Seabed Minerals Amendment Bill 2020

Ture Aka’tūkē’anga ite Ture Takere Moana 2020

Public presentation
23 June 2020
Development of Seabed minerals sector:
Who is involved?

- Minister responsible for Seabed Minerals
  - Sets overall policy for SBM sector
- Seabed Minerals Authority (Authority)
  - Lead agency. Independent regulator
- National Environment Service
  - Responsible for environmental management
- Ministry of Finance and Economic Management
  - Responsible for revenue management
- Ministry of Transport
  - Responsible for maritime issues

Other agencies / bodies involved:
- Marae Moana office
- Ministry of Marine Resources
- Ministry of Foreign Affairs & Immigration
- Ministry of Internal Affairs (OSH)
• Years in development. Advice received from Commonwealth Secretariat, NZ Parliamentary Counsel Office. SBM Working Group involved throughout.

• Changes aimed at improving regulatory framework and to reflect best practice.

• Extensive public consultation period, over half a year from 2018 to 2019. Consultation on 2009 Act.

• Importantly, we putting in place the framework before any activity has even occurred.

• Passed 17 June 2019. Main purpose: to enable the effective and responsible management of the seabed minerals of the Cook Islands
Key improvements:

• Express application of key environmental principles, including precautionary approach, and best environmental practice

• Ensures consistency with Marae Moana for better integration between seabed and Marae Moana processes

• Strengthened coordination between Govt agencies, particularly Authority and NES – reflects importance of responsible environmental management

• More robust and transparent licensing process, including creation of independent Licensing Panel, greater transparency and accountability

• Stronger enforcement and compliance powers for the Authority
Te Ture Takere Moana 2019

- Ko teia Ture ou o te Takeremoana 2019, kua akameitaki ia te reira
- Kua pou rai tetai au mataiti ite aka’meitaki anga i te reira – te au aronga angaanga e tetai au tangata kite pakari i vao ake ite pātireira.
- Kua pou mei tetai apa mataiti ite uri ia anga te reira ki to tatou iti tangata

Tetai au Aka’meitaki’anga Puainga

- Kia āru ia te au aka’noo’noo anga pāruru ote au mea natura
- Kua āru te reira ite au aka’noonoo anga ote Marae Moana
- Kua meitaki atu te au aka’teretere anga i rotopu ite au Tipatimani Ākara Matatio koia te SBMA ete NES
- Mātutu te turanga raitini’anga e te māorara ki te katoatoa, e pera te aka’tupu anga i tetai Kumiti takake
- Mātutu te au mana no te aronga angaanga ite rave anga ita ratou angaanga
Licensing process under the Act

- Application submitted
- Authority check application complete

Submit application

Due diligence
- Authority
- Qualification criteria:
  - Fit and proper person test
  - Technical / financial resources & capability

Public notice of application
- Relevant agencies / bodies notified (incl Marae Moana Council and TAG)
- Comments received by Authority
- Consultation Authority/NES on environmental matters

Consultation

Evaluation
- Licensing panel - independent experts
- Assess application
- Evaluation criteria
  - Incl: Work plan; financial resources; technical competence; National interest etc

Licensing Panel recommend to Minister to grant or decline
- If to grant, and Minister and Cabinet agree – Authority must prepare licence
- If to decline, the Minister must decline

Decision to Grant/Decline

Licence
- Authority prepares licence
- Model licence in Regulations

If grant recommendation accepted by Minister and Cabinet.
Recent developments since passing of Act

Exploration Regulations

• Released for comment December 2019.

• Feedback received stakeholders including NGOs, industry and government.

• Reviewing stakeholder comments, evident that Act would benefit from some slight amendments

• Revised version released May 2020, further comments received June 2020.

• Currently under review by the Authority

Other legislative work

• To be discussed later in the presentation
Amendments to the Seabed Minerals Act

• One of the purposes of the Act is a stable, effective, and efficient regulatory framework

• To achieve that, the Act must balance the interests of the Crown as it seeks to regulate seabed mineral activity with that of providing certainty and predictability to stakeholders in the regulatory process

• Proposed amendments are limited
  • Focused on changes considered necessary to achieve the purpose of the Act
  • Reopening of licensing in 2020/2021, will need to ensure that legal framework is sound

• Important to note that the proposed amendments do not fundamentally change the purposes of the Act
  • Rather, it seeks to ensure it is achieved.
Proposed amendments are broken down into three categories:

A. **Minor amendments**
   - Corrects minor typographical errors, incorrect referencing, omissions, and sections requiring clarification.

B. **Substantive amendments**
   - Provides for greater certainty and predictability in an application or other process, which includes: management of confidential information; Licensing Panel composition; renewals of licenses; and retention rights.

C. **Amendments to Schedule 2 of the Act**
   - Provides for statutory obligations on exploration and mining licence holders
   - Some proposed amendments are to both improve language and understanding.
   - Some content from draft exploration regulations better placed in Schedule 2, or vice versa
A. Minor amendments
National interest vs Public interest
Sections 55, 117, 134

Currently:
Refers to public interest in 3 places: s 55 prospecting permit, s117 variation of licence, s 134 sponsorship certificate.
Rest of Act uses national interest, in 12 places.

National interest factors (under the Act / Regs) include:
• Economic or other benefits; potential to contribute to sustainable economic development
• Risks to environment or society; Risks to national security, public safety, international relations, or other national interests
• Employment, training and capacity development benefits to Cook Islands community
• Engagement with Cook Islands public
• Potential positive / negative impacts on well-being of individuals, communities and cultural practices of the Cook Islands

Proposal:
Replace 3 ‘public interest’ references with ‘national interest’

Rationale
• More in line with scheme of the Act. Having two concepts potentially undermines the certainty in the application of the Act
• ‘National interest’ is not an arbitrary concept but has objective factors to reference against in the Act and Regulations
  • Gives greater certainty and predictability
  • Numerous checks and balances throughout
Tuatāpapa no tetai au aka’tūkē’anga iti

Tetai au Manako Puapinga:

- Tetai au aka’tūke’anga iti tei tāmanako ia – no teia au tumu nei:
- Aka’tano i tetai au tārevake ite taipi anga, e pera tetai au aka’tau anga tei oronga ia
- Aka’meataki atu i tetai au irava ture tei kore i rava te aka’marama’anga

- Te au tumu’anga:
  - I te aka’pāpū e kua aiteite ite tā’angaanga anga i te reira i roto ite Ture
  - Ei oronga i tetai turanga pāpū tikai e te ākara mamao anga ite kopapa akatere ote tuanga takere moana (SBM Sector) pera te katoatoa tei aka’taka ia ete Ture
  - Te anoano pātireia no te aka’tūke’anga kia pāpū ki te anoano ote Ture
  - Kia pāpū e kia maata te mārama i te raverave anga i teia e pera te tā’angaanga anga ite au apinga roro uira i teia tuatau
B. Substantive amendments
Management of confidential information
Sections 17 & 18

Current: Allows the Authority to release a trade secret or other commercially sensitive information, if the Authority gives 7 days notice and considers comments from affected persons

Proposal
- Information that is (a) prohibited by law from disclosures or (b) trade secret or other commercially sensitive information should not be disclosed
- Provides for Guidelines on confidential information to be developed, so there is objective / transparent criteria

Rationale
- Current provision potentially allows the disclosure of commercially sensitive information by the Authority on giving of 7-days’ notice.
- If the information is commercially sensitive or a trade secret, then there is a legitimate expectation that it will not be disclosed.
- The Authority should, in line with the practice of other jurisdictions, establish guidelines relating to the classification of information that is designated as confidential by a third party.
Currently:
1. Extractives  
2. Financial  
3. Governance  
4. Legal  
5. Environmental  
6. Maritime

Proposal:
1. Extractives  
2. Financial  
3. Engineering  
4. Legal  
5. Environmental  
6. Maritime

Rationale:
• In line with competencies of the Legal and Technical Commission at the ISA
  • Earth Sciences, Engineering, Environment, Law, Economy
• Governance is addressed through the legal framework – due diligence, monitoring and compliance, checks and balances between Authority and decision-makers.
• The Licensing Panel’s role is limited to assessing / evaluating applications
Licence duration & renewal
Sections 76 & 86

Currently:
• Duration (section 76) and renewal (section 86) of exploration and mining licences
• Text on renewal of licences slightly ambiguous, could mean endless renewal
• On renewal of exploration & mining licences, this is discretionary – may

Proposal
• Language makes clear that renewals are limited to 3 times for exploration, and 2 times for mining.
• On renewal of exploration licences, this is mandatory (must) provided the licensee meets all requirements.
• Mining renewal still discretionary – may

Rationale
• Following stakeholder comments to the Seabed Minerals Bill and the exploration regulations, it is proposed that a renewal for an exploration licence must be granted, provided specified criteria are satisfied.
• This will provide greater certainty for investors at the critical stage of attracting exploration expenditure and investment.
• It also recognises that an initial period of 5-years exploration may be considered too short by some potential investors.
Right of retention arising from exploration licence

Section 79

Currently:
• Appears to give former licensee automatic retention right upon initial request.
• No timeframes under process

Proposal:
• Makes clear that requests for retention right and renewal thereof must comply with prescribed requirements before being granted

Rationale:
• Proposed change is intended to improve understanding and to remove ambiguity.
• Additional subsections have been proposed to clarify what rights are held under a retention, as well as the continuing requirement to satisfy the criteria for approving a retention, and if not satisfied, the discretion of the Authority to require that a mining licence application be made.
Tuatāpapa no tetai au aka’tūkē’anga mama’ata

- Te aka’tūkē’anga maata teia tāmanako ia – no teia au tumu nei:
  - Ko te oronga i tetai au aka’pāpū anga ete akara anga ki roto i tetai au tuanga puapinga
- Tetai au tuatua muna no te tuanga okooko, mei te okooko anga muna, e au aka’nnoonoo anga āriki ua ia te reira:
  - Ka atu ia tetai aka’kitekite’anga no runga i teia au tuanga muna e ka tuku iatu ki te katoatoa
- Te irāvā ture no te akaou anga ite raitini, e te tika anga ki mou uatu rai ite raitini, kua aka’tano ia te reira kia māmā e kia mā’ramarama ua i tona raverave anga
- I te aka’oki mai ite manako maata no teia aka’tūkē’anga, koia oki, ite rave i tetai au taui anga puapinga, kia tau ki te aka’koroanga o teia Ture, kia rauka tetai turanga pāpū, te meitaki ete tiratiratū ote kopapa raverave’anga matatio.
Schedule 2
Statutory duties of title holders

Currently:
(1) Environmental data; (2) Precautionary approach and best environmental practice; (3) Pollution prevention; (4) Additional consent for high-risk activities; (5) Dumping; (6) Closure of site; (7) Capacity-building and employment of Cook Islanders; (8) Training of personnel; (9) Accounts; (10) Maritime laws; (11) Additional permissions; (12) Work plan; (13) Response to incidents; (14) Obligations on termination of title; (15) Insurances; (16) Conduct for improper benefit; (17) Reporting; (18) Inconsistent obligations

Proposed changes
• Accounts replaced with “Records and samples”. The exploration regulations deal with accounts in more detail
• Maritime laws more comprehensive – detail taken from the exploration regulations and added to Sch 2
• Work plan removed from Sch 2 – covered adequately in exploration regulations and model licence
• Obligations on termination of title move from Sch 2 to regulations
• Consideration was given to how Act and regulations could better operate cohesively as a whole
Currently:  The title holder must apply the precautionary approach, and employ best environmental practice including best available technology...in accordance with prevailing international standards

Proposal  The title holder must apply the precautionary approach, and employ best environmental practice including best available techniques...in accordance with any standards or guidelines issued by the Cook Islands Government

Rationale:
• ‘Best available techniques’ considered broader and more practical in application
  • Includes technology and its operation
  • A dynamic concept: changes with advances in technology and scientific understanding
  • Concept adopted by the International Seabed Authority (draft exploitation regulations)
• Cook Islands bound by prevailing international standards as a minimum legal obligation. The proposed change means that Cook Islands can set even higher bar / standards than prevailing international standards
Pollution prevention
Schedule 2, Clause 3

Currently:
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.

Proposal:
Pollution control and management of waste
The title holder must take the necessary steps to prevent, reduce, and control pollution and other hazards to the marine environment, including the disposal or discharge of waste material, arising from the regulated activity in accordance with the standards or guidelines issued by the Cook Islands Government.

Rationale:
• Original text substantially the same, but specifically added ‘disposal or discharge’.
• Heading broadened – but content still refers to ‘prevent’.
• Implementation is by references to standards / guidelines
• Cook Islands bound by prevailing international standards as a minimum legal obligation. The proposed change means that Cook Islands can set even higher bar / standards than prevailing international standards
Tu’anga Rua ote Ture – te au aka’nnoonoo anga te reira ite au anoano ote ture no tei raitini ia

Te au aka’tūkē’anga tei tāmanako ia ei aka’meitaki ite reo tei tata ia, e kia māramarama meitaki

Kua kiriti ia tetai au tātā’anga mei roto ite Ture Maata e kua tuku ia ki roto ite Ture iti, e pera oki mei roto ite Ture Iti ki roto ite Ture Maata

Ko te au raverave’anga meitaki tikai e ma’ata te reira, e pera te au tuanga roro uira i teia tuatau kia akamanako ia

Ko te paruru’anga ite au kino ete akono meitaki anga ite au repo, kare i ma’ata roa te aka’tūkē anga.
For more information on Amendment Bill

Visit our website:
https://sbma.gov.ck/sbm-amendment-bill-2020

1. Seabed Minerals Amendment Bill 2020
2. Seabed Minerals Amendment Bill 2020 Explanatory Note
3. Policy paper setting out the rationale for proposed Bill amendments

Closing date for written submissions: Thursday 25 June 2020 at 4:00pm
### Environment Act 2003
- Seabed Minerals (Environment) Regulations
  - Environmental principles & concepts
  - Key obligations: assessment & management
  - Application process (consent/project permit)
  - EIA process
  - Environmental monitoring and management plan
  - Review triggers
- Standards and guidelines development

### Seabed Minerals Act 2019
- Seabed Minerals (Exploration) Regulations
  - Re-work following stakeholder feedback
- Seabed Minerals (Mining) Regulations
  - Application process
  - Due diligence/evaluation
  - Rights and obligations
  - Review mechanisms
- Standards and guidelines development

### Other key development areas
- Review of financial terms (tax mechanism: royalty / income tax)
- Sovereign wealth fund set-up
- Institutional mechanisms
  - MOUs between agencies
- Communication & engagement