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### **Part 1**

#### **Amendments to Acts**

**An Act to establish an effective and responsible regulatory scheme for the management of the seabed minerals of the Cook Islands.**

**(17 June 2019)**

**The Parliament of the Cook Islands enacts as follows—**

## **Part 1**

### **Preliminary matters**

**1 Title**

This Act is the Seabed Minerals Act 2019.

**2 Commencement**

This Act comes into force on a date appointed by the Queen's Representative by Order in Executive Council.

**3 Purpose**

(1) The purpose of this Act is to enable the effective and responsible management of the seabed minerals of the Cook Islands in a way that also—

- (a) is consistent with international rules and principles recognised by the Cook Islands;
- (b) provides a stable, effective, and efficient regulatory framework;
- (c) promotes transparent, informed, co-operative, and consultative decision-making;
- (d) seeks to maximise the benefits of seabed mineral activities for present and future generations of Cook Islanders.

(2) In order to achieve its purpose, this Act, among other things,—

- (a) replaces the existing legal framework with a streamlined legal framework;
- (b) creates an improved regulatory system and continues to provide for a responsible Authority to monitor and manage the Cook Islands, involvement with seabed mineral activities;
- (c) introduces a licensing panel to make recommendations on whether to grant or decline applications for licences;
- (d) continues the register of titles and provides for the registration of dealings and interests in titles;
- (e) provides for interaction between this Act and national law relating to environmental impact assessment, consents, project permits, and environmental management;
- (f) provides for the payment of royalties or other revenues derived under this Act, into a sovereign wealth fund, and the payment of fees;
- (g) provides for and regulates sponsored activities in the international seabed area;
- (h) provides for the management of information.

**4 Act binds the Crown**

This Act binds the Crown.

**5 Ownership of minerals**

All rights to the seabed of the Cook Islands and its mineral resources are vested in the Crown to be managed by the Cook Islands Seabed Minerals Authority on behalf of the people of the Cook Islands in accordance with the provisions of this Act.

## 6 Interpretation

(1) In this Act, unless the context otherwise requires,—

**affiliate**, in relation to an applicant or a title holder, means any person, firm, body corporate, or entity that controls, is controlled by, or is under common control with, the applicant or title holder

**applicant** means a body corporate incorporated in the Cook Islands

**application** means an application made to the Authority for a prospecting permit or an exploration or a mining licence

the **Area** means the seabed and ocean floor and the subsoil of the seabed and ocean floor beyond the limits of national jurisdiction, as defined in Article 1(1) of the UN Convention on the Law of the Sea

**associate** means a person who acts on behalf of, or enters into an agreement with, a title holder, or a title holder's associate, to carry out regulated activity

**Authority** means the Cook Islands Seabed Minerals Authority continued under section 10

**body corporate** means a company (whether incorporated in the Cook Islands or elsewhere)

**Commissioner** means the Seabed Minerals Commissioner

**Committee** means the Cook Islands Seabed Minerals Advisory Committee established by section 35

**continental shelf** has the same meaning as in section 4 of the Maritime Zones Act 2018

**Cook Islands** has the meaning given to it in Article 1 of the Constitution and for the purpose of this Act extends to the seabed and subsoil of the territorial sea, exclusive economic zone, and continental shelf of the Cook Islands

**court** means the High Court of the Cook Islands

**environment** has the same meaning as in section 2 of the Environment Act 2003, and includes genetic and geological information pertaining to an ecosystem

**environmental impact assessment** means an environmental impact assessment conducted in accordance with the Environment Act 2003

**exclusive economic zone** has the same meaning as in section 4 of the Maritime Zones Act 2018

**exploration**—

(a) means any one or more of the following, when conducted in the exclusive economic zone for the purpose of investigating whether seabed minerals can be commercially exploited:

(i) searching for seabed minerals in a title area:

(ii) sampling and analysing those minerals:

(iii) testing systems and equipment:

(iv) carrying out studies; but

(b) does not include mining

**incident** means any one or more of the following occurrences:

(a) a ship or installation engaged in regulated activity—

(i) is lost, abandoned, or capsized; or

- (ii) collides with another vessel or object; or
- (iii) incurs significant damage:
- (b) death (except when certified by an independent medical practitioner as being the result of natural causes) or injury requiring hospitalisation occurs on board any ship or installation engaged in regulated activity:
- (c) the conduct of regulated activity results in serious harm to the marine environment or damage to submarine cables or to a marine user:
- (d) the conduct of regulated activity results in the pollution of the marine environment in breach of—
  - (i) applicable national law; or
  - (ii) the Cook Islands' obligations under international law

**inspector** means a person appointed or deemed to be appointed as an inspector in accordance with section 21

**installation**—

- (a) means a facility, platform, or structure used in relation to a regulated activity, if it—
  - (i) rests on the seabed; or
  - (ii) is fixed or connected to the seabed, whether or not the facility, platform, or structure is floating; and
- (b) includes any facility, platform, or structure that is attached to or tethered to a thing referred to in paragraph (a)

**licence** means a written document that is granted under Part 4 for the purpose of conducting exploration or mining under this Act

**licensed area** means a part of the Cook Islands seabed in respect of which there is in force an exploration or a mining licence

**licensee** means each body corporate to whom an exploration or mining licence is—

- (a) granted under Part 4; or
- (b) lawfully assigned, novated, or otherwise transferred

**licensing panel** or **panel** means the panel established by section 22

**marae moana** has the same meaning as in section 4 of the Marae Moana Act 2017

**marine environment**—

- (a) means the environment of the sea; and
- (b) includes the physical, chemical, geological, biological, and genetic components of, and conditions and factors that interact and determine the productivity, condition, quality, and connectivity of the marine ecosystem in,—
  - (i) the waters of the seas and oceans and the airspace above those waters; and
  - (ii) the seabed and ocean floor and subsoil below those waters



**mining—**

- (a) means the recovery for commercial purposes of seabed minerals from the exclusive economic zone, or other areas under the jurisdiction of the Cook Islands, and the extraction of minerals from that zone or areas; and
- (b) includes the construction and operation of mining, processing, and transportation systems within or outside the Cook Islands jurisdiction

**National Environment Service** means the Government agency that administers the Environment Act 2003

**officer** means a person appointed or deemed to have been appointed as an officer of the Authority under section 21

**pecuniary penalty provision** means a provision in this Act or the regulations, the contravention of which makes a person liable to pay a pecuniary penalty

**person—**

- (a) means any natural person or group of natural persons, or legal person or business enterprise; and
- (b) includes, but is not limited to, a company, corporation, partnership, co-operative, or association

**precautionary approach** means the precautionary principle described in section 5(c) of the Marae Moana Act 2017

**prescribed** means prescribed by regulations under this Act or another Act

**prospecting** means low impact activities involved in the preliminary search for seabed minerals deposits, including estimation of the composition, size, and distribution of deposits and their economic values, without exclusive rights

**prospecting permit** means a written document granted under Part 4 for the purpose of allowing the conduct of prospecting within the exclusive economic zone

**prospector** means a person to whom a prospecting permit is—

- (a) granted under Part 4; or
- (b) assigned, novated, or otherwise lawfully transferred

**public official** means a person who is an employee within the meaning of section 4 of the Public Service Act 2009

**regulated activity—**

- (a) means seabed mineral activities and any activity conducted by or on behalf of a title holder that is incidental or ancillary to seabed mineral activities; and
- (b) includes the establishment and operation of—
  - (i) sampling or collecting systems and equipment:
  - (ii) processing facilities:
  - (iii) installations:
  - (iv) other equipment, including plant and machinery:
  - (v) transportation systems, including in relation to the transportation of personnel to and from the location of seabed mineral activities

**responsible Minister** means the Minister responsible for the Cook Islands Seabed Minerals Authority and the administration of this Act

**seabed mineral activities** means prospecting under a prospecting permit, exploration under an exploration licence, or mining under a mining licence

**seabed minerals**—

- (a) means the mineral resources of any part of the seabed; and
- (b) includes, but is not limited to, mineral resources in crust, sediment, nodule, or hydrothermal deposit form, which contain metalliferous or non-metalliferous elements

**Seabed Minerals Advisory Committee** or **Committee** means the committee established by section 35

**serious harm**, in relation to the marine environment, means any effect on that environment beyond that which has been, or is likely to be, permitted by the National Environment Service under the Environment Act 2003

**the regulations** means any regulations made under this Act

**title** means a prospecting permit or an exploration or mining licence under this Act

**title area** means the area of seabed to which a title relates

**title holder** means a prospector or licensee

**UN Convention on the Law of the Sea** means—

- (a) the United Nations Convention on the Law of Sea of 10 December 1982 that entered into force on 16 November 1994; and
- (b) the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 both of which the Cook Islands is a party

**work plan** means a schedule, plan, or other document that sets out a programme of works for the conduct of the seabed mineral activities, and that forms part of, or is proposed to be part of, a title.

- (2) In this Act, unless the context otherwise requires, a reference to this Act includes a reference to regulations made under this Act.

## **7 Persons performing functions and duties must apply principles**

- (1) To the extent allowed by law, this Act must be interpreted, and all persons performing functions and duties or exercising powers under it must act consistently with the Cook Islands' obligations under the UN Convention on the Law of the Sea and other relevant regional and international instruments.
- (2) Without limiting subsection (1), the obligations referred to in that subsection include the obligations of a person or body, while exercising their right to utilise the marine resources in the exclusive economic zone or relevant areas, to also seek to—
  - (a) protect and preserve the marine environment and rare or fragile ecosystems and habitats; and
  - (b) prevent, reduce, and control pollution from seabed mineral activities; and
  - (c) prevent harm to other countries; and
  - (d) conserve biodiversity; and
  - (e) apply the precautionary approach; and
  - (f) employ best environmental practice; and

- (g) conduct a prior environmental impact assessment of activities likely to cause serious environmental impact; and
- (h) take measures for ensuring safety at sea.

## **8 Application of Act**

(1) This Act applies—

- (a) to all individuals, whether or not they are Cook Islanders, and whether or not they are resident in the Cook Islands; and
- (b) to all bodies corporate, whether or not they are incorporated or carry on business in the Cook Islands.

(2) The provisions of this Act—

- (a) are subject to—
  - (i) the Environment Act 2003; and
  - (ii) the Constitution of the Cook Islands; and
  - (iii) any applicable Acts, regulations, rules, standards, or procedures that are in force in the Cook Islands relating to—
    - (A) protection against discrimination in employment; and
    - (B) occupational health and safety; and
    - (C) labour relations and social security; and
    - (D) employment security and living conditions; and
- (b) are subject to the provisions of the Marae Moana Act 2017 (except in relation to the area beyond the limits of the national jurisdiction, as defined in Article 1(1) of the UN Convention on the Law of the Sea); but
- (c) prevail in the event of inconsistency or incompatibility with any other Act (excluding the enactments or other instruments referred to in paragraphs (a) and (b)).

## **9 Jurisdiction**

By the enactment of this Act, the Cook Islands exercises its exclusive sovereign rights over its exclusive economic zone and continental shelf for the purpose of this Act (as described in section 3).

## **Part 2**

### **Cook Islands Seabed Minerals Authority, Licensing Panel, and Advisory Committee**

#### Subpart 1—Cook Islands Seabed Minerals Authority

## **10 Continuation of Authority**

- (1) There continues to be a statutory body called the Cook Islands Seabed Minerals Authority.
- (2) The Authority—
  - (a) is a statutory agency of the Crown;
  - (b) is a body corporate with perpetual succession;
  - (c) is capable of holding real and personal property and of suing and being sued; and

- (d) is capable of doing and suffering all those other acts and things that corporations may lawfully do and suffer.

## 11 **Functions of Authority**

The functions of the Authority are to—

- (a) ensure that the objectives and authority provided under this Act are effectively discharged; and
- (b) regulate seabed mineral activities under the jurisdiction of the Cook Islands in accordance with this Act, including through—
  - (i) monitoring the performance of title holders; and
  - (ii) taking enforcement actions for non-compliance with this Act or a title; and
- (c) undertake due diligence in respect of applicants for licences, as provided in sections 63 to 66 and otherwise as considered appropriate by the Authority; and
- (d) assist the work of the licensing panel; and
- (e) develop policies, standards, and guidelines for the purpose of regulating and monitoring the development of the Cook Islands seabed minerals sector; and
- (f) advise the responsible Minister on matters relevant to the responsible Minister's functions and powers under this Act; and
- (g) co-operate with other government agencies who have a role or interest pertaining to the seabed minerals of the Cook Islands.

## 12 **Duties of Authority**

In performing its functions, the Authority must—

- (a) act in accordance with—
  - (i) the purpose set out in section 3(1); and
  - (ii) the principles set out in section 7(2); and
  - (iii) official Government policy conveyed to it in writing by the responsible Minister; and
  - (iv) directions issued to it by the Commissioner under this Act; and
  - (v) the principle that regulatory actions should be—
    - (A) proportionate to the severity of the actions that they are designed to deter or punish;
    - (B) carried out by persons who are accountable for their actions;
    - (C) carried out in a consistent manner;
    - (D) open to scrutiny (transparent);
    - (E) carried out only in circumstances where the action is needed;
- (b) consider recommendations issued to it by the Committee; and
- (c) seek expert advice where that advice is required for the effective administration of this Act and is reasonably available; and

- (d) share information and consult about regulated activities with the relevant stakeholders and the community as appropriate in the circumstances, including—
  - (i) through consultation with the Committee; and
  - (ii) through publication of up-to-date information on the Authority’s website; and
- (e) publish an annual report each year providing a summary of information on seabed mineral activities relating to the Cook Islands, and on the work of the Authority during that year.

### **13 Powers of Authority**

The Authority may undertake any lawful and reasonable action intended to facilitate the performance of its functions.

### **14 Responsible Minister may give directions to Authority**

- (1) The responsible Minister may give written directions to the Authority in relation to the performance of its functions or the exercise of its powers.
- (2) Directions given by the responsible Minister must not relate to the processing of a particular application (for a prospecting permit) or the regulation of a particular title.
- (3) Subsection (2) does not prevent the responsible Minister from directing the Authority to investigate a particular occurrence in relation to a particular title, if the responsible Minister considers that the direction is necessary or desirable for the purposes of this Act.

### **15 Records of decisions of Authority**

- (1) The Authority must keep records in electronic form or in hard copy, signed by an officer of the Authority, of decisions and the grounds for them made under—
  - (a) section 112 (directions):
  - (b) section 114 (action by Authority where there is failure to comply):
  - (c) section 116 (administrative action):
  - (d) section 53 (grant of prospecting permit):
  - (e) section 70 (licence decision-making: grant of licences):
  - (f) section 71 (role of licensing panel and responsible Minister on reconsideration):
  - (g) section 79 (right of retention arising from exploration licence):
  - (h) section 86 (renewal of licence):
  - (i) section 102 (transfer of title).
- (2) A record kept under subsection (1) is sufficient evidence, in the absence of evidence to the contrary, that the decision was duly made as recorded.

### **16 Information gathering**

In performing its functions, the Authority may gather, retain and publish or disseminate information relating to any application, title, or regulated activity, including by way of a direction under section 112.

**17 Information management**

- (1) The Authority may use, disclose, or publish information that it holds or receives in relation to seabed mineral activities when necessary for the effective exercise of its functions.
- (2) The Authority may also disclose or publish information if—
  - (a) the relevant title holder or applicant consents;
  - (b) the information is generally known, or is publicly available from other sources, or is available under the Official Information Act 2008;
  - (c) disclosure or publication is necessary in connection with the Authority's administration of this Act, including for the purpose of maintaining a public register of titles, for reasonable records management purposes, for the purposes of the licensing panel, or for consultation with the Committee and the public of the Cook Islands;
  - (d) the information has been held by the Authority for more than 5 years or is not commercially sensitive;
  - (e) the information is reasonably required by one or more Crown agencies for the effective administration of other Cook Islands laws;
  - (f) the disclosure or publication is made for the purpose of any arbitration or litigation, or is required by order of a court.
- (3) The Authority may also disclose or publish information—
  - (a) of any prescribed kind; or
  - (b) for any prescribed purpose.
- (4) If the Authority discloses information in accordance with this section without making that information publicly known, it may disclose the information subject to any terms and conditions that the Authority considers appropriate.
- (5) This section is subject to section 18 (which relates to information supplied by third parties).

**18 Further provisions about information disclosure**

- (1) Nothing in this Act permits disclosure by any person of third party information that—
  - (a) is prohibited from disclosure by another law of the Cook Islands or a court order; or
  - (b) is a trade secret or other commercially sensitive information, the disclosure of which, at that time, could reasonably be expected to adversely affect the business of the information owner's or the commercial or financial affairs of the person who supplied the information, unless the Authority has—
    - (i) considered any relevant representations from any affected person; and
    - (ii) given the owner of the information not less than 7 days' notice of the proposed disclosure.
- (2) Any person who uses or discloses information knowingly in breach of subsection (1) or being reckless as to whether use or disclosure of the information is lawful, commits an offence and is liable on conviction to a fine not exceeding \$200,000 or 5 years' imprisonment, or both.

**19 Supply of false or misleading information to Authority**

- (1) A person must not knowingly or recklessly provide the Authority with information that is incomplete, false, or misleading in a material particular if the information—
  - (a) is provided in purported compliance with a requirement imposed by or under this Act; or
  - (b) is provided otherwise than as mentioned in subsection (1)(a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging its functions.
- (2) A person must not, without the Authority's prior written permission, wilfully alter, suppress, conceal, or destroy any document or sample that the person is required by this Act to—
  - (a) retain; or
  - (b) produce to the Authority.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$300,000.
- (4) Subsection (3) is subject to section 115(5).

**20 Incidents and inquiries**

- (1) Whenever an incident comes to the knowledge of the Authority, the Authority must ensure that the details of the incident are notified as soon as practicable or within the prescribed period (if any) to—
  - (a) any affected title holder; and
  - (b) the responsible Minister; and
  - (c) any affected Crown agency; and
  - (d) the Committee.
- (2) The Authority must provide any administrative assistance to a title holder that is desirable to facilitate the title holder's efficient response to an incident.
- (3) The Authority may, in accordance with any prescribed requirements, hold or commission inquiries into incidents or any other matter related to the interests of the orderly conduct of seabed mineral activities.
- (4) The responsible Minister must, within 12 months after the commencement of this section, approve a contingency plan that—
  - (a) makes adequate provision (including financial provision) for the Crown to respond appropriately to any incident that it is reasonable to believe could occur; and
  - (b) sets out the roles, functions, and duties of Crown agencies in the event of an incident; and
  - (c) is agreed in writing by each Crown agency that has a role in the plan; and
  - (d) is periodically updated; and
  - (e) is published on the Authority's website.

**21 Head and staff of Authority**

- (1) The head of the Authority is the Seabed Minerals Commissioner, who is responsible to the responsible Minister for the efficient and proper administration and management of the Authority.
- (2) The Commissioner—
  - (a) is appointed under the Public Service Act 2009; and
  - (b) is an employer for the purposes of section 4 of that Act; and
  - (c) may from time to time appoint public officials in accordance with the provisions of that Act, on terms and conditions specified in a contract of employment.
- (3) The Commissioner may, at any time, appoint in writing suitably competent persons as inspectors to assist with the Authority's monitoring and enforcement functions.
- (4) The Commissioner, and any constable assisting or accompanying the Commissioner or another inspector while the Commissioner or inspector is performing functions or exercising powers conferred under this Act, is deemed to be an inspector for the purpose of this Act.

**Subpart 2—Licensing panel****22 Licensing panel**

- (1) The licensing panel consists of at least 7 members who are appointed by the responsible Minister with the agreement of Cabinet.
- (2) One of the members of the panel must be appointed as Chairperson by the responsible Minister.
- (3) The members of the panel may at any time choose 1 member to be vice chairperson, and that person may perform all the functions of the chairperson in the chairperson's absence.
- (4) The members of the panel
  - (a) must include—
    - (i) 6 members who qualify for appointment under section 25(1); and
    - (ii) 1 member who qualifies for appointment under section 25(2); and
  - (b) may include between 1 and 4 members who qualify for appointment under section 25(3).
- (5) The responsible Minister must, when making decisions under this section,—
  - (a) use the services of the panel constituted under Schedule 1; and
  - (b) comply with the provisions of Schedule 1.

**23 Functions of licensing panel**

- (1) The licensing panel has the functions set out in subpart 3 of Part 4.
- (2) In carrying out its functions, the licensing panel must act independently.

**24 Term of office of members**

- (1) A member must be appointed for a term not exceeding 3 years as specified in his or her instrument of appointment, and may from time to time be reappointed.
- (2) However, no person may serve for more than 12 successive years as a member.



- (3) A member whose term of office expires continues in office until—
  - (a) his or her successor is appointed; or
  - (b) he or she is given notice in writing from the responsible Minister that he or she will not be reappointed.
- (4) A member is not entitled to compensation, severance, or other benefits on, or because of, ceasing to be a member for any reason.

## **25 Qualifications for appointment as member**

- (1) The persons who qualify for appointment under section 22(4)(a)(i) are—
  - (a) one person who—
    - (i) has at least 10 years' experience of any prescribed kind in any prescribed type of extractive industries; or
    - (ii) has lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1:
  - (b) one person who—
    - (i) has at least 10 years' experience of any prescribed kind in any prescribed type of governance; or
    - (ii) has lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1:
  - (c) one person who—
    - (i) has at least 10 years of financial experience of any prescribed kind in any prescribed type of financial work; or
    - (ii) has lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1:
  - (d) one person who—
    - (i) has at least 10 years of legal experience of any prescribed kind, in any prescribed type of legal work; or
    - (ii) has lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1:
  - (e) one person who—
    - (i) has at least 10 years' experience in matters of a prescribed kind, in environmental matters of a prescribed type; or
    - (ii) has lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1:
  - (f) one person who—
    - (i) has 10 years' experience of a prescribed kind, in any prescribed type of maritime work; or
    - (ii) has lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1.
- (2) The persons who qualifies for appointment under section 22(4)(a)(ii) must be 1 of the following:
  - (a) the Solicitor-General:
  - (b) the head of the Ministry of Finance and Economic Management:
  - (c) the head of the office of the Prime Minister.

- (3) The persons who qualify for appointment under section 22(4)(b) are between 1 and 4 persons who—
- (a) have at least 10 years' experience of any prescribed kind, in any prescribed type of extractive industries;
  - (b) have lesser experience, but is recommended by the selection panel under clause 8 of Schedule 1.

**26 Disqualifications for appointment as member**

A person must not be appointed as a member of the panel if the person—

- (a) has a medical or other condition that impairs his or her judgment, skills, or intellectual capacity; or
- (b) is a member of Parliament; or
- (c) has been convicted of an offence committed in any country punishable by a maximum term of imprisonment of 2 years or more; or
- (d) has been a shareholder, director, or manager of a company at the time when it entered into receivership or liquidation; or
- (e) is a shareholder, director, or manager of company or other business that—
  - (i) conducts seabed mineral activities; and
  - (ii) is likely to involve the person in recurring conflicts of interest.

**27 Extraordinary vacancies**

- (1) The responsible Minister may remove any member, including the chairperson, at any time for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the responsible Minister.
- (2) A member ceases to hold office by operation of law if—
  - (a) he or she is elected as a member of Parliament;
  - (b) he or she is convicted of an offence in any country punishable by a maximum term of imprisonment of 2 years or more;
  - (c) he or she is a shareholder, director, or manager of a company that enters into receivership or liquidation;
  - (d) he or she becomes a shareholder, director, or manager of a company or other business (whether in the Cook Islands or overseas) and is informed by the responsible Minister that—
    - (i) the company or other business conducts or may conduct seabed mineral activities; and
    - (ii) the director's involvement in that business is likely to lead to recurring conflicts of interest with his or her duties as a member of the Board.
- (3) A member may at any time resign from office by giving written notice to the responsible Minister.
- (4) If a member dies, resigns, is removed from office, or ceases to hold office by operation of law, the vacancy must be filled in the same manner as the appointment of the vacating member.
- (5) An extraordinary vacancy must be filled in the same manner as the appointment of the vacating member.

- (6) Every person appointed to fill an extraordinary vacancy must be appointed for the balance of the term for which that vacating member was appointed.

**28 Panel not affected by vacancies in membership**

The powers of the licensing panel are not affected by a vacancy in the membership of its panel.

**29 Meetings of panel**

- (1) Meetings of the panel may be held at times and places that the panel or the chairperson appoints, in order to assess and make recommendations on licence applications under subpart 3 of Part 4.
- (2) A special meeting must be called by the chairperson whenever 2 or more members, in writing, request a meeting.
- (3) A panel meeting may be held only if a quorum of the members is present at the time and place appointed for the meeting.
- (4) The quorum for a meeting of members is 3 persons present in person, but those quorum requirements are deemed to be satisfied if 3 members can simultaneously hear and speak to each other although they may not all be in the same place.
- (5) A resolution signed by all members, whether on one or more copies of that resolution, is deemed to be a resolution duly passed at a meeting.

**30 Procedures at meeting**

- (1) At any panel meeting,—
- (a) decisions may be made by a simple majority of members present and voting on the matter; and
- (b) the chairperson of that meeting has a deliberative vote and a casting vote; and
- (c) proper minutes must be kept of proceedings.
- (2) The panel may regulate its procedures as it thinks fit, subject to the provisions of this Act, the regulations, and other applicable laws.
- (3) A copy of that written resolution may be in—
- (a) digital format; or
- (b) hard copy format; or
- (c) both formats.

**31 Disclosure of information and interests**

- (1) This section applies to—
- (a) each member of the panel;
- (b) every officer and employee of the Authority who attends a panel meeting.
- (2) A person to whom this section applies must keep information discussed by the panel confidential unless—
- (a) that information is disclosed under section 17 or 18 or any other applicable law; or
- (b) the panel or the Authority authorises that information to be disclosed for the purpose of carrying out its functions and subject to any conditions imposed by it; or

- (c) a court orders that the information be disclosed.
- (3) The members must maintain an interests register setting out all other interests, including all directorships and shareholding interests held in or outside the Cook Islands.
- (4) A person must disclose to a panel meeting any conflict of interest (direct or indirect) in matters discussed, or resolutions put, at that panel meeting.
- (5) A disclosure must be recorded in the panel minutes and, unless all members present decide otherwise, the person making that disclosure must leave the meeting while the board discusses the matter.
- (6) That absence does not affect the quorum of the panel.

### **32 Remuneration of members**

- (1) Each member of the licensing panel must be paid at the rate determined by the Authority.
- (2) Members are also entitled to reimbursement of actual and reasonable travelling and other expenses where those have been incurred in performing functions and duties as a member.
- (3) A member of the panel who is employed in the public service under the Public Service Act 2009 is not entitled to remuneration or reimbursement.

### **33 Personal liability**

- (1) A member of the panel is not personally liable for any act or default done or made or omitted by him or her or by the panel or by any other member in the course of the operations of the panel, unless the member acted in bad faith or without reasonable care.
- (2) The Authority must indemnify each member—
  - (a) for costs and damages for any civil liability arising from any action brought by a third party, if the member was acting in good faith and with reasonable care in the course of operations of the panel or the Authority; and
  - (b) for costs arising from any successfully defended criminal prosecution, if the prosecution arose in the course of the operations of the panel or the Authority.

### **34 Secretariat to panel**

The Authority must provide secretariat and administrative support to the licensing panel to help the panel carry out its functions.

## Subpart 3—Cook Islands Seabed Minerals Advisory Committee

### **35 Cook Islands Seabed Minerals Advisory Committee**

- (1) This section establishes the Cook Islands Seabed Minerals Advisory Committee.
- (2) The Committee's objective is to assist the Authority by providing to the Authority perspectives from the community.
- (3) The responsible Minister may at any time declare or amend terms of reference for the Committee.

**36 Composition of Committee**

The Committee is composed of at least 7 members, being—

- (a) a Chair and a Secretary, each appointed in writing by the responsible Minister; and
- (b) at least four members appointed in writing by the responsible Minister to present a range of community perspectives or expertise relevant to the achievement of the purpose of this Act; and
- (c) the Commissioner, who must attend Committee meetings to inform and advise the Committee on any issues that the Committee members require advice about.

**37 Functions of Committee members**

(1) The functions of the Committee members, other than the Secretary, are to—

- (a) make recommendations to the Authority on matters relating to policies of the Authority under this Act or the regulations;
- (b) perform any other functions that are assigned to the Committee members by the Authority or the responsible Minister, or in accordance with the provisions of this Act or the regulations.

(2) Recommendations made by the Committee to the Authority under this section may include (without limitation), that—

- (a) further expert advice be sought by the Authority;
- (b) further public consultation be undertaken;
- (c) further advice be sought from the Crown Law Office or another Ministry;
- (d) a decision or an action be taken, or not be taken by the Authority in a specified way.

(3) The Committee Secretary must ensure that a copy of every report or recommendation of the Committee or a Committee member is provided to the responsible Minister for consideration.

**38 Membership**

All appointments to the Committee must be by name and recorded in an instrument of appointment issued by the responsible Minister.

**39 Rules of procedure of Committee**

Regulations may prescribe procedures for the Committee that include requirements relating to all or any of the following:

- (a) frequency of meetings, conduct of meetings, record-keeping and reporting of decision-making, quorums, disclosure of interest, information management, and methods of sharing information with the general public; and
- (b) terms and conditions for members of the Committee, including remuneration and allowances, maximum duration of appointments, eligibility for re-appointment, and provisions relating to suspension, removal, or resignation of Committee members.

**40 Secretariat to Committee**

The Authority must, subject to funding and resource constraints, provide secretariat and administrative support (including technical advice) to the Committee to help the Committee carry out its functions.

**Part 3****Areas available for seabed mineral activities within Cook Islands national jurisdiction****41 Graticulation and measurement of surface of Earth**

- (1) For the purposes of this Act, the surface of the Earth is taken to be divided into graticular sections called blocks.
- (2) Each block is bounded—
  - (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five minutes, or a multiple of five minutes, of longitude; and
  - (b) by the equator and by parallels of latitude that are at a distance from the equator of five minutes, or a multiple of five minutes, of latitude; and
  - (c) by portions of two of those meridians that are at a distance from each other of five minutes of longitude; and
  - (d) by portions of two of those parallels of latitude that are at an angular distance from each other of five minutes of latitude.
- (3) For the purposes of this Act,—
  - (a) the position on the surface of the Earth of a block, or any other position identified for the purpose of the Act, is by reference to the World Geodetic System (WGS-84); and
  - (b) a boundary between points on the surface of the Earth must be a geodesic; and
  - (c) grid co-ordinates must be described in accordance with the Universal Transverse Mercator grid system.
- (4) The Authority may further divide blocks into smaller divisions called cells.

**42 Designation of blocks or cells for seabed mineral activities**

- (1) The responsible Minister may, by written notice published on the Authority's website and in a national newspaper of the Cook Islands,—
  - (a) designate blocks or cells to be released for the purpose of specified seabed mineral activities; or
  - (b) declare that particular blocks or cells not covered by a designation under paragraph (a) are—
    - (i) not to be subject to the grant of a title under the Act; or
    - (ii) only open to an application from a person with whom the Crown has entered into a sponsorship arrangement for the purpose of Annex III, Article 4(3) of the UN Convention on the Law of the Sea; or
    - (iii) only open to an application where the Crown would have a financial, equitable, or operational stake or benefit in the title if granted.

- (2) The responsible Minister must not make a designation under subsection (1)(a) or a declaration under subsection (1)(b)—
  - (a) that is prohibited under an enactment (including rules relating to marine protected areas) of the Cook Islands;
  - (b) in relation to a block in respect of which—
    - (i) there is a licence; or
    - (ii) there is a licence application that is yet to be finally determined.
- (3) In making a designation under subsection (1)(a) or a declaration under subsection (1)(b) the responsible Minister must follow any prescribed procedures.

#### **43 Block or cell eligibility for application**

- (1) Subject to subsection (2), only blocks or cells designated under section 42(1)(a) may be the subject of a licence application.
- (2) A person for whom blocks or cells are reserved under section 42(1)(b)(ii) or (iii) may make a licence application in respect of the those blocks or cells.
- (3) A licence application made under subsection (1) or (2) must be determined in accordance with the provisions of this Act.
- (4) If a declaration under section 42(1)(b) is in force in relation to a block or cell,—
  - (a) any title granted over that block or cell that is inconsistent with the declaration is null and void; and
  - (b) any declaration affecting that block or cell for any inconsistent purpose by or under another enactment is null and void to the extent of that inconsistency;
  - (c) any declaration by or under another enactment that affects the block or cell ceases to have effect to the extent of its inconsistency with the declaration under section 42(1)(b).

#### **44 Invitation for applications for titles**

- (1) The Authority may, in any manner it considers appropriate, invite applications for titles by reference to a block or blocks, or cell or cells, that are covered by a designation under section 42(1)(a).
- (2) The invitation may, but need not, be issued through the public announcement of a tender round to be administered by the Authority, in accordance with prescribed tender procedures.

#### **45 Public announcement of tender process**

- (1) The Authority must not make a public announcement of a tender round under the Act unless and until the Authority has received notification in writing from the responsible Minister that he or she is satisfied that—
  - (a) the information on the mineral potential of the blocks to be covered by the tender round is sufficient to justify a competitive tender; and
  - (b) the invitation to apply and the tender document package are complete and fit for purpose.
- (2) Each invitation to apply must provide for the prescribed matters.
- (3) Each tender document package must provide for the prescribed matters.

**46 Amendment and cancellation of tender round**

- (1) The Authority may, by public announcement in accordance with any requirements in an invitation to apply, cancel a tender round at any time if, with the prior written agreement of the responsible Minister, the Authority decides that cancellation is in the national interest.
- (2) In considering the national interest, regard must be had to the following matters:
  - (a) any policies published by the Government setting out the national interest; and
  - (b) any regulations setting out the national interest or prescribing matters to be taken into account when considering it.
- (3) The Authority may, at any time before the closing time of the tender date by public announcement and in accordance with requirements in the invitation to apply,—
  - (a) clarify or amend any aspect of the invitation to apply or tender document package; and
  - (b) extend the closing time to allow modification of applications in light of any such clarification or amendment.
- (4) No cause of action lies against the Crown, any Minister, or any officer of the Crown in respect of losses caused by an amendment or a cancellation of a tender round under this Act.

**47 Conduct of tender**

The Authority must conduct any tender round in a manner that—

- (a) facilitates—
  - (i) the purpose of the Act; and
  - (ii) the promotion of fair competition between potential applicants; and
  - (iii) the conduct of a fair, accountable, and transparent process; and
- (b) takes into account, as applicable, the views of other relevant government agencies and stakeholders.

**48 Cadastre and register of titles**

- (1) The Authority must maintain an inventory of its geological data and title records (a **cadastre**) and delineate on the cadastre the map areas and the blocks or cells that are subject to—
  - (a) applications or titles; or
  - (b) a designation under section 42(1)(a); or
  - (c) a declaration under section 42(1)(b); or
  - (d) a prohibition on seabed mineral activities under another enactment.
- (2) The Authority must maintain a register of titles, containing up-to-date and accurate records of applications received and titles granted.

**49 Duties of Authority to update cadastre and register of titles**

- (1) In respect of every title, the Authority must promptly update the cadastre and enter a record in the register of titles that includes at least the following information:
  - (a) the name and registered address of the title holder:



- (b) the date of the grant of the title:
  - (c) the duration of the title and expiry date:
  - (d) a description of the area or areas in respect of which the title is granted:
  - (e) the seabed minerals in respect of which the title is granted:
  - (f) a description of the seabed mineral activities in respect of which the title is granted:
  - (g) the details of any assignment, novation, lease, sub-lease, mortgage, transfer, renewal, variation, suspension, cancellation, expiry, or surrender of title:
  - (h) any other prescribed information.
- (2) The Authority must—
- (a) include on the register copies of applications and titles, details of any incident, and title holders' annual reports; but
  - (b) omit information the disclosure of which is prohibited by this Act.
- (3) For the purposes of this Act,—
- (a) the title holder is the person whose name is given as the title holder on the register; and
  - (b) the registered address of a title holder is the address in the Cook Islands to which all written communications under this Act must be sent.

#### **50 Cadastre and register open to public inspection**

- (1) The Authority must keep the cadastre and the register of titles open to public inspection during business hours at the head office of the Authority.
- (2) The Authority may, on application and payment of any prescribed fee, issue a certified copy of any title or other document filed with the Authority for the purpose of maintaining the register of titles.
- (3) A certified copy is evidence in any court of the facts stated in the copy.

### **Part 4**

#### **Issuing of permits and licences for seabed mineral activities**

##### **Subpart 1—General**

#### **51 Prohibited seabed mineral activities**

- (1) No person may engage in any prospecting, exploration, or mining—
  - (a) in the Cook Islands territorial sea:
  - (b) in the exclusive economic zone or continental shelf, unless the person holds a valid prospecting permit or licence that covers the relevant seabed mineral activities.
- (2) Subsection (1) does not apply to marine scientific research.
- (3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$2,000,000.
- (4) Any seabed minerals or other products, or proceeds from seabed minerals or other products, obtained in contravention of subsection (1) are forfeited to the Crown.

## Subpart 2—Prospecting permits within Cook Islands national jurisdiction

### **52 Prospecting within Cook Islands national jurisdiction**

Prospecting may be carried out within the Cook Islands exclusive economic zone and continental shelf by any person holding a valid prospecting permit relating to that area.

### **53 Grant of prospecting permit**

- (1) The Authority may grant a prospecting permit to an applicant if the Authority receives an application for a prospecting permit that—
  - (a) complies with the prescribed requirements; and
  - (b) satisfies the prescribed criteria; and
  - (c) is accompanied by the prescribed fee.
- (2) An application for a prospecting permit may be only made by a person that is a body corporate incorporated in the Cook Islands.
- (3) The Authority may grant a prospecting permit subject to—
  - (a) terms and conditions that the Authority considers appropriate; or
  - (b) any prescribed terms and conditions; or
  - (c) terms and conditions referred to in both paragraphs (a) and (b).
- (4) This section is subject to section 55.

### **54 Timely prospecting permit decisions**

- (1) Subject to subsection (2), within 60 days of receiving any application or any additional information sought by the Authority during the application process, the Authority must—
  - (a) decide to grant a prospecting permit; or
  - (b) decide not to grant a prospecting permit; or
  - (c) request further information from the applicant.
- (2) Before the Authority declines to grant a prospecting permit, the Authority must notify the applicant in writing that—
  - (a) the Authority proposes to refuse to grant the title to which the application relates for the reasons stated in the notice; and
  - (b) the applicant has 30 days to explain or clarify the application in writing.

### **55 Denial of prospecting permit**

- (1) The Authority must not grant a prospecting permit if—
  - (a) the past performance of the applicant as a title holder, or the equivalent in another jurisdiction, has to the Authority's knowledge been materially unsatisfactory; or
  - (b) the prospecting permit includes within its scope any area of seabed that is included within the scope of a reserved area under section 42(1)(b) or an exploration or mining licence, or is subject to a retention right under section 79; or
  - (c) the terms of the prospecting permit would, in the Authority's reasonable opinion, be likely to—

- (i) lead to the contravention by any person of any enactment relating to marine protected areas or zoning of areas within the Cook Islands; or
- (ii) cause serious harm to the marine environment or human health or safety; or
- (d) the Authority is aware of other grounds, including matters raised by the Committee, that reasonably indicate that the grant of the prospecting permit would be—
  - (i) contrary to the public interest; or
  - (ii) contrary to the purpose of this Act.
- (2) A decision by the Authority to decline an application for a prospecting permit must be accompanied by a written statement of the reasons for that decision.

**56 Excision of prospecting blocks due to other title or reservation of area**

- (1) The Authority must as soon as practicable notify a prospector if a block or cell within a prospecting permit area falls within—
  - (a) a licence application; or
  - (b) a determination by the Authority to invite licence applications; or
  - (c) a declaration of reservation by the responsible Minister under section 42(1)(b) or an announcement of a tender round under section 45(1); or
  - (d) a proposed marine protected area or other marine zone that prohibits seabed mineral activities.
- (2) A prospecting permit ceases to authorise prospecting in respect of any block or cell at the time that the block or cell becomes covered by—
  - (a) a licence; or
  - (b) a declaration under section 42(1)(b); or
  - (c) a declaration of a marine protected area or other marine zone that prohibits seabed mineral activities.

**57 Limitation on rights of prospecting permit**

A prospecting permit—

- (a) does not confer any exclusive rights of access to the seabed or water column and does not permit extraction of minerals for a commercial purpose;
- (b) allows prospecting that may be conducted simultaneously by more than one prospector in the same area or areas;
- (c) does not confer any right to drill into the continental shelf, use explosives, or introduce harmful substances into the marine environment.

**Subpart 3—Licensing of seabed mineral activities within Cook Islands national jurisdiction**

**58 Exploration and mining within Cook Islands national jurisdiction**

Exploration or mining may be carried out in an area of the Cook Islands exclusive economic zone only by a person who is a body corporate holding a valid licence for that area, granted in accordance with this Act.

**59 Application for licence**

- (1) A person may apply to the Authority for an exploration licence or a mining licence (whether in response to a tender round or otherwise) to conduct seabed mineral activities in blocks or cells that are—
  - (a) designated for this purpose under section 42(1)(a); and
  - (b) not otherwise subject to a licence or an undetermined application for the grant of a licence.
- (2) An application for a licence may only be made by a person that is a body corporate, incorporated in the Cook Islands.
- (3) An application for a mining licence may be made only—
  - (a) by the title holder of a valid exploration licence, to the extent that the application relates to the grant of a mining licence over one or more blocks in the exploration title area; or
  - (b) in relation to blocks of an area that have been retained under section 79, by the person for whom the blocks have been retained; or
  - (c) by any other person invited to apply in accordance with section 44 or otherwise invited to apply in writing by the Authority.
- (4) More than one licence may be granted to the same person.

**60 Priority of right of section 59 applications**

- (1) For the purpose of dealing with multiple applications for the same kind of licence in respect of the same block or blocks in accordance with section 59, the Authority must record the date and time that the Authority receives each application under section 59.
- (2) If the Authority cannot reasonably distinguish the order of receipt of 2 or more applications made under section 59 that cover any of the same block or blocks, the Authority must assess the applications competitively against each other in accordance with the prescribed tender procedures for ranking multiple tender applications.
- (3) The Authority must postpone the time and date of receipt of an application until the time and date that the Authority receives all information required for the application to be both—
  - (a) substantially in the approved manner and form; and
  - (b) meaningfully capable of assessment in accordance with the requirements of this Act and the regulations.

**61 Licence area**

The proposed licensed area must be clearly delineated by the applicant in the application and comply with any prescribed requirements.

**62 Content of application for licence**

An application for a licence must comply with the prescribed requirements and contain the prescribed information.

**63 Review of licence applications by Authority**

- (1) The Authority must be satisfied that an applicant for a licence meets the qualification criteria before it refers the application to the licensing panel.

- (2) The Authority, in conducting its functions under subsection (1) and sections 65 and 66,—
- (a) must consider licence applications promptly, in accordance with the prescribed criteria for assessing applications and any prescribed procedures or time limits; and
  - (b) may request further information from a licence applicant, or require the applicant to perform a test or demonstration; and
  - (c) may return an application without a decision if the applicant fails to properly comply with a request under paragraph (b); and
  - (d) may undertake any inquiries and collect any information it considers appropriate about the applicant.

**64 Qualification criteria for grant of licence**

The qualification criteria for the grant of a licence are as follows:

- (a) the application complies with the requirements of this Act; and
- (b) the applicant has given a written undertaking that—
  - (i) the content of the application is true and accurate to the best of the applicant's belief; and
  - (ii) the applicant intends to conduct the regulated activity in a responsible manner in accordance with the Act, other laws of the Cook Islands, and the terms of the licence; and
- (c) the applicant will have, while the proposed seabed mineral activities are conducted if the licence is granted, access to sufficient expertise and financial and technical resources and capability to—
  - (i) properly and lawfully perform the regulated activity that is the subject of the licence application; and
  - (ii) respond to any incident; and
  - (iii) cover the costs of any potential liability arising from accidents, pollution, or any other serious harm occurring as a result of the regulated activity; and
- (d) the applicant is governed by a corporate structure and risk management model, and staffed, in a way that is appropriate for the proper performance of obligations under the licence; and
- (e) the applicant is a fit and proper person to hold a licence; and
- (f) the applicant has paid any fees required by this Act or otherwise prescribed.

**65 Fit and proper person test**

- (1) For the purpose of determining whether the applicant is a **fit and proper person** under section 64(e) the Authority must take into account,—
- (a) whether the applicant (including each director, affiliate, and any associate involved in the management of the applicant's business) has previously, in any jurisdiction,—
    - (i) been found on reasonable evidence to have breached a term or condition of an approval (however described) to conduct seabed mineral activities or similar sea- or land-based activities, which related to—

- (A) protecting or rehabilitating the environment; or
  - (B) safeguarding the interests of the local community; or
  - (ii) been convicted of an offence relating to the conduct of seabed mineral activities or other sea- or land-based exploration or mining activities; or
  - (iii) been convicted of an offence involving fraud or dishonesty; and
  - (b) any other prescribed criteria; and
  - (c) any information the Authority has collected about the applicant.
- (2) Subsection (1) does not limit the matters that the Authority may take into account when deciding if an applicant is a fit and proper person to hold a licence.
- (3) An applicant is not a fit and proper person for the purposes of section 64(e) if the applicant is currently insolvent or under administration.

#### **66 Licence decision-making: consultation**

- (1) The Authority, on receiving an application for a licence, must, as soon as practicable and within the prescribed period (if any) after deciding that the applicant satisfies the qualification criteria,—
- (a) give notice setting out appropriately comprehensive information about that application to any neighbouring State that may be affected by the proposed seabed mineral activities described within that application; and
  - (b) notify the application to the public of the Cook Islands in accordance with the prescribed procedures or otherwise as the Authority considers appropriate; and
  - (c) consider any information in relation to that application that is provided, within a time period that is specified, in response to a notice or notification under this section.

#### **67 Initial decision on application**

- (1) If the applicant does not meet the qualification criteria or is not a fit and proper person, the Authority must—
- (a) decline to grant a licence; or
  - (b) return the application to the applicant without making a decision.
- (2) If the applicant meets the qualification criteria and the applicant is a fit and proper person, the Authority must as soon as practicable and within the prescribed period (if any) refer the application and any other relevant information to the licensing panel to evaluate the application against the prescribed evaluation criteria.

#### **68 Duties of licensing panel**

- (1) On receipt of an application from the Authority under section 67, the licensing panel must as soon as practicable and within the prescribed period (if any)—
- (a) evaluate the application against the prescribed evaluation criteria; and
  - (b) decide whether to—
    - (i) recommend to the responsible Minister the grant of the application; or
    - (ii) recommend to the responsible Minister the declining of the application.

- (2) For the purposes of carrying out its duties the licensing panel has the same powers as the Authority has under section 63(2)(b) and (c).

**69 Licence decision-making: restrictions**

- (1) No licence may be granted that—
- (a) would give exploration or mining rights over an area—
    - (i) that is covered by an existing licence or that has been retained under section 79 (except if a person applies for a mining licence in circumstances permitted under section 59(3)); or
    - (ii) that has been reserved by the responsible Minister under section 42(1)(b), unless the licence is for the person for whom the reservation was made; or
  - (b) would be likely to lead to a contravention of a declaration of a marine protected area, the Marae Moana Act 2017, or other zoning rules; or
  - (c) is not demonstrably in the national interest.
- (2) In considering the national interest, regard must be had to the following factors:
- (a) the economic or other benefits to the Cook Islands of granting the licence;
  - (b) any risks to the environment or society if the licence is granted;
  - (c) any risks to national security, public safety, international relations, or other national interests (as conveyed to the licensing panel by the head of the Ministry of Foreign Affairs and Immigration, where applicable) if the licence is granted or not granted;
  - (d) whether the risks in paragraphs (a) to (c) can be adequately mitigated by the use of conditions or otherwise;
  - (e) any other policies setting out the national interest published by the Government;
  - (f) any regulations setting out the national interest or prescribing matters to be taken into account when considering it.

**70 Licence decision-making: grant or decline of licence applications**

- (1) The licensing panel, in carrying out its functions under section 68, may recommend to the responsible Minister that he or she—
- (a) grant a licence to the applicant (with the agreement of Cabinet); or
  - (b) decline to grant a licence.
- (2) If the panel recommends to the responsible Minister that the licence be declined, the responsible Minister must decline to grant the licence.
- (3) If the Minister intends to follow a recommendation to grant a licence, the approval of the Cabinet must be obtained in accordance with section 73.
- (4) After obtaining that approval, and after the Authority has complied with section 72, the Minister must grant the licence.
- (5) If the responsible Minister receives a recommendation from the licensing panel to grant a licence and the Minister disagrees with that recommendation, the Minister must as soon as practicable and within the prescribed period (if any), by notice to the panel—
- (a) refer the recommendation back to the panel for its reconsideration; and
  - (b) provide the panel with—

- (i) reasons explaining why the responsible Minister disagrees with the panel's recommendation; and
- (ii) a list of any particular issues the responsible Minister wishes the panel to reconsider.

#### **71 Role of licensing panel and responsible Minister on reconsideration**

- (1) On receipt of a notice from the responsible Minister under section 70(5), the licensing panel must as soon as practicable and within the prescribed period (if any)—
  - (a) reconsider its recommendation that a licence be granted; and
  - (b) either—
    - (i) advise the responsible Minister that it wishes to confirm its recommendation; or
    - (ii) recommend that the application be declined.
- (2) If the responsible Minister receives advice from the panel under subsection (1)(b)(i) confirming its original recommendation, the responsible Minister must as soon as practicable and within the prescribed period (if any) refer the recommendation to Cabinet for decision under section 73 on whether the licence is to be granted or the application declined.
- (3) If Cabinet decides that the application for a grant of a licence should be declined, the responsible Minister must decline to grant a licence.
- (4) If the responsible Minister receives a recommendation under subsection (1)(b)(ii), the responsible Minister must decline to grant the application.
- (5) If Cabinet decides under section 73 that the application for the licence should be granted, and after the Authority as complied with section 72, the responsible Minister must grant the licence.

#### **72 Terms of licence**

- (1) If the responsible Minister intends to grant a licence, the Authority must, in accordance with any prescribed procedures, provide the applicant with a draft licence based on—
  - (a) the requirements of this Act; and
  - (b) the content of the application, including the applicant's proposed work plan; and
  - (c) any matter arising from consideration of, and consultations on, the application; and
  - (d) any other prescribed content, terms, or form of licence.
- (2) The draft licence—
  - (a) must specify—
    - (i) the seabed minerals to be covered by the licence; and
    - (ii) the licensed area; and
    - (iii) the duration of the licence; and
    - (iv) the scope of the rights to conduct specified exploration or mining activities, and associated regulated activity; and



- (v) a detailed work plan in the prescribed format, approved by the Authority, including time schedules and specified annual expenditure requirements; and
  - (vi) any requirements that need to be satisfied before the licensee can commence specified seabed mineral activities:
- (b) must include a requirement to obtain baseline data (as defined in the regulations) while that licence is in force, in the prescribed manner and to the prescribed standards:
  - (c) may specify additional terms and conditions determined by the Authority that are not inconsistent with the Act or the prescribed terms:
  - (d) must be approved by the responsible Minister, before being provided to the applicant.

### **73 Cabinet approval of licences**

- (1) A licence is not validly granted unless the Cabinet has given its prior approval to the licence terms.
- (2) The Cabinet, before giving approval to the grant of a licence, may request an opinion from the Crown Law Office that the grant of that licence in those terms—
  - (a) adheres to procedural propriety; and
  - (b) complies with the provisions of this Act and the other applicable laws of Cook Islands; and
  - (c) complies with obligations of the Cook Islands under international law.

### **74 Licence decision-making: written statement of reasons**

Within the prescribed time after a decision is made by the responsible Minister or the Cabinet under section 70, 71, or 73,—

- (a) if the decision is to grant a licence, a written statement of reasons must be provided to the applicant and then published by the Authority on a website maintained by the Authority; and
- (b) if the decision is to decline to grant a licence, a written statement of reasons must be provided by the Authority to the applicant and then published by the Authority on a website maintained by the Authority.

### **75 Review of licence decision**

- (1) An applicant who is dissatisfied with a decision by the responsible Minister or the Cabinet on a licence application may apply in writing within the prescribed time to the responsible Minister for a review of the decision, setting out the grounds for the review.
- (2) On receiving a request under subsection (1), the responsible Minister—
  - (a) must as soon as practicable and within the prescribed period (if any) refer it to the licensing panel for the panels consideration, and subject to paragraph (b), sections 68 to 74 apply with any necessary modifications as if the review were an application; and

- (b) must, as soon as practicable and within the prescribed period (if any) after receiving the request, affirm the decision in writing to the person requesting it, or submit to the Cabinet a new or amended recommendation for consideration in accordance with section 70.
- (3) Nothing in this section prevents a person from applying for judicial review of a licence decision in accordance with the laws of the Cook Islands, but the application for judicial review must be made within 28 days of the on date which the person was notified of the licence decision.

#### **76 Duration of licence**

- (1) The responsible Minister may grant an exploration licence for any period determined by the responsible Minister, not exceeding 5 years, commencing on a date (within the prescribed period (if any)) that is agreed with the applicant.
- (2) That term may be renewed for successive further periods (not exceeding 20 years in total) of up to 5 years each, if the licensee satisfies the prescribed requirements and pays the prescribed fee.
- (3) The responsible Minister may grant a mining licence for any period up to 30 years that is agreed with the applicant.
- (4) That term may be renewed for successive further periods of up to 20 years but only if—
  - (a) the area has been the subject of sustained commercial mining by the title holder in the preceding 24-month period; and
  - (b) it is necessary to extend the term to provide for continued and sustained commercial mining in the area; and
  - (c) the licensee satisfies the prescribed requirements and pays the prescribed fee.

#### **77 Exclusivity of licence and security of tenure**

- (1) A licence grants to the licensee exclusive rights to conduct the specified seabed mineral activities in the licensed area.
- (2) A licence must not be varied, suspended, or cancelled except in accordance with this Act and the regulations.

#### **78 Relinquishment**

- (1) The Authority may, in accordance with the regulations or the terms of the exploration licence, require an exploration licensee to relinquish a percentage or portions of the licensed exploration area over a set time period—
  - (a) in accordance with a schedule set by the Authority in the licence; or
  - (b) for a prescribed purpose and in a prescribed manner.
- (2) For the purposes of subsection (1), the blocks to be relinquished must be—
  - (a) contiguous; and
  - (b) expressed by the exploration licence holder by reference to 1 or more blocks.

#### **79 Right of retention arising from exploration licence**

- (1) If the responsible Minister has granted an exploration licence,—

- (a) any block that was part of the licensed area at the termination of the licence may on request be retained by the Authority for the former licensee for a period of 3 years from the date of termination; and
  - (b) before the expiry of the retention period in paragraph (a), the former licensee may make a written request to the Authority for the retention to be extended in respect of specified blocks.
- (2) The Authority may approve or decline the request for retention of blocks specified by a former licensee under subsection (1)(b), or to renew a previous retention, for a period of not more than 5 years from the date of termination, if the former licensee continues to demonstrate to the Authority's satisfaction that—
- (a) the former licensee is taking diligent steps towards making an application for a mining licence in respect of the retained area; or
  - (b) there are good grounds for the former licensee not yet applying for a mining licence in respect of the area.
- (3) If the Authority decides to approve the request to retain blocks under subsection (2), the Authority must—
- (a) notify the former licensee of the terms and conditions of the retention, not inconsistent with this Act or the regulations, that the Authority considers appropriate, including payment of a prescribed fee; and
  - (b) publish a notice of the retention in the *Gazette*, and record the retention in the register of titles, and on the website of the Authority.

#### **80 Extension of exploration licence during mining licence application**

If an application for a mining licence is made by an exploration licensee in respect of the exploration licensed area, the exploration licence continues in force until the time at which the applicant receives a final decision on the mining licence application.

#### **81 Mining licence gives licensee rights to seabed minerals recovered**

- (1) When seabed minerals are recovered by a mining licensee from the licensed area in accordance with the terms of the licence,—
- (a) the licensee acquires title to, and property rights over, those seabed minerals at the point of extraction, from the seabed, including the right to transport, market, process, sell, and export the seabed minerals; and
  - (b) subject to this Act, to freely utilise any sale proceeds; and
  - (c) the seabed minerals are not subject to the rights of any other person.
- (2) To avoid doubt, and for the purposes of section 5 of the Cook Islands Investment Corporation Act 1998,—
- (a) the disposal of real property owned by the Crown to the holder of a mining licence is effected by subsection (1); and
  - (b) the Cook Islands Investment Corporation is not required to consent to the grant of a mining licence or to the disposal of real property under subsection (1).

#### **82 Conditions precedent for mining**

- (1) A mining licensee may commence the licensed seabed mineral activities only after—

- (a) the entry of the licence in the register of titles; and
  - (b) the mining licensee has provided evidence, to the Authority's satisfaction, that the licensee has appropriate financial resources, security deposit, or monetary guarantee.
- (2) A licensee who contravenes this section is liable to pay a pecuniary penalty not exceeding \$2,000,000.

**83 Diligent mining**

- (1) Once mining of seabed minerals has commenced under a mining licence, the licensee must, within reasonable limits and taking into consideration all relevant factors, continue mining in the prescribed manner—
- (a) throughout the period of the licence; or
  - (b) as provided in the work plan.
- (2) Despite subsection (1), the Authority may, at the licensee's request, authorise the temporary suspension of the licensee's mining activities, if the Authority is satisfied that there are good grounds for doing so.

**84 When project permit required**

A project permit is required to be obtained in relation to seabed minerals activities under this Act in the circumstances set out in section 36 of the Environment Act 2003.

**85 Part of licensed area outside of national jurisdiction**

If part of the licensed area includes or purports to include an area that is outside the national jurisdiction of the Cook Islands,—

- (a) the licence remains valid; but
- (b) the licence does not authorise seabed mineral activities to be carried out within that area.

**86 Renewal of licence**

- (1) A licensee may apply to the Authority for successive renewals of a licence.
- (2) On receipt of an application, the Authority and, as the case requires, the licensing panel must treat the applications as an application for a licence, and sections 58 to 80 apply accordingly with any necessary modifications.
- (3) The responsible Minister, with the Cabinet's approval, may grant a renewal, but only if—
- (a) the application is received at least 90 days before the expiry date of the existing term of the title; and
  - (b) the title holder continues to meet the qualification criteria; and
  - (c) the title holder has satisfactorily met its obligations under the existing title; and
  - (d) the duration of the renewal period does not exceed the periods provided in section 76.
- (4) If a renewal is granted after the expiry date of the initial term of the title, the title is deemed to have continued in force during the period between that expiry date and the date the renewal is granted.

- (5) If a renewal is to be denied, the Authority must follow the processes set out in section 74.
- (6) If the renewal relates to a mining licence, the renewed licence is not valid until the licensee presents to the Authority written advice obtained from the National Environment Service that the renewed mining activities are permitted under the Environment Act 2003.

#### **87 Review of work plan**

- (1) A joint review by the licensee and Authority of each licence work plan—
  - (a) must be carried out promptly after completion of any environmental impact assessment conducted under the Environment Act 2003 after the date of grant of the licence; and
  - (b) must be conducted in accordance with any prescribed procedures, or the procedures described in the licence; and
  - (c) may be performed at reasonable intervals at the request of the licensee or by the Authority (if the Authority becomes aware of new information); and
  - (d) may lead to a variation of the licence or work plan.
- (2) The Authority may require the licensee to submit additional data for the purposes of a joint review.

#### **88 Termination of licences and titles**

- (1) A licence terminates if—
  - (a) the licence expires without the licence being renewed; or
  - (b) the licence is cancelled under section 117; or
  - (c) the licensee surrenders the licence under section 89; or
  - (d) in the case of an exploration licence, a mining licence is granted over any one or more of the cells or blocks covered by the exploration licence.
- (2) On the termination of a title, all rights granted under the title cease, except to the extent necessary for a person to discharge obligations that survive the termination in accordance with this Act.
- (3) On termination of a title, all rights granted under the title cease, except to the extent necessary for a person to discharge obligations that survive the termination.

#### **89 Surrender of licence**

- (1) A licensee may at any time surrender a licence without penalty, by giving to the Authority not less than six months' prior notice.
- (2) The surrender of a licence under subsection (1)—
  - (a) does not take effect until the licensee has paid all outstanding money due under this Act to the Authority; and
  - (b) does not affect any previous obligation or liability incurred by the licensee under this Act.
- (3) The Authority must cancel a licence after the expiry of the notice period required in subsection (1) if the licensee has paid all outstanding sums.

**Part 5**  
**Duties and responsibilities of permit and title holders and licensees, etc**

**90 Environment Act 2003 applies**

- (1) Nothing in this Act exempts a person from complying at all times with any enactment concerning the protection of the environment of the Cook Islands.
- (2) A title confers no rights to conduct seabed mineral activities unless and until the title holder has satisfied the relevant requirements of the Environment Act 2003.
- (3) The Authority and the National Environment Service must consult with each other about the conditions for the protection of the environment that should be imposed in relation to permits, licences, and titles under this Act.
- (4) A title holder's continuing compliance with the conditions of a permit or consent granted under the Environment Act 2003 or contained in its licence is deemed to be a condition of the title.

**91 Adherence to laws and rules**

- (1) Each title holder, affiliate, and associate is required, in their performance of regulated activities, to adhere to the terms and conditions of the title and the laws of the Cook Islands in force from time to time.
- (2) The obligation imposed by subsection (1), includes (without limitation) the duty to comply with—
  - (a) this Act; and
  - (b) the Environment Act 2003; and
  - (c) the Marae Moana Act 2017; and
  - (d) any applicable Act, regulations, rules, standards, and procedures that are in force in the Cook Islands relating to—
    - (i) protection against discrimination in employment; and
    - (ii) occupational health and safety, and
    - (iii) labour relations and social security; and
    - (iv) employment security and living conditions.

**92 General duties of title holders**

In addition to terms and conditions contained in the individual title, all title holders must comply with the requirements set out in Schedule 2.

**93 Breach of duties**

A title holder who contravenes clause 5, 11(a), 14, 15, 16, 17, or 18(4) of Schedule 2 commits an offence and is liable on conviction to a fine not exceeding \$2,000,000 or to imprisonment for a term not exceeding 10 years, or to both.

**94 Discovery by title holder of seabed minerals not covered by title**

- (1) A title holder must notify the Authority of the discovery and location of any seabed mineral, oil, gas, or other non-living natural resource to which that title does not relate within 30 days of the discovery.

- (2) The Authority must treat any application to include a newly discovered seabed mineral, oil, gas, or other natural resource in the title as an application by the title holder to vary the title, and apply the relevant requirements under this Act.

#### **95 Treatment of samples recovered**

- (1) Any biological sample acquired by a title holder, or any seabed mineral sample acquired under a prospecting permit or an exploration licence, remains the property of the Crown.
- (2) A title holder must, in respect of each sample covered by subsection (1) acquired by or on behalf of the title holder,—
- (a) maintain a record sufficient for the identification of the sample, and the specific location where the sample was found; and
  - (b) not dispose of or remove the sample from the Cook Islands without the prior written consent of the Authority.
- (3) Subsection (2) does not apply to any prescribed quantity of minerals obtained for the exclusive purpose of sampling, assaying, analysis, or other similar examination.
- (4) A person who does not comply with subsection (2)—
- (a) commits an offence and is liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years, or both;
  - (b) is liable to pay a pecuniary penalty not exceeding \$500,000.
- (5) Subsection (4) is subject to section 115(5).

#### **96 Liability of title holders**

- (1) Each title holder is—
- (a) responsible for ensuring that all regulated activity conducted in relation to the title complies with this Act and the title; and
  - (b) liable for the actual amount of any compensation, damages, or penalties arising out of its failure to comply, or out of any wrongful acts or omissions in the conduct of the regulated activity.
- (2) The court has jurisdiction to hear civil claims against a title holder.
- (3) Each title holder must indemnify the Crown at all times against all actions, proceedings, costs, charges, claims, and demands that may be made by any third party arising out of any—
- (a) failure of the title holder, or any affiliate or associate, to ensure that any regulated activity conducted in relation to the title complies with a law of the Cook Islands or the title; and
  - (b) accidents, pollution, or other serious harm to the environment caused by any regulated activity.

#### **97 Ongoing liability of former title holders**

On the termination of a title, the title holder remains subject to all obligations and liabilities arising as a consequence of any regulated activity already conducted, or otherwise by reason of having entered into the title, including—

- (a) requirements to submit reports and to make payments to the Authority or any other person;
- (b) the liability and indemnity requirements specified in section 96.

## Part 6

### Financial arrangements

#### 98 Payments

- (1) Each title holder must pay—
  - (a) any fees, in the manner and on the terms, that are prescribed; and
  - (b) all applicable customs duties and taxes, in accordance with Cook Islands laws.
- (2) The holder of a mining licence must pay royalties in accordance with the Seabed Minerals (Royalties) Regulations 2013 or with any regulations relating to royalties made under this Act.

#### 99 Recovery of payments owed by title holders

- (1) Any fee, charge, royalty, penalty or other amount payable under this Act may be sued for and recovered by the Authority as a debt due to the Crown.
- (2) In any proceedings brought for the purposes of subsection (1),—
  - (a) a certificate of the Authority certifying that a specified sum of money is payable constitutes evidence of that fact;
  - (b) the court may order that—
    - (i) any sum unpaid by the title holder be recovered from any security deposited by the title holder under section 101;
    - (ii) interest on the amount outstanding be charged at a rate that is prescribed, or at the Government's official interest rate.

#### 100 Sovereign wealth fund

Any royalties and all revenue other than trading revenue (for example, licence fees) paid to the Crown or to the Authority under section 98 must either—

- (a) be—
  - (i) deposited into a separate bank account operated by the Financial Secretary (within the meaning of section 2 of the Ministry of Finance and Economic Management Act 1995–96); and
  - (ii) managed under the Ministry of Finance and Economic Management Act 1995–96 separately from other public money; or
- (b) be dealt with as provided in any other enactment specifically providing for the sovereign wealth fund.

#### 101 Security deposit

- (1) The Authority may, as a condition of a title, require a title holder to deposit one or more securities as a guarantee of performance of the obligations attaching to the title.
- (2) The form, amount, and terms and conditions of a security may be prescribed or required as a term of the title.
- (3) The security may be used by the Authority to take steps towards any one or more of the following:
  - (a) fulfilling an obligation that the title holder fails to fulfil;
  - (b) rectifying any unpermitted damage or loss caused by the regulated activity of the title holder;



- (c) payment of an amount legally payable to the Authority or to a third party by the title holder by operation of this Act or the title.
- (4) A security must remain in place during the period of the regulated activity; and for a period of 5 years or more, as specified in the title, following the cessation of the regulated activity.

## **102 Transfer of title**

- (1) No title granted under this Act can be assigned, novated, transferred, leased, sub-let or mortgaged (in this section, a **transfer**) without the Cabinet's prior agreement obtained in accordance with any prescribed procedures.
- (2) To enable Cabinet to make a decision, the Authority may require—
  - (a) the same information from the proposed transferee as would be required of a new applicant for the same title under this Act:
  - (b) an undertaking that the transferee assumes all of the obligations of the transferor:
  - (c) the transferee to comply with the same processes as are prescribed for an application for that type of title:
  - (d) the transferor or transferee to provide any other information that in the opinion of the Authority is necessary to enable the Cabinet to make an informed decision.
- (3) A transfer of title becomes effective upon payment of any prescribed transfer fee and the entry of the transfer into the register of titles.
- (4) The Authority must give an applicant written notice of the Authority's decision.
- (5) If the Authority decides not to consent to a transfer, it must make a note of that refusal in the register.

## **Part 7**

### **Enforcement powers**

#### *Powers of entry and search*

## **103 Powers of entry and examination for regulatory purposes**

- (1) In the course of the enforcement and administration of this Act, an inspector may, at any reasonable time,—
  - (a) examine any vessel, installation, vehicle, premises, or other place (by stopping or opening the thing or place, as the case requires, where necessary) and—
    - (i) examine any seabed minerals or equipment used in connection with prospecting, exploration, or mining in that thing or at that place; or
    - (ii) examine any accounts, records, returns, or other documents in that thing or at that place that may be relevant to monitoring compliance with this Act or the regulations; or
    - (iii) examine any record, authority, approval, permission, licence, or authority in that thing or at that place that may be relevant to monitoring compliance with this Act or the regulations; or

- (iv) examine by any suitable method any equipment, article, gear, container, apparatus, device, or thing relating to the taking, sale, or purchase of seabed minerals that is in that thing or at that place:
  - (b) enter, pass across, or remain upon any land for the purpose of observing any public place, including by the use of a visual surveillance device:
  - (c) stop any person and examine any thing referred to in paragraph (a)(i) to (iv) that is in the possession of that person:
  - (d) for the purposes of any examination under paragraph (a) or (c),—
    - (i) open, or direct any person to open, any thing that may be examined; and
    - (ii) take any sample of a thing that may be examined, for forensic or other scientific testing:
  - (e) for the purposes of exercising any power conferred by paragraph (a), enter or pass across any land.
- (2) An inspector may detain any vessel, installation, vehicle, conveyance of any kind, equipment, parcel, package, record, document, article, gear, apparatus, device, container, seabed mineral or thing for any period that is reasonably necessary to enable the inspector to carry out an examination under this section.
- (3) In this section and in section 104, **visual surveillance device** means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to observe, or to observe and record, any object or activity.

#### **104 Powers of entry and search for law enforcement purposes**

- (1) Subsection (2) applies to an inspector if he or she believes, on reasonable grounds, that—
- (a) an offence is being or has been committed against this Act or the regulations; and
  - (b) there may be concealed or located or held in any vessel, installation, vehicle, conveyance of any kind, premises, place, equipment, parcel, package, record, or thing—
    - (i) any equipment, seabed minerals, or thing used or intended to be used in contravention of this Act or the regulations; or
    - (ii) any article, record, document, or thing that will be evidence as to the commission of an offence against this Act or the regulations.
- (2) If this subsection applies to an inspector, then, for the purpose of enforcing this Act, the inspector may—
- (a) enter, examine, and search any such premises or place, or any such vessel, installation, vehicle, or conveyance of any kind (by stopping or opening the thing or place, as the case requires, where necessary); and
  - (b) enter, pass across, or remain upon any land for the purpose of observing any public place, including by the use of a visual surveillance device; and
  - (c) examine and search (by opening the thing where necessary) any such equipment, parcel, package, record, or thing; and
  - (d) for the purposes of exercising any power conferred by paragraph (a), enter or pass across any land.

- (3) An inspector may detain any vessel, installation, vehicle, conveyance of any kind, equipment, parcel, package, record, document, article, gear, apparatus, device, container, seabed mineral, seaweed, or other thing for any period that is reasonably necessary to enable the inspector to carry out an examination or a search under this section.

*Carrying out search powers*

**105 Search powers**

A search power conferred by or under section 103 or 104 authorises the person exercising it—

- (a) to enter and search the vessel, installation, place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found in that place or vehicle, or thing, at any time that is reasonable:
- (b) to request any person to assist with the entry and search:
- (c) to use any force in respect of any property that is reasonable for the purposes of carrying out the search and any lawful seizure:
- (d) to seize anything that is the subject of the search or anything else that may be lawfully seized:
- (e) to bring and use in or on the vessel, installation, place, vehicle, or other thing searched any equipment, to use any equipment found on the vessel, installation, place, vehicle, or other thing, and to extract any electricity from the vessel, installation, place, vehicle, or other thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:
- (f) to copy any document, or part of a document, that may lawfully be seized:
- (g) to use any reasonable measures to access a computer system or other data storage device located (in whole or in part) in the vessel, installation, place, vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device:
- (h) if any intangible material accessed under paragraph (h) is the subject of the search or may otherwise be lawfully seized, to copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination):
- (i) to take photographs, sound and video recordings, and drawings of the vessel, installation, place, vehicle, or other thing searched, and of any thing found in or on that vessel, installation, place, vehicle, or other thing, if the person exercising the power has reasonable grounds to believe that the photographs or recordings or drawings may be relevant to the purposes of the entry and search.

**106 Powers of persons called to assist**

- (1) Every person called on to assist an inspector exercising a search power under section 103 or 104 is subject to the control of the inspector with overall responsibility for exercising that power.
- (2) Every person called on to assist a person exercising a search power may—
  - (a) enter the vessel, installation, place, vehicle, or other thing to be searched:

- (b) while under the direction of the person exercising the power, use reasonable force in respect of any property for the purposes of carrying out the entry and search and any lawful seizure:
  - (c) search areas within the vessel, installation, place, vehicle, or other thing that the person exercising the power has determined may lawfully be searched:
  - (d) seize anything that is the subject of the search or anything else that may be lawfully seized:
  - (e) take photographs, sound and video recordings, and drawings of the vessel, installation, place, vehicle, or other thing, and things found in or on the vessel, installation, place, vehicle, or other thing, if the person exercising the power has determined that those things may be lawfully taken:
  - (f) bring into or onto the vessel, installation, place, vehicle, or other thing searched and use any equipment, make use of any equipment found in or on the vessel, installation, place, vehicle, or other thing, or extract electricity from the vessel, installation, place, vehicle, or other thing for the purposes of operating the equipment that the person exercising the power has determined may be lawfully used:
  - (g) bring in and use in or on the vessel, installation, place, vehicle, or other thing searched a dog (being a dog that is trained to undertake searching for law enforcement purposes and that is under the control of its usual handler):
  - (h) use any reasonable measures to access a computer system or other data storage device located (in whole or in part) in the vessel, installation, place, vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device:
  - (i) if any intangible material accessed under paragraph (h) is the subject of the search or may otherwise be lawfully seized, to copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination):
  - (j) copy any document, or part of a document, that the person exercising the power has determined may be lawfully copied.
- (3) If a constable is assisting another person exercising the search power, that constable may, without any direction or supervision by the person he or she is assisting, exercise any power ordinarily exercisable by that constable.
- (4) The person exercising the search power must—
- (a) accompany any assistant on the first occasion when the assistant enters the vessel, installation, place, vehicle, or other thing to be searched; and
  - (b) provide any other supervision of any assistant that is reasonable in the circumstances.
- (5) Subsection (4) does not apply if the assistant is a constable.

**107 Items of uncertain status may be seized**

If a person exercising a search power is uncertain whether any item found may lawfully be seized, and it is not reasonably practicable to determine whether that item can be seized at the vessel, installation, place, vehicle, or other thing where the search takes place, the person exercising the search power may remove the item for the purpose of examination or analysis to determine whether it may be lawfully seized.

**108 Other powers of inspectors**

An inspector has, in addition to the powers conferred by sections 103 to 106, any other powers, not inconsistent with those sections, that are prescribed.

**109 Duties of inspectors**

An inspector must take all reasonable steps to avoid—

- (a) spending excessive time on a title holder's premises, vessels, or installations:
- (b) disrupting lawful seabed mineral activities:
- (c) unjustifiably removing samples:
- (d) interfering with the safe and normal operations of vessels or installations.

**110 Review of inspector's activities**

- (1) Any title holder who considers that an inspector is acting outside the scope of authority conferred under this Act or the regulations may apply to the Authority for an administrative review of the inspector's decision or action.
- (2) However, unless the court orders otherwise, the title holder must comply with the decision or action under review while the review is pending.

**111 Facilitation of exercise of inspector's powers**

- (1) A title holder and its associates and affiliates must—
  - (a) comply with the reasonable requests of an inspector; and
  - (b) provide an inspector with reasonable and safe accommodation and subsistence while the inspector is on board any vessel or installation for the purposes of this Act or the regulations.
- (2) A person who obstructs, intimidates, or abuses an inspector commits an offence and is liable on conviction to a fine not exceeding \$200,000, or to imprisonment for a term not exceeding 2 years, or both.
- (3) A title holder who contravenes subsection (1) is liable to pay a pecuniary penalty not exceeding \$200,000.
- (4) Subsections (2) and (3) are subject to section 115(5).

*Directions***112 Directions**

- (1) The Authority or an inspector may, if he or she considers it necessary or desirable, issue a direction requiring any person to—
  - (a) take corrective action in relation to—
    - (i) a suspected, observed, or anticipated contravention of this Act, the regulations, or the title and its terms:

- (ii) any circumstance that has resulted in, or presents a risk of, serious harm to life or to the marine environment:
- (b) pay money to another person to cover reasonable costs incurred by that person due to failure to comply with this Act or the regulations:
- (c) provide information that the Authority or inspector reasonably believes—
  - (i) is in the person's possession; and
  - (ii) relates to any title or regulated activity; and
  - (iii) is relevant to the performance of the Authority's functions.
- (2) A direction may include a mandatory timeframe for compliance with the direction, or specify any other condition or circumstance by reference to which the direction is to have effect.
- (3) The subject of a direction made under this section may apply as soon as practicable and within the prescribed period (if any) to the responsible Minister for an administrative review of the direction, which must be completed 28 days', and the responsible Minister must indicate whether the subject must comply with the direction while the review is pending.
- (4) The power in subsection (1)(c) to require the supply of information is subject to any privilege recognised in a court of law.

### **113 Consequences of non-compliance with section 112**

- (1) A title holder who does not comply with a direction given under section 112 is liable to pay a pecuniary penalty not exceeding \$500,000.
- (2) A person who does not comply with a direction given under section 112 commits an offence and is liable on conviction to a fine not exceeding \$250,000.
- (3) It is a defence for a person subject to proceedings for payment of a pecuniary penalty under subsection (1) or charged with an offence under subsection (2) that—
  - (a) the person took all reasonable steps within the person's control to ensure that the required action would be complied with in time;
  - (b) compliance with the direction would cause a person to breach another statutory requirement.
- (4) Subsections (1) and (2) are subject to section 115(5).

### **114 Action by Authority where there is failure to comply with direction**

- (1) The Authority may take any action necessary to give effect to a direction under section 112 if—
  - (a) a timeframe for compliance specified in the direction has ended; and
  - (b) the person to whom the direction was given or to whom it extended has not complied with the direction.
- (2) If the Authority takes action under subsection (1),—
  - (a) the reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority by the person whose failure to comply with the direction led to the taking of that action; and
  - (b) the debt is recoverable through proceedings before the court.

*Pecuniary penalties***115 Pecuniary penalties**

- (1) The Commissioner may bring civil proceedings in the court seeking a pecuniary penalty.
- (2) Before imposing a pecuniary penalty, the court must be satisfied on the balance of probabilities that the defendant breached the Act or regulations or is responsible for the action or inaction that makes a person liable to the imposition of a penalty.
- (3) In determining the amount of a pecuniary penalty under this Act, the court must have regard to all relevant matters, including—
  - (a) the nature, extent and circumstances of the relevant conduct;
  - (b) any loss or damage suffered as a result of the relevant conduct;
  - (c) the person's history of compliance with the Act.
- (4) Where a contravention of a pecuniary penalty provision is a continuing one, the court may order payment of a pecuniary penalty in respect of each day or part of a day on which the contravention continues.
- (5) Criminal proceedings may not be brought against a person for the same conduct that is already the subject of a court order to pay a pecuniary penalty.
- (6) Within a six-year limitation period, the Commissioner may institute proceedings in the court for the recovery on behalf of the Authority of a pecuniary penalty imposed under this Act.

*Administrative action***116 Administrative action**

- (1) This section applies—
  - (a) if the Authority determines that a licensee has materially or repeatedly breached—
    - (i) an undertaking, condition, or term of its title; or
    - (ii) a requirement of this Act or other law of the Cook Islands; or
    - (iii) a direction of the Authority under this Act; or
    - (iv) a condition imposed under the Environment Act 2003;
  - (b) if the Authority determines that administrative action is necessary or desirable in order to secure compliance by the licensee with the licensee's obligations and undertakings under this Act, the regulations, and the licence;
  - (c) if the licensee has made no material efforts to undertake, or has been prevented from undertaking due to reasons outside the licensee's control, the licensed seabed mineral activities for a period exceeding 2 years;
  - (d) if the licensee has failed to comply with a final binding decision of a dispute settlement body applicable to it;
  - (e) if any payment or deposit due under this Act or the regulations is in arrears or unpaid for six months after the day on which it ought to have been paid;
  - (f) if there is a transfer, mortgage, lease of a title, or significant change in the constitution, ownership, or control of the title holder without the Authority's prior written consent.

- (2) The Authority may take any one or more of the following administrative actions in respect of the licensee:
- (a) counsel the licensee as to matters relating to its conduct;
  - (b) issue written warnings, including warnings in relation to possible action the Authority may take in the event of future breaches;
  - (c) enter into a written agreement providing for the licensee to undertake a specified action in relation to the licence, including programmes of remedial or mitigation action;
  - (d) issue a direction under section 112;
  - (e) subject to section 118, impose an administrative penalty of \$10,000 for each day during which the breach continues;
  - (f) impose immediate temporary restrictions on the seabed mineral activities of the licensee to mitigate an imminent risk of an incident, or a material breach of the licence or a law of the Cook Islands;
  - (g) publish information about any conduct of the licensee, or any action taken under this subsection, in any form that the Authority considers appropriate.
- (3) The Authority must ensure that any action under subsection (2)—
- (a) is consistent with the purposes of the Act; and
  - (b) is commensurate with the gravity, frequency, and other circumstances of the relevant conduct of the licensee, including the licensee's previous conduct under the licence.

**117 Grounds for variation, suspension, or cancellation of licence**

- (1) The Authority may, subject to section 118, vary, suspend, or cancel a licence in any of the following circumstances without the licensee's consent:
- (a) in the event of a serious, persistent, or wilful breach of a material term of the title that either cannot be remedied or has not been remedied on the giving of reasonable notice by the Authority;
  - (b) if the licensee ceases to meet one or more of the qualifications or evaluation criteria for the grant of the licence in a material way;
  - (c) if the variation, suspension, or cancellation is, in the reasonable opinion of the Authority, necessary to—
    - (i) prevent serious harm to the marine environment or to the safety, health, or welfare of any person; or
    - (ii) avoid a conflict with any obligation of the Cook Islands under international law or any instrument in force for the Cook Islands; or
    - (iii) avoid any situation that may reasonably be expected to lead to a breach of international or domestic peace and security; or
    - (iv) avoid damage to the national interest.
  - (d) if, in the view of the Cabinet, the relevant seabed mineral activities constitute an unacceptable risk to the Cook Islands or are clearly no longer in the public interest due to changes in the circumstances relating to the seabed mineral activities, including (without limitation)—
    - (i) the market for seabed minerals;



- (ii) scientific knowledge or best environmental practice pertaining to seabed mineral activities;
  - (iii) the state of technology used for seabed mineral activities;
  - (iv) the capacity of the licensee to adapt to the changes in circumstances.
- (2) The Authority may vary, suspend, or cancel a title at any time with the consent of the licensee.
  - (3) A variation, suspension, or cancellation of a licence may be in whole or in part, including by reference to one or more specified blocks or cells covered by a licence, a specified period of time, or a specified right conferred by the licence.
  - (4) A power to suspend a title under this Act includes a power to lift the suspension, and if the Authority has suspended a licence it may, by notice, require the licensee to resume its activities.

### **118 Procedures for regulatory action**

- (1) The Authority must not take action against a licensee under any of sections 114, 116(2)(d), (e), and (f), and 117(1) unless the Authority first—
  - (a) gives the licensee written notice that—
    - (i) sets out details of and reasons for the proposed regulatory action; and
    - (ii) specifies a time period that is reasonable in the circumstances within which the licensee may do either or both of the following:
      - (A) take remedial action;
      - (B) make a written submission to the Authority about the proposed regulatory action; and
  - (b) takes into account any action taken or submission provided under paragraph (a)(ii); and
  - (c) gives the licensee a final written notice that sets out the details of and reasons for the regulatory action.
- (2) The Authority must—
  - (a) give notice of any action taken against a licensee under section 116(2)(d), (e), and (f) or 117 to the Committee and to any other persons that the Authority considers appropriate, and publish a summary of the notice on the Authority's website; and
  - (b) ensure that any notice under subsection (1)(c) that varies, suspends, or cancels a licence is counter-signed by the responsible Minister, after obtaining Cabinet approval, and registered in the register of titles.
- (3) The Authority must, in a notice that has the effect of suspending a title, specify how the suspension affects the rights and obligations of the title holder.
- (4) This section does not apply to a decision of the Authority to vary a detail of a licence work plan by written notice to the licensee if the variation—
  - (a) is, in the Authority's reasonable view, minor or requires expeditious action to meet the objectives of this Act; and
  - (b) does not require variation of a term of the licence.

## Part 8 Seabed mining in international seabed area

### Subpart 1—Preliminary matters

#### 119 Interpretation

In this Part, unless the context otherwise requires,—

**CIIC** means the Cook Islands Investment Corporation

**contract area** means any part of the Area in respect of which there is in force a contract between a sponsored party and the ISA for the conduct of ISA seabed mineral activities

**exploitation** means the recovery for commercial purposes of seabed minerals in the Area as is defined as exploitation by the rules of the ISA

**exploration** means the searching for deposits of seabed minerals in the Area with exclusive rights, as is defined as exploration by the rules of the ISA

**country** means the Cook Islands

**incident** means an event that occurs when—

- (a) any ship or installation or other similar item or structure while engaged in ISA seabed mineral activities is lost, abandoned, or capsized, or collides, or incurs significant damage;
- (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in ISA seabed mineral activities, except in the case of a loss of life that is certified by an independent medical practitioner as being the result of natural causes;
- (c) the conduct of ISA seabed mineral activities results in significant unanticipated or unlawful adverse impact to or pollution of the marine environment or damage to submarine cables or other marine users;
- (d) the ISA issues an emergency order in connection with the ISA seabed mineral activities, or the sponsored party, at the requirement of the ISA or the rules of the ISA, implements an emergency response plan or protocol

**International Seabed Authority** or **ISA** means the International Seabed Authority established by Part XI Section 4 of the UN Convention on the Law of the Sea as the organisation through which States parties to the UN Convention on the Law of the Sea must organise and control ISA seabed mineral activities in the Area

**ISA seabed mineral activities** means operations for the exploration or exploitation of seabed minerals within the Area under contract with the ISA under the Cook Islands sponsorship in accordance with this Part

**marine environment** means—

- (a) the environment of the sea; and
- (b) includes the physical, chemical, geological, biological and genetic components, conditions, and factors that interact and determine,—
  - (i) the productivity, state, condition, and quality of the marine ecosystem; and
  - (ii) the waters of the seas and oceans; and
  - (iii) the airspace above those waters and the seabed; and

(iv) the ocean floor and its subsoil

**qualification criteria** means the criteria that must be met before a sponsorship certificate can be issued, as provided in section 134(2) of this Act

**rules of the ISA** means—

- (a) any rules, regulations, or procedures adopted by the ISA under to powers conferred on the ISA by the UN Convention on the Law of the Sea that are from time to time in force; and
- (b) any contractual terms contained in a contract between the ISA and a sponsored party relating to ISA seabed mineral activities

**sponsored party** means a person who holds a current sponsorship certificate, that person's representatives or officers, and any person or persons to whom the sponsorship certificate may lawfully have been assigned

**sponsorship applicant** means a person applying for a sponsorship certificate under this Act

**sponsorship application** means an application made by a person for a sponsorship certificate under this Act

**sponsorship certificate** means a certificate validly issued by the Cook Islands under this Part

**sponsoring State** means a State party to the UN Convention on the Law of the Sea sponsoring a person to carry out exploration or exploitation in the Area in accordance with Article 153(2)(b) of the UN Convention on the Law of the Sea

**State party** means a State which has consented to be bound by the UN Convention on the Law of the Sea

**technical committee** means any technical committee, appointed by the Minister in accordance with section 127

**UN Convention on the Law of the Sea** means the United Nations Convention on the Law of Sea of 10 December 1982 entered into force on 16 November 1994; the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, and any Annexes thereto.

- (2) Unless a contrary intention appears, words and expressions used in this Part have the same meaning as used in the UN Convention on the Law of the Sea.

### *Scope of this Part*

#### **120 Scope of this Part**

- (1) The objectives of this Part are to—
- (a) enable the Cook Islands to act as a sponsoring State for the purposes of engaging in ISA seabed mineral activities in the Area;
  - (b) empower the Cook Islands to participate in ISA seabed mineral activities, whether directly, through a body corporate established under this Act, or through sponsorship of a third party contractor with the ISA;
  - (c) establish a clear and stable legal operating environment for persons sponsored or engaged by the Cook Islands to undertake ISA seabed mineral activities in the Area;

- (d) ensure that ISA seabed mineral activities are carried out only by entities that are under the Cook Islands' effective control, and in a manner that is consistent with the rules of the ISA and the Cook Islands' responsibilities under the UN Convention on the Law of the Sea, and other applicable requirements of international law;
  - (e) implement measures to maximise the benefits of ISA seabed mineral activities for present and future generations.
- (2) In order to achieve its objectives, this Part, among other things,—
- (a) identifies the responsible authority within Government to manage and regulate the Cook Islands involvement with ISA seabed mineral activities, as the Authority;
  - (b) establishes a system for sponsorship application, and the grant of sponsorship certificates under which sponsored parties will be authorised to engage in ISA seabed mineral activities under specific and enforceable conditions;
  - (c) provides for the Cook Islands to receive payments for its sponsorship of ISA seabed mineral activities, and for a ring-fenced sovereign wealth fund for ISA seabed minerals revenues for the responsible long-term management of any such revenues generated by the Cook Islands from ISA seabed mineral activities.
- (3) The provisions of this Part are based on an expectation that the rules of the ISA and the ISA's monitoring and enforcement capacity will be developed in an appropriate and timely manner for the purpose of ensuring that ISA seabed mineral activities will comply with relevant standards and obligations of international law.

## 121 Jurisdiction

By this Part, the Cook Islands recognises—

- (a) the seabed resources of the area to be the common heritage of mankind; and
- (b) that the rights to the area are governed by the UN Convention on the Law of the Sea and the rules of the ISA; and
- (c) the ISA's responsibility under the UN Convention on the Law of the Sea to organise and control activities in the area on behalf of mankind as a whole, including to—
  - (i) process applications for approval of plans of work for exploration and exploitation; and
  - (ii) monitor compliance with plans of work, approved in the form of a contract, including through a staff of inspectors; and
  - (iii) adopt rules, regulations and procedures necessary for the conduct of exploration and exploitation; and
- (d) the rules of the ISA for the—
  - (i) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment; and

- (ii) prevention, reduction, and control of pollution and other hazards to, and interference with the ecological balance of, the marine environment; and
- (iii) exercise of such control over activities in the area as is necessary for the purpose of securing compliance with the UN Convention on the Law of the Sea and the rules of the ISA by contractors carrying out activities in the area; and
- (e) the responsibility of States parties to assist the ISA in exercising the duty outlined in paragraph; and
- (f) that ISA seabed mineral activities must be carried out in association with the ISA only by—
  - (i) State parties; or
  - (ii) State enterprises, or
  - (iii) persons sponsored by State parties; and
- (g) if a State is a sponsoring State, the State's duty to effectively control any person engaged in activities in the area under its sponsorship, in order to ensure conformity of those activities with the UN Convention on the Law of the Sea and the rules of the ISA.

## **122 ISA seabed mineral activities**

- (1) The Cook Islands Government may, in accordance with the provisions of the UN Convention on the Law of the Sea, apply to the ISA to be issued a contract for ISA seabed mineral activities directly, through a State enterprise, or in partnership with a sponsored party.
- (2) CIIC may act as a State enterprise under this Part for the purpose of entering into a contract with the ISA and being a sponsored party.

## Subpart 2—Cook Islands sponsorship of seabed mineral activities

### **123 Administration**

- (1) If a state-owned enterprise holds an ISA contract, the responsible Minister (acting through CIIC) is responsible for the performance of the contract.
- (2) If the Cook Islands sponsors a sponsored party to conduct ISA seabed mineral activities, the Authority is—
  - (a) responsible for the regulatory supervision of the sponsorship, and in particular for ensuring that the performance of the contract takes place in accordance with—
    - (i) the rules of the ISA; and
    - (ii) this Act; and
    - (iii) other relevant laws of the Cook Islands.
- (3) In undertaking these roles,—
  - (a) CIIC and the Authority have all reasonable powers required, including a power to appoint any persons qualified for the purpose to assist in the discharge of the relevant functions:
  - (b) the Authority must act in a way that is compatible with principles of best regulatory practice, including that regulatory activities should be—

- (i) proportionate; and
- (ii) accountable; and
- (iii) consistent; and
- (iv) transparent; and
- (v) targeted only at cases in which action is needed.

**124 Consultation**

The Authority may at any time and in any way that it sees fit consult with persons of relevant expertise, interest groups, the technical committee, the Seabed Minerals Advisory Committee, or the general public, before taking a decision or action under this Part.

**125 Objectives of the Authority**

In performing its functions under this Part, the Authority has the following objectives:

- (a) to provide a stable, transparent and accountable regime within the Cook Islands for the sponsorship and supervision of ISA seabed mineral activities;
- (b) to maintain effective control of sponsored parties, and to secure compliance by sponsored parties with the rules of the ISA and any other relevant rules and internationally agreed standards;
- (c) to ensure that the conduct of ISA seabed mineral activities maximises benefits to the Cook Islands and its people.

**126 Functions of the Authority under this Part**

(1) The Authority, in relation to ISA seabed mineral activities, has the following functions:

- (a) receiving and considering recommendations regarding sponsorship applications, and preparing and issuing certificates of sponsorship for successful sponsorship applicants;
- (b) liaising with the ISA and any other relevant international organisations to facilitate a sponsored party's application to the ISA for a contract, and to facilitate the Cook Islands and its sponsored parties' understanding of and compliance with relevant international laws, standards, and rules;
- (c) assisting the ISA in its work to establish, monitor, implement, and secure compliance with the rules of the ISA;
- (d) undertaking any advisory, supervisory, or enforcement activities in relation to ISA seabed mineral activities or the protection of the marine environment, in the event this is required in addition to the ISA's work, in order for the Cook Islands to meet its obligations under the UN Convention of the Law of the Sea, whether as a State enterprise or as a sponsoring State;
- (e) requiring and reviewing relevant reports and information, and maintaining appropriate records, relating to ISA seabed mineral activities;
- (f) insofar as they are not prescribed by law, negotiating financial terms in respect of ISA seabed mineral activities with sponsored parties and other parties engaged in ISA seabed mineral activities.

- (2) The responsible Minister may give any directions to the Authority, not inconsistent with the provisions of this Part and the UN Convention on the Law of the Sea, as to the performance of the functions and duties of the Authority under this Part, as the responsible Minister considers appropriate.

**127 Technical committee**

- (1) The responsible Minister may at any time appoint a technical committee, which must, on the Authority's request, provide technical and policy advice and recommendations to the Authority to assist the Authority in the performance of its functions.
- (2) The technical committee is composed of officials and other members as determined by the responsible Minister.

**128 Jurisdiction of High Court**

- (1) The High Court has jurisdiction to determine proceedings—
- (a) involving the judicial review of administrative decisions, determinations, actions, or inquiries taken under this Part; or
  - (b) to establish liability and to provide recourse for prompt and adequate compensation in the event of damage caused by ISA seabed mineral activities, in accordance with Article 235(2) of the UN Convention on the Law of the Sea.
- (2) However, any judicial review proceedings referred to in subsection (1) must be brought within 28 days of the date on which the applicant receives notice of the decision, determination, action or inquiry that is the subject of the proceedings.

### Subpart 3—Sponsorship applications

**129 Invitation for sponsorship applications**

The Authority may in any manner it considers appropriate invite sponsorship applications, or conduct discussions with sponsorship applicants or potential sponsorship applicants.

**130 Eligibility to Perform ISA seabed mineral activities**

To be eligible to perform ISA seabed mineral activities, a sponsorship applicant must, in relation to those activities, first—

- (a) obtain a valid sponsorship certificate from the Authority; and
- (b) obtain a valid contract from the ISA.

**131 The processing of sponsorship applications**

The Authority—

- (a) must deal with sponsorship applications promptly, and in accordance with this Part;
- (b) may do one or more of the following things:
  - (i) request further information from a sponsorship applicant; and
  - (ii) request the sponsorship applicant to amend any part of its sponsorship application, at any time before making a recommendation under section 135; and

- (iii) may return a sponsorship application without a decision if the sponsorship applicant fails to comply with a reasonable request under subparagraph (i).

### **132 Evidence**

- (1) In making a recommendation under section 135 of this Act to sponsor or not to sponsor, the Authority may take into account—
  - (a) any or all of the information submitted by the sponsorship applicant; and
  - (b) any relevant information in the public domain; and
  - (c) any information received from the technical committee or other consultation; and
  - (d) any relevant information otherwise held in the records of Government of the Cook Islands.
- (2) A previous decision by the ISA to grant a sponsorship applicant a contract for activities similar to those that are the subject of a sponsorship application may be considered by the Authority as evidence in relation to any of the qualification criteria for that sponsorship application.

### **133 Content of sponsorship application**

A sponsorship application must be made in writing to the Authority and must—

- (a) provide evidence that the sponsorship applicant meets the qualification criteria; and
- (b) include—
  - (i) the same content that is required by the rules of the ISA for an application for approval of a plan of work to obtain a contract for the proposed ISA seabed mineral activities;
  - (ii) written undertakings by way of a statutory declaration that the sponsorship applicant—
    - (A) will fully comply with its obligations under the rules of the ISA and this Part, including by submitting to the respective regulatory authorities of the ISA and the Authority; and
    - (B) warrants that the content of the sponsorship application is true and accurate to the best of its belief, and
    - (C) intends to apply for a contract with the ISA to conduct exploration or exploitation in the Area under sponsorship by the Cook Islands;
  - (iii) copies and easily comprehensible summaries of any studies conducted by the sponsorship applicant, or other data in relation to the potential of the site or sites within which the proposed ISA seabed mineral activities will be conducted;
  - (iv) copies or summaries of any studies conducted by the sponsorship applicant or other data in relation to the potential impact of the ISA seabed mineral activities on the marine environment;
  - (v) an indication insofar as known of the sponsorship applicant's proposed—
    - (A) methods for financing the ISA seabed mineral activities;



- (B) ownership of, leasing of, or other arrangements to use vessels and equipment required for the operation of the ISA seabed mineral activities:
- (C) insurance or contingency funding to cover damage that may be caused by the ISA seabed mineral activities or the costs of responding to an incident:
- (vi) a list of employees required to operate the ISA seabed mineral activities, and an indication of whether any of these will be recruited from the Cook Islands:
- (vii) a capacity-building programme providing for the training of personnel of the Cook Islands:
- (viii) the fee required by section 153 of this Act:
- (ix) a statement as to whether the sponsored party or any of its directors has previously been found on reasonable evidence to have—
  - (A) breached a material term or condition of the rules of the ISA; or
  - (B) been convicted of an offence or incurred a civil penalty relating to the conduct of ISA seabed mineral activities or similar sea or land-based activities in another jurisdiction; or
  - (C) been convicted of an offence involving fraud or dishonesty:
- (x) any further matters as may be prescribed by the regulations.

#### 134 **Qualification criteria**

The Authority may recommend to the responsible Minister that the responsible Minister issue a sponsorship certificate if it is satisfied that—

- (a) the undertakings required by section 133 have been given; and
  - (b) the qualification criteria in subsection (2) are met; and
  - (c) the proposed ISA seabed mineral activities—
    - (i) will not result in irreparable harm to any community, environment, cultural practice, or industry in the Cook Islands; and
    - (ii) would be generally in the public interest of the country, taking into account the potential for capacity-building and/or local employment and the long-term economic benefit to the Cook Islands.
- (2) The qualification criteria are that—
- (a) the sponsorship applicant—
    - (i) is an existing body corporate, registered in the Cook Islands; and
    - (ii) has, or will have, at the commencement of the proposed ISA seabed mineral activities, sufficient financial and technical resources and capability to—
      - (A) properly perform the ISA seabed mineral activities in compliance with the rules of the ISA; and
      - (B) to cover damage that may be caused by the ISA seabed mineral activities or the costs of responding to an incident; and
  - (iii) has paid any applicable fees:

- (b) the proposed ISA seabed mineral activities are—
  - (i) consistent with the rules of the ISA, including in relation to environmental management; and
  - (ii) compatible with applicable national and international laws, including those relating to safety at sea and the protection and preservation of the marine environment; and
  - (iii) will not unduly affect—
    - (A) the rights of other legitimate sea users; or
    - (B) the protection and preservation of the marine environment, or
    - (C) international peace and security.

**135 Sponsorship certificate recommendation**

- (1) The Authority must make a recommendation to the responsible Minister, taking into account any advice from the technical committee, whether or not to sponsor the sponsorship applicant.
- (2) The responsible Minister must present the recommendation to Cabinet, as soon as practicable or within the prescribed time (if any) after receiving it.

**136 Sponsorship certificate decision**

- (1) The Cabinet must make a decision, based on the Authority's recommendation, whether or not to sponsor the sponsorship applicant.
- (2) The Authority must inform the sponsorship applicant of the decision taken under subsection (1) within 10 days of that decision having been taken by the Cabinet.

**137 Notice of sponsorship certificate decision**

- (1) If a decision is taken under section 136 to decline to sponsor the sponsorship applicant, the Authority must—
  - (a) provide the sponsorship applicant with a written statement of the reasons for that decision; and
  - (b) give the sponsorship applicant a reasonable opportunity to re-submit an amended version of that sponsorship application, without requiring another application fee.
- (2) If a decision is taken by the Cabinet to sponsor a sponsorship applicant, public notice of the decision must be given by the Authority within 30 days of that decision.

**138 Terms of sponsorship certificate**

If a decision is taken by the Cabinet to sponsor a sponsorship applicant, a sponsorship certificate, signed by the responsible Minister, must be issued to the sponsored party in a form necessary to satisfy the rules of the ISA, and must contain—

- (a) the name of the sponsored party;
- (b) a statement that the sponsored party is—
  - (i) a national of the Cook Islands; or
  - (ii) subject to the effective control of the Cook Islands or its nationals;
- (c) a statement by the State that it sponsors the sponsored party;

- (d) the date of deposit by the State of its instrument of ratification of, or accession or succession to, the UN Convention on the Law of the Sea;
- (e) a declaration that the State assumes responsibility in accordance with Article 139, Article 153(4), and Annex III, Article 4(4), of the UN Convention on the Law of the Sea;
- (f) the date at which the sponsorship commences;
- (g) a statement that the sponsorship certificate remains in force for the duration of any ISA contract awarded to the sponsored party under the State's sponsorship (including during any extension or renewal of the contract), unless otherwise terminated in accordance with this Act and the rules of the ISA;
- (h) any other content reasonably required by the ISA or that the Authority considers appropriate to include.

### **139 Application by sponsored party to ISA**

- (1) A sponsored party must, on the basis of the sponsorship application, submit an application to the ISA for a contract to explore or exploit in the area under the Cook Islands sponsorship if it wishes to explore or exploit in the area.
- (2) The Authority must provide all reasonable co-operation to the sponsored party to facilitate the preparation, submission, and support of the application to the ISA.
- (3) The costs of presenting that application to the ISA must be met by the sponsored party, including any costs reasonably incurred by the Government of the Cook Islands in taking actions either requested by the sponsored party or considered necessary by the Government of the Cook Islands, under the rules of the ISA, to support the application before the ISA.

### **140 Sponsorship agreements**

- (1) The responsible Minister, with the Cabinet's approval on the recommendation of the Authority, may enter into written agreements in the prescribed manner and subject to the prescribed requirements (if any) with the sponsored party at any time to establish additional terms and conditions as to the sponsorship arrangement.
- (2) Subsection (1) only applies if the terms of such an agreement do not, or are not likely to, lead to a contravention by the Government of the Cook Islands or the sponsored party of the rules of the ISA or this Act.

## **Subpart 4—Obligations pertaining to the conduct of ISA seabed mineral activities**

### **141 Duties relating to ISA seabed mineral activities**

Any person engaging in ISA seabed mineral activities is required, among other matters, to—

- (a) comply with the provisions of the rules of the ISA and this Part;
- (b) provide sufficient training, supervision, and resources to employees, agents, or officers so as to ensure compliance with the rules of the ISA and any other instructions or requests of the ISA:

- (c) facilitate the ISA's and the Authority's regulation of ISA seabed mineral activities in accordance with the rules of the ISA and this Act, and comply with the reasonable requests, directions, or orders of the ISA or the Authority made under this Part:
- (d) apply the precautionary approach, and employ best environmental practice in accordance with prevailing international standards in order to avoid, mitigate, or remedy adverse effects of ISA seabed mineral activities on the marine environment:
- (e) offer to government officials and nationals of the Cook Islands opportunities for training in relation to, and opportunity to participate in, the ISA seabed mineral activities:
- (f) regularly consult with, refer any technical matters to, and take into account in its decision-making relating to ISA seabed mineral activities any recommendations from the Authority:
- (g) at all material times, maintain appropriate insurance policies that provide adequate cover for identified risks and costs of damages that may be caused by the ISA seabed mineral activities, or otherwise satisfy the Cook Islands of its financial and technical capability to respond to potential incidents:
- (h) report to the ISA and the Authority immediately in the event of an incident occurring or appearing reasonably likely to occur, and respond efficiently and responsibly to the incident, including by seeking and following the ISA's and the Authority's directions, where appropriate:
- (i) submit to the ISA and the Authority, immediately in writing, notice of any new information arising or data collected that materially affect—
  - (i) the qualification criteria; or
  - (ii) the programme of work; or
  - (iii) the sponsored party's ability to adhere to the terms of the rules of the ISA:
- (j) at all material times, ensure that—
  - (i) any vessels, installations, and equipment engaged in ISA seabed mineral activities are registered with a reputable shipping registry, are in good repair, and comply with the laws of the flag State; and
  - (ii) working conditions for personnel engaged in ISA seabed mineral activities meet applicable employment rules and health and safety standards:
- (k) ensure that mineral materials or waste are not dumped from any vessel being used for the ISA seabed mineral activities, except in accordance with relevant international law or the rules of the ISA:
- (l) ensure that ISA seabed mineral activities do not proceed or continue without obtaining prior specific written consent from the ISA to proceed, if evidence arises that to proceed is reasonably likely to cause significant adverse impact to—
  - (i) the marine environment; or
  - (ii) the safety, health, or welfare of any person:

- (iii) other existing or planned legitimate sea uses, including, but not limited to, marine scientific research, navigation, submarine cables, fisheries, or conservation activities:
- (m) ensure that the content of data, reports, or other information submitted to the ISA in relation to the relevant seabed minerals activities is true, accurate, and comprehensive, and that copies of the same are submitted to the Authority along with easily comprehensible summary documents:
- (n) ensure that trading arrangements or subcontracts with third parties for the delivery of services relating to the performance of ISA seabed mineral activities are entered only where such subcontracts contain provisions—
  - (i) to ensure the conformity of any subcontractor's activities with—
    - (A) the rules of the ISA and this Act; and
    - (B) any other applicable laws of the Cook Islands; and
  - (ii) requiring that evidence to verify this be provided to the Authority on request.

#### **142 Liability of sponsored party and indemnity against third party claims**

- (1) A sponsored party is—
  - (a) responsible for—
    - (i) the performance of all ISA seabed mineral activities carried out within the contract area; and
    - (ii) their compliance with the rules of the ISA; and
  - (b) liable for the actual amount of any compensation, actionable damage to third parties or the environment, or penalties arising out of its failure so to comply, or out of any acts or omissions in the conduct of the ISA seabed mineral activities.
- (2) The sponsored party must at all times keep the Cook Islands Government indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to its ISA seabed mineral activities.

### Subpart 5—Role of the Cook Islands as sponsoring State or State enterprise

#### **143 Duties as sponsoring State**

- (1) If the Cook Islands is sponsoring a sponsored party the Cook Islands acting through the Authority must—
  - (a) seek to ensure that the sponsored parties' conduct in relation to the ISA, the Area, and ISA seabed mineral activities adheres to the requirements and standards established by general principles of international law:
  - (b) take all appropriate means to maintain effective control over sponsored parties, and to ensure that any ISA seabed mineral activities are carried out in conformity with the UN Convention on the Law of the Sea, the rules of the ISA, and other requirements and standards established by general principles of international law:

- (c) do all things reasonably necessary to give effect to its sponsorship of a sponsored party, including undertaking any communications with, and providing any assistance, documentation, certificates and undertakings to, the ISA, or any other relevant party, required in respect of the sponsorship:
- (d) not impose—
  - (i) unnecessary, disproportionate, or duplicate regulatory burdens on sponsored parties:
  - (ii) requirements on a sponsored party under this Act or the Regulations unless, and only insofar as, these are consistent with existing requirements imposed by applicable standards of international law or are otherwise in the best interests of the Cook Islands:
- (e) promote the application of the precautionary approach by the sponsored party.

#### **144 Monitoring powers**

- (1) The Authority may make any examinations, inspections, and inquiries of sponsored parties regarding the conduct of ISA seabed mineral activities that are necessary to meet its responsibilities under international law.
- (2) These examinations, inspections, and inquiries may include—
  - (a) the sending of an observer to the site of the ISA seabed mineral activities and the vessel or premises of the sponsored party; or
  - (b) the inspection of relevant books, records and other relevant data at any time on giving reasonable notice to the sponsored party.
- (3) An observer must take all reasonable steps to avoid interference with the safe and normal operations taking place onboard vessels.
- (4) The Authority may direct any person to give it, within a reasonable time, any information—
  - (a) it reasonably believes is in that person's possession; and
  - (b) that is directly relevant to the discharge of the Authority's functions.
- (5) Failure to comply with a direction made under this section without reasonable justification is an offence punishable on conviction by a maximum fine of \$200,000.

#### **145 Administrative action**

- (1) If the Authority determines that a sponsored party has materially breached, or in the Authority's reasonable opinion is at serious risk of materially breaching, the rules of the ISA, or this Part, the Authority may—
  - (a) issue written warnings, including warnings in relation to possible action the Authority may take in the event of future material breaches:
  - (b) enter into a written agreement providing for the sponsored party to undertake a programme of remedial action and to mitigate the risk of re-occurrence:
  - (c) issue a written direction requiring the sponsored party to take specified action, or not take specified action, within a specified time frame, aimed to stop, remedy, or mitigate the risk of occurrence or reoccurrence of material breach:

- (d) in the case of actual material breach of the rules of the ISA or a direction made under paragraph (c),—
  - (i) impose on the sponsored party monetary penalties proportionate to the seriousness of the violation, but no greater than \$20,000 for each day for which the breach continues, which amount excludes any compensation payable for damage or harm;
  - (ii) commence a process under section 150 to revoke the sponsorship certificate.
- (2) Action taken under subsection (1) must be commensurate with the gravity, frequency, and other circumstances of the material or reasonably anticipated breach, including the sponsored party's previous conduct under the Cook Islands sponsorship.

### Subpart 6—Register, termination, transfer, extension of sponsorship

#### 146 Records

- (1) The Authority must retain up-to-date and accurate records of sponsorship applications received, sponsorship certificates issued, ISA contracts held, and all ensuing communication, reports, or other information created or received.
- (2) The Authority must ensure that all such records are held with appropriate confidentiality, and must not disclose commercially sensitive information unless agreed otherwise with the sponsored party.
- (3) Subsection (2)—
  - (a) overrides the Official Information Act 2008; but
  - (b) is subject to any order of a court.

#### 147 Security of tenure

A sponsorship certificate remains in force unless and until it is terminated in accordance with section 148.

#### 148 Termination of sponsorship

- (1) A sponsorship certificate terminates if, under this Act,—
  - (a) the sponsored party's contract with the ISA expires, is surrendered, or is terminated;
  - (b) it is surrendered by the sponsored party in accordance with section 149;
  - (c) it is revoked by the Authority in accordance with section 150 under the sponsorship certificate lease.
- (2) On termination, all rights granted by the Cook Islands under the sponsorship certificate cease.

#### 149 Surrender of sponsorship

A sponsored party may at any time surrender a sponsorship certificate without penalty by—

- (a) giving to the Authority not less than 3 months' previous notice in writing to that effect; and
- (b) complying with any relevant rules of the ISA.

**150 Revocation of sponsorship**

The responsible Minister, with Cabinet's approval, may revoke a sponsorship certificate, on the Authority's recommendation, for one or more of the following reasons:

- (a) in any case, with the written consent of the sponsored party;
- (b) if the sponsored party has failed to apply to the ISA for a contract, or has applied but failed to obtain a contract with the ISA, within 3 years of the date of issue of the sponsorship certificate;
- (c) if no material efforts have been made by the sponsored party to undertake the ISA seabed mineral activities for a period exceeding 5 years from the date of signing the contract with the ISA;
- (d) if—
  - (i) the sponsored party has conducted its activities in such a way as to result in a serious, persistent, or wilful violation of the rules of the ISA, the requirements of this Part, or a final binding decision of a dispute settlement body applicable to it; and
  - (ii) that violation either cannot be remedied or has not been remedied on the giving of reasonable notice by the Authority or the ISA;
- (e) if the sponsored party knowingly or recklessly provides the ISA or the Authority with information which is false or misleading in a material particular;
- (f) if the sponsored party fails to retain for a reasonable time period, wilfully alters, suppresses, conceals or destroys any document which is required to be produced to the ISA or the Authority;
- (g) if, following at least two written notices given by the Authority in accordance with this Act, any payment or deposit required under section 156 is in arrears or unpaid for six months following the day on which it ought to have been paid.

**151 Notice of revocation**

Before making a decision under section 150, the Authority must—

- (a) give to the sponsored party at least 30 days' written notice of the Authority's intention to make the decision, setting out details of that proposed decision and the reasons for it, and inviting the sponsored party to make a written submission to the Authority about the proposed decision within a specified timeframe, if the sponsored party objects to the proposed decision;
- (b) take into account in the decision any submissions received;
- (c) if the decision taken in paragraph (a) is to revoke the sponsorship certificate, give the sponsored party no fewer than 6 months' notice before that revocation takes effect.

**152 Ongoing liability after termination**

Despite the revocation of a sponsorship certificate, the previously sponsored party remains—



- (a) subject to any ongoing obligations with respect to ISA seabed mineral activities that occurred prior to termination, including requirements to submit reports and to make any required payments to the Authority or the ISA; and
- (b) responsible, in accordance with this Part, for any damage or claims from its acts or otherwise arising from Seabed Minerals Activities carried out prior to termination.

### Subpart 7—Financial arrangements

#### *Sponsorship application fee*

#### **153 Payments by sponsored parties**

- (1) A sponsorship applicant, on submission of a sponsorship application, must pay to the Authority a non-refundable fee of US\$15,000.

#### *Administration fees*

- (2) The holder of a sponsorship certificate must pay to the Authority an annual administration fee of US\$20,000—
  - (a) within six months from the date of the issue of the sponsorship certificate, and
  - (b) every year after that, on the anniversary each year of the date of the issue of the sponsorship certificate.
- (3) During the fifth year of the term of the sponsorship certificate, the Authority—
  - (a) may review the amount of the administration fee required each year for the remainder of the term of the sponsorship certificate; and
  - (b) may reasonably increase the amount where this is required to cover the actual costs to the Cook Islands of administering and supervising the sponsorship.

#### *Seabed Mineral recovery payment*

- (4) A sponsored party holding an ISA contract for Exploitation under the Cook Islands sponsorship must pay to the Authority such sums by way of a recovery payment as and when are agreed and specified in a written agreement made under section 140 before the commencement of Exploitation by the sponsored party.
- (5) The recovery payment amount must—
  - (a) take into account the set-up, exploration, and exploitation costs incurred by the sponsored party, and
  - (b) be based on a percentage of the latest market value of the metal content contained in the seabed minerals to be extracted by the sponsored party through the seabed minerals activities.

#### **154 Seabed Minerals Fund**

Any sums paid to the Cook Islands Government under this Part (except any funds allocated by the Ministry of Finance and Economic Management) to be used directly for the purposes of covering the costs of the Authority and performing its functions under this Part must be paid in the sovereign wealth fund referred to in section 100.

**155 Taxation**

A sponsored party is subject to the laws relating to the payment of corporate tax within the Cook Islands in relation to its profit from ISA seabed mineral activities.

**156 Financial payments to ISA**

A sponsored party is responsible for making prompt and full payment of any sums due to the ISA under the rules of the ISA.

**157 Recovery of payments owed by sponsored parties**

A sum of money payable under section 155 is a debt due to the State and may be recovered in a court of competent jurisdiction, and,—

- (a) in any such proceedings, a certificate of the Authority certifying that a specified sum of money is so payable may be received as evidence of that fact; and
- (b) any debt of the sponsored party may at the court's discretion be recovered from any security deposited by the same sponsored party under section 158; and
- (c) interest on the amount outstanding may additionally be charged at a prescribed or otherwise reasonable rate.

**158 Deposit of security**

- (1) The Authority may, after an exploitation contract has been granted by the ISA to the sponsored party, and before exploitation commences, require a sponsored party to deposit security as a guarantee of performance of its obligations under the rules of the ISA and this Act.
- (2) The form and value of any such security required, and the terms upon which it will be held, must be specified in a written agreement made under section 140, and must take into account the type and quantum of any security that the sponsored party is also required to deposit with the ISA.
- (3) A security deposited in accordance with this section may be used by the Authority to—
  - (a) take steps towards fulfilling any obligations that the sponsored party fails to fulfil under this Act; or
  - (b) rectify any damage or loss caused as a result of such failure; or
  - (c) satisfy any order of compensation or damages made against the sponsored party by the High Court.

**Subpart 8—Miscellaneous****159 Inquiries into Incidents**

The Authority may, in cooperation with the ISA, hold or may commission inquiries into incidents in the Area.

**160 Nothing to authorise unlawful interference with other sea users**

This Part does not authorise the unlawful interference with the freedom of the high seas or the conduct of marine scientific research by other persons or nations under the general principles of international law.

**161 Rights of other States not affected**

This Part does not affect the rights of coastal States in accordance with Article 142 and other relevant provisions of the UN Convention on the Law of the Sea.

**162 Interference with ISA seabed mineral activities or Authority**

- (1) Unless authorised under this Act or the regulations, any third party who interferes with ISA seabed mineral activities, or the Authority, or its representative in the performance of duties under this Part, or incites another person to so behave commits an offence and is liable on conviction to a fine not exceeding \$500,000.
- (2) For the purposes of subsection (1), **interfere** means wilful sabotage of ISA seabed mineral activities, or violence against or similar physical interference with any representative of the Authority or person conducting ISA seabed mineral activities.

**163 Public officials prohibited from acquiring Seabed Mineral rights**

- (1) No public official may, directly or indirectly, personally acquire any right or interest in any sponsored party contract for ISA seabed mineral activities, and any document or transaction purporting to confer any right or interest on any public official is null and void.
- (2) No public official engaged by the Authority may directly or indirectly acquire or retain any personal shareholding in a private company carrying on ISA seabed mineral activities.

**164 Offence committed by body corporate**

If an offence under this Part committed by a body corporate has been committed with the consent or connivance, or is attributable to the neglect, of any director or officer of the body corporate, that officer as well as the body corporate is guilty of that offence.

**165 Notice**

Any application, request, notice, warning, report, or direction made or given under this Part—

- (a) must be made by the responsible Minister or by the designated representative of the sponsored party, as the case may be, in writing; and
- (b) is deemed to be served the day after delivery, if delivered by hand, facsimile or email to the responsible Minister or to the designated representative.

**166 Disputes**

- (1) Any dispute arising between the Cook Islands and another State in connection with ISA seabed mineral activities must be resolved under the provisions of the UN Convention on the Law of the Sea.
- (2) Any dispute between the Cook Islands and the sponsored party arising in connection with the administration of this Act must be dealt with—
  - (a) by the parties attempting to reach settlement by mutual agreement or mediation, and in the event this is not successful, then:
  - (b) by referral to arbitration to be conducted in accordance with the Arbitration Act 2009.

**167 Regulations giving effect to this Part**

- (1) The Queen's Representative may, by Order in Executive Council, make regulations prescribing anything required or authorised to be prescribed under this Part or generally for carrying this Part into effect.
- (2) Those regulations must be consistent with the UN Convention on the Law of the Sea, the rules of the ISA, and other applicable standards of international law.

## **Part 9 Miscellaneous**

**168 Indemnity of responsible Minister, public officials, and Committee members**

The Crown, the responsible Minister, the Commissioner, officers, public officials, inspectors, members of the licensing panel, and members of the Committee and selection panel are not liable for anything done in good faith in the performance of any function vested in or delegated to them under this Act or the regulations.

**169 Change of ownership, constitution or control of title holder**

- (1) A title holder must, as soon as possible, notify the Authority of any actual, proposed, or likely change in the constitution, ownership, control, or corporate organisation of the title holder, if that change is significant.  
The Authority must, within 60 days from the date of receipt of a notice under subsection (1), assess the notice and notify the title holder of whether or not—
  - (a) the change constitutes a transfer for the purposes of section 102; or
  - (b) any action is envisaged under section 116(1)(f) or 117(1)(b).
- (2) The Authority must enter any change to which this section applies into the register of titles maintained by the Authority under section 49(2), for which a prescribed fee may be payable.

**170 Offence for breach of section 169**

- (1) A person who contravenes section 169(1) is liable to pay a pecuniary penalty not exceeding \$250,000.

**171 Grant of title confers reasonable rights of access**

The grant of a title entitles the title holder to the right of navigation within the exclusive economic zone of the Cook Islands to the extent that is reasonably required by the title holder—

- (a) to access the area of the seabed that is the subject of the title; and
- (b) to carry out the regulated activity.

**172 Rights of other States**

- (1) Nothing in this Act affects the rights of coastal States under the UN Convention on the Law of the Sea, including with respect to activities in the Area.
- (2) Any coastal State that has grounds for believing that seabed mineral activities have caused, are causing, or are likely to cause harm to the marine environment under its jurisdiction may notify the Authority in writing of the grounds on which that belief is based.

- (3) The Authority must provide any applicant or title holder affected by the notice with a reasonable opportunity to comment on it, within a time period that is reasonable in the circumstances.

**173 Objects of archaeological or historical nature**

- (1) Any object of an archaeological or historical nature found by any title within the jurisdiction of the Cook Islands must be—
  - (a) reported to the Authority; and
  - (b) treated in accordance with the Authority's instructions; and
  - (c) safeguarded pending receipt of those instructions.
- (2) Instructions given by the Authority under this section must take into account Articles 149 and 303 of the UN Convention on the Law of the Sea.
- (3) A person who contravenes subsection (1) is liable to pay a pecuniary penalty not exceeding \$200,000.

**174 No interest in land**

The grant of a title does not—

- (a) create an estate or interest in land other than the rights expressly granted by this Act or the title; or
- (b) give rise to land taxation duties.

**175 Interference with seabed mineral activities**

- (1) No person may—
  - (a) sabotage a regulated activity, or a vessel or equipment used in connection with a regulated activity, or an installation; or
  - (b) without reasonable excuse, commit any physical hindrance to, or other obstruction to, any officer, inspector, or title holder in respect of the exercise of a right, or the performance of a function or duty, under this Act or a title.
- (2) Any person who does not comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$500,000.
- (3) A title holder who contravenes subsection (1)(b) is liable to pay a pecuniary penalty not exceeding \$500,000.
- (4) Subsections (2) and (3) are subject to section 115(5).

**176 Conflict of interest**

- (1) Any officer of the Authority, inspector, a member of the licensing panel, or the Committee must, in accordance with any prescribed procedures, immediately disclose to the Commissioner or the responsible Minister any conflict of interest, and that person must not take part in any deliberation or decision in relation to which the conflict applies.
- (2) A person who breaches subsection (1) is guilty of misconduct and may be dismissed from their position under the Public Service Act 2009 or under this Act.
- (3) Any public official engaged in performing functions under this Act is prohibited,—

- (a) subject to section 177, from acquiring or holding any direct or indirect right or interest in any title or in relation to any regulated activity; and
  - (b) from using any information obtained in that role to confer any benefit or advantage on the person or any other person.
- (4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$200,000.
- (5) Subsection (4) does not affect the operation of the Proceeds of Crime Act 2003.
- (6) In this section,—
- conflict of interest** means a conflict between an individual’s public duty and a private right or interest that could—
- (a) influence the ability of that individual to perform functions or exercise powers under this Act; or
  - (b) reasonably be perceived by another person to influence that ability
- indirect**, in relation to a right or an interest, means an interest through a parent, spouse, de facto spouse, child, sibling, aunt, uncle, cousin, or grandparent.

### 177 Authorised rights and interests

- (1) Section 176(3) does not apply to the holding of a right or an interest to the extent that the holding of the right or interest is authorised in writing by—
- (a) the Prime Minister, in the case of a holding of the responsible Minister; or
  - (b) the responsible Minister, in the case of a holding of any other Member of Parliament or the Commissioner; or
  - (c) the Commissioner, in the case of a holding of any other person.
- (2) Before granting an authorisation under subsection (1), the person with the power to grant it must—
- (a) be satisfied on reasonable grounds that the holding of the right or interest does not create a conflict of interest; and
  - (b) make the authorisation subject to any conditions that the person considers appropriate or necessary to mitigate the risk of a conflict of interest in relation to the right or interest.
- (3) The Commissioner must publish a notice in the *Gazette* providing details of any authorisation made under this section.

### 178 Regulations

- (1) The Queen’s Representative may, with the approval of the Cabinet, make regulations—
- (a) prescribing anything required or authorised to be prescribed under this Act; and
  - (b) prescribing any matter that is necessary or desirable for carrying this Act into effect.
- (2) Without limiting subsection (1), the Queen’s Representative may make regulations with respect to any of the following matters:
- (a) regulating the way in which the Authority keeps information;
  - (b) the gridding, mapping, and allocation of blocks, cells, and licensed areas;

- (c) the establishment, activities, functions, procedures, management, and administration of the licensing panel:
- (d) setting standards of behaviour and ethical conduct for officers and public officials exercising powers and performing duties under this Act:
- (f) providing for consultation and sharing of information between any specified persons or panel (including the Marae Moana Council and the Technical Advisory Group established by the Marae Moana Act 2017) and the Authority or the licensing panel to facilitate the coordination of activities under the Marae Moana Act 2017 and this Act:
- (g) prescribing standard terms and conditions for licences and prospecting permits:
- (h) prescribing criteria or rules for—
  - (i) conducting tenders:
  - (ii) evaluating applications:
  - (iii) the exercise of the responsible Minister's powers under section 42(1):
  - (iv) granting titles:
  - (v) the purpose of section 65(1)(b) (which relates to fit and proper persons):
- (i) prescribing time limits for actions to be taken under this Act:
- (j) regulating the publication and disclosure of—
  - (i) recommendation of the licensing panel; and
  - (ii) communications between that panel and the responsible Minister:
- (k) providing for the amendment and reassessment of applications for licences and prospecting permits:
- (l) defining the term “baseline data”, and prescribing the manner in which it is to be collected and the standards to be applied to its collection:
- (m) the maximum areas that may be held under any one licence, or by any one person, at any one time:
- (n) monitoring (after the grant of title) and other requirements relating to the closure of seabed mineral activities:
- (o) the management and investigation of incidents:
- (p) providing for the payment of bonds and other kinds of securities by prospecting permit and licence holders, and regulating how that money is dealt with:
- (q) requiring parties to disputes under this Act to undergo dispute resolution using prescribed mechanisms:
- (r) providing a regime for the payment of compensation to persons whose licences or prospecting permits are cancelled, varied, or suspended for reasons that relate solely or primarily to the national interest:
- (s) setting out, for the purposes of any specified provision, supplementary material describing the national interest and factors to be taken into account when considering it:

- (t) providing rules designed to ensure the health and safety of persons working on vessels or installations or using equipment for seabed activities, and for the health and safety of others who may come into contact with regulated activities:
  - (u) requiring prospecting permit holders and licensees to hold insurance of a specified kind for a specified period:
  - (v) providing for the payment of royalties:
  - (w) sanctions for contraventions against requirements in the regulations, including—
    - (i) offences carrying a maximum penalty not exceeding—
      - (A) a \$1,000,000 fine for a corporation; and
      - (B) 2 years' imprisonment or a \$250,000 fine, or both, for an individual:
    - (ii) civil penalties carrying a maximum penalty of \$1,000,000 for a corporation and \$100,000 for an individual:
  - (x) the conferral of regulatory powers under this Act on officers or inspectors and the conditions on which such powers may be exercised:
  - (y) prescribing fees for matters under this Act or the regulations, including a method for determining those fees:
  - (z) prescribing transitional and savings provisions relating to the implementation of this Act.
- (3) Without limiting subsection (2)(h), different criteria may be prescribed for evaluating—
- (a) applications for prospecting permits:
  - (b) applications for exploration licences:
  - (c) applications for mining licences.
- (4) Different provisions may be made in relation to any matter in the regulations for regulating—
- (a) prospecting permits:
  - (b) exploration licences:
  - (c) mining licences.

## Part 10

### Transitional and savings provisions

#### 179 Related amendments

The enactments specified in Schedule 1 are amended in the way set out in that schedule.

#### 180 Savings

- (1) Despite any of the provisions of this Act, nothing in this Act affects the use or occupation of any land or Cook Islands waters, if that use or occupation existed at the date of the commencement of this Act.
- (2) Any ongoing reference in any other law or any document to the Seabed Minerals Act 2009 is to be treated as a reference to the Seabed Minerals Act 2019.



- (3) Any title that was issued under the Seabed Minerals Act 2009 before the commencement of this Act that is valid at the commencement of this Act remains in force until the review or termination of that title, whichever occurs first.
- (4) The appointment of any person under the Seabed Minerals Act 2009 continues in effect as if it had been made under this Act. However, if a person was appointed for a fixed term, this subsection does not extend the duration of that term.
- (5) If, immediately before the commencement of this Act, any person holds office as an officer, public official, inspector, or other employee of the Authority, that person continues to be an officer, public official, inspector, or other employee of the Authority on and after the commencement of this section.
- (6) Nothing in this Act affects the legal effect of anything lawfully done, before the commencement of this Act, under the Seabed Minerals Act 2009.
- (7) Any financial or other liability of the holder of a title under the Seabed Minerals Act 2009 before the repeal of that Act is, by operation of this subsection,—
  - (a) a liability of the title holder under this Act on the same terms; and
  - (b) enforceable by any person under this Act as if the Seabed Minerals Act 2009 had not been repealed.
- (8) Any area that was designated under section 49(1) of the Seabed Minerals Act 2009 and that, immediately before the commencement of this section, continued to be so designated is to be treated as having been designated under section 42(1) of this Act.
- (9) Any block or blocks that were subject to a declaration under section 53(2) of the Seabed Minerals Act 2009, and that immediately before the commencement of this section continued to be subjected to the declaration, are to be treated as having been the subject of a declaration under section 42(1)(b) of this Act.

#### **181 Transitionals, savings, and orderly implementation of Act and related enactments**

- (1) The Queen's Representative may, with the approval of the Cabinet, on the recommendation of the responsible Minister, make regulations for either or both of the following purposes:
  - (a) providing that, subject to any conditions stated in the regulations, transitional or savings provisions prescribed by the regulations that relate to the implementation of this Act (in addition to, or in substitution for, any other transitional provisions in the specified enactments) apply during the whole or any part of the transitional implementation period ending on the date that is 5 years after the commencement of this section:
  - (b) providing that, subject to any conditions stated in the regulations, specified provisions of the specified enactments (including definitions and any transitional provisions in the specified enactments), or provisions of other enactments amended, revoked, or repealed by the specified enactments, do not apply, or continue to apply or apply with modifications or additions, or both, during the whole or any part of the transitional implementation period ending on the date that is 5 years after the commencement of this section.

- (2) The responsible Minister must not recommend the making of regulations under this section unless the responsible Minister is satisfied that the regulations—
  - (a) are necessary or desirable for the orderly implementation of the specified enactments; and
  - (b) are consistent with the purposes of the specified enactments.
- (3) This section is repealed on the close of the date that is 5 years after this section comes into force.
- (4) Any regulations made under this section that are in force on the date that is 5 years after this section comes into force are revoked on the close of that day.

**182 Repeal**

The Seabed Minerals Act 2009 is repealed.

**183 Amendments to enactments**

- (1) The Acts listed in Part 1 of Schedule 3 are amended as set out in that Part.
- (2) The regulations listed in Part 2 of Schedule 3 are amended as set out in that Part.

**Schedule 1****Appointment of selection panel and remuneration of selection panel**

s 22(5)

1. The Secretary to the Cabinet must inform the responsible Minister of any vacancy or impending vacancy in the panel membership of the licensing panel.
2. The responsible Minister must establish a selection panel of 4 members appointed by the responsible Minister on the recommendations of the Seabed Minerals Commissioner.
3. The Seabed Minerals Commissioner must recommend to the responsible Minister the appointment to the selection panel comprising the following members:
  - (a) one person who is—
    - (i) the Solicitor-General; or
    - (ii) the head of the Ministry of Finance and Economic Management; or
    - (iii) the head of the Office of the Prime Minister:
  - (b) one person from the 1 or more persons nominated by the Cook Islands Law Society;
  - (c) one person from the 1 or more persons nominated by the Cook Islands Chamber of Commerce;
  - (d) one person from the 1 or more persons nominated by the Cook Islands Society of Chartered Accountants.
4. The Seabed Minerals Commissioner is not eligible for appointment to the selection panel.
5. The responsible Minister may inform the selection panel of any matter that the responsible Minister wishes the panel to take into account in making recommendations under clause 7.
6. The selection panel may—
  - (a) examine applicants for membership of the licensing panel; and
  - (b) seek information from the Authority and advice from any sources the selection panel considers relevant; and
  - (c) deliberate on the person or persons to be recommended for appointment.
7. Following its deliberations, the selection panel (either by consensus or by a majority vote) must recommend to the responsible Minister up to twice the maximum number of persons required for appointment. The recommendation must include full particulars of each person's qualifications.
8. For the purposes of section 25(1) and (3) the selection panel may recommend a person with less than the 10 years required experience, but only if the selection panel—
  - (a) considers that there are very good reasons for appointing that person; and

- (b) the selection panel records those reasons in its recommendation to the responsible Minister.
9. If the responsible Minister decides to accept 1 or more of the persons recommended and the Cabinet agrees,—
- (a) the Queen’s Representative must be advised accordingly; and
  - (b) the Queen’s Representative must appoint that person as a member of the selection panel and the Secretary to the Cabinet must announce publicly that the appointment has been made.
10. If the responsible Minister decides not to accept any of the persons recommended,—
- (a) the responsible Minister must immediately advise the Queen’s Representative to appoint other persons to that office named by the responsible Minister to the office and the Queen’s Representative must appoint those persons; and
  - (b) the Secretary to the Cabinet must publish in the *Cook Islands Gazette* and a newspaper of general circulation in the Cook Islands notice of—
    - (i) the making of an appointment under paragraph (a); and
    - (ii) the fact that the responsible Minister has decided not to accept any of the persons recommended by the panel for appointment to the membership of the selection panel.
11. Each member of the selection panel (other than a member employed under the Public Service Act 2009) must be paid out of the Cook Islands Government Account remuneration at the rate determined by the Queen’s Representative by Order in Executive Council. The determination takes effect on the date specified in the order.

## Schedule 2

### General duties of title holders

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All title holders must comply with the following requirements:

**1 Environmental data**

The title holder must collect and analyse environmental data, in accordance with any guidelines issued by the Cook Islands Government, and in any event sufficient to enable comprehensive environmental impact assessment, monitoring and management in relation to seabed mineral activities in the title area.

**2 Precautionary approach and best environmental practice**

The title holder must apply the precautionary approach, and employ best environmental practice including best available technology, in accordance with prevailing international standards in order to avoid, remedy, or mitigate the adverse effects of regulated activity on the marine environment.

**3 Pollution prevention**

The title holder must take the necessary steps to prevent, reduce, and control pollution and other hazards to the marine environment, including waste material, arising from regulated activity.

**4 Additional consent for high-risk activities**

The title holder must obtain the prior written consent of the Authority before proceeding with any regulated activity if evidence arises that to proceed is likely to cause serious harm to—

- (a) the marine environment; or
- (b) the safety, health, or welfare of any person; or
- (c) other existing or planned legitimate sea uses, including, but not limited to, marine scientific research.

**5 Dumping**

The title holder must not dump minerals, other materials, or waste from any vessel except in accordance with the rules of the relevant flag State, or the directions of the Government of the Cook Islands.

**6 Closure of site**

The title holder must, at the termination of the title, remove installations, equipment and materials related to the title operations, so as to ensure that the title area does not constitute a danger to persons, shipping, or the marine environment; comply with any prescribed requirements, relating to site closure, and provide a final report to the Authority including information on the closure and rehabilitation of the title area.

**7 Capacity-building and employment of Cook Islanders**

The title holder must cooperate in capacity-building of the people of the Cook Islands in connection with seabed mineral activities, and any related transfer of technology that may be agreed in the title, including providing opportunities in consultation with the Authority for the participation of Cook Islanders in the seabed mineral activities.

**8 Training of personnel**

The title holder must provide sufficient training, supervision, and resources to employees, associates, and affiliates to ensure compliance with all requirements applicable to the regulated activity.

**9 Accounts**

The title holder must maintain, separately for each title and for a period of 5 years after the termination of a title, a complete and proper set of books, accounts, financial records, technical and performance data, and samples consistent with internationally accepted accounting and records management standards, which are—

- (a) annually audited by an independent auditor at the title holder's cost; and
- (b) in the case of a mining licensee, sufficient to determine the amount of royalties, fees, or taxes payable under this Act or any other Cook Islands law.

**10 Maritime laws**

The title holder must ensure that—

- (a) vessels engaged in its regulated activity are flagged only with a registry of a member State that has signed and implemented into national law any shipping conventions that are prescribed:
- (b) any vessel, installation, or equipment used in the regulated activity is in good repair and complies with the laws of the Cook Islands, or laws of the flag State, as applicable, and is placed and marked in such a way as to minimise risk to other sea users:
- (c) working conditions for personnel engaged in regulated activity comply with applicable flag State standards in the case of vessels, and with Cook Islands laws in the case of installations.

**11 Additional permissions**

The title holder must obtain, and adhere to the terms of, any other permit, certificate, approval, or other form of authorisation required under a law of the Cook Islands in respect of regulated activity.

**12 Work plan**

- (1) The title holder must carry out the seabed mineral activities in accordance with the work plan, and with due diligence and efficiency.
- (2) The work plan must include the following plans developed in accordance with any guidelines issued by the Government of the Cook Islands:
  - (a) an environmental monitoring and management plan; and
  - (b) a financial plan.
- (3) The title holder must not amend, alter, or vary the work plan contained in the title except in accordance with section 87 and the prescribed procedures.

**13 Response to incidents**

The title holder must respond efficiently and responsibly to any incident, including by implementing any applicable incident management plan and following the Authority's instructions.

**14 Obligations on termination of title**

The title holder must, on the termination of a title and at the request of the Authority, transfer to the Authority—

- (a) copies of all books, accounts, financial records, and technical and performance data that the holder is required to maintain under this Act or the terms of the title; and
- (b) all reports and plans or maps prepared by or for the title holder pertaining to the seabed mineral activities under the title; and
- (c) copies of geological, environmental, geochemical, and geophysical data acquired by the title holder in the course of carrying out the seabed mineral activities that, in the Authority's reasonable opinion, are necessary for and relevant to the effective exercise and performance of the powers and functions of the Authority; and
- (d) the estimation of the grade and quantity of commercially exploitable deposits within the title area at the time of termination; and
- (e) any other document, information, or samples relating to the title, as the Authority may reasonably direct.

**15 Insurances**

The title holder must at all material times maintain appropriate insurance for identified risks and costs arising from regulated activity, or otherwise satisfy the Authority of its financial and technical capability to perform its title obligations and respond to potential incidents.

**16 Conduct for improper benefit**

The title holder must not engage in, and must take all reasonable steps to ensure that its employees, associates, and affiliates do not engage in, any activity related to the title in exchange for any improper benefit to—

- (a) the title holder, employee, associate, affiliate, or any other person, including a friend or family member, or any person associated with the title by personal or other relationship; and
- (b) any member of the licensing panel or the Committee, inspector, officer, public official, or other person acting for or on behalf of the Crown.

**17 Reporting**

- (1) The title holder must advise the Authority in writing at least 30 days before the date of departure of a vessel from port of the schedule of each voyage planned for the purpose of performing the seabed mineral activities under its title.
- (2) The title holder must submit to the Authority immediately in writing notice of any new information arising or data collected that materially affects the work plan or the title holder's ability to adhere to the terms of the title.
- (3) The title holder must submit to the Authority immediately by telephone and in writing notice of any incident arising from a regulated activity, and provide regular reports throughout the occurrence of an incident.
- (4) The title holder must submit to the Authority, within 3 months after the end of each calendar year, a written annual report containing any information that is prescribed or reasonably required by the Authority.

**18 Inconsistent obligations**

The title holder must notify the Authority in writing immediately on becoming aware that any requirement imposed on it under this Act is inconsistent with any other requirement imposed under this Act or another enactment, or otherwise incompatible with the performance of the seabed mineral activities.



### Schedule 3 Related amendments to other enactments

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#### Part 1

#### Amendments to Acts

##### **Cook Islands Investment Corporation Act 1998**

In section 2, definition of **real property**, add to paragraph (c) “and minerals on or under the seabed”.

##### **Environment Act 2003**

In section 2, insert in its appropriate alphabetical order:

**“seabed mineral activities** has the meaning given in section 6 of the Seabed Minerals Act 2019”

Replace section 20 of the Environment Act 2003 with the following sections:

**“20 National Environment Council**

- “(1) The Director may, at any time as required for the purposes of this Act, convene a National Environment Council to act as permitting authority for any part of the Cook Islands, other than Rarotonga and the Pa Enua.
- “(2) In carrying out his or her functions under subsection (1), the Director must consult with the responsible Minister.
- “(3) The members of the Council are the following:
- “(a) the Director, who is chairperson of the Council;
- “(b) the members appointed by the responsible Minister under subsection (4);
- “(c) the members appointed by the Director under subsection (5).
- “(4) The responsible Minister must appoint as members—
- “(a) 2 persons to represent the Pae Tonga (Southern Group) and the Pae Tokerau (Northern Group) of the Cook Islands; and
- “(b) 1 person who is recognised by the Cook Islands community as a traditional leader; and
- “(c) 1 or 2 persons to represent the interests of the Cook Islands community and the interests of the private sector.
- “(5) The Director must appoint, from the register of technical experts maintained by the National Environment Service—
- “(a) between 1 and 3 members with knowledge and experience of 1 or more of the following matters:
- “(i) environmental matters;
- “(ii) the law of the Cook Islands;
- “(iii) economics; and
- “(b) 1 or 2 persons with knowledge and expertise in the matters under consideration by the Council.

**“20A Suspension or removal of members and disbanding of council**

- “(1) A member of the council may be suspended or removed from office by the responsible Minister with the concurrence of Cabinet,—

- “(a) on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct; or
  - “(b) if the member, having dissented from a majority decision of the council, publicly criticises the decision of the majority.
- “(2) As soon as practicable after the council has completed its consideration and determination of the matter for which the council was convened, the Director must, after convening a final council meeting to approve the minutes of the last meeting relating to that matter, disband the council.
- “(3) The Director may at any time necessary convene another council in accordance with section 20.

Replace the Part 5 heading with:

**“Part 5  
Tier 1 to 3 activities”**

Replace section 36 of the Environment Act 2003 with the following sections:

**“36AA Tier 1 to 3 activities**

- “(1) A tier 1 activity is an activity that has only minimal environmental impact and is able to be undertaken without conditions.
- “(2) A tier 2 activity is an activity that has some but not significant environmental impacts and may be undertaken—
  - “(a) with the consent of the permitting authority; and
  - “(b) subject to any conditions imposed by the Authority.
- “(3) A tier 3 activity is an activity which will cause or is likely to cause significant environmental impact, and may only be undertaken in accordance with sections 36 to 36C.
- “(4) Regulations may be made under this Act—
  - “(a) regulating the undertaking of Tier 1, Tier 2, and Tier 3 activities; and
  - “(b) categorising specified activities as Tier 1, Tier 2, or Tier 3 category activities.

**“36 Environmental impact assessment**

- “(1) No person may undertake any activity which causes or is likely to cause significant environmental impacts except in accordance with a project permit issued under this section.
- “(2) A person who proposes to undertake an activity of the kind referred to in subsection (1) must apply to the permitting authority for a project permit in respect of the activity in accordance with the procedures (if any) prescribed by regulations.
- “(3) Every application for a project permit must be submitted to the service and must include an environmental impact assessment, setting out details of—
  - the impact of the project on the environment and, in particular,—
    - “(i) the adverse effects that the project will have on the environment; and

- “(ii) a justification for the use or commitment of resources that can be depleted, or non-renewable resources (if any), to the project; and
  - “(iii) a reconciliation of short-term uses and long-term productivity of the affected resources; and
  - “(b) the proposed action to mitigate adverse environmental effects and the proposed plan to monitor environmental impacts arising out of the project; and
  - “(c) the alternatives to the proposed project.
- “(4) Every application for a project permit must be accompanied by an application fee prescribed by regulations.
- “(5) After the permitting authority has reviewed and assessed the application and all relevant information including the environment impact assessment, it must, subject to guidelines (if any) prescribed by regulations—
- “(a) issue a permit for the proposed project specifying the terms and conditions subject to which the permit is issued; or
  - “(b) request the applicant to submit modifications regarding the proposed project; or
  - “(c) where there are reasonable grounds to do so (taking particular account of the purpose of this Act), decline to issue a permit for the proposed project and state the reasons for that refusal.
- “(6) The service must immediately convey to the applicant the decision of the permitting authority.
- “(7) For the purposes of subsection (1),—
- “(a) any designation, or issue or reissue of approval of any land (whether by a responsible Minister or any other public officer or authority, and whether under this or any other Act) for the disposal of any kind of waste is deemed to be an activity that is likely to cause significant environmental impacts:
  - “(b) regulations may declare any kind or class of seabed minerals activity to be or not to be an activity which causes or is likely to cause significant environment impacts.
- “36A Consultation for purpose of section 36**
- “(1) The service must undertake public consultation for the issuing of the project permit and for that purpose—
- “(a) publish details of the project in such a manner that these become accessible to the affected public; and
  - “(b) make available copies of the environment impact assessment report prepared by the project developer for review by the public; and
  - “(c) receive comments within 30 days from the date of public notice from the general public and other interested parties.
- “(2) The service must request comment from any Government department or agency or person affected by or having expertise relevant to the proposed project or its environmental impact.

**“36B Reconsideration of, and appeal against, permitting Authority’s decisions**

- “(1) Within 14 days of receiving notice of a refusal under section 36(5)(c), the applicant may, by letter to the responsible Minister, request that the responsible Minister review the permitting authority’s decision.
- “(2) The responsible Minister must review the permitting authority’s decision and all information relevant to it and must notify the applicant and the permitting authority in writing of the responsible Minister’s decision to—
- “(a) uphold the permitting authority’s decision to refuse a permit for the proposed project; or
  - “(b) direct the service to request that the applicant submit specified modifications to the service regarding the proposed project for reconsideration by the permitting authority.
- “(3) If the responsible Minister is required to make a decision under subsection (2) in any case where the responsible Minister is the applicant for the permit, or is otherwise directly or indirectly interested in the permit application otherwise than as the reviewing authority, the responsible Minister must,—
- “(a) with the concurrence of the permitting authority concerned, convene an independent panel to review the permitting authority’s decision and submit a recommendation to the responsible Minister; and
  - “(b) follow the panel’s recommendation in making the decision under subsection (2); and
  - “(c) make those recommendations public.
- “(4) If the responsible Minister has conducted a review under subsection (2), or an independent panel has conducted a review under subsection (3), no further review of the decision may be conducted (except on the order of the court).

**“36C Offences of failing to comply with section 36(1)**

- “(1) Every person commits an offence who, without reasonable excuse or lawful justification, fails or refuses to comply with section 36(1), and is liable on conviction,—
- “(a) in the case of a body corporate, to a fine not exceeding \$100,000;
  - “(b) in any other case, to a fine not exceeding \$50,000.
- “(2) In addition to any penalties imposed under subsection (1), the court may order that the person convicted,—
- “(a) under the supervision and to the satisfaction of a person appointed by the court, clear up and remove the damage caused to the environment as a consequent of the offence, within any period and subject to any conditions that are specified in the order;
  - “(b) pay an amount that the court assesses in respect of the expenses and costs that have been or are likely to have been incurred—
    - “(i) in restoring the environment to its former state (its state immediately before the offence was committed); or

“(ii) in removing or cleaning up or dispensing any oil or noxious liquid, or other harmful substance to which the offence relates.”

In section 50(1), insert:

“(e) carries out seabed mineral activities in Cook Islands waters.”

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This Act is administered by the Seabed Minerals Authority.  
Printed under the authority of the Cook Islands Parliament—2019.

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