



# NZ ROCK LOBSTER INDUSTRY COUNCIL LTD

*Ka whakapai te kai o te moana*

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## Submission on developing a regulatory framework for offshore renewable energy

2 November 2023

1. This submission is made by the NZ Rock Lobster Industry Council (NZ RLIC) and the Pāua Industry Council (PIC) on behalf of our members who are quota owners and commercial fishers in the rock lobster and pāua sectors of the fishing industry.
2. Our interest in the regulation of offshore renewable energy is primarily to ensure that the regulatory framework takes proper account of the rights and interests of existing marine users and effectively manages any adverse effects of energy developments on the marine environment, including impacts on fish and shellfish and their habitats. We understand that the proposed permitting regime will sit alongside, and not replace, the environmental consenting process under the Natural and Built Environment Act 2023, Resource Management Act 1991 and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. The majority of issues of concern to the fishing industry will be considered in the environmental consenting process, rather than in the proposed new permitting process.
3. This submission comments briefly on some of the topics traversed in the consultation document. Our main recommendation relates to the timing of decisions about the size of zones around offshore energy infrastructure. We recommend that the maximum potential size of a safety zone and/or cable protection zone needs to be determined prior to the environmental consenting process so that the impacts of any spatial exclusions of fishing can be assessed as part of the assessments of the impacts of an application.

### **Feasibility permits**

4. We note that although there is no requirement for developers to engage with the fishing industry during the feasibility stage, developers will require information on existing fishing activity and fisheries impacts for environmental assessments and consenting – engagement is therefore almost certain to occur. We therefore have no particular concerns with the proposals for feasibility permits.

### **Commercial permits**

5. As with the feasibility permits, the matters considered by MBIE when granting a commercial permit are separate from the impacts of the proposal on fisheries resources and fishing. We therefore have no particular concerns with the proposals for commercial permits.

### **Engagement with iwi and hapū**

6. NZ RLIC and PIC support the recognition provided in the consultation document that the proposed regulatory framework will not remove any legally-recognised rights and interests that might be held by iwi or hapū, including those provided under the Māori Fisheries Act 2004.

### **Public consultation**

7. It is unlikely that the fishing industry would typically provide any input to the commercial permit assessment process (for instance, we do not provide input to similar permitting decisions under the Crown Minerals Act, but instead participate only in the environmental consenting process). However, given the significance of offshore energy renewable developments and potential national interest implications, we consider that it is appropriate to allow for public notification and consultation on commercial permit applications.

### **Interaction with environmental consenting regime**

8. We agree that the permitting process should not unnecessarily duplicate assessments that are undertaken as part of the environmental consenting process and we support the proposal that environmental consents need to be obtained before applying for a commercial permit. This sequencing of authorisations provides certainty that any adverse effects on fishing or fisheries resources will be considered (within the limitations of the relevant environmental legislation) before the government gives the final go ahead to an offshore renewable energy development.

### **Optimal location in EEZ or territorial sea**

9. It is not clear to us why MBIE is seeking information on the optimal location of offshore energy developments as it is the developers, not the government, that will determine their preferred location for offshore renewable energy developments. We note however, that the consultation document implies some advantages of EEZ development over territorial sea developments (fewer competing interests or landscape effects etc), whereas developers may prefer locations closer to shore. Commercial fishing takes place across inshore and deepwater locations and it is the precise location of a proposed development rather than the fact that it is in the EEZ or territorial sea that is important with respect to fisheries interactions and impacts.

### **Transmission infrastructure**

10. NZ RLIC and PIC do not have a preference as to whether development of transmission infrastructure (including inter-array cables, offshore substations, export cables and onshore connections) should be developer-led or whether Transpower should take a leading role. However, we do have a significant interest in the nature of the infrastructure – i.e., the number and location of cables, whether they are on the seabed or buried, and whether the cables have exclusion zones – because cables, and the protections that may be applied around cables, can have a significant impact on access to fisheries resources.

11. The consultation document does not discuss how the Submarine Cables and Pipelines Protection Act 1996 might apply, but we presume that these matters would be considered as part of the environmental consenting process. We suggest that this should be clarified in the final proposals.
12. Our recommendation about safety zones below applies equally to the timing of decisions on any restrictions that may be imposed under the Submarine Cables and Pipelines Protection Act.

### **Safety zones**

13. NZ RLIC and PIC appreciate that safety zones may be required around the infrastructure to prevent collisions, protect the environment, or protect the infrastructure. Option 1 (no safety zone) is therefore inappropriate. An automatic 500m safety zone (option 2) may be unnecessary and could have excessive impacts on existing marine users. We therefore consider that option 3 (regulator considers on case by case basis) or option 4 (regulator provides guidance but has flexibility to consider applications for other amounts) are more appropriate.
14. An issue that is not considered in the consultation material is the timing of the decision about any safety zone (or restriction imposed under the Submarine Cables and Pipelines Protection Act). This is a critical issue as the size of any exclusion zone affects existing fishing activity and displacement of fishing effort. Fisheries impacts are considered in the environmental consenting process which occurs prior to the commercial permit decision – the potential maximum size of any safety zone or cable protection zone therefore needs to be known prior to the environmental consenting process. Affected parties should also be provided with an opportunity to provide input to the regulators' decisions on the size of any such zone. We recommend that the sequencing should be:
  - i. Indicative decision by the regulators on the maximum size of any safety zone and/or cable protection zone;
  - ii. Environmental consenting process;
  - iii. Commercial permit decision, including final decisions on size of safety zone and/or cable protection zone, having taken into account any relevant matters identified during the environmental consenting process.

### **Decommissioning**

15. We support the proposals for decommissioning, including: placing a legal obligation on the permit holder to decommission infrastructure; requiring the developer to submit a decommissioning plan and cost estimate to get a permit; requiring permit holders to undergo regular financial capability assessments to test their capability to carry out and meet the costs of decommissioning; and requiring permit holders to put in place a financial security covering their decommissioning plan.

Thank you for the opportunity to comment on the proposals.