In Confidence

Office of the Minister for the Environment

Chair, Cabinet Economic Development Committee

Seabed mining in New Zealand

Proposal

1 This paper:

1.1 provides advice on New Zealand's domestic regulatory settings for seabed mining in light of our support for a conditional moratorium on seabed mining in areas beyond national jurisdiction

1.2 seeks agreement to initiate a select committee inquiry into the issue of seabed mining in New Zealand.

Relation to Government Priorities

2 New Zealand has been participating in negotiations at the International Seabed Authority (ISA) to develop an international framework to regulate seabed mining in areas beyond national jurisdiction (BNJ areas).[1] In October 2022, the Government announced its support for a conditional moratorium on seabed mining in BNJ areas. This is to apply until such time as an international regulatory framework can be agreed at the ISA that ensures the effective protection of the marine environment.

3 Reviewing our domestic seabed mining regulatory settings supports the Government's commitment to a more holistic and integrated approach to managing oceans.

Executive Summary

4 Seabed mining is an emerging industry to extract minerals from the seafloor using techniques that are similar to nearshore dredging and aggregate mining operations. Proponents identify that the minerals are high in financial value and may assist our transition to a low-carbon economy. Opponents consider there is the potential for significant adverse impacts on marine ecosystems, particularly in sensitive deep-sea habitats.

5 On 17 October 2022, Cabinet invited me to work with the Minister of Energy and Resources to provide advice on the domestic regulatory settings for seabed mining [CAB-22-MIN-0449 refers]. On 27 October 2022, Minister of Foreign Affairs Hon Nanaia Mahuta announced New Zealand's support for a conditional moratorium on seabed mining in BNJ areas.

[1] Areas beyond national jurisdiction (BNJ areas) are those beyond the exclusive economic zone (EEZ) ie 200 nm, and extended continental shelf.

6 On 19 December 2022, Cabinet deferred until 2023 consideration of a paper seeking agreement to refer the matter of seabed mining to a select committee for the purpose of an inquiry [22-CAB-MIN-0599.01 refers].

7 New Zealand's international position does not require the Government to change its domestic approach to seabed mining. Our domestic regulatory settings, which allow seabed mining applications, are consistent with our rights and duties under the United Nations Convention on the Law of the Sea (UNCLOS). A more restrictive domestic regime would also be consistent with those rights and duties.

8 It is appropriate to consider our domestic regulatory settings given our support for a conditional moratorium in BNJ areas and growing opposition domestically to seabed mining. But before we consider any adjustments, I consider a broad public conversation about the risks and benefits/disbenefits of seabed mining in New Zealand is desirable, including with the public, Treaty partners, and stakeholders.

9 Any adjustments to domestic regulatory settings for seabed mining would need to consider the impact on existing rights held by minerals permit holders, and the rights conferred by customary marine titles and Treaty of Waitangi settlements. Cabinet has agreed that any adjustments would not have retrospective effect and therefore no existing permits or consents for mining activities would be repealed [CAB-22-MIN-0449 refers].

10 The application of any changes to sand dredging/mining activities, which do not require permits under the Crown Minerals Act 1991 (CMA), would also need to be considered.

11 There are three potential pathways to consider domestic regulatory settings for seabed mining:

11.1 adopting *The Prohibition on Seabed Mining Legislation Amendment Bill* (the Member's Bill) that bans seabed mining would take 9 to 12 months and is dependent on obtaining the consent of the Member

11.2 a standard policy process could result in the implementation of changes in 12 to 18 months

11.3 a select committee inquiry would likely take 6 months.

12 A select committee inquiry is my preferred option. I seek Cabinet approval to request the Environment Committee to conduct an inquiry on seabed mining in New Zealand's jurisdiction.[2] I consider the Committee to be the most appropriate select committee for this as the subject is primarily one of environmental regulation.

13 Also, I note that the Environment Committee has before it a petition on banning seabed mining, which was presented to the House in June 2022. I understand that the Committee has received evidence on the petition and will progress work on it in due course.

14 I intend to work with the Minister of Energy and Resources to refine proposed terms of reference, and to discuss them with the Chair of the Environment Committee.

[2] Encompassing the territorial sea, EEZ, and extended continental shelf.

15 I would intend to report back to Cabinet on the recommendations of the inquiry. If regulatory adjustments are recommended, they could be implemented within 18 to 24 months (including the time taken for the inquiry).

Background

Seabed mining is a divisive issue

16 Seabed mining is an emerging industry to extract minerals from the seafloor using techniques that are similar to nearshore dredging and aggregate mining operations. Proponents identify that the minerals are high in financial value and may assist our transition to a low-carbon economy. Opponents consider there is the potential for significant adverse impacts on marine ecosystems, particularly in sensitive deep-sea habitats.

New Zealand's support for a conditional moratorium in areas beyond national jurisdiction

17 Seabed mining in areas beyond national jurisdiction (BNJ areas) is governed by the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS enables seabed mining in BNJ areas, subject to the regulatory authority of the International Seabed Authority (ISA).

18 On 27 October 2022, Minister of Foreign Affairs Hon Nanaia Mahuta announced New Zealand's support for a conditional moratorium on seabed mining in BNJ areas. This is to apply until such time as an international regulatory framework can be agreed at the ISA that ensures the effective protection of the marine environment, which requires adequate scientific knowledge about the impacts.

The domestic seabed mining framework

19 In New Zealand, seabed mining is governed by three key pieces of legislation:

19.1 the Crown Minerals Act 1991 (CMA) governs minerals permits, ie rights to prospect, explore and mine for Crown-owned minerals

19.2 the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) governs marine consents required to undertake seabed mining activities in the exclusive economic zone (EEZ) and extended continental shelf

19.3 the Resource Management Act 1991 (RMA) governs resource consents required to undertake seabed mining in the coastal marine area.

20 To mine the seabed, operators require:

20.1 a minerals mining permit under the CMA (unless the mining is for sand or shingle or undertaken under Takutai Moana legislation)[3]; and

20.2 environmental consents under the EEZ Act or the RMA (depending on the location of their activities).

21 Operators obtain prospecting and/or exploration permits under the CMA before applying for a mining permit. Environmental consents are generally sought under the EEZ Act or the RMA after mining permits have been obtained under the CMA.

[3] Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

22 Seabed mining is already banned in five marine mammal sanctuaries and one whale sanctuary (with the exemption of any existing permits or consents) and 44 marine reserves.[4]

Existing operators in New Zealand waters

23 Trans-Tasman Resources Ltd (TTR) and Chatham Rock Phosphate (CRP) both hold a minerals mining permit in the EEZ, and there are two existing exploration permits within the coastal marine area (ie the territorial sea, out to 12 nautical miles).

24 There are no active marine consents for seabed mining in New Zealand's EEZ. TTR and CRP have both had marine consent applications under the EEZ refused by the Environmental Protection Authority (EPA). Although TTR's consent was granted on its second attempt, it was later quashed by the Supreme Court. TTR's application is currently being reconsidered by the EPA.

25 Some sand dredging/mining activities occur, or have occurred, close to shore in the coastal marine area. These activities have taken place over a number of decades and are not traditionally considered seabed mining. These activities supply sand and aggregate to the domestic construction industry and allow ports to remove sediment in harbours to improve ship access.

26 Sand mining/dredging activities require resource consents (unless there is a protected customary right under Takutai Moana legislation) but do not require mineral permits under the CMA.

Recent developments have increased focus on seabed mining

27 Globally, opposition to seabed mining continues to gain momentum. This is partly because seabed mining is becoming more feasible and because negotiations at the ISA are entering their final stages (mining applications could be made as early as July 2023). Domestically, the recent judicial proceedings on TTR's consent applications and the introduction of the Member's Bill have led to calls for a seabed mining ban in New Zealand.

28 The Member's Bill aims to place a nationwide ban on seabed mining through a series of amendments to the CMA, the EEZ Act, and the RMA, and to do so retrospectively.

Cabinet invited me to provide advice on domestic regulatory settings for seabed mining

29 On 17 October 2022, Cabinet invited me, working with the Minister of Energy and Resources, to prepare advice on:

29.1 how New Zealand should make any adjustments to domestic regulatory settings for seabed/deep sea mining in light of the Government's new position on BNJ areas

29.2 the process for considering the issue, or aspects of it, possibly by reference to a select committee for an inquiry

29.3 the implications for sand mining or dredging or mooring structures, and for customary marine titles and Treaty settlements [CAB-22-MIN-0449 refers].

[4] Note that gold mining is provided for in some marine reserves.

Analysis

New Zealand's international position does not require changes to our domestic regulatory settings

30 New Zealand's support for a conditional moratorium in areas beyond national jurisdiction does not prevent the Government from taking a different approach to seabed mining domestically. Our support for a conditional moratorium only applies until such time as a regulatory framework can be agreed at the ISA that ensures the effective protection of the marine environment (as required by UNCLOS).

31 UNCLOS provides coastal states with sovereign rights to exploit resources within their EEZ and extended continental shelf, subject to the duty to protect and preserve the marine environment. Our domestic regime, which requires a robust assessment of environmental effects, is consistent with New Zealand's rights and duties under UNCLOS. A more restrictive domestic regime, including a ban, would also be consistent with those rights and duties.

32 The Pacific being such a large area, it features significantly in the international debate on seabed mining. Pacific nations have a range of views about this activity, including within their EEZs, and around the management of environmental risks associated with it. In looking at our own domestic regulatory settings, New Zealand could be supportive of Pacific nations as they consider theirs.

The nature of any changes to domestic regulatory settings would determine the legislative options

33 Given the shift in New Zealand's international position on seabed mining in BNJ areas, and growing opposition to seabed mining, it is appropriate to consider our domestic regulatory settings. Any adjustments in domestic settings may require changes to all three pieces of legislation (the CMA, the EEZ Act and the RMA) and their secondary instruments.

34 Before considering any adjustments, a broad public conversation on the benefits and risks of seabed mining in New Zealand is desirable, including with the public, Treaty partners, and stakeholders. Any future decisions to amend domestic regulatory settings would benefit from having this conversation.

35 I consider the key issues that would need to be addressed when making any adjustments include impacts on:

35.1 existing rights of permit and consent holders

35.2 rights of customary marine title holders and applicants

35.3 impacts on Treaty settlements

35.4 application to nearshore sand dredging and mining activities.

Impact on existing permit and consent holders

36 Cabinet has agreed that any adjustments to domestic policy settings would not have retrospective effect and therefore no existing permits for mining activities would be repealed [CAB-22-MIN-0449 refers]. This is consistent with the Government's approach to the 2018 CMA amendments that targeted *new* offshore oil and gas activities.

37 This means the rights of the four current permit holders would be preserved until those permits expire[5] (TTR and CRP's mining permits under the CMA are valid until the mid-2030s). However, consideration would also need to be given to how any mining restrictions would apply to any subsequent rights (eg can exploration permit holders apply for mining permits, should current mining permits be extended?).

38 TTR's application for marine consents under the EEZ Act is being reconsidered by the EPA. If these consents are granted, TTR will have the necessary permissions to mine the seabed off the coast of Taranaki, and any adjustments to our domestic regulatory settings would likely not apply to TTR's operation.

Impact on customary marine titles and treaty settlements

39 A total seabed mining ban would impact customary marine titles or title applications under Takutai Moana legislation.

40 One of the rights conferred by customary marine title is the ownership of minerals (excluding petroleum, gold, silver, and uranium). This ownership, amongst other things, precludes the need for a CMA permit by customary marine title groups in the area to which the relevant title relates (changes to the CMA alone would not impact title holders).

41 If any restrictions or a ban on seabed mining prevent customary marine title groups from exercising their customary rights (or seeking consents for activities), it would undermine a benefit provided for under the Takutai Moana legislation.

42 It is important that any relevant treaty settlement obligations are met when adjusting domestic regulatory settings. 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.

Impact on dredging and sand mining operations

43 The impact of any changes on sand dredging/mining operations that, amongst other things, help supply our construction industry, also requires consideration. Sand dredging/mining operations would be unaffected by a prohibition on permit grants under the CMA, but these activities may have similar effects to seabed mining albeit on a smaller scale. This means they could be impacted by changes to the RMA's consenting regime.

Three potential pathways to consider adjustments to domestic regulatory settings

44 I have identified three broad options for considering adjustments to domestic regulatory settings:

44.1 adoption of the Member's Bill

44.2 a standard policy process

44.3 a select committee inquiry.

[5] Section 36(5) of the CMA enables the duration of permits to be extended.

Adoption of the Member's Bill

45 The *Prohibition on Seabed Mining Legislation Amendment Bill* (the Member's Bill) was introduced on 4 August 2022 and awaits its first reading. With the consent of the Member, Debbie Ngarewa-Packer of Te Pāti Māori, the Government could adopt the Member's Bill with suitable amendments being made at select committee or in the House. Adoption of the Member's Bill would preclude alternative adjustments to policy settings and would limit a consideration of a ban's implications.

46 A key issue related to the Member's Bill is the issue of retrospectivity. As drafted, the Member's Bill would withdraw seabed mining consents under the EEZ Act and exploration rights under the CMA. Ministry of Business Innovation and Employment (MBIE) officials advise there are other issues that require careful consideration, including the Bill's application to existing petroleum permits, the foregone financial value of the minerals in the seabed (and the associated Crown royalties), and the potential for seabed minerals to support a transition to a low-carbon economy.

47 Adoption of the Bill would also limit the ability to engage with claimant groups with redress relating to the coastal marine area, and with post-settlement governance entities who have redress in the EEZ and coastal marine area. MBIE also has relationship agreements, protocols, and accords with iwi that would require consultation before changes to the CMA are proposed.

Standard policy process

48 This would lead to the production of a discussion document on seabed mining, exploration of the issue, and identification of options for adjusting domestic regulatory settings. This process would support an assessment of the merits and risks of a seabed mining ban or other adjustments, and allow for a considered examination of the potential impacts outlined above.

49 The Minister of Energy and Resources would lead any changes to the CMA, while I would be responsible for any changes under the EEZ Act and RMA as Minister for the Environment. Any proposed adjustments would take approximately 12 to 18 months to take effect, subject to Government priorities.

Select committee inquiry (preferred approach)

50 I recommend that a select committee inquiry be initiated into seabed mining in New Zealand's jurisdiction, and that I request the Environment Committee to undertake such an inquiry.[6]

51 An inquiry could be undertaken without having a predetermined course of action decided (unlike the current Member's Bill) or an assumption that change is necessary. It would also provide an opportunity for input from the public, Treaty partners, and stakeholders, and the findings of the inquiry would inform a subsequent standard legislative process if amendment is required to regulatory settings.

52 The purpose of the inquiry would be to advise on the potential benefits and risks of seabed mining in New Zealand and whether changes to our domestic framework are needed. I propose the following draft terms of reference:

52.1 an overview of seabed mining operations and proposals

[6] Encompassing the territorial sea, EEZ, and extended continental shelf.

52.2 the opportunities that could arise from seabed mining in New Zealand

52.3 the costs and risks of seabed mining in New Zealand

52.4 comparison to other methods for obtaining minerals (eg land-based)

52.5 how seabed mining is managed internationally and in New Zealand

52.6 how domestic regulatory settings are performing

52.7 whether any change to domestic regulatory settings should apply to the coastal marine area, the EEZ and extended continental shelf, or both

52.8 the prospect of any change to domestic regulatory settings being supportive of Pacific countries in considering their own positions on seabed mining

52.9 recommendations for maintaining or updating our domestic regulatory settings.

53 I would work with the Minister of Energy and Resources to refine the proposed terms of reference, and discuss them with the Chair of the Environment Committee.

54 I also propose to discuss the approach to the inquiry with the Chair of the Environment Committee, including on the potential to contract an independent expert to gather evidence and write a report. This would provide a dedicated resource and allow work to progress without extensively drawing on agency resources.

55 Following a select committee report back, I would return to Cabinet with advice on the committee's recommendations. Any adjustments to our domestic regulatory settings would take a further 12 to 18 months to implement after the inquiry had provided its recommendations.

Financial Implications

56 There are no financial implications arising from this paper. Any financial implications would be considered if adjustments to domestic settings on seabed mining policy are pursued.

Legislative Implications

57 There are no legislative implications.

Impact Analysis

Regulatory Impact Statement

58 Impact analysis requirements do not apply, as no policy proposals are being submitted to Cabinet.

Climate Implications of Policy Assessment

59 Not applicable.

Population Implications

60 There are no population implications arising from this Cabinet paper.

Human Rights

61 There are no implications for human rights arising from this Cabinet paper.

Consultation

62 Preparation of this paper was led by the Ministry for the Environment, working with the Ministry of Business, Innovation and Employment. The following agencies have been consulted: the Ministry of Foreign Affairs and Trade, the Office for Crown Māori Relations: Te Arawhiti, the Department of Conservation, and the Ministry for Primary Industries. The Department of Prime Minister and Cabinet was informed.

Proactive Release

63 I intend to proactively release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister for the Environment recommends that the Cabinet Environment, Energy and Climate Committee:

1 **note** that seabed mining is a divisive issue, as there are high financial opportunities and significant potential adverse impacts on marine ecosystems

2 **note** that on 17 October 2022, Cabinet invited the Minister for the Environment, working with the Minister of Energy and Resources, to prepare advice on:

2.1 how New Zealand should make any adjustments to domestic regulatory settings for seabed/deep sea mining in light of the Government's new position on areas beyond national jurisdiction (BNJ areas)

2.2 the process for considering the issue, or aspects of it, possibly by reference to a select committee for an inquiry

2.3 the implications for sand mining or dredging or mooring structures, and for customary marine titles and Treaty settlements [CAB-22-MIN-0449 refers]

3 **note** that on 27 October 2022, the Minister of Foreign Affairs announced the new position referred to in recommendation 2.1, ie New Zealand's support for a conditional moratorium on seabed mining in BNJ areas, to apply until an international regulatory framework can be agreed by the International Seabed Authority to ensure effective protection of the marine environment

4 **note** that on 19 December 2022, Cabinet deferred until 2023 a paper seeking agreement to refer the matter of seabed mining to a select committee for the purpose of an inquiry [22-CAB-MIN-0599.01 refers]

5 **note** that seabed mining can occur under domestic regulatory settings,[7] and that New Zealand's support for a conditional moratorium on seabed mining in BNJ areas does not require this to change

The domestic seabed mining framework

6 **note** that seabed mining is regulated under three key pieces of legislation:

6.1 the Crown Minerals Act 1991 (CMA) governs minerals permits, ie rights to prospect, explore and mine for Crown-owned minerals

6.2 the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) governs marine consents required to undertake seabed mining activities in the exclusive economic zone (EEZ) and extended continental shelf

6.3 the Resource Management Act 1991 (RMA) governs resource consents required to undertake seabed mining in the coastal marine area

Existing operators in New Zealand waters

7 **note** that to date, no seabed mining has occurred in New Zealand's jurisdiction (aside from sand mining and dredging activities near shore, which are not traditionally considered seabed mining)

8 **note** that two operators hold mineral mining permits under the CMA (in addition, two operators hold exploration permits), but both have had marine consents in the EEZ refused

9 **note** that the Environmental Protection Authority is currently reconsidering the marine consent application made by Trans-Tasman Resources Ltd

10 **note** that, if successful, Trans-Tasman Resources Ltd would have the required permissions to mine the seabed

The nature of any changes to domestic regulatory settings would determine the legislative options

11 **note** that it is appropriate to consider domestic regulatory settings given the shift in New Zealand's international position on seabed mining in BNJ areas, and growing opposition to seabed mining

12 **note** that any adjustments in domestic regulatory settings for seabed mining may require changes to all three pieces of legislation (the CMA, the EEZ Act and the RMA) and their secondary instruments

13 **note** that a broad public conversation on the benefits and risks of seabed mining in New Zealand is desirable, including with the public, Treaty partners, and stakeholders before adjustments to domestic regulatory settings are considered

14 **note** that any adjustment to domestic regulatory settings would require careful consideration of:

14.1 existing rights of permit and consent holders

14.2 rights of customary marine title holders

[7] Encompassing the territorial sea, EEZ, and extended continental shelf.

14.3 impacts on Treaty settlements

14.4 application to nearshore sand dredging and mining activities

15 **note** that Cabinet has agreed that any adjustments would not have retrospective effect and therefore no existing permits for mining activities would be repealed [CAB-22-MIN-0449 refers]

Three potential pathways to consider adjustments to domestic regulatory settings

16 **note** that adjustments could be made by:

16.1 the Government adopting *The Prohibition on Seabed Mining Legislation Amendment* Bill (the Member's Bill) in the name of Debbie Ngarewa-Packer MP

16.2 a standard policy process

16.3 a select committee inquiry

17 **note** that adopting the Member's Bill (with appropriate amendments) could result in the implementation of a seabed mining ban in 9 to 12 months

18 **note** that the Member's Bill, if enacted as drafted, would retrospectively withdraw minerals permits and marine consents, and that this process would limit the assessment of the merits and risks of a seabed mining ban and the consideration of other options

19 **note** that a standard process would likely take 12 to 18 months to amend the domestic regulatory framework and would allow for a robust assessment of the merits and risks of a seabed mining ban or other options available

20 **note** that a select committee inquiry would provide an opportunity for input from the public, Treaty partners, and stakeholders, and would not commit the Government to a predetermined course of action, unlike the Member's Bill

21 **note** that a select committee inquiry is the Minister for the Environment's preferred approach

22 **authorise** the Minister for the Environment to request the Environment Committee to conduct an inquiry on seabed mining in New Zealand's jurisdiction

23 **note** that the Environment Committee has before it a petition on banning seabed mining and has received evidence on the petition

24 **agree** that the draft terms of reference be:

24.1 an overview of seabed mining operations and proposals

24.2 the opportunities that could arise from seabed mining in New Zealand

24.3 the costs and risks of seabed mining in New Zealand

24.4 comparison to other methods for obtaining minerals (eg land-based)

24.5 how seabed mining is managed internationally and in New Zealand

24.6 how domestic regulatory settings are performing

24.7 whether any change to domestic regulatory settings should apply to the coastal marine area, the EEZ and extended continental shelf, or both

24.8 the prospect of any change to domestic regulatory settings being supportive of Pacific countries in considering their own positions on seabed mining

24.9 recommendations for maintaining or updating our domestic regulatory settings

25 **authorise** the Minister for the Environment, working with the Minister of Energy and Resources, to refine the proposed terms of reference for the inquiry, and to discuss these with the Chair of the Environment Committee

26 **note** that following an inquiry, the Environment Committee would report back to the House, and the Minister for the Environment would return to Cabinet with advice on the Committee's recommendations

27 **note** that any adjustments to regulatory settings (if needed) would take a further 12 to 18 months to implement after the inquiry had provided its recommendations.

Authorised for lodgement

Hon David Parker

Minister for the Environment