Prohibition on Seabed Mining Legislation Amendment Bill

Member’s Bill

Explanatory note

General policy statement

The policy intention of this Bill is to:

• Put in place a nationwide ban on seabed mining consents within the Exclusive Economic Zone (EEZ) and Aotearoa’s coastal waters (governed under the RMA).

• Prohibit the ability to apply for exploration rights for seabed mining under the Crown Minerals Act.

• Retrospectively withdraw existing seabed mining consents and exploration rights under the EEZ Act and Crown Minerals Act.

In 2017 Trans-Tasman Resources (TTR) was given consent by a split decision of the Environmental Protection Agency to undertake seabed mining of ironsands off the South Taranaki Bight. Local mana whenua including Te Rūnanga o Ngāti Ruanui and Te Kāhui o Rauru, alongside other local community and Māori groups, put forward legal challenges against the consent. In 2018, the decision was overturned in an appeal to the High Court, which was upheld by the Court of Appeal’s ruling in April 2020. In November 2020 the matter was considered by the Supreme Court, whose deliberations have yet to be announced.

Deep sea seabed mining is a risky and new mineral extraction practice. TTR’s permit allows them to mine up to 50 million tonnes of ironsands every year, which would destroy diverse ecosystems and adversely impact coastlines for years to come. This activity puts at risk endangered whale and dolphin species, kaimoana, local industries and the kaitiaki relationships of mana whenua.
Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on the day after Royal assent.

Part 1

Amendments to Crown Minerals Act 1991

Clause 3 identifies the Crown Minerals Act 1991 as the Act being amended by this Part (the principal Act).

Clause 4 amends section 2 of the principal Act (Interpretation) to insert a definition of prohibited activity, which means prospecting or exploration for, or mining, Crown owned minerals on the seabed to the outer limits of the territorial sea.

Clause 5 amends section 23A of the principal Act to preclude a person applying for a permit for a prohibited activity.

Clause 6 amends section 24 to prohibit the Minister offering permits for allocation in respect of a prohibited activity.

Clause 7 amends section 25 to prevent the Minister granting a permit for a prohibited activity.

Clause 8 amends section 36 to prevent a permit being changed to authorise a prohibited activity.

Clause 9 inserts a new section 39A into the principal Act to require the Minister to revoke a permit if it relates to, or the permit holder undertakes, a prohibited activity.

Clause 10 inserts a new part into Schedule 1 of the principal Act to make provision for transitional and saving provisions in respect of this Bill.

Part 2

Amendments to Exclusive Economic Zone and Continental Shelf
(Environmental Effects) Act 2012

Clause 11 identifies the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 as the Act being amended by this Part (the principal Act).

Clause 12 repeals section 22 of the principal Act, which allowed planned petroleum activities to commence.

Clause 13 amends section 23 of the principal Act, which allows certain existing activities that become prohibited to continue, to clarify that a mining activity is not permitted to continue under this section.

Clause 14 amends section 37 of the principal Act to identify a mining activity as a prohibited activity.

Clause 15 inserts a new part into Schedule 1 of the principal Act to make provision for transitional and saving provisions in respect of this Bill.
Part 3
Amendments to Resource Management Act 1991

Clause 16 identifies the Resource Management Act 1991 as the Act being amended by this Part (the principal Act).

Clause 17 amends section 87B of the principal Act to identify prospecting or exploration for, or mining, Crown owned minerals on the seabed to the outer limits of the territorial sea as prohibited activities.

Clause 18 inserts a new part into Schedule 12 of the principal Act to make provision for transitional and saving provisions in respect of this Bill.
# Prohibition on Seabed Mining Legislation Amendment Bill

Member’s Bill

## Contents

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Title</td>
</tr>
<tr>
<td>2</td>
<td>Commencement</td>
</tr>
</tbody>
</table>

### Part 1
Amendments to Crown Minerals Act 1991

<table>
<thead>
<tr>
<th>Page</th>
<th>Principal Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Section 2 amended (Interpretation)</td>
</tr>
<tr>
<td>2</td>
<td>Section 23A amended (Application for permits)</td>
</tr>
<tr>
<td>2</td>
<td>Section 24 amended (Allocation by public tender)</td>
</tr>
<tr>
<td>3</td>
<td>Section 25 amended (Grant of permit)</td>
</tr>
<tr>
<td>3</td>
<td>Section 36 amended (Change to permit)</td>
</tr>
<tr>
<td>3</td>
<td>Section 39A inserted (Minister must revoke permit for prohibited activity)</td>
</tr>
<tr>
<td>3</td>
<td>Minister must revoke permit for prohibited activity</td>
</tr>
<tr>
<td>3</td>
<td>Schedule 1 amended</td>
</tr>
</tbody>
</table>

### Part 2
Amendments to Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

<table>
<thead>
<tr>
<th>Page</th>
<th>Principal Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Section 22 repealed (Planned petroleum activities may commence)</td>
</tr>
<tr>
<td>3</td>
<td>Section 23 amended (Certain existing activities that become prohibited may continue)</td>
</tr>
<tr>
<td>4</td>
<td>Section 37 amended (Prohibited activities)</td>
</tr>
<tr>
<td>4</td>
<td>Schedule 1 amended</td>
</tr>
</tbody>
</table>
Part 3
Amendments to Resource Management Act 1991

16 Principal Act

17 Section 87B amended (Certain activities to be treated as discretionary activities or prohibited activities)

18 Schedule 12 amended

Schedule 1
New Part 4 inserted into Schedule 1

Schedule 2
New Part 3 inserted into Schedule 1

Schedule 3
New Part 4 inserted into Schedule 12

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Prohibition on Seabed Mining Legislation Amendment Act 2021.

2 Commencement
This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Crown Minerals Act 1991

3 Principal Act
This Part amends the Crown Minerals Act 1991 (the principal Act).

4 Section 2 amended (Interpretation)
In section 2(1), insert in its appropriate alphabetical order:

Prohibited activity means prospecting or exploration for, or mining, Crown owned minerals on the seabed to the outer limits of the territorial sea.

5 Section 23A amended (Application for permits)
Above section 23A(2)(a), insert:

(aa) a person may not apply under this section for a permit for a prohibited activity:

6 Section 24 amended (Allocation by public tender)
After section 24(1), insert:
Despite subsection (1), the Minister must not offer permits for allocation in respect of a prohibited activity.

Section 25 amended (Grant of permit)
Replace section 25(2A) with:

Despite anything to the contrary in this Act (including section 1A), the Minister must not grant a permit for—

(a) a prohibited activity; or

(b) petroleum in respect of any land outside the onshore Taranaki region.

Section 36 amended (Change to permit)
Replace section 36(2A) with:

However,—

(a) a change to a permit may not authorise a prohibited activity; and

(b) the land to which a permit for petroleum relates cannot be extended to include any land outside the onshore Taranaki region.

Section 39A inserted (Minister must revoke permit for prohibited activity)
After section 39, insert:

Minister must revoke permit for prohibited activity
The Minister must revoke a permit if the Minister is satisfied that the permit relates to, or a permit holder has undertaken, a prohibited activity.

Schedule 1 amended
In Schedule 1, after Part 3, insert the Part 4 set out in Schedule 1 of this Act.

Part 2
Amendments to Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Principal Act
This Part amends the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the principal Act).

Section 22 repealed (Planned petroleum activities may commence)
Repeal section 22.

Section 23 amended (Certain existing activities that become prohibited may continue)
After section 23(2), insert:
(3) To avoid doubt, this section does not apply to a mining activity that is a prohibited activity under section 37(1)(a).

14 Section 37 amended (Prohibited activities)
Replace section 37(1) with:

(1) An activity is a prohibited activity if—
(a) it is a mining activity; or
(b) it is described in regulations as a prohibited activity.

15 Schedule 1 amended
In Schedule 1, after Part 2, insert the Part 3 set out in Schedule 2 of this Act.

Part 3
Amendments to Resource Management Act 1991

16 Principal Act

17 Section 87B amended (Certain activities to be treated as discretionary activities or prohibited activities)
After section 87B(1), insert:

(1A) Prospecting, exploring, or mining for Crown owned minerals in the territorial sea must be treated as a prohibited activity.

18 Schedule 12 amended
In Schedule 12, after Part 3, insert the Part 4 set out in Schedule 3 of this Act.
Schedule 1
New Part 4 inserted into Schedule 1

Part 4
Provisions relating to Prohibition on Seabed Mining Legislation Amendment Act 2021

32 Interpretation
In Part 4 of this schedule,—

Amendment Act means the Prohibition on Seabed Mining Legislation Amendment Act 2021

existing application means an application for a permit for prohibited activity that—
(a) was lodged by a person under section 23A before the commencement date; and
(b) as at the commencement date had not been finally determined

existing permit means a permit for a prohibited activity that is current immediately before the commencement of the Amendment Act

existing tender means a tender for a permit for a prohibited activity that—
(a) was submitted in response to a public tender process under section 24 before the commencement date; and
(b) as at the commencement date had not been finally determined.

33 Existing permits revoked
(1) Existing permits are revoked.
(2) An activity that was authorised by a permit that is revoked in accordance with this clause must immediately stop.

34 Matters pending on commencement date
All existing applications and existing tenders must be determined in accordance with this Act (as amended by the amendment Act).

35 No compensation payable
(1) No compensation is payable by the Crown for any loss or damage, or any adverse effect on or under any right or interest, arising from the enactment or operation of the amendment Act.
(2) If there is any inconsistency between this clause and any other enactment or rule of law, this clause prevails over that enactment or rule of law.
36 Changes to minerals programme

Nothing in sections 17 and 18 applies to a change to a minerals programme if the change inserts information into the programme to explain the effect of the amendments made to this Act by the Amendment Act.
Part 3
Provisions relating to Prohibition on Seabed Mining Legislation Amendment Act 2021

4 Interpretation
In this Part,—

amendment Act means the Prohibition on Seabed Mining Legislation Amendment Act 2021

commencement date means the date on which the amendment Act comes into force

pending consent application means an application for a marine consent in respect of a mining activity that—

(a) was made under section 38 before the commencement date; and

(b) as at the commencement date had not been finally determined

pending proceeding means an objection, appeal, or proceeding under Part 4 of this Act that was commenced before the commencement date and as at that date had not been finally determined

pending review means a review under section 76 that was commenced before the commencement date and as at that day had not been completed.

5 Existing activities that become prohibited
(1) This section applies to a mining activity that—

(a) becomes a prohibited activity as a result of the amendment Act coming into force; and

(b) was lawfully established before the amendment Act comes into force.

(2) The activity must cease on the commencement date.

6 Matters pending on commencement date
(1) The Environmental Protection Authority must deal with all pending consent applications in accordance with this Act (as amended by the amendment Act).

(2) All pending proceedings must be determined in accordance with this Act (as amended by the amendment Act).

(3) All pending reviews must be discontinued and the Environment Protection Authority must not take any action to progress any of the reviews.
7 **No compensation payable**

(1) No compensation is payable by the Crown for any loss or damage, or any adverse effect on or under any right or interest, arising from the enactment or operation of the amendment Act.

(2) If there is any inconsistency between this clause and any other enactment or rule of law, this clause prevails over that enactment or rule of law.
Schedule 3
New Part 4 inserted into Schedule 12

Part 4
Provisions relating to Prohibition on Seabed Mining Legislation Amendment Act 2021

31 Interpretation
In this Part,—

amendment Act means the Prohibition on Seabed Mining Legislation Amendment Act 2021

commencement date means the date on which the amendment Act comes into force

prohibited mining activity means an activity prohibited under section 87B(1A)

pending consent application means an application for a resource consent in respect of a mining activity that—
(a) was made before the commencement date; and
(b) as at the commencement date had not been finally determined

pending proceeding means an objection, appeal, or proceeding under this Act that was commenced before the commencement date and as at that day had not been finally determined

32 Existing activities that become prohibited
(1) This section applies to a prohibited mining activity that—
(a) becomes a prohibited mining activity as a result of the amendment Act coming into force; and
(b) was lawfully established before the amendment Act comes into force.
(2) The activity must cease on the commencement date.

33 Matters pending on commencement date
(1) All pending consent applications must be determined in accordance with this Act (as amended by the amendment Act).
(2) All pending proceedings must be determined in accordance with this Act (as amended by the amendment Act).
34 **No compensation payable**

(1) No compensation is payable by the Crown for any loss or damage, or any adverse effect on or under any right or interest, arising from the enactment or operation of the amendment Act.

(2) If there is any inconsistency between this clause and any other enactment or rule of law, this clause prevails over that enactment or rule of law.