



# NZ ROCK LOBSTER INDUSTRY COUNCIL LTD

*Ka whakapai te kai o te moana*

## 2022 Proposal for a new Commodity Levy on Rock Lobster (CRA and PHC) Ballot Information Booklet

*Please read this Information Booklet carefully before voting.*

*To cast your vote online, follow the instructions provided in your voting email.*

**Your vote must be received by the Returning Officer before the close of voting at 12 noon on Friday 5 August 2022.**

This is a referendum to determine the support for a compulsory levy on rock lobster which will be used to fund the activities of the NZ Rock Lobster Industry Council Limited (“**NZ RLIC**”). The new levy order (“**the Order**”) will in effect replicate the current Commodity Levies (Rock Lobster) Order 2013 while extending the scope of the levy to include packhorse rock lobster (**PHC**). The referendum is being conducted under the Commodity Levies Act 1990 (“**the Act**”). If the outcome of the referendum supports a new levy order, the Order will come into effect in 2023 for a period of up to 6 years.

This information booklet is in three parts:

- **Part A)** Description of the proposed new levy;
- **Part B)** Useful information for voters;
- **Part C)** Further information on setting levy rates – this section describes the consultation that occurs before NZ RLIC sets or adjusts annual levy rates. These consultation requirements are set out in NZ RLIC’s constitution.

### A) Description of the proposed new levy

This referendum is being conducted under the Act and the following matters are specified in accordance with the Act.

#### 1. Who is the levy paid to and who is entitled to spend it?

The levy is payable to NZ RLIC and NZ RLIC imposes, collects and is accountable for expenditure of the levy.

#### 2. Is it compulsory?

The levy is not voluntary – it is compulsory for all persons liable to pay the levy.

#### 3. What commodity is subject to the levy?

The commodity that is subject to the levy is wild-caught rock lobster, which is defined as spiny rock lobster (*Jasus edwardsii*) and packhorse rock lobster (*Jasus verreauxi*).

#### 4. Who is primarily responsible for paying the levy?

The levy is paid by rock lobster quota share owners. In all cases the levy is paid by the persons primarily responsible for paying it.

#### 5. On what basis is the levy imposed?

The levy is based on the “quota weight equivalent” of rock lobster quota shares owned by levy payers. Quota weight equivalent is defined in the Fisheries Act

in relation to any quota shares owned. The figure in kilograms is arrived at by dividing the Total Allowable Commercial Catch for the stock to which the quota share relates by 100,000,000. Consequently, the quota weight equivalent of a parcel of shares is the quota weight of one share multiplied by the number of shares in the parcel. The levy rate is expressed in dollars per tonne of quota weight equivalent.

#### 6. Can a different levy rate be set for different rock lobster stocks?

A different rate can be set for each rock lobster stock (as defined in the Fisheries Act). As described in Part C of this booklet, the levy for each stock is made up of two components – the NZ RLIC core services levy and a stock specific levy requested by a CRAMAC. While the stock specific component may vary across different rock lobster stocks, the core services levy rate is in most cases the same across each CRA stock. However, NZ RLIC will set a different core services levy rate for PHC to reflect the differential in port price between the two species of rock lobster and may also reduce the core services levy for a stock in two circumstances provided for in NZ RLIC’s constitution. Please refer to Part C of this booklet for further details.

#### 7. How is the levy invoiced and collected?

Quota share owners are invoiced one-twelfth of the annual levy each month. The levy is invoiced to and payable by the person who owns the quota shares at the close of the first day of each month. This is the due date

for payment. The latest date for payment is the 20th of the month in which it is invoiced. Any payment of less than \$50 (exclusive of GST) for any month can be held over and paid in the subsequent month, but payment must not be made at greater than quarterly intervals.

#### **8. What happens if someone doesn't pay the levy on time?**

NZ RLIC may require the levy payer to pay an additional levy of up to 10% of the unpaid amount.

#### **9. What is the levy period?**

The levy is set annually for the 12 month period commencing on 1 October each year.

#### **10. Is there a maximum rate of levy?**

The maximum total levy rate is \$2,000.00 per tonne of quota weight equivalent (exclusive of GST).

#### **11. How is the annual levy rate set?**

NZ RLIC sets or alters the levy rate (up to the maximum) after completing the consultation process described in NZ RLIC's constitution. Please refer to Part C of this booklet for further details.

#### **12. How is the levy rate notified?**

NZ RLIC notifies the rates for the levy year in the *Gazette* and also notifies all levy payers directly in writing prior to the start of the relevant levy year.

#### **13. What is the levy used for?**

NZ RLIC spends the levy money on:

- research and development, including obtaining scientific and technical services;
- management of rock lobster fisheries;
- policy issues affecting the rock lobster industry;
- promotion of the rock lobster industry;
- education and training; and
- day to day administration of NZ RLIC.

The levy cannot be used to fund commercial or trading activities.

NZ RLIC collects the stock specific levies on behalf of each CRAMAC.

#### **14. Are there any exemptions?**

The only person exempt from paying the levy is the Crown.

#### **15. What about conscientious objectors?**

A person who objects on conscientious or religious grounds to paying the levy in the manner provided for in the Order may pay the amount to the Chief Executive of the Ministry for Primary Industries, who must ensure that it is paid to NZ RLIC.

#### **16. What records must be kept?**

NZ RLIC must keep records of the following information and retain the records for seven years:

- The amount of levy paid to NZ RLIC in a year, and for each payment: (i) the amount; (ii) the date on which it is received; and (iii) the name of the person who paid it;
- How (if at all) the levies paid to it in that year were invested;
- How, and when, all levies spent by it were spent.

#### **17. How is confidentiality maintained?**

People or organisations who gather information as a result of the levy order cannot divulge those details unless required to by law. This does not affect or prevent:

- The use and disclosure of such information for statistical or research purposes provided the information will not be published in a form that can identify any individual or will only be published with the consent of all identifiable individuals;
- Using such information to assist in the invoicing and collection of levies;
- The production of records or accounts under section 17(1) of the Act (which relates to the rights of the Minister to have accounts audited);
- The production of statements under section 25 of the Act (which relates to annual reports and statements);
- Disclosing or using information necessary in the giving of evidence in any legal proceedings taken under or in relation to the levy order under the Act;
- The disclosure of information to, and the use of any such information by, the Returning Officer to determine the voting entitlement and to count the votes of persons primarily responsible for paying the levy.

## **B) Useful information for voters**

#### **18. Who is entitled to vote?**

All potential levy payers (i.e., all current owners of CRA and PHC quota shares as at 1 July 2022) are entitled to vote in this referendum. The Crown is not entitled to vote as it is exempt from the levy.

If you are a natural person, two or more persons or legal entities operating as a partnership, a body corporate or a trust, you are entitled to cast one vote only per legal entity. The name of the entity entitled to vote is shown in your voting email or letter.

#### **19. What level of support is required for a new levy?**

Before the new levy order can be made, the Minister for Oceans and Fisheries must be satisfied that there is majority support for it by the levy payers, as shown by this referendum. The referendum must therefore be supported by:

- More than 50% by number of those voting; and
- More than 50% of the combined quota weight equivalent owned by those voting.

Where a vote is returned to the Returning Officer not completed or completed incorrectly it will be treated as being a NO vote in accordance with the Act.

Although the Act does not require the voting thresholds to be achieved separately for each species to be levied, NZ RLIC would not seek to impose a levy on PHC quota owners without the support of at least 50% of PHC quota owners and at least 50% of PHC QWE.

#### **20. What is the basis for voting?**

The basis for voting is the same as the basis on which the levy is imposed (see question 5 above). The voting email specifies the share of your vote in terms of quota weight equivalent for all rock lobster stocks (CRA and

PHC) you owned on 1 July 2022. You have only one vote that covers all elements of the levy. It is not possible to vote in favour of one element of the levy only.

### **21. How do I vote?**

Voting is being conducted online only. The Returning Officer will email levy payers all the information required to cast their vote online. Levy payers without an email address will be posted a voting letter with all the information required to cast their vote online.

Your vote must be received before 12 noon on Friday 5 August 2022. Votes received after this time will not be counted.

### **22. What if I believe the details in the voting email are wrong?**

The voting email or letter contains details of the quota shares you owned as at 1 July 2022. If you believe there is a mistake, you should advise the Returning Officer at least five days prior to Friday 5 August 2022. The Returning Officer will verify the details and if incorrect will email the amended voting credentials to you.

### **23. How will information in the voting email be treated?**

The information will be used by the Returning Officer to ascertain the level of support for the extension of the rock lobster commodity levy. Voting information will be destroyed by the Returning Officer immediately upon the extension of the Order being confirmed by Order in Council, or upon this referendum failing to obtain the required level of support. Voting information will be provided to NZ RLIC for statistical and research purposes in a form that does not identify any individuals.

### **24. How will the results be notified?**

Everyone who receives online voting details will be notified of the results by NZ RLIC by means of a newsletter as soon as practicable after the results are known to NZ RLIC.

### **25. What if I need more information?**

Further information on the current levy and on the proposed new Order is available from NZ RLIC at the contact address below. This Information Booklet and other consultation material related to the proposed levy are on the NZ RLIC website at [www.nzrocklobster.co.nz](http://www.nzrocklobster.co.nz). For any inquiries about the election process you can ring the electionz.com Helpline on 0800 666 032.

### **26. What can I do if I object to the proposed new levy order?**

In addition to voting against the new levy order, any potential levy payer or person potentially affected by the levy can make their objection known to NZ RLIC and/or the Minister for Oceans and Fisheries. You can write to:

NZ Rock Lobster Industry Council Limited  
Private Bag 24 901  
Wellington 6142  
Attention: Mark Edwards; OR  
Minister for Oceans and Fisheries  
Parliament Buildings  
Wellington

## **C) Further Information on Setting Levy Rates**

This section is not part of the Ballot. It explains the consultation and approval process that NZ RLIC is required to follow before it can set the annual levy rates under the rock lobster levy order. These requirements, which are entrenched in the NZ RLIC constitution, have been implemented by NZ RLIC under the current rock lobster levy order every year since 2013. The same requirements will apply under the new levy order, with the only difference being a new ability for NZ RLIC to set a different core levy rate for packhorse rock lobster. A full copy of the NZ RLIC constitution can be obtained from NZ RLIC or on the NZ RLIC website [www.nzrocklobster.co.nz](http://www.nzrocklobster.co.nz).

### **1. What are the components that make up the levy?**

While there is only one rate of levy declared for any rock lobster stock, two components make up that rate – i.e., the NZ RLIC core services component and, if requested by a CRAMAC, the stock specific component.

The *core services* component funds NZ RLIC's own activities, other rock lobster industry-wide services, and the rock lobster industry share of any services provided for the wider benefit of the seafood industry.

The *stock specific* component funds services and projects that are undertaken at the request of a CRAMAC.

These two components of the levy are added together to get the total levy for a stock.

### **2. Who is accountable for the levy?**

The total levy (core services levy and stock specific levy) is paid to NZ RLIC and NZ RLIC is accountable for its expenditure. However, NZ RLIC only imposes a stock specific levy at the request of the relevant CRAMAC and only if the mandate of quota owners has been obtained (see point 5 below). NZ RLIC then purchases those services from the relevant CRAMAC (for instance, through a contract, MoU, or letter of engagement). The CRAMAC is required to demonstrate to NZ RLIC that it has delivered the services required under that engagement.

### **3. Can the levy be set at variable rates?**

Variable rates can be set for different rock lobster stocks. This reflects the variable stock specific component that may apply in different rock lobster stocks. The core services component of the levy is usually the same across each of the CRA stocks. However, the NZ RLIC constitution provides that:

- A different core services levy will be set for PHC on the basis of the differential in declared port price between packhorse rock lobster and spiny rock lobster; and
- In two circumstances NZ RLIC is able to reduce the core services component of the levy for a particular CRA or PHC stock:
  - *Alternative funding*: If a CRAMAC has its own funding arrangements in place, or has made alternative arrangements with NZ RLIC to meet their share of the cost of the core services, NZ

RLIC may reduce the core services levy rate for that stock by an amount that is equivalent to an amount no greater than the funds received by NZ RLIC under those arrangements with the CRAMAC;

- *Over recoveries:* If there has been an over-recovery in a previous year on a stock specific component of the levy, NZ RLIC may reduce the core services levy rate for that stock by an amount that is equivalent to an amount no greater than the funds received by NZ RLIC under that over-recovery.

#### **4. What consultation must NZ RLIC undertake before setting the core levy rate for a year?**

The process that NZ RLIC must follow when setting annual levy rates is set out in the Fifth Schedule of NZ RLIC's constitution. The two components of the levy are consulted on as follows:

- *Core services levy rate:* Before setting the core levy rate, NZ RLIC sends its business plan, budget and core levy rate to all levy payers (i.e., quota share owners) and posts a copy of the business plan on the NZ RLIC website. On behalf of CRAMACs, NZ RLIC provides four weeks for levy payers to provide comment on the business plan, budget and core levy rate. All quota share owners for a fishery (irrespective of whether they are a member of the CRAMAC) have the right to provide feedback on the proposed core services levy rate.
- *Stock specific levy rate:* NZ RLIC can set a stock specific levy only at the request of the relevant CRAMAC. The CRAMAC rules of association or constitutions require a CRAMAC to follow a special mandating procedure, which is set out in the Sixth Schedule of the NZ RLIC constitution, before requesting NZ RLIC to set a stock specific levy.

#### **5. What mandate must a CRAMAC have before requesting NZ RLIC to set a stock specific levy?**

As a basic requirement, the CRAMAC must be a shareholder in NZ RLIC (i.e., it must represent the owners of at least 51% of the quota in the rock lobster area) and must be a body corporate (i.e., an incorporated society or a company).

The CRAMAC's annual project plan, budget, and proposed rate of levy, must be approved either through a postal or electronic ballot of levy payers or at a specially convened meeting of levy payers. All quota owners for that fishery (irrespective of whether they are a member of the CRAMAC) have the right to vote in that ballot or meeting. A quorum for the voting is persons holding at least  $\frac{66}{3}$  percent of the quota weight equivalent for the fishery. The proposal must have the support of at least  $\frac{66}{3}$  percent (by quota weight equivalent) of those voting.

Aside from complying with the process in the NZ RLIC Sixth Schedule, a CRAMAC's rules of association or constitution may also specify additional requirements (e.g., approval of the project plan by CRAMAC members and/or a higher threshold for approval).

#### **6. How secure are these consultation provisions?**

The parts of the NZ RLIC constitution that prescribe the procedures governing the setting of the commodity levy rates are entrenched. This means they cannot be altered during the six-year period of the levy order without the approval of the Minister for Oceans and Fisheries.

#### **7. What other checks and balances apply?**

NZ RLIC's constitution requires its auditors to audit the expenditure of the levy money to ensure that money levied for core services and stock specific services has been used for these purposes.