



## Submission on a Draft Minerals Strategy for New Zealand to 2040

5 August 2024

1. This submission is made by the NZ Rock Lobster Industry Council (NZ RLIC) and the Pāua Industry Council (PIC). NZ RLIC and PIC are the national representative bodies for the rock lobster and pāua sectors of New Zealand's fishing industry. Our submission is made on behalf of our members who are quota owners, fishers and affiliated seafood industry personnel in rock lobster and pāua fisheries. There are around 290 vessels involved nationally across these two fisheries and we generate round \$430m in export revenue (FOB) annually. Our product is landed, held, processed and exported through around 50 depots and licensed fish receivers premises.
2. NZ RLIC and PIC support the need for a strategic approach to the development of the minerals sector in New Zealand.
3. Mining projects in the territorial sea or Exclusive Economic Zone (EEZ) may have significant impacts on the marine environment, fish habitats, the sustainability of fisheries resources and existing economic activity such as commercial fishing. For example, two recent seabed mining applications (Trans-Tasman Resources and Chatham Rock Phosphate) were declined on the grounds of adverse effects on the marine environment, including potential effects on nearby fisheries. Mining on land also has potential adverse effects on coastal fisheries through the discharge of contaminants and sediments into waterways or directly into coastal waters. While we recognise and support the potential for further development of the minerals sector, we wish to ensure that the policy and regulatory framework takes proper account of the rights and interests of existing marine users and effectively manages any adverse effects of minerals extraction on the marine environment, including impacts on fish and shellfish and their habitats.
4. Our submission addresses three of the consultation questions posed in the Strategy.

### Q1. Strategic pillars

5. We consider that the strategic pillars of the Strategy – i.e., enhancing prosperity for New Zealanders, demonstrating the sector's value, and delivering minerals for a clean energy transition – are appropriate. The Strategy provides a timely opportunity for a national

discussion about where and how we obtain the minerals that we need to support our society and economy now and in the future. ‘Enhancing prosperity for New Zealanders’ through minerals development will inevitably require tradeoffs to be made between different types of uses and values and it is essential that the regulatory regime provides a principled and transparent framework for these decisions to be made. We discuss this in more detail below.

## Q2. Actions

6. NZ RLIC and PIC are particularly interested in Action 3, which is to develop a more enduring, efficient and responsible regulatory framework. In order to reflect these attributes, the regulatory framework must, among other things, (a) ensure the sustainability of natural resources, and (b) respect existing property rights.

### **Input and participation of affected rights holders**

7. The adverse effects of minerals development are currently managed under the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). In our experience, the RMA and the EEZ Act both provide an adequate framework for ensuring sustainability, although there is room to improve the implementation of both statutes. Importantly, the two Acts provide opportunities for participation in consenting processes by affected parties such as rock lobster and pāua quota owners.
8. In contrast, the Strategy positions the Fast-track Approvals Bill as a ‘*one-stop shop fast-track approvals regime to accelerate the development of [mining projects of] regional and national ... significance*’. NZ RLIC and PIC support the aim of the Fast-track Approvals Bill but we are concerned that, as introduced, the Bill does not allow participation by inshore fisheries rights holders and does not provide decision makers with access to expertise related to potential impacts of mining on fishing, fisheries resources and fish habitats.
9. On our submission to the Select Committee on the Fast-track Approvals Bill, we recommended that:
  - ‘Existing interests’ in the territorial sea (such as commercial fisheries rights holders) should be provided with an opportunity to participate in consenting processes, in the same way that land owners or existing rights holders in the EEZ are able to participate; and
  - The Minister for Oceans and Fisheries should be able to provide input to the expert panel, in order that:
    - i. impacts of proposed developments on fish habitats, fisheries resources, fisheries management and the exercise of existing fishing rights may be assessed with access to relevant expertise; and
    - ii. the full range of the government’s interests in the territorial sea and EEZ may be considered in an integrated manner.
10. We emphasise the relevance of these two recommendations in the context of Action 3 of the Strategy.

### Managing the consequences of uncertainty

11. Uncertainty is a prevalent feature of nearly all decision-making in the marine environment. In comparison to terrestrial environments, far less is known about the marine environment. Inevitably, decisions about marine mining proposals will be made on the basis of information that is incomplete, inadequate and uncertain. The regulatory framework should therefore include principles to guide decision-makers in situations where information is uncertain, such as in s.10 of the Fisheries Act 1996. However, the more challenging issue is the inequitable distribution of the consequences of uncertainty among different sectors of the economy and society.
12. The economic success of a seabed mining operation is not dependent on maintaining a healthy marine environment. The consequences of uncertainty in relation to the environmental impacts of seabed mining are therefore experienced not by the mining sector, but instead by others who currently use and value the marine environment – for example, rock lobster and pāua quota owners and harvesters are *wholly* dependent on a healthy marine environment. This unequal distribution of risk indicates that the regulatory framework should include:
  - Economic safeguards to compensate for harm to the environment and existing resource users if unanticipated adverse effects arise from minerals development (bonds, insurance, environmental restoration requirements, compensation etc); and
  - Market-based mechanisms to make tradeoffs between different uses (as discussed below).

### Q5. Missing elements: market-based solutions to respect existing property rights

13. In order to provide real and enduring benefits for New Zealanders the Strategy, and the legislative framework to implement it, should respect existing property rights. The Strategy is silent on existing property rights, even though the Coalition Government has acknowledged the importance of a rights-based approach in numerous statements, including the following from Hon Chris Bishop:

*...the third part of our reform agenda is to replace the resource management regime [i.e., the Resource Management Act 1991 (RMA)] with one **based on the concept of property rights**, which some members had previously decided is sort of by definition anti-environment. But, actually, **proper respect for property rights and using market-based frameworks can do a lot for the environment and improving things.**<sup>1</sup>*

14. While some seabed mining projects may be compatible with the ongoing exercise of commercial fishing rights, others may cause substantial displacement of commercial fishing with consequent impacts on the value of quota rights, including rights allocated under the Maori Fisheries Settlement, for affected fisheries. NZ RLIC and PIC do not wish to stand in the way of mining projects with significant economic benefit for New Zealand – but we do not want to be forced, by law, to surrender highly valued existing commercial fishing rights to private mining companies. The most efficient way of respecting existing property rights and ensuring

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<sup>1</sup> Hon Chris Bishop, speech at the First Reading of the Fast-track Approvals Bill.

that resource development provides the best overall value for New Zealand is to make use of market-based solutions where possible.

15. NZ RLIC and PIC recommend that the regulatory framework for mining in the territorial sea and EEZ should include a requirement for minerals developers to negotiate a compensation arrangement with existing fisheries rights owners if the mining development is determined to have a material adverse effect (i.e., beyond a defined threshold level) on the exercise of commercial fishing rights.<sup>2</sup> This would be appropriate because:
  - It is consistent with the Government’s policy objective for resource management law based on enjoyment of property rights;
  - It is more consistent with the Crown’s obligations under the Maori Fisheries Settlement than allowing the value of the Settlement to be reduced by a private commercial developer without negotiated compensation for the diminution of settlement rights;
  - It helps to ensure that any change in the use of marine resources achieves ‘best economic value’ for New Zealand;
  - It potentially enables projects to proceed that would otherwise cause unacceptable adverse effects on existing resource users; and
  - It incentivises minerals developers to find ways of working with, rather than displacing, owners of existing use rights.
16. All of these benefits are consistent with – and in our view, essential for – achieving the strategic pillars of the Strategy.

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<sup>2</sup> An example of this type of regime is provided by the ‘aquaculture agreement’ and arbitration provisions in the Fisheries Act 1996 (Part 9A, subpart 4), under which a new aquaculture developer negotiates an agreement with affected quota owners in situations where the proposed aquaculture development is determined to have an ‘undue adverse effect’ on fishing.

## Summary

17. NZ RLIC and PIC support the development of a Minerals Strategy for New Zealand. We recommend that the draft Strategy should be amended to provide stronger recognition of existing property rights, including commercial fishing rights. In particular, with respect to Action 3 – i.e., a more enduring, efficient and responsible regulatory framework – we recommend that:
- i. Changes should be made to the Fast-track Approvals Bill to allow participation in consenting processes by existing rights holders in the territorial sea and to enable input from the Minister for Oceans and Fisheries;
  - ii. The legislative framework should include regulatory and economic mechanisms to mitigate the consequences for existing uses and values of marine resources of uncertainty in the information that informs decisions; and
  - iii. The legislative framework for seabed mining should include a requirement for minerals developers to negotiate a compensation arrangement with fisheries rights owners if the mining development has a material adverse effect on the exercise of existing commercial fishing rights.



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