



Cook Islands

National Seabed Minerals

Policy

Reviewed from the 2014 Policy

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1. Background

The Cook Islands is a small, developing Pacific Islands nation that is increasingly viewing itself as a “large ocean state”. Like many Pacific Islands nations, the Cook Islands has limited opportunities for sustainable economic growth and diversification. One of our greatest natural resources has always been our ocean. To this end, the **NSDP** under Goal 12 of “Sustainable Management, of Ocean, lagoon and Marine Resources”, strategically focuses on developing our marine resources including those located on the **Continental Shelf**.

The people of the Cook Islands are collectively the resource owners of all marine resources within our **EEZ**¹, which are managed by Government for the benefit of our people, now and for generations to come.

1.1 Purpose

The principal purpose of this policy is to establish the rationale and vision for high level policies that will guide the planning and implementation of our Government’s sustainable management of the **Seabed Mineral (SBM) Resources** under the control of the Cook Islands and to enable the wise regulation of **SBM Activities**. The policy states our Government’s position on the implementation of key aspects of the legislative scheme for **SBM Activities** set out in the **SBM Act, Environment Act, Permits and Consents Regulations, and Tax Act**.

It is the expectation of our Government that this document will assist:

- the Cook Islands community to engage with our Government to seek to ensure that **SBM Activities** are managed for the greatest national benefit;
- the private sector to make informed decisions about investing or participating in **SBM Activities**; and
- to continue to build stakeholder confidence in our Government’s management of **SBM Activities**.

1.2 Scope

This Policy covers the regulation and management of **SBM Activities** both:

- within national jurisdiction (the seabed of the Cook Islands **Continental Shelf**); and
- in ‘**The Area**’: any parts of the global seabed that do not fall within a country’s national jurisdiction but in which any signatory State to **United Nations Convention of the Law of the Sea (UNCLOS)**, including the Cook Islands may ‘sponsor’, and thereby regulate and control **SBM Activities** by companies.

1.3 Definitions

Definitions for this policy are set out in section 8. Defined terms are printed in **bold** text. Definitions contained in the SBM Act have priority at all times.

¹ Approximately 1.98 million km²

2. Policy Context

Forty years of ocean survey work suggests as much as 10 billion tonnes² of mineral rich manganese nodules are spread over some 750,000 square kilometres of Cook Islands **Continental Shelf**. This **SBM Resource** offers a significant opportunity for the long term sustainable economic and social development of the Cook Islands. The **NSDP** Goal 12 states:

“Sustainably use the oceans, lagoons and marine resources for sustainable development.”

In doing so we recognise the critical need to conserve the ecosystems of the ocean in order to safeguard Cook Islands culture and to promote higher quality of life for Cook Islanders.

This theme of the **NSDP** is addressed by the environmental management strategies in the **National Environmental Strategic Action Framework (NESAF)**. The **NESAF** offers guidance and direction for achieving sustainable social and economic progress for the Cook Islands through the wise management of natural resources and the environment. This policy takes account of relevant objectives and goals of the **NSDP** and **NESAF**.

Beyond national policy, the legal framework establishing the rights and obligations of the Cook Islands with respect to the **exploitation** of **SBM Resources** is set out in **UNCLOS**. Under **UNCLOS**¹, the Cook Islands enjoys exclusive rights to utilise its **SBM Resources** within its **EEZ** subject to compliance with **UNCLOS** requirements including in relation to protection of the marine environment (see section 5.45.4). These rights and obligations are reflected in a legislative scheme to manage Cook Islands **SBM Activities**.

Legislative scheme for SBM Activities

- **SBM Act**: establishes the national framework for **SBM Activities**, including in relation to the release of areas of seabed for **SBM Activities**, controls for the issue and regulation of **Titles**, institutional arrangements for administration of the scheme including monitoring and enforcement powers, and Government accountability measures. Administered principally by the **Authority**.
- **Permits and Consents Regulations (*2019)**: sets out requirements for **Environmental Impact Assessments (EIAs)** and environmental permits, ongoing monitoring and reporting requirements, site closure obligations and enforcement powers in respect of environmental issues relevant to **SBM Activities**. Administered by the **National Environment Service (NES)**.
- **Tax Act**: provides key elements of the fiscal scheme applicable to **SBM Activities**, including application of company income tax, a resources rent tax, tax collection mechanisms and measures for reducing tax leakage. Administered by the **Ministry of Finance and Economic Management (MFEM)**.
- **Royalties Regulations**: requires payment of royalties on mined **SBM Resources**, administered by **MFEM**.

² Note that this is an estimate of the in-ground resource, not a recoverable estimate. A recoverable estimate will only be known after considerable exploration including geological, environmental, processing, mining and economic studies are completed. If only 10% of that resource can be recovered it will be one of the largest mineral deposits ever discovered. It is a world class mineral deposit

The roles and responsibilities of institutions that oversee **SBM Activities** are outlined in section 6. Our Government is preparing legislation for a **SWF** consistent with section 5.90 of this policy.

3. Vision

Aruaru kia tā'anga'anga maata ia te au minera o te takere moana o te Kuki Airani na roto i te kaveinga akatere'anga tau meitaki tei tangoia ki runga i te au ravenga karape ei puapinga no te uki o teia ra e te au tuatau ki mua.

Strive to attain optimal utilisation of Cook Islands seabed mineral resources through effective and efficient management using best practice principles for the benefit of present and future generations.

4. Challenges and Considerations

The following challenges potentially impact the management of **SBM Activities**:

- **The Seabed Minerals sector is a frontier industry**

As of 2018, deep seabed exploration has only occurred in the Clarion Clipperton Zone and is taking place in a limited number of other countries. The **SBM** sector is still in its developmental, frontier stage and any engagement requires the Cook Islands to be responsive in having a regime in place that allows it to be an effective, responsible participant/resource owner and to ensure the best interests of the Cook Islands are protected. There are many unknowns and legitimate concerns that need to be addressed for this **SBM** industry to progress in a sustainably responsible and effective manner.

- **Management of health, cultural and other social risks**

Other developed and developing nations which are generating significant national revenues from extractive industries have experienced a range of social and environmental challenges. The trigger for these challenges vary and could include the negative environmental impacts, the rapid influx of money into the local economy and the presence of larger numbers of returning nationals and foreign nationals in the community over the medium to long term.

- **Lack of seabed data in our EEZ**

The **SBM** sector is an emerging industry, and there is still limited data currently available on the deep seabed and associated environment at the depths that **SBM Activities** are expected to occur at in the Cook Islands. The lack of data makes it inherently challenging in making decisions on the necessary initial investment, technology, risks, impacts, environmental assessments and mitigation measures.

The source of new data about the Cook Islands' **SBM Resources** and the associated environment, which is required to assist Government decisions about **SBM Activities**, is likely only to come from

private sector entities. Expert overseas companies can apply for and be granted **Titles** under the SBM Act to conduct prospecting and exploration in the Cook Islands seabed minerals zones, given the high-cost of marine scientific research in the deep oceans. All the resulting data will come back to the Cook Islands and be independently peer reviewed for and by Cook Islands decision makers.

- **Environment protection**

It remains a critical priority of our Government that **SBM Activities** are carried out in a manner that is consistent with the primary purpose of the Marae Moana Act 2017, does not lead to significant negative impact on marine eco-systems and is consistent with internationally accepted rules, standards, principles and practices and care for the environment (under **UNCLOS** and other relevant conventions, treaties and agreements). A lack of data (see above) may compromise effective environmental management, while monitoring and enforcement activities may be complicated by the remoteness of **SBM Activities**, in terms of the distance of both: surface ships from shore; and **mining** activities from the surface. The collection and review of data from **exploration** activities is expected to assist in overcoming the current lack of information and understanding of issues related to **SBM Activities**.

- **Government capacity to administer the legislative and regulatory scheme**

Our small population, limited national budget, geographical remoteness and the further remoteness of **SBM Activities** from our islands will challenge our capability to provide sufficient suitably qualified, trained and experienced local personnel to the institutions responsible for the licensing, environmental, fiscal and safety regulation of **SBM Activities**. Management of conflict of interest and avoidance of undue influence are also challenges in small Governments. Capacity training of Cook Islands people is essential to allow the Cook Islands to develop and control its own national seabed mineral resources.

- **Attracting suitable investors**

The Cook Islands is not the only source of **Polymetallic Nodules** or the metals found therein, which are also found in the CCZ and on land in diminishing abundances. Investors will only be interested in the Cook Islands' **SBM Resources** if they consider the operating environment is sound, and assess that they can sustainably harvest those resources with a long term profitable objective in mind. The higher the costs of **SBM Activities** incurred by investors, the lower the profits and the less attractive as an investment our resources could become. Factors within the Cook Islands' Government control that may increase the cost to investors of **SBM Activities** are: regulatory controls, environmental protection measures and the priority to maximise financial return to the nation from finite **SBM Resources** (i.e. high tax rates and royalties). Outside of the Government's control are the costs of technology and equipment that reflect the pioneering nature of **SBM Activities**, the extreme sea depths at which **SBM Activities** will occur and the global market value and long term demand for minerals and metals. All costs of conducting **SBM Activities** under Cook Islands jurisdiction affect the international competitiveness of our nation among potential investors, and may impact our capability to attract the highest quality investment.

5. Seabed Minerals Policy (reviewed from the 2014 Policy)

5.1 Overview of Policy Objectives

In achieving this vision we outline the following specific policy objectives that are explained in further detail in subsections 5.3 to 5.14.

1. Transparent and accountable governance of **SBM Activities**.
2. Engagement and cooperation between communities and government in the administration of the SBM Activities.
3. Sustainable Environmental Management.
4. Responsible SBM health and safety standards
5. Minimisation of negative social impacts from SBM Activities.
6. World class partnerships to develop the SBM Sector
7. A competitive investment and fair financial regime
8. Sound revenue management practices, that benefit current and future generations
9. SBM exploration and exploitation rights
10. Maximising the benefits of MSR.
11. Maximising the non-financial benefits of SBM Activities.
12. Maximising the benefits of Cook Islands SBM Resources.
13. Sound regulatory framework – national jurisdiction.
14. Sound regulatory framework – The Area.

5.2 Transparent and accountable governance and management of SBM Activities

An effective and responsible Cook Islands SBM sector will be transformational for the country from an economic standpoint, but also from the other benefits that will arise from this industry. Ensuring that these benefits are 1) maximised and; 2) managed prudently and equitable shared, required the establishment of a sustainable regulatory framework that promotes accountability and transparency as its corner stones.

Transparency and accountability are so crucial due to the significant amounts of money involved in the sector. What this means in practice is that we have effective decision making processes in place at all levels that promote the best choices to be made based on the best information available by the best people. To this end we must ensure all material decisions (including appointments and licensing) are done in a manner consistent with this objective.

Regular reporting of the industry is important. Whilst the sector has commercially sensitive information it is important to illustrate and report on all the processes and activities that regulate the sector to show that they are working effectively.

A rigorous reporting framework is important to enforcing transparency and accountability. This reporting framework is inclusive of the commercial, licencing and contracting arrangements, the financial regime as well as the environmental reporting.

1. Transparent and accountable approach to **governance and management of SBM Activities**

1.1 We will ensure all appointments to a position that have decision making authority or expert advisory roles in the SBM sector have a transparent process and will be thoroughly advertised, assessed and appointed on the basis of merit.

1.2 We will ensure issuing of licences have clear transparent processes, accessible and able to be understood by the public.

1.3 The Authority will produce an annual report and the report will contain its decision making processes, its key decisions during the year (appointments and licences) to ensure transparency and due process is carried out in safeguarding the best interests of the country

5.3 Engagement and cooperation between communities and government in the administration of the SBM Activities.

Parliament has decreed that the objectives of the **SBM Act** include to:

“promote a co-operative approach to the management of the seabed minerals of the Cook Islands involving government and island communities.”

Cooperative administration of **SBM Activities** by Government agencies, within the allocated responsibility of agencies, maximises the efficiency and efficacy of that administration.

Engagement of island communities in the administration of **SBM Activities** assists to ensure that **SBM Activities** best serve the national interest and minimises the risk that inadequately-informed decisions are taken by the Government or Title holders, or that the community misunderstands or does not support our Government’s approach to **SBM Activities**. The Cook Islands’ **SBM Resources**

can be seen as the common heritage of all citizens, present and future; and the issues around their development are cross-cutting, complex and novel. For this reason Government adopts the position that the entire nation and its people are the “community” affected by **SBM Activities** and that related decisions are best-handled with participation of all concerned citizens.

We have a commitment to community engagement, including through:

- Engagements with the community via the **Advisory Committee**;
- Consultations on the various islands, and with various groups (including traditional and political leaders), regarding **SBM Activities**;
- Engagement with international and regional stakeholders and donors; and
- Publication of relevant information about **SBM Activities**, via the media and **Authority** website.

2. Participatory approach to management of SBM Activities

2.1 We will take all reasonable steps to ensure that the administration of **SBM Activities** is conducted in participation and consultation with other relevant Government agencies and the Cook Islands community.

Measures for a cooperative approach to the management of Cook Islands SBM Activities

- The **Authority** will assess with expert advisors all **Licence** applications in consultation with other relevant agencies, including **NES** and Marae Moana.
- The **Authority** will actively consult with the community on the conduct of **SBM Activities**, through the **Advisory Committee** and other avenues
- **EIA** processes, including a public consultation component, will apply where necessary for **SBM Activities**, in accordance with the **Environment Act** and the **SBM Act**.
- The Government will consult with the community on changes to this policy or to the legislative scheme governing **SBM Activities**.
- Decisions in relation to investment of the **Sovereign Wealth Fund (SWF)** are proposed to be taken in consultation with an investment entity to be established by law that will include community members.
- **SBM Activities** will be consistent with Marae Moana principles, objectives, policies and legislation.

In addition, the Government recognises the benefits that can accrue to regional co-operative measures. In this regard, the Cook Islands are a key founding member of the regional ACP-EU Deep Sea Minerals Project managed in Fiji by SOPAC, which ended in 2016. Also, the Pacific Islands Regional Ocean Policy encourages the Cook Islands to engage with neighbours to harmonise policies, share information to minimise impacts and to promote joint developments. Among other opportunities, the administration of Pacific region **SBM Activities** may in the future be undertaken by a regional body that enables the sharing of resources for regulatory activities. Experience in the

development and management of **SBM Activities** may enable the Cook Islands to assist this initiative.

3. Regional cooperative measures

3.1 As appropriate, we will consider and pursue regional cooperative measures that offer short or long term benefits to the development of the Cook Islands **SBM** sector. Such as the proposed DSM Agreement.

5.4 Sustainable environmental management

UNCLOS and general international law, establish standards of environmental protection that apply to **SBM Activities**. These standards relevantly include: application of the **precautionary approach**, implementation of due diligence measures for the administration of national laws, adoption of ‘best environmental practice’ and making provision for environmental emergencies.

‘Best environmental practice’

Will change over time but currently includes (in addition to the **precautionary approach**):

- stringent environmental data collection requirements, to enable monitoring of potential impacts against baseline data and control sites;
- application of appropriate requirements to undertake an **EIA**;
- adherence to pollutant restrictions, and application of the ‘polluter pays’ principle;
- use of ‘best available technology’;
- managing environmental issues using adaptive management;
- basis of the anticipated effect of activities, rather than the nature of the activities; a lighter response to **prospecting** than **exploration** is therefore likely, and **exploration** rather than **exploitation**, depending on the circumstances;
- considering environmental effects at the broad ecosystem level, rather than (for example) by reference to individual species;
- a requirement for persons engaged in **SBM Activities** to pay financial bonds, held on trust by the Government, to actively discourage (and to cover the costs of clean-up or compensation for) potential environmental damage.

The lack of data about the deep seabed and its associated ecosystems presently makes it difficult to assess fully the potential impact of **SBM Activities**. In particular, **SBM Activities** on the Cook Islands **Continental Shelf** is expected to occur at depths between 4,000m and 5,000m. It is Government policy that there is unlikely to be local processing of **SBM Resources** in the Cook Islands due to a lack of expertise power, personnel and available land. This, and the distance from shore of proposed mining sites, will greatly limit onshore or coastal impacts of **SBM Activities**. Impacts will occur at harvesting sites of **SBM Resources**, where possible environmental damage may include significant

disturbance to seafloor ecosystems, long term suspended sediments in the water column, and potential flow-on effects for food chains. and may potentially lead to impacts due to increased marine traffic (e.g. barges shipping ore out of the EEZ) The **precautionary approach** means that the Government cannot use the absence of data to avoid taking protective measures to require the prevention, mitigation, or remedy of any such impacts where cost-effective measures are available to do so.

4 Adherence to international standards of environmental protection

4.1 We will comply with applicable principles of international law targeting protection of the environment, including adoption of best environmental practice and application of the **precautionary approach**.

In pursuing this objective, and as appropriate, the **NES** on behalf of the Government will apply the requirements of established national environmental policy as well as the **Environment Act**, and the **Permits and Consents Regulations**, and other environment-related legislation. Additional legislative mechanisms will be considered as required.

5 Protection of the environment

5.1 We will seek to ensure that the conservation, protection and management of the marine and coastal environment of the Cook Islands is not unreasonably compromised by **SBM Activities** through the formulation, enactment and application of environmental laws and regulations reflective of the needs of our ocean and of internationally accepted principles and standards of environmental protection, including the **precautionary approach**.

Best environmental practice measures

- This policy will assist Government to determine which parts (and how much) of the seabed to allocate for **SBM Activities**, and any plans for associated control sites, buffer zones, marine protected areas.
- Title holders proposing to engage in **SBM Activities** must obtain an environmental permit from the **NES**, and depending on the potential impacts of the **exploration** techniques to be implemented must conduct an **EIA**.
- Stringent data collection and reporting requirements on Title holders to enable ongoing environmental monitoring by the **NES** and the **Authority**.
- Application of appropriate impact mitigation measures during **SBM Activities**.
- An on-vessel inspection regime.

- Title holders will be obliged to adopt the **precautionary approach** and to remedy environmental harm on their **SBM Activities** and closure, and will remain responsible for any latent environmental damage beyond closure.
- Heavy penalties for breach, including criminal sanctions and cancellation of **Titles**.

Environmental factors also pose particular risks and challenges to people engaged at sea in **SBM Activities**, including as a result of the specific tasks of **SBM Activities** and the remoteness of **SBM Activities** from medical help.

5.5 Responsible SBM health and safety standards

SBM Activities both exploratory and exploitative is an inherently risky activity combining the issues of maritime activity and the operation of complex heavy machinery. The Cook Islands, in all aspects of SBM activities wishes to aspire to the highest standards which also extends to the occupational health and safety of those who operate and work in Cook Islands waters.

6 Responsible SBM health and safety standards

6.1 We will ensure the highest standard of health and safety standards are practiced in **SBM Activities** within Cook Islands’ waters.

5.6 Minimisation of negative social impacts from SBM Activities

Risks of social impacts from **SBM Activities** have been extrapolated from the experience in land-based, extractive industries, and at different times these concerns have been reflected in some views from the Cook Islands community. The principal concerns and the Government’s responses are:

| Concern | Government position |
|--|--|
| Rapid changes to social balance caused by the sudden influx of SBM Revenues or other economic development | The proposed SWF and its controlled, strategic, protection, investment and use of funds in the local economy will prevent and reduce the destabilising effect of a rapid influx of SBM Revenues . |
| Effects on social structures and ideals caused by a large influx of returning nationals and foreign nationals | The remoteness of SBM Activities , and the Government’s position that no processing of SBM Resources will be carried out on Cook Islands territory, means that no substantial increase of foreign nationals on Cook Islands land is expected. Issues relating to returning nationals will need to be addressed through strategies designed after extensive social studies and assessments. |
| Undermining traditional uses of the ocean as a result of damage to the environment | The SBM Act prohibits unnecessary interference with specified other uses of the sea, including fishing and sea cables and navigation. The remoteness of SBM Activities from islands means that the Government anticipates no social impact from SBM Activities on coastal areas used in customary practices of people living on islands in the Cook Islands. |

The Government remains committed to pre-empting and addressing potential social impacts, in open consultation with the community (see section 5.3). Where an **EIA** shows likely adverse social impacts from proposed **SBM Activities**, the Government (the **Authority** or the relevant environment permitting authority) can reject a project or require amendments to avoid or minimise those impacts.

7 Mitigation of negative social impacts from SBM Activities

7.1 We will prioritise the early identification and treatment of risks that could adversely impact our society.

7.2 We will require that **Title** holders conduct **SBM Activities** in a socially responsible manner, consistent with the best international principles.

7.3 We will require that **Title** holders develop a participatory and collaborative approach to the planning and development of **SBM Activities** relating to their **Title**, taking account the needs of Cook Islanders.

5.7 World class partnerships to develop the SBM Sector

In developing the Seabed mineral industry in the Cook Islands, due to the scope, complexity and capital intensity of the industry, the Cook Islands will be reliant on a number of partnerships to successfully develop a deep seabed mineral industry.

This will be crucial in the set up phase of the industry in establishing the appropriate regulatory framework, but also throughout the lifecycle of the industry in the Cooks. In establishing a frontier industry the Cook Islands must align itself with global leaders in best practice.

What this means in practice is at the early stages of the industry aligning with agencies, organisations with experience and expertise in research and regulation in ascertaining how best to manage and regulate the SBM industry considering potential future trends (modelling commodity prices, future technological chances and their impacts on the environment and productivity, etc)

The need to work with various international partners is also relevant when assessing commercial opportunities in harvesting the natural resource. The Cook Islands perceives each potential commercial contractor, not simply as a commercial licensee, but a potential partner in the development of the industry. As such through a process of due diligence and thorough vetting, the Cook Islands will only work with companies and commercial interests who are considered industry leaders in the range of respective fields the industry entails (from marine ecology to maritime, to finance to metallurgy). Of equal importance is the need for these partners to have a strong background in social and environmental responsibility, ensuring that their values and practices reflect those of the Cook Islands and its policy framework.

Sustainable partnerships for the development of our industry

- 8.1 We will ensure that in the development of all aspects of the regulatory framework the Cook Islands works with the world leaders in their respective fields to ensure that the best possible outcome for the Cook Island in having a fair & competitive framework that protects the interests of Cook Islanders in the long term
- 8.2 We will enforce a thorough and rigorous vetting process of all prospective commercial partners to ensure that we engage with only those who are best able to sustainably develop the Cook Islands SBM Industry consistent with the country's aspirations.
- 8.3 The Cook Islands will ensure that only contractors who have a proven background of socially and environmentally responsible behaviour will be considered in developing our SBM industry working in partnership with the country to mitigate risks and maximise positive benefits to the Cook Islands.

5.8 A competitive investment and fair financial regime

The Government seeks to strike a balance between:

- ensuring that **SBM Activities** maximise **SBM Revenues** generated by the **mining** of non-renewable **SBM Resources** that belong to the present and future generations of the Cook Islands, the income from which is both finite and temporary, and;
- providing appropriate investment conditions and seeking to ensure that investors will make the significant capital outlay for **SBM Activities**, which represents an emerging and as yet untested industry.

9 Transparent, fair and stable fiscal regime

- 9.1 We will establish a stable fiscal regime that provides the Cook Islands a fair and equitable share of **SBM Revenues** while encouraging investment by providing for early payback of capital and a return commensurate with **mining** industry norms and the risk undertaken.
- 9.2 We will also encourage investment in **SBM Activities** by providing for: the transparent, consistent and fair treatment of investors, their security of rights over areas of **SBM Resources**, and protection from sovereign risk.

Principles of the Cook Islands fiscal regime

In order to achieve the Government's policy objectives, the fiscal regime will:

- be internationally competitive;
- be progressive, standardised, transparent and (so far as possible) simple and clear, so that investors can predict and plan for all fiscal obligations and so that the Government can administer the fiscal regime efficiently and effectively;
- operate so as to increase the nation's share of profits as the profitability of **SBM Activities** increase;
- enshrine key elements in legislation that: avoids case by case negotiation of fiscal provisions that risks 'bad deals' and opportunity for undue influence; offers transparency to the community; and provides stability to the scheme as a whole;
- permit offshore transfer of funds from **SBM Activities** at prevailing international exchange rates;
- avoid adding significantly to investment costs;
- be centrally administered by **MFEM** to ensure a national view on the distribution of revenues;
- safeguard against tax leakage through measures like: thin capitalisation rules (to prevent financing through excessive debt); stronger transfer pricing rules (governing charges between related entities) via an arm's length rule and rules for determining arm's length prices; ensuring income from **mining** activities is treated as Cook Islands source income; ring-fencing **mining** expenditure to specific projects; applying internationally accepted accounting procedures and robust financial reporting obligations; and ensuring **MFEM** capacity to efficiently administer the fiscal regime.

In addition to the fiscal arrangements, investors will be further protected by:

- statutory prohibitions on unlawful obstruction or other interference of **SBM Activities**; and
- security of tenure over **Titles** issued under the **SBM Act** and statutory protection against sovereign risk such as the nationalisation of businesses engaged in **SBM Activities**.

Key taxes applicable to SBM Activities

- Corporate Income Tax – charged on all non-resident companies at the rate of 28% (**Tax Act**).
- Royalties – charged at a percentage of the export value of mined **SBM Resources** (**Royalties Regulations**).
- Additional profits tax – that requires additional tax payments to the nation if extra-ordinary profits are made (**Tax Act**).

5.9 Sound revenue management practices, that benefit current and future generations

The prudent management of **SBM Revenues** will provide the basis for the long term sustainable economic growth and development of the Cook Islands. This potential is challenged by: potential

for **SBM Revenues** to enter our economy at a level disproportionate to other revenue; price fluctuations; and the finite and exhaustible nature of **SBM Resources** (and **SBM Revenues**).

Transparency and accountability concerning **SBM Revenues** will be critical to ensuring long term benefits from **SBM Activities**.

10 Disclosure of information about SBM Revenues

10.1 We will disclose and disseminate information about **SBM Revenues** consistent with the laws of the Cook Islands relating to the management of public monies.

The experience of other countries is that allowing mineral revenues to enter the local economy has significant adverse impact on inflation and encourages short term spending in preference to long term investment. In order to mitigate this risk, and promote the proper management of **SBM Revenues** for the benefit of present and future generations of Cook Islanders, the Government will establish a sovereign wealth fund ('**SWF**') consistent with best international practice.

Characteristics of the SWF

- Established by law and operated on the basis that all **SBM Revenues** (income taxes, royalties, and resource rents) will be paid directly into the **SWF**. Administrative fees (eg **Licence** application fees and annual fees) may be reserved to cover administrative costs and not paid into the **SWF**.
- Requirements for **SBM Revenue** to be deposited into the **SWF**, and the conditions in which money may be withdrawn from the **SWF**, may be entrenched in the Constitution to better protect the integrity of the **SWF** and to minimise social risk from imprudent use of the **SWF**.
- Best international practise will apply to operation of the **SWF**, including: independent (external) audit of the **SWF**; statutory reporting requirements to the public and Parliament that will safeguard effective and transparent governance and accountability; and consultation with an independent body broadly representative of Cook Islands society.
- Legislation will provide guidance on the investment of the **SWF**. An investment strategy for the **SWF** will be devised by a statutory investment committee that will take a long term view of optimizing the interest of the Cook Islands.

11 Diligent collection and sound management of SBM Revenues

11.1 We will seek to ensure that SBM Revenues are efficiently managed consistent with best international practice by establishing a Sovereign Wealth Fund to ensure the prudent and effective management of the proceeds from SBM Activities to safeguard and promote the long term interests of current and future generations of Cook Islanders .

5.10 SBM exploration and exploitation rights

The initial phase of commercial activities is known as “Exploration”. Exploration allows a licenced contractor to explore a designated marine area with conferred rights to eventually conduct “exploitative activities” (this is the next phase which refers to the harvesting of nodules).

Exploration is comprised of a number of components, separated into two phases including

- Phase One: Baseline Studies
 - o Scientific baseline studies of the area – conducting research to assess the state of the environment including biological sampling
 - o Resource Assessment – to verify the mineral abundance and location (how many nodules, where they are, and the terrain upon which they sit
 - o Environmental Impact assessment – which is possible through improved understanding of the ocean environment through studies of ecosystem function, habitat, species niche, nutrient cycling etc.
- Phase Two: Technological testing and development
 - o Feasibility study – testing of equipment for the ‘exploitation’ phase to assess commercial and operational viability and potential environmental impacts

Exploration of the explored area also allows the Cook Islands to attain valuable scientific and environmental data. It is in the Cook Islands interest that this data is made available over a large area of Cook Island waters.

Exploration of the explored area also allows the Cook Islands and the Contractor to ascertain levels of abundance and terrain over a potential preferred harvest area ie it allows both parties to determine appropriate area/(s) for exploitation and the designation of an area for harvest. A harvest area will have a 25/30 year lifespan and allow a Contractor to receive a fair return on their investment.

It is envisioned that a harvest area within the explored area will be determined and an exploitation licence can be explored for by the Contractor who undertook exploration activities across that specific area. **All remaining explored areas by the contractor will be returned to the Cook Islands, or relinquished under the SBM Act.** A second harvest area within the exploration area may also be identified, subject to the exploration contract between the Cook Islands and the Contractor. It is envisaged that the Contractor would have a first right of refusal over that specific second harvest area, in partnership with the Cook Islands.

12 Balancing the rights of contractors with the long term interests of the Cook Islands

12.1 We will seek to maximise the value of exploratory activities to the Cook Islands in the longer term through requiring Contractors to undertake exploration activities over a large area with the requirement for Contractors to relinquish a large proportion of that area at the end of exploration.

12.2 We will allow Contractors who are granted exploratory licences to have an opportunity to (after exploration activities) apply for a licence for a specific area for exploitation within the area they have explored.

12.3 The explored areas that were not designated for exploitation, will be returned or relinquished to the Cook Islands to be conserved for future generations (with possibly areas that have a first rights of refusal for partnership to be granted to the contractor).

5.11 Maximising the benefits of MSR

The Cook Islands has obligations under international law to promote and facilitate **marine scientific research (MSR)**, and to seek to ensure the maximum benefit to the Cook Islands arising from **MSR**.

Benefits of MSR and scientific data arising from SBM Activities

- Better information about the distribution, quantity and composition of **SBM Resources**.
- Greater understanding of the deep sea environment that will facilitate the management of environmental issues arising from **SBM Activities**.
- Identification of other marine resources of environmental, cultural or economic value.
- Data collected essential for marine spatial planning

MSR can be carried out as an incident to **SBM Activities** or as part of other dedicated **MSR** or incidental activities. Participants in **SBM Activities** will be required to provide our Government with **MSR** and scientific data gathered, subject to confidentiality requirements if necessary. Among other things, such data will assist our Government to administer the scheme for protection of the environment. Title holders are also prohibited from interfering with **MSR** conducted by other persons.

13. Promotion of MSR

13.1 We will give effect to our **MSR** obligations under international law by maximising Government access to **MSR** data acquired during **SBM Activities** and prohibiting **Title** holders from interfering with **MSR** by third parties.

Since **MSR** can itself cause environmental degradation, **MSR** activities will be subject to the environmental management regime under the **Environment Act**.

5.12 Maximising the non-financial benefits of SBM Activities

A thriving industry for **SBM Activities** is expected to offer a range of social benefits, in addition to the increased national revenue for the Cook Islands, including alleviation of poverty and improvements to the quality of life in the Cook Islands.

Possible socially beneficial programs

- Opportunities for private sector and Government training and employment connected with **SBM Activities** and associated capacity building
- Studying, training and other capacity building opportunities for Cook Island nationals in disciplines relevant to **SBM Activities** (science, law, economics, engineering, environmental management, vessel inspection etc.) Beneficial use of new **MSR** data emanating from **SBM Activities**
- Economic benefits if Cook Islands ports, and local goods and services are utilised by vessels engaged in **SBM Activities**.
- Sharing of infrastructure

The **Authority** may also make it a condition that **Title** holders give preference to employing relevantly qualified Cook Islanders and use Cook Islands materials and service providers.

Due to the remoteness of **SBM Activities** from Cook Islands land territory and the likelihood that most operators may never come ashore in the Cook Islands, the scope for other socially beneficial programs may be limited (compared to, for example, on-land mining where roads and buildings may be constructed by the mining company). Given that the principal benefit of **SBM Activities** will be **SBM Revenues**, the Government is aware that requiring **Title** holders to deliver social benefits may reduce our international competitiveness for investors in **SBM Activities**.

14 Other socially beneficial programs

14.1 We will pursue opportunities for Cook Islanders to benefit from **SBM Activities** through relevant education, training and career development and other socially beneficial projects, as appropriate from time to time.

5.13 Maximise benefits of Cook Islands SBM Resources

The Government has discretion as to whether to pursue the early **exploitation** of Cook Islands **SBM Resources** or to delay **exploitation**.

| Early exploitation | | Delayed exploitation | |
|---|--|--|--|
| Benefits | Risks | Benefits | Risks |
| <ul style="list-style-type: none"> • Earlier access to SBM Revenues | <ul style="list-style-type: none"> • Technology and environment uncertainty may result in environmental harm and/or increased costs | <ul style="list-style-type: none"> • Better knowledge of seabed environment and SBM Activities likely to increase certainty and reduce cost of regulatory controls | <ul style="list-style-type: none"> • More competition with other commercially exploitable areas of seabed • Miss out altogether on the opportunity to develop the resource, as only so many projects can go at once • No short term access to SBM Revenues |
| <ul style="list-style-type: none"> • Take advantage of lack of other sources of SBM Resources | <ul style="list-style-type: none"> • Lower profits (and lower SBM Revenues) due to higher cost of new technology/equipment | <ul style="list-style-type: none"> • Established technology likely to be cheaper, resulting in higher SBM Revenues | <ul style="list-style-type: none"> • Price and demand for target minerals may diminish, making SBM Activities uneconomic or reducing SBM Revenues |

The Government believes that the risks of early **exploitation** can be mitigated through: detailed environmental assessments; use of environmental bonds; and a strategy for the release of seabed areas that reserves some high-potential **SBM Resources** for later **exploitation**. Early **exploitation** will seek to ensure that the Cook Islands does not ‘miss the boat’, particularly if other nations release seabed areas that are either more profitable or can be exploited on more advantageous terms. Only so many long term projects can go ahead at any one time.

The Government also proposes to sponsor **SBM Activities** in ‘**The Area**’ to build Government capacity in the management of **SBM Activities**. This will assist to ensure that Activities on the Cook Islands seabed is efficient and economically viable – see section 5.15.

15 Maximise benefits of Cook Islands SBM Resources

15.1 We will move to develop our **SBM Resources** as soon as it is viable, having regard to the environmental issues, the profitability of **SBM Activities** and the desirability of reserving some high-potential areas for future **exploitation**.

5.14 Sound regulatory framework – national jurisdiction

A brief overview of the legislative scheme for **SBM Activities** is set out in section 2, while the regulation of environmental and fiscal matters is explained in sections 5.4 and 5.7 respectively. A number of other aspects of **SBM Activities** are governed by existing legislative schemes, including the schemes in the Marine Transport Act 2008, Employment Relations Act 2012 and Prevention of Marine Pollution Act 1998. The **SBM Act** adds the regulatory scheme for issues specific to the conduct of **SBM Activities** and the overall administration of **SBM Activities** by the Government.

Key aspects of regulatory scheme in the SBM Act

- Establishment of administrative institutions and other roles.
- Standardised licensing system for **Titles**, separately covering **prospecting permits**, **exploration Licences**, retention **Licences** and **exploitation Licences**.
- Process for the release and reservation of ‘blocks’ and the efficient allocation of blocks (through **Titles**) to *bona fide* and suitably qualified and experienced applicants. Blocks will be allocated on the basis of tender processes or own-initiative applications, and the diligent application of assessment criteria by the **Authority**.
- Process for entry into **Licence** agreements by the Minister.
- Rights of **Title** holders that provides for: security of tenure; minimisation of sovereign risk; rights to transfer **Titles** subject to specified conditions.
- Obligations of **Title** holders including: diligent execution of **Titles**; conduct of **EIAs**; mine closure obligations, insurance requirements).
- Monitoring/enforcement tools and sanctions for non-compliance such as revocation of **Titles**.
- Provisions for the disclosure of information about **SBM Activities**, but protecting commercially confidential information.
- Transparency measures that require reporting and audit by operators and by the Government, the maintenance of a public register of **Titles**. Public consultation mechanisms.
- Details of the regulatory scheme will be set out in regulations proposed under the **SBM Act**.
- Our government may declare ‘**Strategic Reserved Areas**’ – being parts of the EZZ of the Cook Islands that may be reserved by the Government as a strategic national SBM asset, or for special SBM arrangements of national benefit to the Cook Islands.

Most importantly, the Government is committed to the diligent, predictable and transparent administration of the **SBM Act** consistent with Government policy. This requires sufficient numbers of suitably qualified, trained and experienced public servants and for agencies to be adequately funded to oversee **SBM Activities** that occur far from islands. Administrative fees paid under the legislative scheme will assist Government funding.

The Government also concedes that the small size of the Cook Islands creates risk that conflicts of interest will arise in the management of **SBM Activities**. Transparency and accountability mechanisms reflect the critical importance of consistency and accountability in the management of **SBM Activities** as well as the administration and enforcement of laws without bias or undue influence. Such mechanisms also protect the benefits to the community of **SBM Activities** and assist to create a regulatory climate that is conducive to investment.

Transparency and accountability mechanisms

- Proactive publication of information, and consultation mechanisms, as highlighted in section 5.2, above.
- Audit and reporting obligations in the **SBM Act**.
- Access to Government information provisions of the Official Information Act 2008.

- Judicial review of administrative decisions in the inherent jurisdiction of the High Court. Special interest groups have standing to seek such review.
- The **Advisory Committee**, which is to be representative of community interests.
- Risk of undue influence on decision makers is reduced by measures such as:
 - separation under the **SBM Act**, of the consideration of applications for **Titles** by the **Authority** from the entry into **Licence** agreements by the Minister; and
 - use of public tender as a key mechanism for awarding **exploration Licences**.

16 Regulation of SBM Activities

16.1 We will prioritise the adequate resourcing of institutions tasked with authorising, monitoring and regulating **SBM Activities**.

5.15 Sound regulatory framework – The Area

UNCLOS states that **SBM Resources** in **The Area** are ‘the common heritage of mankind’ and **exploitation** of such Resources is subject to **ISA** oversight. As a party to **UNCLOS**, the Cook Islands may apply to the **ISA** for access to the **SBM Resources** of **The Area**, or may sponsor a company to apply. **UNCLOS** gives preferential access to developing States such as the Cook Islands through a system of **reserves sites**.

The Cook Islands sponsorship of a contractor to undertake **SBM Activities** in **The Area** enables the contractor to extract and sell the **SBM Resources** in exchange for paying fees and royalties to the **ISA**. The **ISA** is obliged to share those royalties equitably amongst the global community. Other beneficial contractual arrangements are also possible in the Area.

The role of the Cook Islands as sponsor is to seek to ensure the company complies with **ISA** rules. Consistent with current international law, this requires us to exercise due diligence in our oversight of a company, including in the application of regulatory provisions. The specific regulatory scheme will be similar, but not identical, to the scheme under the **SBM Act**.

The Government will have licence rights over the **SBM Resources** in **The Area** and may impose fees, royalties and require a share of future proceeds or profits from the sale of the extracted **SBM Resources** in return for sponsoring and regulating the **SBM Activities**.

The Government is pursuing options to sponsor **SBM Activities** in **The Area** in order to access the fees, royalties and other revenue from such Activities and to build experience and expertise in the management of **SBM Activities** in the Area that will be highly relevant to the management of **SBM Activities** on the Cook Islands **Continental Shelf**.

17 Sponsorship of SBM Activities in The Area

17.1 We will consider and engage in sponsorship of **SBM Activities** in **The Area** where this is in the national interest, including on economic grounds or

because sponsorship improves the nation's capability to manage **SBM Activities** in the Cook Islands consistent with the objects of this policy.

6. Role & Responsibilities

Overview of Government roles and responsibilities

- The Responsible Minister has responsibility for matters with high level political implications, including policy and reporting matters. Cabinet exercises the final act of entering **Licence** agreements under the **SBM Act**.
- The **Authority** is the principal administrative body for **SBM Activities**, other than in relation to environmental and fiscal matters, subject to Ministerial oversight.
- The **Commissioner** is head of the **Authority** with specified high level administrative functions.
- The **Advisory Committee** is comprised of a range of community representatives and is the official avenue for consultation between Government and the community on matters concerning the regulation and management of the **SBM Resources** of the Cook Islands
- The **Marae Moana Council** (the Council), under the Marae Moana Act 2017, is responsible for policy oversight over Marae Moana. The **Marae Moana Technical Advisory Group** (TAG) prepares policies, marine spatial plans and the schedule of marine based activities for Marae Moana Council approval.
- The **NES** has principal responsibility for environmental issues arising from **SBM Activities**, particularly in relation to the issue of permits under the **Permits and Consents Regulations**.
- **CIIC** administers and manages Crown assets and to control and manage the commercial undertakings of statutory corporations. **CIIC** is also the entity through which the Cook Islands can access entitlements under UNCLOS in **The Area**.
- **MFEM** administers the fiscal arrangements pertaining to **SBM Activities**.
- **MFEM** has overall responsibility for revenue management.
- **MOT** is responsible for the safety of 'vessels' engaged in, or associated with, **SBM Activities**.
-

• **Responsible Minister and Cabinet**

Under the **SBM Act**, the Minister responsible for minerals has responsibility for the overall management of the **SBM** sector and an oversight role under the **SBM Act**. At the time of publication the Responsible Minister is the Minister of Minerals and Natural Resources. Cabinet holds the statutory power to enter into **Licence** agreements for the **exploration** for and **exploitation** of **SBM Resources**.

• **The Cook Islands Seabed Minerals Authority (Authority)**

The **Authority** is responsible for the day to day administration of **SBM Activities**. This includes the processing of applications for **Titles** under the **SBM Act** and the issue of **Titles**, the negotiation of **Licence** agreements, advising the Government on which areas of seabed should be released for

SBM Activities, and the administration of the regulatory scheme that seek to ensure **SBM Activities** avoid harm to the Cook Islands nation, including its environment.

A fee structure will be established, through transparent regulations, for regulatory services performed by the **Authority** under the **SBM Act**. These fees will be fair, internationally benchmarked from time to time and will enable the Government to fund the **Authority's** operational costs.

- **Seabed Minerals Commissioner (Commissioner)**

The **Commissioner** is a statutory office created under the **SBM Act** to lead the **Authority**. Among other things, the **Commissioner** is responsible for the appointment of **Authority** staff and persons authorised to undertake safety related functions under the **SBM Act**. The **Commissioner** is also responsible for reporting to the Government on the **Authority's** administration of the **SBM Act**.

- **Seabed Minerals Advisory Committee (Advisory Committee)**

The **Advisory Committee** is an unincorporated body created under the **SBM Act** to provide a formal avenue for the **Authority** to consult with the community on the management of **SBM Activities**. It is empowered to provide the Authority with perspectives from the community and make recommendations to the **Authority** on matters relating to policies of the Authority, and any other functions assigned to it.

The **Advisory Committee** is composed of at least 7 members, a Chair and a Secretary and at least 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 the Act.

- **Marae Moana**

The **Marae Moana Council** (the Council), under the Marae Moana Act 2017, is responsible for policy oversight over Marae Moana. They ensure that the Marae Moana Policy is achieving its objectives, agree to revised versions of the Policy for approval by Cabinet and gain consensus on a Marae Moana Action Plan. The Council may establish committees to address specific issues related to the governance of the Marae Moana. They approve marine spatial plans, a schedule of marine-based activities and an annual report for submission to Parliament. The Marae Moana Council – implemented through the Technical Advisory Groups and Coordination Office- oversees and monitors the work of agencies in implementing aspects of the National Marae Moana Spatial Plan and management measures for which those agencies are responsible. They work in collaboration with other established institutions of Government to ensure the implementation of the Marae Moana Policy.

The **Marae Moana Technical Advisory Group** (TAG) prepares policies, marine spatial plans and the schedule of marine based activities for Marae Moana Council approval. They monitor the work of agencies in implementing aspects of the National Marae Moana Spatial Plan and management measures for which those agencies are responsible. The TAG comments on agency draft policies and instruments, including, but not limited to, strategic plans, protected area management plans, seabed mineral agreements, seabed environmental emergency contingency plans, fishery plans, access agreements, and licence and permit conditions. The TAG undertakes public education and promotional activities to raise awareness of the restrictions imposed by the national marae moana spatial plan and the management measures. They prepare an annual report that records the

activities and achievements of the Technical Advisory Group and related matters. They take necessary measures to secure national and international sources of finance to support the purposes of the Marae Moana Act 2017.

- **National Environment Service (NES)**

The **NES** is responsible for environmental permitting of SBM Activities, and the monitoring and enforcement of environmental laws that apply to **SBM Activities**. This includes administration of requirements for **EIAs** to be conducted by persons proposing to undertake **SBM Activities**. The **NES** will also play a significant role in research, advocacy and awareness around environmentally sustainable practices for **SBM Activities**.

- **Cook Islands Investment Corporation**

The Cook Islands Investment Corporation was established under the Cook Islands Investment Corporation Act 1998. The function of the Corporation is to administer and manage Crown assets and to control and manage the commercial undertakings of statutory corporations. Crown assets includes the Crown's ownership rights to any minerals and natural resources. CIIC has entered into seabed mineral commercial arrangements for the Cook Islands Government. CIIC has also incorporated a joint venture entity, CIIC Seabed Mineral Resources Limited.

- **Ministry of Finance and Economic Management (MFEM)**

MFEM is responsible for the administration of Cook Islands tax legislation, including the **Tax Act** that establishes special fiscal arrangements for **SBM Activities**. Accordingly, **MFEM** will collect taxes and royalties from companies engaged in **SBM Activities** and monitor compliance with the tax and royalty schemes. In addition, **MFEM** is proposed to administer legislation for the establishment of the **SWF** into which all taxes and royalties will be paid.

- **Ministry of Transport**

Ministry of Transport administers maritime law and is responsible for ensuring that vessels used in connection with **SBM Activities** comply with national and international laws, including in relation to the safety of maritime navigation.

- **Exploration and Mining Companies**

As it is a new industry, there are few exploration and mining companies experienced in **SBM Activities** and generally it is private sector entities (and some industrialised-State-back mining companies and research institutions) that have the resources and knowhow to undertake **SBM Activities**. Accordingly, the structure and administration of the scheme for **SBM Activities** must, consistent with this Policy, balance protective measures against the importance of encouraging investment from such companies.

- **Individuals and the Public**

The conduct of **SBM Activities** and management of revenues from those Activities affects everyone. The inappropriate management of **SBM Activities** threatens to deter investment, compromises the efficient generation of revenue to the nation, undermines the Government's intention to avoid harm to the environment and risks the long term benefits that are expected from the **SWF**. All Cook

Islander's should engage with the Government's position on **SBM Activities** to seek to ensure that the **SBM Activities** are undertaken in the manner that reflects the public interest.

7. Policy effectiveness

This Policy is effective from its date of publication in the Official Gazette and is deemed to be the foundation document that informs and assists our Government in its management of the Cook Islands SBM sector. The Government will undertake regular reviews of this Policy as required.

8. Appendix - Glossary

Acronyms

- 'CIIC'** - "Cook Islands Investment Corporation."
- 'EEZ'** - "exclusive economic zone."
- 'EIA'** - "environmental and social impact assessment (under the Environment (Permits and Consents) Regulations 2013)."
- 'ISA'** - "International Seabed Authority."
- 'MFEM'** - "the Ministry for Finance and Economic Management."
- 'MOT'** - "the Ministry of Transport."
- 'MSR'** - "Marine scientific research."
- 'NSDP'** - "Cook Islands National Sustainable Development Plan 2011-2015."
- 'NES'** - "the National Environment Service of the Cook Islands."
- 'NESAF'** - "National Environment Strategic Action Framework 2005-2009."
- 'SBM'** - "seabed minerals."
- 'SWF'** - "Sovereign Wealth Fund".
- 'UNCLOS'** - "United Nations Convention on the Law of the Sea, 1982."

Definitions

- 'Advisory Committee'** - "the Seabed Minerals Advisory Committee established under the **SBM Bill**."
- 'Authority'** - "the Seabed Minerals Authority established under the **SBM Act** - see section 6."
- 'The Area'** - "the international area of seabed, which is established by **UNCLOS** as all ocean-floor that falls outside of any country's **EEZ** or **Continental Shelf**. The **SBM Resources** of The Area can only be explored or mined under a contract with the **ISA**. Nations that are bound by **UNCLOS** (including the Cook Islands), or companies 'sponsored' by such nations, are eligible to apply to the **ISA** for a contract. A company from a developed nation may be sponsored by a developing nation to apply for a **licence over a reserved site**."
- 'Cook Islands Investment Corporation' or 'CIIC'** - "a Cook Islands State Owned Enterprise established pursuant to section 3 of the Cook Islands Investment Corporation Act 1998 (as amended) and has its registered office in Avarua and at the Office of the Minister responsible in the Cook Islands."
- Commissioner'** - "the Seabed Minerals Commissioner appointed under the **SBM Act** - see section 6."
- 'Continental Shelf'** - "a submerged portion of land that continues from a country's coastline under the sea towards the deep ocean floor determined in accordance with **UNCLOS**. All coastal countries enjoy a 200 **nautical mile** deemed Continental Shelf as part of the **EEZ** (subject to negotiation if it runs into a neighbouring country's Continental Shelf entitlement), and some countries (including the Cook Islands) may claim up to 350 **nautical miles** of Continental Shelf in accordance with the formula in **UNCLOS** Article 76. **UNCLOS** confers sovereign rights over the **SBM Resources** of a country's Continental Shelf."
- 'Exclusive economic zone' or 'EEZ'** - "a maritime zone described by **UNCLOS**, measured at 200 **nautical miles** from the baseline, and encompassing the seabed and water column. A country has sovereign rights over the **SBM Resources** within its EEZ."

‘Exploitation’ – see **SBM Activities**.

‘Exploration’ – see **SBM Activities**.

‘Environment Act’ – “the Environment Act 2003.”

‘Environmental and social impact assessment’ – “an **EIA** under Part 4 of the **Permits and Consents Regulations** and encompasses a prior scientific study and evaluation of the potential effects of a proposed **SBM Activity** that assists the Government determine whether to permit the Activity and under what conditions.”

‘International Seabed Authority’ or ‘ISA’ – “the intergovernmental body, of which the Cook Islands is a member, established by **UNCLOS** to organise and control **SBM Activities** in **The Area** for the benefit of mankind as a whole.”

‘Licence’ – “a legal document issued by a legal **Authority** conferring rights on a person to conduct certain activities that would otherwise be prohibited (**SBM Activities** in the form of **exploration** or **mining**) subject to certain terms and conditions (for example, the payment of fees and royalties, compliance with specified performance and environmental protection standards, submission of data to Government and reporting obligations).”

‘Marine scientific research’ or ‘MSR’ – “scientific study, research and other academic activity undertaken to increase the world’s knowledge about the marine environment, not for industrial or economic purposes.”

‘Mining’ – see **SBM Activities**.

‘Ministry for Finance and Economic Management’ or ‘MFEM’ – see section 6.

‘National Environmental Service’ or ‘NES’ – see section 6.

‘Nautical mile’ – “a unit to measure distance based on lines of longitude and latitude, and set by international agreement at: 1.852 kilometres (equivalent to 1.15 miles or 6076 feet).”

‘Permits and Consents Regulations’ – “the Environment (Permits and Consents) Regulations 2013 made under the Environment Act.”

‘Precautionary approach’ (or ‘precautionary principle’) – “where there are threats of serious or irreversible damage to the environment, a lack of full scientific certainty regarding the extent of that damage shall not be used as a reason for postponing cost-effective measures to prevent or minimise environmental degradation.”

‘Prospecting’ – see **SBM Activities**.

‘Reserved sites’ – “a United Nations system designed to give developing countries preferential access to **SBM Resources** in international waters: **UNCLOS** requires that any developed country (or company sponsored by a developed country) applying for a **Licence** to explore or mine the **SBM Resources** in **The Area** must apply for two sites of equal size and mineral potential. The **ISA** can issue a contract to the applicant for one of those sites, and will retain the other as a ‘reserved site’ which can only be accessed by application from a developing country, or a company sponsored by a developing country. Reserved sites are already assessed to have high mineral potential, and come with the developed country’s **prospecting** data.”

‘Royalties Regulations’ – “Seabed Minerals (Royalties) Regulations 2013, made under the **SBM Act**.”

‘SBM Act’ – “Seabed Minerals Act 2009.”

'SBM Bill' – "Seabed Minerals Act 2019."

'SBM Activities' – "Activities leading to and including the commercial **mining** of **SBM Resources**, including under the **SBM Act**. SBM Activities cover three phases: **prospecting**, **exploration** and **exploitation** (or **mining**).

- "**Prospecting** is the search for **SBM Resources**, including estimation of the composition, size and distribution of **SBM Resources** and their economic values. Prospecting does not entail any exclusive rights of access to the seabed or water column, and may be conducted simultaneously by more than one Prospector in the same area or areas. Prospecting is likely to be low-impact (activities such as film or photography, sonar mapping, or sampling of small quantities of water, sediment and biota) and does not permit extraction of minerals for commercial use. Prospecting will yield **MSR** data that must be shared with the Government under the **SBM Act**. **SBM** samples obtained during prospecting remain Government property. A permit under the **SBM Act** is required for prospecting in Cook Islands waters.
- "**Exploration** is the more systematic search for **SBM Resources**, including sampling and analysis to define the geometry and chemistry of deposits, the testing of systems and equipment, and the carrying out of studies for the purpose of investigating whether those minerals can be commercially mined. Exploration within Cook Islands waters requires a valid exploration **Licence** issued under the **SBM Act**. Such **Licences** do not permit large-scale extraction of **SBM Resources** from the **Licence** area, but do confer exclusive rights over **SBM Resources** and priority over other persons for future **mining** rights. Data gathered under an exploration **Licence** must be shared with the Government and samples extracted during exploration remain Government property. The Government may also 'sponsor' exploration activities in **The Area**.
- "**Mining** or **exploitation** is the commercial recovery of **SBM Resources**, including the construction and operation of mining, processing and transportation systems. Mining on the Cook Islands **Continental Shelf** requires a mining **Licence** under the **SBM Act**. The holder of a mining **Licence** generally owns **SBM Resources** in the licensed area and can take them to market in return for the payment of a royalty and appropriate taxes to the Crown and compliance with **Licence** and legislative requirements."

'SBM Resources' or 'Manganese Nodules' – "Minerals resources subject to the **SBM Act** that occur in the deeper-water parts of the ocean (generally deeper than 400 metres), and that are deposited on the surface of the seabed or within the sub-soil by natural processes. SBM Resources accordingly occur below the photic zone and beyond reefs and traditional fishing grounds, where hydrostatic pressures require specialist equipment. Among the different types of SBM Resources, the **Continental Shelf** of the Cook Islands is presently understood to contain deposits of polymetallic (or manganese) nodules. These nodules contain cobalt (used in rechargeable batteries and other industrial, high-tech, medical and military applications) as well as nickel, copper, manganese, niobium, zirconium. Rare-earth elements –in high-demand for technology such as plasma screens, SIM cards, wind turbines, solar panels – may also be present."

'SBM Revenues' – "money earned from the commercial **mining** of **SBM Resources** in accordance with the **SBM Act**."

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'Strategic Reserved Areas'- "means parts of the EZZ of the Cook Islands that may be reserved by our Government as a strategic national SBM asset, or for special SBM arrangements of national benefit to the Cook Islands".

'Tax Act' – "Income Tax Act 1997, including as amended by the Income Tax Amendment Act 2013."

'Titles' – "**Prospecting** permits and **exploration**, retention and **mining Licences** granted under the **SBM Act.**"

ⁱ *Article 56*

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.