

23 May 2019

SUMMARY OF PROGRESS OF DRAFT SEABED MINERALS BILL 2019



Rakahanga Consultation- April 2019

INTRODUCTION

Our national Seabed Minerals (SBM) Act was passed in 2009, and commenced in 2013. In 2015, the first Tender for Exploration licences in our EEZ was opened by the Deputy Prime Minister, the Honourable Mark Brown, Minister of Natural Resources and Minerals.

No Applications for Exploration were received in that first Tender, under the 2015 licencing regime. This lack of interest turned around in early 2018 with a number of substantial overseas seabed minerals entities showing interest in the valuable, cobalt-rich Manganese nodule resource of the Cook Islands

In May 2018, under the SBM Act, the Deputy Prime Minister directed a “hold” on all seabed minerals Application work, to allow for the Seabed Minerals Authority to attend to certain “house-keeping” matters. This “house-keeping” included, in preparation for a proposed second Tender of Exploration Licences, a review of the existing Seabed Minerals (SBM) Act 2009 and the licensing regime established in 2015, and related documents.

The 2018 review then led to numerous Update consultations, commencing in October 2018, being undertaken, starting in the three Vaka of Rarotonga and then the Outer Islands. This initial phase of wide ranging Consultations continued for 7 months until April 2019.

The consultations also covered the new draft SBM Bill which was released in December 2018 for public review, comment and feedback. The feedback period was extended three times, due to requests to submit late feedback from various parties and ended 5 months later in April 2019.

The Deputy Prime Minister, the Honourable Mark Brown, Minister of Natural Resources and Minerals, is grateful to all those who attended and participated in the consultations and those who provided feedback.

It is the intention of the Government to have a well-informed and engaged community and stakeholders, which can then lead to a sustainable, long-term and beneficial national seabed minerals sector, based on best principles and an effective, robust SBM Act and regulatory framework, to benefit all those in the Cook Islands, in harmony with our high environmental, cultural and social values.

CONSULTATIONS

The Deputy Prime Minister, the Honourable Mark Brown, presented, to the communities and people gathered at each consultation, an update report on the progress being made in our national seabed minerals sector and on the new draft SBM Bill 2019. He was supported at the numerous consultations by a team of relevant government officials and by the Marae Moana Ambassador, Kevin Iro.

The consultations provided an update on the background of the sector, the sector's current status aiming at Exploration to commence in 2019 and where the government (with the support of our people) would like the sector to be progressing towards, in the short, medium and long terms. Of particular note by people was reference made by the Deputy Prime Minister of the rise of electric car batteries driving up the demand for the mineral known as Cobalt, which is contained in good abundance in the Manganese Nodule resource in the Cook Islands EEZ.

The consultations also covered the main amendments in the proposed SBM Bill, which is intended to upgrade and replace the ten year old SBM Act, passed in 2009. The new SBM Bill includes the latest international standards and needs of the Cook Islands, and particularly seeks to better align our seabed minerals sector regime with the framework set under the new Marae Moana Act 2017.

This review of the SBM Act 2009 has been taking place for many years under the work plan of the SBM Authority. The Commonwealth Secretariat helped draft the 2009 SBM Act and were willing to draft the new SBM Bill. The draft Bill was then taken over and completed under the usual Cook Islands legislative service provided by the NZ Parliamentary Counsel's Office, under the supervision of the Cook Islands Solicitor- General, who heads the Cook Islands Crown Law Office.

The review is part of the on-going and careful progress of this sector, with valuable input from numerous stakeholders and government agencies, such as the Marae Moana, the SBM Authority, Crown Law Office, Cook Islands Investment Corporation, National Environment Service, etc.

External assistance has also been sought and received from overseas agencies such as Commonwealth Secretariat, NZ Parliamentary Counsel's Office, NZ Petroleum and Minerals, NZ Environmental Protection Agency, and NIWA, MIT and the Commonwealth Secretariat (Hannah Lily) etc.

The consultations were well attended by a wide range of people in our community and interested persons. Opportunities were always made available in consultations for frank and direct oral contributions for those who attended meetings, or wanted to also give additional feedback through direct or on-line avenues to the SBM Authority or the Crown Law Office.

See Consultation News Release 19 April 2019 attached.

Dates and venues of the numerous Consultations are attached to this Report.

FEEDBACK

Feedback was received orally and recorded at each public and stakeholder consultation meeting. Feedback was also encouraged to be provided in writing, which many contributors undertook in providing extension and helpful feedback to the SBM Authority.

A List of Feedback Contributors is attached to this Report.

In the consultations in our community, there was over-whelmingly supportive and positive views from our community expressed back to the Deputy Prime Minister and his delegation to continue in advancing this new sector, commencing with the proposed Exploration phase, starting with a proposed Tender of Exploration Licences in limited zones and areas in our EEZ.

There were also concerns raised by various NGOs and concerned persons about the social, social, environmental and financial management challenges that the Cook Islands may face which could be anticipated in this new sector.

It was raised on numerous occasions that that the Government should continue with its steady, informed approach and keep working to progress the development of this new economic opportunity of the Cook Islands, based on best principles, standards, practices and advice.

MAIN ISSUES RAISED IN THE FEEDBACK ON THE DRAFT SBM BILL

There was excellent and detailed Feedback on the draft SBM Bill. There were numerous small issue and typo-graphical errors raised in the feedback that will be required to be amended in the draft SBBM Bill.

It is possible to identify 10 significant issues that were raised that will need further evaluation and consideration as to how that might be dealt with effectively and whether they will influence a change in the SBM Bill or SBM Policy.

The major issues are attached with this Report.

RECORDING AND COLLATION OF FEEDBACK

Recording and collation of the feedback began immediately at the first Consultations.

This task was coordinated by Rachel Reeves under a contract with the CIIC.

The period for receiving feedback on the new draft SBM Bill has now closed and all feedback received is now being collated and evaluated.

The recent Northern Group consultation in the first week of April 2019 completed the latest series of public consultations that commenced 5 months ago in Avarua in October 2018. These were undertaken to provide an update of the seabed minerals sector and the proposed SBM Bill to our local communities.

The final draft SBM Bill will then be released to the public in April/May for further feedback and preparation for a possible Parliament session in June 2019.

More updates on our national Seabed Minerals sector can be found on the SBMA website – www.seabedmineralsauthority.gov.ck

REVIEW AND EVALUATION OF FEEDBACK

The initial review and condensing of all the extensive feedback received on the draft SBM Bill was undertaken in March/April by-

- **Mr. Paul Lynch**, the SBM Commissioner, responsible for the implementation of the SBM Act and management of the SBM Authority under that SBM Act; and
- **Ms. Alex Herman**, Crown Counsel at the Cook Islands Crown Law Office.

Further evaluation and discussion of the results of the feedback and its possible influence of the draft SBM Bill will then be undertaken in April/May with other parties which can include-

- The local **Deep Sea Minerals Working Group**, established by the Deputy Prime Minister in 2015/16, made up of senior officials of relevant agencies, such as MFEM, MFAI, NES, OPM, Marae Moana, CIIC and SBMA;
- The **Marae Moana Technical Advisory Group**, established under the Marae Moana Act 2017;
- Further review by relevant experts, including NZPAM, MIT, CommSe;
- Further review by special stakeholder groups, such as the Opposition and TIS; and
- The **NZ Parliamentary Counsel's Office** (with the Crown Law Office directions and SBMA assistance, where required).

The final draft SBM Bill may then be able to be prepared and released to the public in May/June 2019.

FINAL EVALUATION OF MAJOR ISSUES FROM FEEDBACK

On 22 May 2019, the Hon. Mark Brown, as Minister Responsible, made a final evaluation on the Major issues from the Feedback.

The Key changes to the draft SBM Bill are-

1. Continuation of Authority and establishment of new bodies

The Bill continues the Seabed Minerals Authority (Authority) and creates two new bodies: (1) Seabed Minerals Advisory Committee and (2) Licensing Panel.

The Authority's role generally is to regulate SBM activities under Cook Islands jurisdiction.

- a) The Advisory Committee's role is to assist the Authority by providing community perspectives relevant to the seabed minerals sector. This role was undertaken by the Advisory Board in the previous Act.
- b) The Licensing Panel is an independent expert panel, largely made up of members with expertise in SBM industry, financial, legal and environmental matters – its role is to assess and make decisions of all licence applications.

2. Improved licensing regime

There is an improvement in transparency and accountability in the 2019 licensing process.

The general Licencing decision-making process under the Bill is as follows:

- a) The Authority receives Applications for a licence and manages the Application and Due Diligence process, relating to Applications received under the Act, including consultation with relevant advisors, parties and stakeholders.
- b) All Application information and Due Diligence reports gathered by the Authority in the Application process, are then submitted to the Licensing Panel.
- c) The Licensing Panel evaluates the submitted Application information and Due Diligence reports.
- d) The Licensing Panel then makes its recommendations to the Minister to approve or decline an Application/s, based on its evaluation of the merits of an application(s) and on prescribed criteria.
- e) The Minister (with Cabinet approval) may approve or decline an application/s to grant a licence.
- f) There is a regulated appeal process in the Act, if the Minister (with Cabinet) decides to decline the application. An applicant/s also retains its rights to judicial review.

By setting out the above licensing process in the Bill, this gives greater certainty to stakeholders as to the process.

3. Application of key environmental principles and Marae Moana

The new SBM Bill includes the latest enhanced environmental standards and principles, including: the precautionary approach, best environmental practice.

The Bill is states clearly that it is subject to the Marae Moana Act 2017, to ensure that it remains consistent with the Marae Moana framework and principles, coordinated under the OPM.

4. Statutory obligations and duties placed on licence holders

The Bill includes specific statutory obligations and duties on licence holders, setting a minimum standard for licence holders which is not open for negotiation. This is in line with good governance best practice, relating to the minerals extraction sector.

5. Amendments to Environment Act 2003 to capture SBM activities

The composition of the National Environment Council has been amended, so that it will be have the necessary expertise and representation to deal with activities of national significance in our EEZ, such as SBM activities.

The consents and permits process has been clarified to deal with SBM activities ranging from the lowest level of activities (Tier 1) up to higher level activities requiring environmental impact assessment (Tier 3).

Regulations will set out further the types of SBM activities falling within Tiers 1, 2 and 3.

PROCESS OF BILL TO PARLIAMENT

The Crown Law Office (with NZPCO and SBMA assistance) will then be responsible for preparing the final draft SBM Bill for-

1. Further consultations as needed;
2. the Deputy Prime Minister to submit the SBM Bill to Cabinet (and the Central Agencies Committee CAC/TAG); and
3. then to prepare the SBM Bill (and Explanatory Note) and translation to be tabled in Parliament.

Kia manuia,

Paul Lynch

Seabed Minerals Commissioner

	CONSULTATIONS LIST OCT 2018 to APRIL 2019		
DATE	Consultation Audience/entity	VENUE	PLACE
24 Oct	Environmental NGOs	SBMA	Avarua
1 Nov	Public	Sinai Hall	Avarua
7 Nov	Public	CICC Sunday school hall	Titikaveka
15 Nov	Public	Aroa Nui hall	Arorangi
	Public and NGOs	USP- Internet discussion with external advisors	Avarua
	NZ High Commissioner	Cabinet room	Avarua
	Opposition (Two meetings)	Opposition office	Avarua
	Select Committee (Orientation week)	Parliament	Avarua
	Potential Applicants (Industry)	Crown Beach Resort	Arorangi
15 Jan	Environmental NGOs	SBMA	Avarua
16 Jan	Public and NGOs	USP	Avarua
	Environmental NGOs	Apostolic church	Avarua
	Public Service Commissioner & Heads of Ministries.	OPSC	Avarua
	Marae Moana Technical Advisory Group (TAG)	OPSC	Avarua
22 Feb	Marae Moana Council	Cabinet room	Avarua
5 Mar	NZ High Commissioner	Cabinet room	Avarua
	OUTER ISLANDS		
	Meet with Mayors and Islands Councils	Island Council rooms	
	Public meetings in Village meeting halls	Village meeting halls	
	<u>Southern group</u>		
Jan/Feb 2019	Aitutaki		Aitutaki
	Mitiaro		Mitiaro
	Mauke		Mauke
	Atiu		Atiu
	Mangaia		Mangaia

	Northern Group		
Feb 2019	Penrhyn		Penrhyn
	Pukapuka		Pukapuka
APR 2019	Rakahanga		Rakahanga
	Manihiki		Manihiki

LIST OF FEEDBACK CONTRIBUTORS

Contributor	Date	Forum
Kelvin Passfield	2018 Oct 2018 Nov 2019 Jan 14 2019 Jan 21 2019 Jan 23 2019 Jan 30	NGO Meeting SBMA Arorangi Consultation NGO Meeting SBMA NGO Meeting Apostolic Church Aitutaki consultation TAG
Imogen Ingram	2019 Jan 14 2019 Jan 16 2019 Jan 28 2019 Feb 27	NGO Meeting SBMA Email USP Consultation Email
Dr. Teina Rongo	2018 Nov 2019 Jan 14	Titikaveka Consultation NGO Meeting SBMA
Liam Kokaua	2018 Nov 2019 Jan 14	Arorangi Consultation NGO Meeting SBMA
Gerald McCormack	2019 Jan 14	NGO Meeting SBMA
Kevin Iro	2018 Oct 2018 Nov 2019 Jan 14 2019 Jan 30	NGO Meeting SBMA Titikaveka Consultation NGO Meeting SBMA TAG
Papa Williams	2019 Jan 15 2019 Jan 21	USP Consultation Community Information Technical Session
Jacqui Evans	2019 Jan 15 2019 Jan 21 2019 Jan 28	USP Consultation Community Information Technical Session USP Consultation
Liz Ponga	2019 Jan 15	USP Consultation
Roger Malcolm	2019 Jan 24 2019 Feb 1	Atiu Consultation Email
June Hosking	2019 Jan 25	Mauke Consultation
Jess Cramp	2019 Nov 2019 Jan 28	Arorangi Consultation USP Consultation
Ben Ponia	2019 Jan 30	TAG
Karen Harvey	2019 Jan 30	Email
Johan Drost	2019 Jan	Email
Dr. Philomene Verlaan	2019 Jan 21 2019 Jan 31	NGO Meeting Apostolic Church Email
Wayne King	2019 Feb 1	Email
TIS	2019 Feb 25	Email
Korero O Te Orau	2019 Feb 26	Email

TIS Legal Opinion CJ Iorns Magallanes	2019 Feb 25	Email
Opposition Party	2019 Feb 27	Email
MM TAG	2019 Feb 27	Email
Dr. Anthony Kung	2019 Feb 27	Email
MM Council	2019 Mar 6	Email

GSR	2019 Feb 5	Email
Darryl Thorburn	2019 Mar 5	Email
Andrea Shaw (Intaff-OSH)	2019 Mar 4	Email and meeting
Ngatokorua Ngatokorua (MOT)	2019 11 Feb	Email
Deepgreen		
Mitiaro Consultation		
	2019 Jan 17	2 Emails
Michael White (Penrhyn)	& Feb 3	
Special Select Committee	2019 Jan 22	In meeting (Sel Napa)
Jinhang	2019 Jan 30	Email
Guangzhou marine geological survey	2019 Mar 12	Email
Noeline Browne	2019 Mar 14	Email

MAIN ISSUES RAISED IN THE FEEDBACK ON THE DRAFT SBM BILL

Attached

19 April 2019

SBMA NEWS RELEASE

Rakahanga and Manihiki Seabed Minerals Update and Bill consultations.

In the first week of April, the northern group Outer islands of Rakahanga and Manihiki were the final island communities in the Pa Enea to receive the latest Seabed Minerals sector update and draft SBM Bill presentation.

The Deputy Prime Minister, the Honourable Mark Brown, Minister of Natural Resources and Minerals, presented, to the communities and people of Rakahanga and then Manihiki, an update report on the progress being made in our national seabed minerals sector and on the new draft Seabed Minerals (SBM) Bill 2019. This proposed SBM Bill is intended to upgrade and replace the ten year old SBM Act, passed in 2009, and includes the latest international standards and needs of the Cook Islands, and particularly to better align our seabed minerals sector with the new Marae Moana Act 2017.

The visiting delegation also consisted of the Prime Minister, the Honourable Henry Puna, and staff of the Cook Islands Investment Corporation, Crown Law Office and the SBM Authority.

The delegation from Rarotonga were warmly welcomed off the Air Rarotonga plane in Manihiki, before catching a boat across the 45 km ocean journey to Rakahanga, where the first of two public presentations were held.

There was an excellent turn out of residents at the Rakahanga consultation, with over forty people attending the meeting. They were eager to find out more about this new and emerging national sector. Just like the previous public consultations, Brown presented in our te reo maori on the background of the sector, the sector's current status aiming at Exploration to commence in 2019 and where the government (with the support of our people) would like the sector to be progressing towards, in the short, medium and long terms. There was a consensus of support at this meeting for the continued development of the sector. There was also a question about the possible effects of seabed mineral activities on our fisheries sector, to which Brown responded "*... through the proposed exploration phase, all relevant data will be collected and will help us to identify the potential impacts any future licenced seabed mineral activities on our ocean and our fisheries sector. So we can make good, informed decisions for the benefit of all our people.*"

The next day the delegation travelled across the open ocean from Rakahanga back to Manihiki, where the second public consultation was held in the village of Tauhunu, where the majority of the population reside. People from Tukao also came in 3 boats across the lagoon to participate in the consultation. This meeting was also well attended, with close to 80 people present. During question time, there was active feedback on when the future exploration phase might begin, as many in Manihiki would like to see the benefits that this potential minerals sector could bring to our nation. There was also advice given to

proceed with caution, due to the priority of the overall health of our ocean in our people's everyday lives. Brown reassured attendees that the careful progress of this sector is taking place with input from numerous stakeholders and government agencies, such as the Marae Moana, the SBM Authority, Crown Law Office, Cook Islands Investment Corporation, National Environment Service, etc.

Assistance has also been sought and coming from overseas agencies such as Commonwealth Secretariat, NZ Parliamentary Counsel's Office, NZ Petroleum and Minerals, NZ Environmental Protection Agency, and NIWA, MIT and the Commonwealth Secretariat etc.

The Manager of the Punanga Nui Market, William Taripo, also accompanied the delegation to ask residents of both Rakahanga and Manihiki how he could help them to sell their craft, produce and fish at the market here in Rarotonga. The opportunity was given to residents of Rakahanga and Manihiki to voice their needs to Taripo, as well as the Prime Minister and Deputy Prime Minister, as to how this beneficial economic proposal above could be achieved.

This recent Northern Group consultation completes the latest series of public consultations that commenced 5 months ago in Avarua in October 2018. These were undertaken to provide an update of the seabed minerals sector and the proposed SBM Bill to our local communities. The period for receiving feedback on the new draft SBM Bill has now closed and all feedback received is now being collated and evaluated. The final draft SBM Bill will then be released to the public in the next few weeks for further feedback.

More updates on our national Seabed Minerals sector can be found on the SBMA website – www.seabedmineralsauthority.gov.ck

Outer Islands Photo attached.

End Release.