

Seabed Minerals Bill 2019

Consultation Draft

[Hon A Member]

[Placeholder for Crest]

Seabed Minerals Bill 2019

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Schedule 1

Part 1

Amendments to Acts

Schedule 2

General duties of title holders

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

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 license, monitor, and manage the Cook Islands involvement with seabed mineral activities:
- (c) continues the register of titles and provides for the registration of dealings and interests in titles:

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- (d) provides for interaction between this Act and national law relating to environmental impact assessment, project permitting, and environmental management:
- (e) provides for the payment of royalties or other revenues derived under this Act, into a sovereign wealth fund, and the payment of fees:
- (f) 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 that makes an application

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

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

the **Area** means the seabed and ocean floor and subsoil thereof 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

Commissioner means the Seabed Minerals Commissioner.

Committee means the Cook Islands Seabed Minerals Advisory Committee established by section 21

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 the 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

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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 is—
 - (i) 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 to damage to submarine cables or 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

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)

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

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 person to whom an exploration or mining licence is—

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

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, 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

marine scientific research means any study, research (whether fundamental or applied), or other related scientific activity within the Cook Islands or the Area that—

- (a) is intended to increase knowledge about the marine environment for the benefit of all people, including through publication of results; and
- (b) is licensed or permitted by the Cook Islands Research Committee;
- (c) is not undertaken directly for commercial or economic purposes

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 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 approach developed in accordance with Principle 15 of the 1992 Rio Declaration on Environment and Development, which requires that, in order to protect the environment and where there are threats of serious and irreversible damage to the marine environment or threats to human health in the Cook Islands, a lack of full scientific certainty regarding the extent of adverse effects is not to be used as a reason for postponing cost-effective measures to prevent or minimise environmental degradation, in accordance with Cook Islands capabilities, arising in any way from a matter or person or any regulated activity

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

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

pro 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

regulations means any regulations made under this Act

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

seabed minerals—

- (a) means the mineral resources of any part of the deep 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 mineral activities means prospecting under a prospecting permit, exploration under an exploration licence, or mining under a mining licence

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

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 the United Nations Convention on the Law of Sea of 10 December 1982 that entered into force on 16 November 1994, and 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.

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- (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 prior environmental impact assessment of activities likely to cause serious harm to the environment in accordance with the Environment Act 2003; and
 - (h) take measures for ensuring safety at sea.

8 Application of Act

- (1) This Act applies—
- (a) to all individuals, whether or not Cook Island's citizens, and whether or not resident in the Cook Islands; and
 - (b) to all bodies corporate, whether or not incorporated or carrying 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
 - (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 Acts referred to in paragraphs (a) and (b)); and
 - (d) prevail in the event of inconsistency or incompatibility with any other Act or instrument in force in the Cook Islands.

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 and Committee

Subpart 1—Cook Islands Seabed Minerals Authority

10 Continuation of Authority

- (1) There continues to be a statutory body called the Cook Islands Minerals Authority.
- (2) The Authority is—
 - (a) a statutory agency of the Crown;
 - (b) a body corporate with perpetual succession;
 - (c) capable of holding real and personal property and of suing and being sued; and
 - (d) 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) licensing and monitoring the performance of title holders; and
 - (ii) taking enforcement actions for non-compliance with this Act or a title; and
- (c) develop policies, standards, and guidelines for the purpose of regulating and monitoring the development of the Cook Islands seabed minerals sector; and
- (d) advise the responsible Minister on matters relevant to the Minister's functions and powers under this Act; and
- (e) 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:

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- (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;
and
- (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 applications and 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 approval, recommendation of, or 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 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 this Act under—
 - (a) section 96 (Directions):
 - (b) section 98 (Action by Authority where there is failure to comply):
 - (c) section 100 (Administrative action):
 - (d) section 40 (Grant of prospecting permit):
 - (e) section 55 (Licence – decision-making):
 - (f) section 63 (Right of retention arising from exploration licence):
 - (g) section 65 (Renewal of licence):
 - (h) section 86 (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 91.

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, 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.

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, information owner's or commercial or financial affairs of the person who supplied the information, unless the Authority has—
 - (i) considered any relevant representations; and
 - (ii) given the owner of the information not less than five business 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 \$100,000 or five 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 \$150,000.
- (4) Subsection (3) is subject to section 99(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 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;
 - (b) sets out the roles, functions, and duties of Crown agencies in the event of an incident;
 - (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, from time to 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—Cook Islands Seabed Minerals Advisory Committee

22 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.

23 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.

24 Functions of Committee members

- (1) The functions of the Committee members, other than the Secretary, are to—
 - (a) provide 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 Secretariat to the Committee, 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.

25 Membership

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

26 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 to decision-making, quorum, disclosure of interest, information management, 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.

27 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

28 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

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- (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 coordinates must be described in accordance with the Universal Transverse Mercator grid system.
- (4) The Authority may further divide blocks into smaller divisions called cells.

29 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 make 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.

30 Block or cell eligibility for application

- (1) Subject to subsection (2), only blocks or cells designated under section 29(1)(a) may be the subject of a licence application.
- (2) A person for whom blocks or cells are reserved under section 29(1)(b)(ii) or (iii) may make a licence application in respect of 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 29(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 29(1)(b).

31 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 29(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.

32 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.

33 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) 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.
- (3) 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.

34 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.

35 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—
- (a) subject to applications or titles; or
 - (b) designated under section 29(1)(a); or
 - (c) declared under section 29(1)(b); or
 - (d) subject to 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.

36 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 information prescribed.
- (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.

37 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

38 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 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 \$1,000,000.
- (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

39 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.

40 Grant of prospecting permit

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 only be made by a person that is a body corporate.
 - (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) both paragraphs (a) and (b).
 - (4) This section is subject to section 42.

41 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 to deny a prospecting permit; or
 - (c) request further information from the applicant.

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- (2) Before the Authority refuses 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 business days to explain or clarify the application in writing.

42 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 or exploration or mining licence, or subject to a retention right under section 63; 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 deny an application for a prospecting permit must be accompanied by a written statement of the reasons for that denial.

43 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 licence 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 29(1)(b) or a declaration of a tender round under section 32(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 29(1)(b); or
 - (c) a declaration of a marine protected area or other marine zone that prohibits seabed mineral activities.

44 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

45 Exploration and mining within Cook Islands national jurisdiction

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

46 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 29(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.
- (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 or cells of an area that has been retained under section 63, by the person for whom the blocks or cells have been retained; or
 - (c) by any other person invited to apply in accordance with section 31 or otherwise invited to apply in writing by the Authority.
- (4) More than one licence may be granted to the same person.

47 Priority of right of section 46 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 46, the Authority must record the date and time that the Authority receives each application under section 46.
- (2) If the Authority cannot reasonably distinguish the order of receipt of 2 or more applications made under section 46 that cover any of the same block or blocks, the Authority must assess the applications competitively against each other in

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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 any 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.

48 Licence area

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

49 Content of application for licence

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

50 Review of licence applications by Authority

- (1) The Authority must be satisfied that an applicant for a licence meets the qualification criteria before it considers the application.
- (2) If the applicant meets the qualification criteria, the Authority must evaluate the application against the prescribed evaluation criteria.
- (3) The Authority—
 - (a) must consider licence applications promptly, in accordance with the prescribed criteria for assessing applications and any prescribed procedures or time limits;
 - (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).

51 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.

52 Fit and proper person test

- (1) For the purpose of determining whether the applicant is a **fit and proper person** under section 51(e), the Authority must take into account whether the applicant (including each director, affiliate, and any associate involved in the management of the applicant's business) has previously, in any jurisdiction,—
 - (a) 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—
 - (i) protecting or rehabilitating the environment; or
 - (ii) safeguarding the interests of the local community; or
 - (b) been convicted of an offence relating to the conduct of seabed mineral activities or other sea- or land-based exploration or mining activities; or
 - (c) been convicted of an offence involving fraud or dishonesty.
- (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 51(e) if the applicant is currently insolvent or under administration.

53 Licence decision-making: consultation

- (1) The Authority, on receiving an application for a licence, must, as soon as practicable after deciding that the applicant satisfies the qualification criteria,—
 - (a) give notice setting out appropriately comprehensive information about that application to—
 - (i) any other State that may be affected by the proposed seabed mineral activities described within that application; and
 - (ii) those Crown agencies, the responsibilities of which are relevant to the subject matter of the 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.
- (2) If the applicant does not meet the qualification criteria, the Authority must—
 - (a) decline to grant a licence; or
 - (b) return the application to the applicant without making a decision.

54 Licence decision-making: restrictions

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 63 (except if a person applies for a mining licence in circumstances permitted under section 46(3)); or
 - (ii) that has been reserved by the responsible Minister under section 29(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.

55 Licence decision-making: grant of licences

- (1) The Authority may, after applying the provisions of this Act and regulations relating to the grant of licences, recommend to the responsible Minister that he or she—
 - (a) grant a licence to the applicant, in accordance with the approval of the Cabinet; or
 - (b) refuse to grant a licence.
- (2) Where the Minister intends to follow a recommendation to grant a licence, the approval of the Cabinet must be obtained in accordance with section 57.
- (3) After obtaining that approval, and after the Authority has complied with section 56, the Minister may grant the licence.

56 Terms of licence

- (1) If the 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.

57 Cabinet approval of licences

- (1) A licence is not validly granted unless the Cabinet has given its prior approval to the licence terms, in accordance with the recommendation of the responsible Minister.
- (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 laws of Cook Islands; and
 - (c) complies with obligations of the Cook Islands under international law.

58 Licence decision-making: written statement of reasons

Within the prescribed time after a decision made by the responsible Minister under section 55—

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

59 Review of licence decision

- (1) An applicant, or any other interested party with legal standing, who is dissatisfied with a decision by the responsible Minister 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) may establish independent procedures or advisors to review the decision; and
 - (b) must, within the prescribed time of 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 55.
- (3) Nothing in this section prevents a person applying for judicial review of a licence decision in accordance with the laws of the Cook Islands.

60 Duration of licence

- (1) The responsible Minister may grant an exploration licence for any period determined by the Minister, not exceeding 5 years, commencing on a date 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 five 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 is actively mined by the title holder in the preceding 12-month period before the renewal; and
 - (b) the licensee satisfies the prescribed requirements and pays the prescribed fee.

61 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.

62 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.

63 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 for the former licensee for a period of three 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 decide to refuse or approve the 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 five years, 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, that the Authority considers appropriate, including payment of a prescribed fee; and
 - (b) publish a notice of the retention in the *Gazette*, and record it in the register of titles, and on the website of the Authority.

64 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.

65 Mining licence gives licensee rights to seabed minerals recovered

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).

66 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 \$1,000,000.

67 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—
 - (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.

68 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.

69 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.

70 Renewal of licence

- (1) A licensee may apply to the Authority for successive renewals of a licence.
- (2) The Authority, 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 60.
- (3) 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.
- (4) If a renewal is to be denied, the Authority must follow the processes set out in section 58.
- (5) 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.

71 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 this licensee to submit additional data for the purposes of a joint review.

72 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 96; or
 - (c) the licensee surrenders the licence under section 68; 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.

73 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

74 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 an environmental permit granted by the National Environment Service or contained in its licence is deemed to be a condition of the title.

75 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—

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- (a) this Act; and
- (b) the Environment Act 2003; and
- (c) the Marae Moana Act 2017; and
- (d) any applicable rules, standards, and procedures that are adopted in the Cook Islands relating to protection against discrimination in employment, occupational health and safety, labour relations, social security, employment security, and living conditions.

76 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.

77 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 \$500,000 or to imprisonment for a term not exceeding 10 years, or to both.

78 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.

79 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 \$350,000 or to imprisonment for a term not exceeding two years, or both;
 - (b) is liable to pay a pecuniary penalty not exceeding \$700,000.
- (5) Subsection (4) is subject to section 99(5).

80 Liability of title holders

- (1) Each title holder is—

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- (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.

81 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 80.

Part 6 Financial arrangements

82 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.

83 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 85:
 - (ii) interest on the amount outstanding be charged at a rate that is prescribed, or at the Government's official interest rate.

84 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 82 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.

85 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 five years or more, as specified in the title, following the cessation of the regulated activity.

86 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 Authority's prior written consent, which must not be unreasonably withheld.
- (2) In considering whether to consent to a transfer, 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.
- (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

87 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 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 89, **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.

88 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.

Compare: Fisheries Act 1996 (NZ) s 199A

Carrying out search powers

89 Search powers

A search power conferred by or under section 82 or 83 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 bring 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):

- (g) to copy any document, or part of a document, that may lawfully be seized:
- (h) 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:
- (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) 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.

Compare: Search and Surveillance Act 2012 (NZ) s 110

90 Powers of persons called to assist

- (1) Every person called on to assist a person exercising a search power under section 87 or 88 is subject to the control of the person 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.
Compare: Search and Surveillance Act 2012 (NZ) s 110

91 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.

Compare: Search and Surveillance Act 2012 (NZ) s 112

92 Other powers of inspectors

An inspector has, in addition to the powers conferred by sections 87 to 90, any other powers, not inconsistent with those sections that are prescribed.

93 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 unlawful seabed mineral activities;
- (c) unjustifiably removing samples; or
- (d) interfering with the safe and normal operations of vessels or installations.

94 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 responsible Minister 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.

95 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 \$150,000, or to imprisonment for a term not exceeding five years, or both.
- (3) A title holder who contravenes subsection (1) is liable to pay a pecuniary penalty not exceeding \$100,000.
- (4) Subsections (2) and (3) are subject to section 99(5).

Directions

96 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 to the responsible Minister for an administrative review of the direction, which must be completed within 14 days, and the 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.

97 Consequences of non-compliance with section 96

- (1) A title holder who does not comply with a direction given under section 91 is liable to pay a pecuniary penalty not exceeding \$500,000.
- (2) A person who does not comply with a direction given under section 91 commits an offence and is liable on conviction to a fine not exceeding \$250,000.

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- (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 99(5).

98 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 96 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,—
 - (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

99 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 other 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; and
 - (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

100 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 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 two 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 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 96:
 - (e) subject to section 102, 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) promotes 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.

101 Grounds for variation, suspension, or cancellation of licence

- (1) The Authority may, subject to section 102, 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 particular;
 - (c) if the variation, suspension, or cancellation is, in the reasonable opinion of the Authority, necessary to—
 - (i) prevent serious risk 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;
 - (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.

102 Procedures for regulatory action

- (1) The Authority must not take action against a licensee under any of sections 98, 100(2)(d), (e), and (f), and 101(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 100(2)(d), (e), and (f) or 101 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

Miscellaneous

103 Indemnity of public officials and Committee members

The responsible Minister, the Commissioner, officers, inspectors, and members of the Committee 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.

104 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.
- (2) 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 in—
 - (a) the change constitutes a transfer for the purposes of section 86; or
 - (b) any action is envisaged under section 29(1)(f) or 30(1)(b).
- (3) The Authority must enter any change to which this section applies into the register of titles maintained by the Authority under section 36(2), for which a prescribed fee may be payable.
- (4) A person who contravenes subsection (1) is liable to pay a pecuniary penalty not exceeding \$250,000.

105 Effect of termination

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.

106 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.

107 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.

108 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 \$100,000.

109 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.

110 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 public official, 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 \$300,000.
- (3) A title holder who contravenes subsection (1)(b) is liable to pay a pecuniary penalty not exceeding \$250,000.
- (4) Subsections (2) and (3) are subject to section 94(5).

111 Conflict of interest

- (1) Any officer of the Authority, inspector, or member of the Commission 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 liable to dismissal 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 96, 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 \$100,000.
- (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.

112 Authorised rights and interests

- (1) Section 107 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.

113 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 convenient for carrying this Act into effect.
- (2) Without prejudice to the generality of 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, management, and administration of the Committee:
 - (d) setting standards of behaviour and ethical conduct for officials and public officers exercising powers and performing duties under this Act:
 - (f) requiring the Authority to consult with any specified persons or groups when considering applications for permits or licences:
 - (g) prescribing standard terms and conditions for licences and permits:
 - (h) prescribing criteria or rules for—
 - (i) conducting tenders:
 - (ii) evaluating applications:
 - (iii) granting titles:
 - (j) providing for the amendment and reassessment of applications for licences and permits:
 - (k) defining the term “baseline data”, and prescribing the manner in which and the standards to be applied to its collection:
 - (l) the maximum areas that may be held under any one licence, or by any one person, at any one time:
 - (m) monitoring (after the grant of title) and other requirements relating to the closure of seabed mineral activities:
 - (n) the management and investigation of incidents:
 - (o) providing for the payment of bonds and other kinds of securities by permit and licence holders, and regulating how that money is dealt with:
 - (p) requiring parties to disputes under this Act to undergo dispute resolution using prescribed mechanisms:
 - (q) providing rules designed to ensure the health and safety of persons working on vessels or installations or using equipment for seabed

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- activities, and for the health and safety of others who may come into contact with regulated activities:
- (r) requiring permit holders and licensees to hold insurance of a specified kind for a specified period:
 - (s) sanctions for contraventions against requirements in the regulations, including—
 - (i) offences carrying a maximum penalty of—
 - (A) \$250,000 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 \$500,000 for a corporation and \$50,000 for an individual:
 - (t) the conferral of regulatory powers under this Act on officers or inspectors and the conditions on which such powers may be exercised:
 - (u) prescribing fees for matters under this Act or the regulations including a method for determining those fees:
 - (v) 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 permits:
 - (b) applications for exploration licences:
 - (c) applications for mining licences.

Part 9

Transitional and savings provisions

114 Related amendments

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

115 Savings

- (1) Despite any of the provisions of this Act, nothing in this Act affects the existing use or occupation of any land or Cook Islands waters, if that 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.

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- (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 to 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 28(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 28(1)(b) of this Act.

116 Transitionals, savings, and orderly implementation of Act and related enactments

- (1) The Queen's Representative my, with the approval of the Cabinet, on the recommendation of the 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 Minister must not recommend the making of regulations under this section unless the 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.

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- (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.

117 Repeal

- (1) The Seabed Minerals Act 2009 is repealed.
- (2) Section 5 of the Continental Shelf Act 1964 is repealed.

118 Amendments to enactments

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

Schedule 1

Part 1

Amendments to Acts

Cook Islands Investment Corporation Act 1998

In section 5(c), definition of **real property**, add to paragraph (c) “and minerals on or under the seabed”.

Environment Act 2003

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 Enea.
- “(2) In carrying out his or her functions under subsection (1), the Director must consult with the Minister.
- “(3) The members of the Council are the following:
- “(a) the Director who is chairperson of the Authority;
 - “(b) between 3 and 5 other members appointed by Cabinet on the recommendation of the Director;
 - “(c) 3 other members appointed by Cabinet on the recommendation of the Minister to represent the interests of the public in Rarotonga and the Pa Enea.
- “(4) The Director must appoint members—
- “(a) under subsection (3)(b) to a National Environment Council who collectively have knowledge of; and
 - “(b) experience in relation to, matters relevant to the functions of the council as the permitting authority.
- “(5) Knowledge and experience that are relevant include knowledge of, and experience relating to,—
- “(a) governance procedures and organisational change; and
 - “(b) the Cook Islands environmental management system; and
 - “(c) the links between the economy and environmental management; and
 - “(d) administration of environmental and risk management frameworks; and
 - “(e) central government processes.

“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 Minister with the concurrence of Cabinet, on—
- “(a) grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct; or

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- “(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 section 36 of the Environment Act 2003 with the following sections:

- “**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—
 - “(a) 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 depletable 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), refuse 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.

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- “(7) For the purposes of subsection (1)—
- “(a) any designation, or issue or re-issue of approval of any land (whether by a 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;
 - “(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 Authorities decisions

- “(1) Within 14 days of receiving notice of a refusal under section 36(5)(c), the applicant may by letter to the Minister, request that the Minister consider the permitting authority’s decision.
- “(2) The 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 Minister’s decision to either—
- “(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 Minister is required to make a decision under subsection (2) in any case where the 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 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 Minister; and
 - “(b) follow the panel’s recommendation in making the decision under subsection (2); and
 - “(c) make those recommendations public.
- “(4) If the Minister has conducted a review under subsection (2), or an independent panel has conducted a review under subsection (3) no

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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 on conviction be liable—
- “(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 section 36(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.”

Schedule 2

General duties of title holders

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 Impact on marine and coastal users

If marine or coastal users likely to be adversely affected by the seabed mineral activities are identified by the Authority or the title holder at any time, including through the application and environmental impact assessment processes, the title holder must obtain free, prior, and informed consent, including by way of compensation, from those persons before commencing the seabed mineral activities.

5 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.

6 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.

7 Closure of site

The title holder must, at the termination of the title, remove installations, equipment and materials in the title area, so as to ensure that the title area does not constitute a danger to persons, shipping, or the marine environment; and provide a final report including information on the closure and rehabilitation of the title area.

8 Capacity-building and employment of Cook Islanders

The title holder must cooperate in capacity-building of personnel 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.

9 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.

10 Accounts

The title holder must maintain, separately for each title and for a period of five 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.

11 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:

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- (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.

12 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.

13 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 Cook Islands Government:
 - (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 66 and the prescribed procedures.

14 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.

15 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.

16 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.

17 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 Committee member, public official, or other person acting for or on behalf of the Crown.

18 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 of the end of each calendar year, a written annual report containing any information that is prescribed or reasonably required by the Authority.

19 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.

This Act is administered by the [insert name of administering department].

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