexity of the complaint, the Chairman declined to adjudicate on the matter.”

The Complaints Board noted Decision 15/196 acknowledged the mix of material that may be on corporate websites, some of which may not be advertising. The Board noted in that Decision, the material did not meet the existing definition of advertisement and given the complexity of the complaint, the Chairman declined to adjudicate on the matter.

The Complaints Board confirmed the range of advertising platforms it now dealt with including Facebook and Instagram posts, tweets, websites and advertising in non-broadcast and broadcast media. It noted content could be sourced from advertisers selling products and services, or companies, organisations and political parties presenting statements of fact and / or opinion.

The Complaints Board noted the points made by the Advertiser on the ASA’s jurisdiction being limited to those who chose to be covered by it. The Complaints Board confirmed the ASA is a self-regulatory organisation supporting responsible advertising. It noted that the ASA membership includes a wide range of advertisers, agencies and media organisations through industry associations.

However, membership of the ASA is not a requirement for the Complaints Board to deal with advertising complaints. It has processed complaints on all advertising that meets its

definition over four decades including that from industry and advocacy groups, political parties, government agencies and individuals.

Taking all of the above into account, the Complaints Board agreed the website www.seismicsurvey.co.nz met the definition of advertisement as it promoted the interest of an advertiser, in this case the petroleum exploration and production industry and provided information for a wide audience including consumers on industry matters. It confirmed that the advertiser controlled the content of the website.

The Complaints Board ruled the complaint was Settled.

The Complaint

The complaint from Climate Justice Taranaki highlighted two statements on the website www.seismicsurvey.co.nz that it considered to be misleading. The statements were:

Statement 1

“Onshore seismic operations use specialised trucks that carry a heavy plate that is vibrated to generate a seismic signal...” <http://www.seismicsurvey.co.nz/#data>

The Complainant considered this statement was misleading as “all recent onshore seismic operations in search of oil and gas in New Zealand have been conducted with explosives not trucks.”

Statement 2

“For more than four decades, seismic surveying and countless research projects (both in New Zealand and world-wide) have shown no evidence to suggest that sound from oil and gas exploration activities in normal operating circumstances has harmed marine species or marine ecological communities.” <http://www.seismicsurvey.co.nz/#environment>

The Complainant said in part that this statement “overstates the scientific acceptance of offshore seismic surveying. It is inaccurate and unsubstantiated by evidence. It does not reflect scientific and technological developments.”

The Advertiser’s Response

The Advertiser advised it had taken the opportunity to update its website as part of a general update. The Advertiser confirmed the following wording changes:

Amended Statement 1

“ONSHORE – The acoustic energy source for onshore seismic survey operations is either small explosive charges placed in shot-holes (commonly 10-50 m deep) or by specialised trucks that carry a heavy plate which is vibrated. Both of these methods send sound waves beneath the earth’s surface and listening devices called geophones are placed on the surface nearby to capture the returning sound waves.”

Amended Statement 2

“After more than four decades of seismic surveying and countless research projects (both in New Zealand and world-wide) there is no clear evidence that sound from exploration activities in normal operating circumstances has permanently harmed marine mammal species.”

The Complaints Board Discussion

In reviewing the advertising before it, the Complaints Board confirmed that context is a key factor in determining whether or not advertising is likely to mislead or is socially responsible. The Complaints Board noted the context in this case is a website for the industry association for the petroleum exploration and production sector.

The Complaints Board confirmed under the principles of self-regulation, advertisers were encouraged to review advertisements and consider whether changes could be made to address issues raised in complaint.

The Complaints Board noted the two statements subject to complaint had been amended.

The Complaints Board said the Complainant's concern with Statement 1, the lack of reference to explosives, had been addressed by the amended statement and the Complaints Board agreed that part of the complaint was settled.

The Complaints Board noted the changes made to Statement 2, which now states in part "there is no clear evidence that sound from exploration activities in normal operating circumstances has permanently harmed marine mammal species."

The Complaints Board acknowledged the willingness of the Advertiser to engage with its process, despite its view on jurisdiction. The Advertiser provided three references in support of amended Statement 2.

In the Complaints Board view, in the context of an industry website, the evidence provided to it, including that from the International Association of Geophysical Contractors, was sufficient to support the very specific claim made in the amended statement. The Complaints Board said this part of the complaint was also settled.

In light of the self-regulatory action by the Advertiser to amend the advertising, the Complaints Board said the matter was settled.

Accordingly, the Complaints Board ruled to Settle the complaint.

DESCRIPTION OF ADVERTISEMENT

The website www.seismicsurvey.co.nz from the Petroleum Exploration and Production Association of New Zealand (PEPANZ) provides information on the industry. Headings include seismic survey overview, data, environment, seismic survey guidelines, Maui's dolphin, and noise.

Statements on the website included:

"Onshore seismic operations use specialised trucks that carry a heavy plate that is vibrated to generate a seismic signal..." <http://www.seismicsurvey.co.nz/#data>

And;

"For more than four decades, seismic surveying and countless research projects (both in New Zealand and world-wide) have shown no evidence to suggest that sound from oil and gas exploration activities in normal operating circumstances has harmed marine species or marine ecological communities." <http://www.seismicsurvey.co.nz/#environment>

COMPLAINT FROM CLIMATE JUSTICE TARANAKI

Submitted by Climate Justice Taranaki Inc.

1. Climate Justice Taranaki Incorporated (CJT) wish to make an official complaint on the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) Seismic Survey website <http://www.seismicsurvey.co.nz/>
2. CJT believe that the website does not comply fully with the Advertising Code of Ethics or the Code for Environmental Claims.

Code of Ethics – Basic principles 3 and 4, and Rule 2

3. The website <http://www.seismicsurvey.co.nz/#data> (Appendix 1A) says: **“Onshore seismic operations use specialised trucks that carry a heavy plate that is vibrated to generate a seismic signal...”**
4. This statement is misleading and deceptive because all recent onshore seismic operations in search of oil and gas in New Zealand have been conducted with explosives, not trucks. These surveys take place almost entirely on farms or other privately-owned properties. By saying that they are conducted using trucks with a heavy plate rather than explosives with real safety concerns, PEPANZ not only fail to honor their social responsibility, but also abuse the trust of the consumers and exploit their lack of experience or knowledge.
5. Discharge consent 10352-1.0 (Appendix 2) issued by the Taranaki Regional Council allowed Todd Energy to discharge contaminants including *“(a) those arising from placing charges of Dyno Nobel Geoprime® dBX™ explosive, each no more than 2 kg, at depths between 10 and 50 metres below ground; and (b) residues from detonating charges of Dyno Nobel Geoprime® dBX™ explosive...”* The consent, granted on 3 November 2016, is valid till 1 June 2021. This particular Todd Energy seismic survey campaign encompassed approximately 85km² of New Plymouth District's rural area.
6. Dyno Nobel Geoprime® dBX™ explosive consist of a mixture of trinitrotoluene (TNT), pentaerythritol tetranitrate (PETN) and aluminium powder (BTW, Oct 2016) ¹ TNT is classified a suspected human carcinogen (HSNO classification 6.7B), possibly mutagen (HSNO classification 6.6B) and a known or presumed reproductive toxin (HSNO classification 6.8A).
7. It is also well known within the oil and gas industry that there are issues of misfires, i.e. when charges fail to detonate as intended, and the explosive is abandoned because it is unsafe to extract them (International Association of Geophysical Contractors, 2012) ² A misfire rate of about 0.2% was reported for the Shell Todd Oil Services (STOS) seismic survey campaign around the Kapuni field (approx. 218 km²) in South Taranaki District (PDP, 5 April 2016 – Appendix 3) ³ That campaign involved 24,000 charges, suggesting that there could have been 48 undetonated charges left in situ on people's properties following the surveys, posing safety risks and disrupting farm operations and property planning. Critically, Taranaki landowners with undetonated seismic explosives on their properties face ten years of monitoring and restrictions on land use, and the possibility that it is recorded on their Land Information Memorandum - LIM report (Radio NZ, 4 May 2016) ⁴, with potential impact on property value.
8. Expert evidence (Polich, 5 June 2016)⁵ presented on behalf of Taranaki Energy Watch over the South Taranaki District Plan review, stressed the safety risks associated with seismic surveys, especially from the storage of explosives and in

cases of misfires. Polich noted that other jurisdictions such as Canada had suggested 1% misfire rate on average, and in Australia around 75% of reported incidents to explosives regulators are misfires.

9. By stating that trucks with vibrating plates are used in onshore seismic surveys, rather than multiple explosives with known safety risks and disruptions, the website fails to provide 'Truthful Presentation' of the actual operations but succeeds in misleading / deceiving people and exploiting their trusts. It appears that the false information is intentionally provided to emphasize the safety of seismic surveys (trucks with vibrating plates) and diverting attention away from a highly hazardous and potentially harmful practice, thereby ignoring social responsibility. As such, the website breaches Basic principles 3 and 4, and Rule 2 of the Code of Ethics.

Code for Environmental Claims - Principle 1 Guideline e and Principle 2 Guideline a

10. The website <http://www.seismicsurvey.co.nz/#environment> (Appendix 1B) says:

“For more than four decades, seismic surveying and countless research projects (both in New Zealand and world-wide) have shown no evidence to suggest that sound from oil and gas exploration activities in normal operating circumstances has harmed marine species or marine ecological communities.”

11. This claim totally overstates the scientific acceptance of offshore seismic surveying. It is inaccurate and unsubstantiated by evidence. It does not reflect scientific and technological developments.
12. In fact, there has been so much evidence that *“There is no longer a scientific debate: seismic airguns are harmful to marine animals and ecosystems”*, Torres and Klinch (24 October 2017) ⁶. Below are some of the published scientific and expert evidence that sound from normal seismic surveys causes, or may cause, harm to a wide range of marine species: zooplankton, scallops, lobsters, squids, fish and marine mammals.
13. A paper by McCauley et al. (2017) ⁷ recently published in the prestigious journal *Nature* presented evidence that suggests seismic surveys cause significant mortality to zooplankton populations. The authors stated, *“There is a significant and unacknowledged potential for ocean ecosystem function and productivity to be negatively impacted by present seismic technology... Healthy populations of fish, top predators and marine mammals are not possible without viable planktonic productivity.”*
14. Day et al. (2017) ⁸ revealed that exposure to seismic signals significantly increased mortality in the scallop *Pecten fumatus* over a chronic time scale and caused both physiological and behavioural disruptions. The study concluded that *“seismic exposure can harm scallops.”*
15. Fitzgibbon et al. (2017) ⁹ found that seismic air gun exposure may negatively influence the nutritional condition and immunological capacity of the spiny lobster *Jasus edwardsii*, as observed in the sustained modification of total haemocyte count. The study cautioned that *“lobsters in the wild would likely be subjected to more stressful conditions associated with limited access to lower energy feed, predator risk and disease exposure. It is likely that minor physiological impairment would have a much greater consequence for animal fitness in these more difficult wild conditions. Further research on the effects of seismic exposure on the performance of lobsters in the wild is required to better understand the biological/ecological consequence of seismic exploration for this important group of crustaceans.”*

16. Fewtrell and McCauley (2012)¹⁰ documented significant increase in alarm responses in fish and squid to air gun noise exceeding 147-151 dB re 1 μ Pa SEL. The study noted, *“the behavioural alterations that occurred to these species would undoubtedly have an effect on other species within the ecosystem. Lokkeborg and Soldal (1993) reported that, while long line and trawl catches of cod (Gadus morhua) decreased after exposure to noise from an actual seismic survey, the catch of prawns, the natural prey of cod, increased. Likewise, Engas et al. (1996) observed a greater reduction in the number of large fish than that of small fish in an area exposed to a 5 days seismic survey... the altered distribution could have significant effects on the entire ecosystem.”*
17. Castellote et. Al. (2012)¹¹ documented non-lethal behavioural effects of underwater noise in marine mammals, notably acoustic changes in fin whale songs and displacement of individuals for an extended period from an area in the Mediterranean Sea that was under seismic survey. Both acoustic changes and displacement could have adverse impacts on the reproductive and feeding success of the Endangered fin whales. The researchers concluded, *“As a precautionary principle, these potential influences of these effects should be considered in areas critical for fin whale survival. Further research is needed to better understand the individual and cumulative potential consequences of shipping and seismic survey noise on this endangered species and to define appropriate ways to reduce acoustic factors that could contribute to the loss of marine acoustic habitat.”*
18. Di Iorio and Clark (2009)¹² investigated the calling behaviour of blue whales relative to seismic operations in the St Lawrence Estuary in Canada. The study found that blue whales changed their calling behaviour in response to a low-medium power technology, and warned that reducing an individual’s ability to detect socially relevant signals could affect biologically important processes. The study suggests *“careful reconsideration of the potential behavioural impacts of even low source level seismic survey sounds on large whales”*, particularly when the species is at high risk of extinction.
19. Dr Leigh Torres from Oregon State University who discovered the previously unrecognised blue whale foraging ground in New Zealand (Torres, 2013)¹³ recently succeeded in capturing rare footage of blue whale lunge feeding in the South Taranaki Bight (Barlow, 18 April 2017)¹⁴ Currently an Assistant Professor in the Department of Fisheries and Wildlife at the university, Torres heads the Geospatial Ecology of Marine Megafauna Laboratory. She has also worked at NIWA – National Institute of Water and Atmospheric Research (2008-2014).
20. Last month, Torres and Klinck (24 October 2017)¹⁵ documented recordings of seismic airguns firing in the South Taranaki Bight which revealed elevated noise intensity across all frequencies (pitch), especially in the 10-80 Hz frequency range, which is where the blue whale and many other large baleen whales hear and communicate. Torres and Klinck pointed out that guidelines in the New Zealand Department of Conservation’s Code of Conduct *“only stop airgun blasting when animals are within 1,000 m of the vessel (1.5 km if a calf is present), yet seismic airgun blasts are so intense that the noise travels much farther. So, while these guidelines may be a start, they only prevent hearing damage to whales and dolphins by stopping airguns from blasting right on top of animals.”* There is no evidence that the guidelines, even when closely adhered to, is effective in minimizing acoustic disturbance to marine mammals when they are beyond the ‘mitigation zone’ (1.0 or 1.5 km).

21. The harm and potential harm of seismic surveys on threatened marine mammals require special attention, given New Zealand's global significance in terms of marine mammal diversity, the presence of threatened and endangered marine mammals and the government's international obligation to protect and promote the recovery of these species under the UN Convention for Biological Diversity.
22. By exaggerating the level of scientific acceptance of seismic surveys in the marine environment, the inaccurate and unsubstantiated claim on PEPANZ's website is grossly misleading and reflects the lack of any sense of social responsibility. Based on the above (para. 10-21), the website clearly breaches the Code for Environmental Claims Principle 1 Guideline e and Principle 2 Guideline a.
23. The website <http://www.seismicsurvey.co.nz/#maui-dolphins> (Appendix 1C) listed a **number of threats to the Maui dolphin but omitted both fishing and seismic surveys**.
24. Prof. Elisabeth Slooten, marine mammal scientist from the University of Otago, has repeatedly warned of the danger of oil and gas exploration (seismic surveys) and drilling, as well as seabed mining, to New Zealand's endangered marine mammals, notably the Maui dolphin. Prof. Slooten is a member of the Scientific Committee of the International Whaling Commission (since 1992) and the Cetacean Specialist Group of the IUCN (since 1991). She is also recipient of the Sir Charles Fleming Award for outstanding contribution to environmental science in 2004, granted by the Royal Society of New Zealand, and the Professor John Morton Award for outstanding contribution to marine science in 2016, granted by the New Zealand Marine Sciences Society.
25. In Slooten's expert evidence (30 September 2014)¹⁶ before the Environmental Protection Authority (EPA) concerning an application by OMV Ltd for a marine consent to drill for oil in the South Taranaki Bight under the EEZ and Continental Shelf Act, she asked that cumulative impacts be considered in combination with impacts from fishing, seismic surveys, ship strike and other activities. She pointed out, "*Maui's dolphin is already Critically Endangered. Fishing is the most serious impact to date and still has not been effectively managed.*"
26. In Slooten's expert evidence (24 Jan 2016)¹⁷ before the EPA concerning the applications by Trans Tasman Resources Limited for marine consents to mine iron sand, she identified fishing and seismic surveys as anthropogenic factors limiting population growth and habitat re-colonization in respect to the Maui and Hector's dolphins. She explained, "*Any noise pollution in the area, including seismic surveys and mining risks displacing these endemic dolphins into high risk areas and increasing the impact of other human activities, including fishing (Forney et al. 2017)*¹⁸ ... *To put the noise impacts into context, ocean noise around the world has been increasing over the last few decades due to industrial activities such as vessel traffic, seismic survey operations and mining activities, and sonar (Hildebrand 2009). This has resulted in significant impacts on cetaceans (e.g. Tyack 2008, Clark et al. 2009).*"
27. In a recent interview¹⁹ Slooten stressed that while there has been very little research on the impacts of airguns on marine mammals so far, "*there is already very clear evidence of impacts*". She also pointed out that in 2012, the California Coastal Commission²⁰ declined a company's application to conduct high energy seismic survey operations. The Commission staff stated, "*Of particular concern are impacts to the harbor porpoise (Morro Bay stock), whose range is limited to the general project area and the entire population of which is likely to be subject to behavioral harassment. The project would also adversely affect Marine Protected Areas, fish*

and other invertebrates, involving both physiological impacts as well as economic impacts to commercial and recreational fishing...” The Commission’s decision clearly confirms that the impacts of seismic surveys are so significant that a regulatory response is required to prevent them from endangering marine species and fisheries.

28. Based on the above (para.10-27), CJT believe that the claims in the website clearly breach Principle 1 Guideline e of the Code for Environmental Claims, by overstating the level of scientific acceptance and avoiding social responsibilities. The claims also breach Principle 2 Guideline a by being misleading, deceptive and failing to provide accurate and substantiated evidence that is current and reflects scientific development.
1. BTW Company, October 2016. Application for resource consent and assessment of environmental effects – Applications to undertake discharges to land whereby contaminants may reach water associated with a seismic survey. Applications to the Taranaki Regional Council.
 2. http://www.iagc.org/uploads/4/5/0/7/45074397/iagc_landsafetymanualonlineversion_2012_12_19.pdf (p.135-137)
 3. PDP Pattle Delamore Partners Ltd, 5 April 2016. Kapuni 2016 Seismic survey – Discharge of explosive residues to land and water. Report prepared for Shell Todd Oil Services.
 4. <http://www.radionz.co.nz/news/regional/303004/undetoned-explosives-mean-a-decade-of-monitoring>
 5. https://www.southtaranaki.com/uploaded_files/District-Plan/Hearings/Evidence%20-%20Taranaki%20Energy%20Watch%20-%20Jenny%20Polich%20FORMATTED.pdf
 6. <http://blogs.oregonstate.edu/gemmlab/?cat=712807>
 7. <https://www.nature.com/articles/s41559-017-0195>
 8. <http://www.pnas.org/content/114/40/E8537.abstract>
 9. <https://www.ncbi.nlm.nih.gov/pubmed/28807415>
 10. <http://www.sciencedirect.com/science/article/pii/S0025326X12000872>
 11. <http://www.sciencedirect.com/science/article/pii/S0006320711004848>
 12. <http://rsbl.royalsocietypublishing.org/content/6/1/51>
 13. <http://www.tandfonline.com/doi/pdf/10.1080/00288330.2013.773919?needAccess=true>
 14. <http://blogs.oregonstate.edu/gemmlab/2017/04/18/new-aerial-footage-captures-blue-whale-lunge-feeding/>
 15. <http://blogs.oregonstate.edu/gemmlab/?cat=712807>
 16. http://www.epa.govt.nz/EEZ/EEZ000007/EEZ000007_SubExWitness01_Slooten_Elisabeth_Marine_mammals_30Sept14.pdf
 17. http://www.epa.govt.nz/EEZ/EEZ000011/KASM_and_Greenpeace_Liz_Slooten.pdf
 18. <http://www.int-res.com/abstracts/esr/v32/p391-413/>
 19. https://www.waateanews.com/site/uma/images/podcasts/Marine-Biologist-Professor-Elizabeth-Slooten-1_Pub.mp3

20. <https://documents.coastal.ca.gov/reports/2012/11/W13b-11-2012.pdf>

FURTHER FROM COMPLAINANT IN RELATION TO ASA JURISDICTION

Climate Justice Taranaki wish to thank the Chair of the Complaints Board for determining that our complaint is suitable for the Board's consideration.

Here, we address Ms Joanna Richards' question (20 December 2017) on whether the material subject to complaint is an advertisement and therefore falls within the Advertising Standards Authority's jurisdiction.

1. We are certain that PEPANZ' seismicsurvey.co.nz website fits well within ASA's definition of advertisement and therefore falls within ASA's jurisdiction.
2. ASA's updated definition of "*Advertising and advertisement(s)*" are *any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.*"
3. This is a very wide definition. The material on the seismic survey website is clearly controlled by PEPANZ which explicitly seeks to encourage people to support seismic surveys for oil and gas exploration.
4. According to PEPANZ'S home website <http://www.pepanz.com/> , PEPANZ is "*the industry association of the upstream oil and gas sector, representing the companies that explore for, and produce, New Zealand's oil and gas resources*". The association's website headline is "*ADVOCATE EDUCATE SUPPORT*". PEPANZ describes itself as an organisation that aims to lead the discussion about oil and gas, advocate on behalf of members and promote the view that developing the industry enriches New Zealand's future.
5. The Advertising Code of Ethics (rule 11) plainly covers advocacy advertising.
6. The target audience of the seismic survey website is the general public. It presents overly simplified (also misleading and unsubstantiated) information in an attractive manner, without any attempt to provide references or links to relevant scientific literature or published reports other than the Department of Conservation's Code of Conduct.
7. The choice of adjectives (e.g. vital and critical) and graphics – notably the beautiful blue ocean adorned with whales, dolphins and seals – is deliberately geared towards advocacy and influencing public minds and opinions, rather than providing a dispassionate and rigorous account of the facts. The assertions that "*Seismic surveying is a 'vital' part of exploring for oil and gas. That makes it 'critical' to producing the energy we need to power our homes and businesses*", are easily contestable. There are now alternative technologies^{1,2} which make seismic surveying not "*vital*" for oil and gas exploration. It follows then that seismic surveying is not "*critical*" to producing the energy we need, especially when 85% of electricity in New

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<https://industry.gov.au/resource/UpstreamPetroleum/OffshorePetroleumEnvironment/Documents/Submission/STR005WildMigration-AttachmentA.pdf>

² <https://www.nrdc.org/sites/default/files/seismic.pdf>

Zealand is generated from renewable sources while only 3% of its gas production supplies homes (IEA, 2017)³.

8. The seismic survey website is clearly designed to advocate for PEPANZ's members and to promote oil and gas exploration by planting the idea that seismic surveys are "vital", safe, environmentally friendly and adequately managed. The intent is to influence public opinion, choice and behaviour, so that: e.g. a landowner signs (rather than declines) an access agreement for oil/gas company to come on his/her properties to conduct seismic survey, not necessarily with full knowledge of the risks involved; a member of the public or an organisation supports (rather than opposes) an oil/gas company application to conduct seismic survey or exploratory drilling in the ocean, without full understanding of the threats to marine species and ecosystems.
9. On 11 January 2018, we were provided with a copy of the ASA decision on complaint 15/196 filed by the Coastal Ratepayers United Inc on the Coastal Systems Ltd. website <http://coastalsystems.co.nz/> because of the question over ASA jurisdiction, as it is being raised also in our complaint. We find the Coastal Systems Ltd. website to be very different from PEPANZ's seismic survey website. The Coastal Systems Ltd website is a much more technical website with relatively plain design to present the kind of technical expertise that the company offers. In different sections, the website gives references to relevant sections of the RMA and NZ Coastal Policy Statement to illustrate the need and relevance of the company's services, and lists the technical reports completed by the company to illustrate its capability. These sections were deemed 'editorial' by the ASA Board Chair in her decision (21 May 2015).
10. In contrast, PEPANZ's seismic survey website has no separate or easily identified 'editorial' sections. There are no references or reports that may be deemed 'editorial'. It is clearly an entire piece of 'advocacy advertising' (See paragraphs 4-8 above) and subject to the Advertising Code of Ethics.
11. In many ways, PEPANZ's seismic survey website is similar to the alcohol industry-funded Cheers.org.nz website. In 2015, the ASA Board processed a complaint (15/209) on the Cheers website without any question re 'editorial' content or jurisdiction. In our view, the Board would be acting inconsistently if it decides to decline our complaint on the seismic survey website.
12. In addition to the issue of jurisdiction, the decision on the Coastal Ratepayers United Inc's complaint was based on two other considerations: i) the complaint was complex and contains technical details that, in the Board Chair's opinion, were beyond the expertise of the Board; ii) the complaint was a dispute between the parties and there are alternative adjudication forums for that. The second point is not relevant to our case. On the first point, we believe the list of references we have included in our complaint provide some of the technical evidence that the Board would find useful in assessing our complaint. We also believe that the two marine scientists who have worked substantively on marine mammals in New Zealand, Prof. Elisabeth Slooten and Dr. Leigh Torres, would likely be willing to assist in providing any technical expertise the Board may need. Moreover, technical issues are readily resolvable via

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<https://www.iea.org/publications/freepublications/publication/EnergyPoliciesofIEACountriesNewZealand2017.pdf>

the ASA's standard process of considering whether the advertiser can provide adequate substantiation for the claims.

13. Relating to the references we provided in our original complaint, please note that EPA has recently redesigned their website. Reference 17 – Prof Slooten's expert evidence (24 Jan 2016) can now be found at:
<https://www.epa.govt.nz/assets/FileAPI/proposal/EEZ000011/Evidence/KASM-and-Greenpeace-Liz-Slooten.pdf> Reference 16 – Prof Slooten's expert evidence (30 Sept 2014) is no longer on EPA website, so we have attached it in our email of 18 Jan 2018.
14. To sum up, we believe strongly that Climate Justice Taranaki's complaint on PEPANZ's seismicsurvey.co.nz website clearly falls within the remit of the ASA to oversee the integrity of claims designed to influence public opinions, choices and behaviour.

CODE OF ETHICS

Basic Principle 3: No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

CODE FOR ENVIRONMENTAL CLAIMS

Principle 1: Advertisements making an environmental claim should be prepared with a due sense of social responsibility to consumers and to society.

Principle 2: Advertisements making environmental claims should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

Guideline 1(e): Environmental claims shall not overstate the level of scientific acceptance.

Guideline 2 (a): Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.

RESPONSE FROM ADVERTISER – PEPANZ

We've had a good look at the two issues raised by the complainant and have decided to update and amend the content featured on our websites (both www.seismicsurvey.co.nz and www.energymix.co.nz). This reflects the fact the content is a few years old and is part of a general update we are doing.

That said, we do want to challenge whether we are subject to the ASA's jurisdiction. More detail on each topic below:

Onshore seismic surveys

Previous wording was:

“ONSHORE - Onshore seismic operations use specialised trucks that carry a heavy plate that is vibrated to generate a seismic signal, sending sound waves beneath the earth's surface. Listening devices placed nearby capture the returning sound waves.”

New wording is:

“ONSHORE – The acoustic energy source for onshore seismic survey operations is either small explosive charges placed in shot-holes (commonly 10-50 m deep) or by specialised trucks that carry a heavy plate which is vibrated. Both of these methods send sound waves beneath the earth's surface and listening devices called geophones are placed on the surface nearby to capture the returning sound waves.”

Offshore seismic surveys

Previous wording:

“For more than four decades, seismic surveying and countless research projects (both in New Zealand and world-wide) have shown no evidence to suggest that sound from oil and gas exploration activities in normal operating circumstances has harmed marine species or marine ecological communities.”

New wording:

“After more than four decades of seismic surveying and countless research projects (both in New Zealand and world-wide) there is no clear evidence that sound from exploration activities in normal operating circumstances has permanently harmed marine mammal species.”

ASA jurisdiction

We question whether our website www.seismicsurvey.co.nz meets the ASA definition of an advertisement as being a *“message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.”*

While we do aim to advocate for our industry and increase public favourability, our websites (including www.pepanz.com and www.energymix.co.nz) are designed to be educational. Their purpose is to provide background information on how our industry works so that people can make up their own minds on topical issues.

This is reflected in our three key objectives as an organisation: to advocate, educate and support on behalf of our members. As our website states: *“We also seek to increase community and government understanding of the industry by publishing information about the sector’s activities and its economic importance to New Zealand...”* (<http://www.pepanz.com/about-us/our-priorities/>)

As part of this educational role we aim to:

- Increase public knowledge, favourability and trust in the sector.
- Promote evidence-based discussions about the sector and its role in providing energy and reducing emissions.

Similarly, we don’t believe as an organisation we meet the definition of an ‘advertiser’ for following reasons:

- There appears to be no legal basis upon which any organisation is subject to the ASA’s jurisdiction unless they choose to be covered.
- The ASA’s self-regulating model is committed to and funded by advertisers and media organisations as it is those organisations who it is intended to have jurisdiction over. The focus of the ASA’s jurisdiction (such as the Code of Conduct for Environmental Claims) seems to be more towards the trading of goods and services to consumers which we are not involved in.
- We are not a commercial organisation, advertiser or media organisation. Instead, we are a not-for-profit industry group representing the upstream oil and gas industry in New Zealand.
- The precedent this would create for ASA. It would mean your jurisdiction would cover any comment on the internet, including blogs, tweets, Facebook posts, advocacy websites, opinion pieces on Stuff, etc. For example – we could make similar complaints about the websites of Climate Justice Taranaki and their portrayal of our industry. It could mean a huge workload for the ASA and take away from your core roles.
- As noted in the decision on Coastal Systems Limited, the subject matter of this complaint (seismic surveys) is very technical and beyond the reasonable expertise of the ASA to determine. This is why we have Government agencies like the Environmental Protection Agency (EPA) to make considered decisions on these kinds of projects.

For these reasons we would be keen to hear your final determination on whether our websites and our publications are subject to the ASA’s jurisdiction.

FURTHER RESPONSE FROM ADVERTISER – PEPANZ

While we continue to hold the view set out in our email to you on 19 January 2018 that our www.energymix.co.nz website is not an advertisement within the jurisdiction of the ASA, in the interests of ongoing trust-building and openness we are happy to voluntarily provide evidence to support the statement the Complaints Board refers to.

We have three main sources of evidence to support this claim:

Department of Conservation

According to the Department of Conservation website:

“Behavioural responses might be observed well outside the monitoring zones designated in the Code, but expert assessment (see below for further explanation) is that these are unlikely to have a significant long-term consequence.

“A variety of studies have been reported in scientific literature over the years, but there is no definitive answer as to the effect of seismic surveying on whales. Some animals/species have been reported as not reacting to the noise at all, others have been observed moving away when the vessel was many kilometres away.”

<http://www.doc.govt.nz/our-work/seismic-surveys-code-of-conduct/frequently-asked-questions/>

International Association of Geophysical Contractors

The International Association of Geophysical Contractors (IAGC) is the global trade association representing all segments of the geophysical industry.

They keep a close eye on the science surrounding seismic surveys and some of their work and sources are attached. This includes:

- A letter from the IAGC to Conservation Minister Eugenie Sage from December 2017 on this topic with their summary of the research in this area.
- Two ‘Science Note’ newsletters from the Bureau of Ocean Energy Management (BOEM) in the US with their conclusion *“To date, there has been no documented scientific evidence of noise from air guns used in geological and geophysical (G&G) seismic activities adversely affecting marine animal populations or coastal communities.”*
- A fact sheet from the IAGC ‘Debunking Offshore Oil Exploration’: *“currently there is no scientific evidence demonstrating biologically significant negative impacts on marine life populations.”*
- A US Federal Register Notice (similar to the New Zealand Gazette) from the National Oceanic and Atmospheric Administration: *“To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to air gun pulses, even in the case of large air gun arrays.”*
- A research bibliography summarising research in this area.

Climate Justice Taranaki evidence

None of the scientific evidence quoted by Climate Justice Taranaki in their complaint shows confirmed permanent harm to marine mammals.

Despite being a selectively chosen list, the two papers quoted on marine mammals can only reach qualified conclusions:

- Castellote (2012): refers to displacement of marine mammals for a period of time (i.e. swimming away from the sound) – this does not count as “permanent harm” and is qualified: “*could*” have adverse impacts.
- Di Iorio and Clark (2009): “*warned that reducing an individual’s ability to detect socially relevant signals **could** affect biologically important processes*” (emphasis added).

Hope this helps, and we are happy to provide any further information if required.