



Seabed mining in New Zealand

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Delete/add Ministers as appropriate	Action sought:
To Hon David PARKER, Minister for the Environment, Minister for Oceans and Fisheries	For noting
CC Hon Megan WOODS, Minister of Energy and Resources	

Actions for Minister's Office Staff	None
Number of appendices and attachments 2	Appendix 1: Questions and answers Appendix 2: Offshore minerals permits under the CMA (excluding petroleum permits and licences)

Ministry for the Environment contacts

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Seabed mining in New Zealand

Purpose

1. This aide memoire provides information on options to ban seabed mining in New Zealand to support your oral item at Cabinet on 17 October 2022.

Background and context

The seabed mining regime

2. New Zealand's domestic framework for seabed mining is governed by several pieces of legislation. The rights to prospect, explore and mine for Crown-owned minerals are granted through permits issued under the Crown Minerals Act 1991 (the CMA). The environmental effects of seabed mining are considered through consenting processes under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) or the Resource Management Act 1991 (RMA).
3. To mine the seabed, operators usually require both mineral permits and the relevant consents (under the EEZ Act or the RMA) depending on the location of their activities. Usually, operators obtain prospecting and/or exploration permits before applying for a mining permit. Environmental consents are generally sought at the end of the process when operators are set to begin production.
4. Sand dredging/mining activities in the coastal marine area require resource consents but do not require mineral permits under the CMA.¹ There are several locations close to shore where sand dredging/mining occurs or has occurred in the past. Though these activities have not been labelled 'seabed mining' in the past (environmental NGOs now refer to these as seabed mining), the effects of sand extraction are similar but on a smaller scale. An example of this is the sand extraction offshore from Pakiri Beach north of Auckland, which is used to supply Auckland's construction industry.

Existing operators in New Zealand waters

5. Trans-Tasman Resources Ltd (TTR) and Chatham Rock Phosphate (CRP) both hold a crown-minerals permit in the EEZ, and there are two existing exploration permits within the coastal marine area (Appendix 2 provides permit details).
6. There are no active seabed mining marine consents in the EEZ. TTR and CRP have both had marine consent applications refused by the Environmental Protection Authority (EPA), though TTR's consent was granted on its second attempt only to be quashed by the Supreme Court. TTR's application is due to be reconsidered by the EPA in mid-2023.

Recent developments have increased focus on seabed mining

7. Recently, opposition to seabed mining has been gaining momentum. This has partly been fuelled by negotiations at the International Seabed Authority (ISA) to develop rules

¹ All minerals seaward of the mean high water spring mark are Crown-owned. Some, such as sand and shingle in the coastal marine area, do not require a permit under Section 8(2)(b) of the Act.

for seabed mining in areas beyond national jurisdiction, and domestically, by the ongoing court proceedings on TTR's consent application and Te Pāti Māori's member's bill.

8. Te Pāti Māori's *Prohibition on Seabed Mining Legislation Amendment Bill* has also drawn support from environmental NGOs. The Bill aims to place a nationwide ban on seabed mining through a series of amendments to the CMA, the EEZ Act and the RMA.

Options to ban seabed mining

9. All three pieces of legislation (the CMA, the EEZ Act and the RMA) could be used to ban seabed mining in New Zealand. The viability of any legislative options depends on:
 - a. a ban's geographic scope (eg, the EEZ and continental shelf and/or the coastal marine area)
 - b. the minerals that would be covered by a ban (eg, whether Crown-owned or all minerals)
 - c. the mining methods to be banned (some may be more harmful than others)
 - d. whether a ban is permanent or for a specified period of time (ie, a moratorium).

Amending the CMA

10. The CMA was amended in 2018 to give effect to the Government's decision to ban the granting of *new* offshore permits for oil and gas exploration, prospecting, or extraction. A similar approach could be used to ban the granting of mineral permits for prospecting, exploration, or mining offshore.
11. The CMA applies throughout New Zealand's waters so amendments could apply within the EEZ and the coastal marine area, or in specified locations. A ban could extend to all Crown-owned minerals or specify certain minerals that cannot be mined. The 2018 amendment preserved the rights of existing permit holders. If the same approach was taken, the four current permit holders would retain rights until those permits expired (the mining permits are valid until the mid-2030s).
12. A total ban under the CMA would, in effect, prevent most operators from seeking the relevant environmental consents to extract most minerals. This is because, without a CMA permit, no person could lawfully give effect to their consents as there is no private ownership of minerals in the coastal marine area and the EEZ.
13. However, a ban under the CMA alone would not prevent customary marine title groups from seeking environmental consents to extract minerals (if this was the Government's intent) because these groups do not require a permit for minerals subject to customary marine title – see paragraph 25.

Amending the EEZ Act and RMA

14. The EEZ Act could be amended to prohibit seabed mining activities in the EEZ and the continental shelf by classifying mining as prohibited in the primary legislation (as is the case for the dumping of radioactive waste and the dumping of toxic or hazardous waste). Alternatively, regulations could be pursued as section 29 specifically provides for the making of regulations to classify certain activities as prohibited. A more nuanced

approach prohibiting mining in certain locations or mining methods could also be considered but with an associated increase in complexity.

15. Consents that are currently in process would likely be unaffected by amendments to the EEZ Act or specific regulations provided they were in place before the law changes took effect (see paragraph 23). In addition, any prohibition would not apply to the coastal marine area.
16. Amendments to the RMA could achieve a seabed mining ban within the coastal marine area. Alternatively, as with the EEZ Act, secondary instruments including the New Zealand Coastal Policy Statement (NZCPS) or the development of a National Environmental Standard (NES) could prohibit the activity.
17. If pursued by way of amendments to the NZCPS (or through the proposed National Planning Framework under the RMA's proposed successor legislation) the ban would likely take several years to be given effect through regional planning documents. In the meantime, the relevant provisions would influence (but not outright dictate the outcome of) any consent applications.
18. A NES could also be used to prohibit seabed mining within the coastal marine area. The advantage of a NES is that it could take almost immediate effect and supersede any regional planning documents.
19. Changes to the NZCPS or the development of a NES would require a section 32 evaluation. It may be difficult for the Crown to demonstrate that a prohibition of seabed mining throughout the coastal marine area was consistent with the sustainable management purpose of the RMA and/or was the most appropriate option for that activity.

Difficulty and timing

20. If the Government's objective was certainty and robustness to challenge, amendments to primary legislation would be the better option to achieve a seabed mining prohibition in the EEZ and the continental shelf and/or the coastal marine area. Regulations could be challenged and potentially overturned in court, whereas amendments to Acts themselves could not be overturned.
21. A total seabed mining ban would likely require a package of amendments involving the CMA with changes to align the EEZ and RM regimes.

Key considerations for a ban

9(2)(h)

22. [Redacted]
23. [Redacted]

24.

Impact on customary marine titles and treaty settlements

25. A total ban will impact customary marine titles or title applications under the Marine and Coastal Area (Takutai Moana) Act 2011. One of the rights conferred by customary marine title is the ownership of minerals (excluding the statute minerals petroleum, gold, silver, and uranium). This ownership, amongst other things, precludes the need for a CMA permit in the area to which the relevant title relates.

26. 9(2)(g)(i)

27. Any relevant Treaty settlement obligations will also need to be considered. Some settlements have dealt with the transfer of Crown mineral rights (see for example the Ngāi Tai ki Tāmaki Claims Settlement Act 2018) so due diligence would be required to ensure there were no such settlements applying to minerals in the coastal marine area.

The opportunity costs

28. Any ban on seabed mining would also come with opportunity costs both in the potential financial value of seabed mineral deposits and because seabed minerals could be useful for technology to assist a transition to a low-carbon economy. It may also reduce investor confidence, particularly if a ban was to extinguish existing permits or consents.

29. The 2019 Government Resource Strategy³ set out actions to secure affordable resources. Banning seabed mining may raise questions about where minerals will be sourced from in future to ensure this supply, and whether they are sourced in a way that meets New Zealand's expectations regarding environmental, social and governance standards. This may be raised in relation to the work being progressed to develop a list of critical minerals.

Impact on New Zealand's international position

30. 9(2)(h)

² For example: under the CMA permits may be distributed as part of a person's estate upon death and transferred to a beneficiary of that estate; permits vest with a person's Official Assignee upon bankruptcy; permits are treated as property for the purposes of the Protection of Personal and Property Rights Act 1988 and the Personal Property Securities Act 1999; and a charge may be granted over a permit as if it were personal property (to a limited extent) – (section 92 CMA)

³ Responsibly Delivering Value - A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand 2019-2029

9(2)(h)

31. The Minister of Foreign Affairs is currently reviewing New Zealand’s approach to seabed mining in areas beyond national jurisdiction, based on advice provided by MFAT on 29 September. UNCLOS enables a regime for seabed mining in areas beyond national jurisdiction subject to the regulatory authority of the ISA. The impact of a domestic ban on seabed mining on New Zealand’s approach to seabed mining in areas beyond national jurisdiction would be limited

Other activities have similar environmental impacts

32. Other activities in the marine area also have similar and sometimes more pervasive impacts than seabed mining (eg. trawling, sediment from runoff). If the driver to ban seabed mining is concern about environmental harm, a broader conversation on marine outcomes - potentially as part of a comprehensive spatial planning process - may be warranted (spatial planning has been mentioned in recent sector specific advice).

Signature

<p>Hayden Johnston Director - Water and Land Use Policy</p>	
<p>Date:</p>	<p>6 October 2022</p>

Appendix 1: Questions and answers

How long would it take to ban seabed mining?

- This largely depends on whether a ban would involve amendments to Acts or regulations.
- A comprehensive ban would likely involve changes to the Crown Minerals Act, the EEZ Act and the RMA.

Who's responsible?

- This depends on the legislative vehicle, but the Minister of Energy and Resources would lead any changes under the Crown Minerals Act, with the Minister for the Environment and Oceans and Fisheries being responsible for any changes to the EEZ Act or RMA.
- The Ministers of Conservation and Māori-Crown Relations would also have a role to play.

What are the impacts of seabed mining?

- Seabed mining would generally involve the disturbance of habitats on the seafloor and the potential for notable sediment plumes. There is a large degree of uncertainty about the potential impacts because of the limited knowledge of deep-sea environments where seabed mining is often proposed.
- In New Zealand, seabed mining applications have been refused by the EPA based, in part, on concern for the environment or uncertainty about the potential effects. However, Trans-Tasman Resources Ltd's (TTR) consent application was granted on its second attempt only to be quashed by the Supreme Court. TTR's application is due to be reconsidered by the EPA in mid-2023.

Who would be impacted by a ban?

- This depends on whether a ban captures existing permit or consent holders.
- TTR and Chatham Rock Phosphate Ltd are the two companies that would be most affected by any revocation of existing rights or halting of extant processes under the CMA, EEZ Act, or RMA. Both have invested millions into research, development, and the acquisition of permits/consents.
- Potential impacts on customary rights holders and applicants under the MACA Act would also need careful consideration because a total ban would impinge on rights conferred by customary marine title.

How would this affect New Zealand's participation at the ISA?

- The impact of a domestic ban on seabed mining on New Zealand's approach to seabed mining at the ISA would be limited.
- UNCLOS sets out a regime to enable seabed mining in areas beyond national jurisdiction subject to the regulatory authority of the ISA. ^{9(2)(h)} [REDACTED]
- While a domestic ban on seabed mining is unlikely to have an adverse effect on New Zealand's ability to influence negotiations at the ISA, it will be important that the distinction between the regime that applies domestically, and the regime that applies

under UNCLOS, is maintained and made clear (particularly because of stakeholder interests and various positions of Pacific countries).

What is the value of New Zealand's seabed mineral resources?

- MBIE commissioned a report by RSC Consulting in 2019 to provide a high-level of assessment of the in-situ dollar value of minerals in the territorial waters off the west coast of the North Island in the areas proposed for the marine mammal sanctuaries.
- The value for iron sand ranged from \$30 billion to \$860 billion and from \$50 billion to \$1,400 billion for vanadium.
- Attempts to establish the financial value of marine mineral resources at this stage is speculative, as additional exploration is required to define these resources. Prohibiting all seabed mining would make this exploration difficult or impossible to carry out.
- Potential seabed minerals may also have other value, for example in their use in clean-energy technology.

What are other countries doing?

- Several Pacific countries (Palau, Fiji, Samoa, Tuvalu and the Federated States of Micronesia) have called for a moratorium on seabed mining.
- Fiji, Palau, the Northern Territory in Australia, and Washington State in the USA have also banned seabed mining in their waters.
- 6(a)

6(a)

Appendix 2: Offshore minerals permits under the CMA (excluding petroleum permits and licences)

Permit number	Operator	Permit type	Mineral	Permit expiry date*	Permit location
55581	Trans Tasman Resources Limited	Mining Permit	Ironsand	1/05/2034	Taranaki Region
54068	Trans Tasman Resources Limited	Exploration Permit**	Ironsand + other metallic and non-metallic minerals	18/12/2021 (current application for a 4-year extension)	Taranaki Region
57130	Pacific Offshore Mining Limited	Exploration Permit**	Ironsand + gold, silver, ilmenite, rare earth elements	7/05/2023	Bay of Plenty Region
55549	Chatham Rock Phosphate	Mining Permit	Phosphate plus a number of metallic and non-metallic minerals	5/12/2033	Canterbury Region

*All permits currently have the right to apply for extensions of duration.

** Exploration permits carry the ability to apply for a subsequent mining permit.

