



Seabed Minerals Amendment Bill 2020

*Ture Aka'tūkē'anga ite Ture
Takere Moana 2020*

Public presentation

23 June 2020

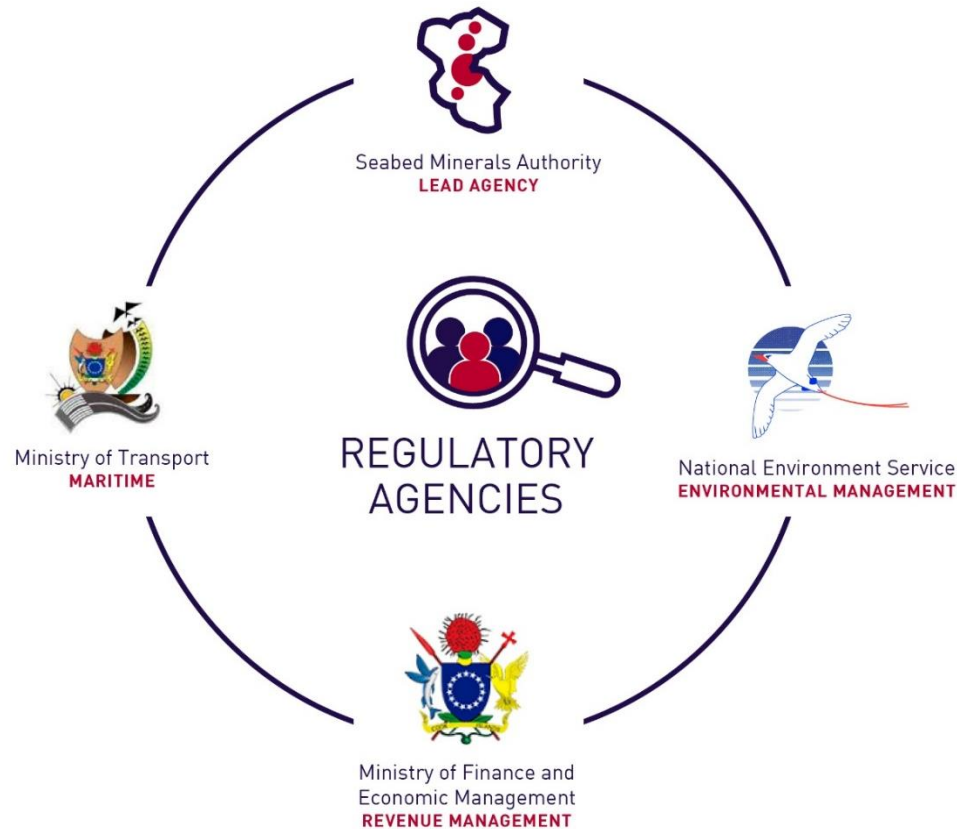


Seabed Minerals Authority
Runanga Takere Moana
COOK ISLANDS



1. Introduction & Background

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)



Seabed Minerals Act 2019

- **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**

Seabed Minerals Act 2019

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

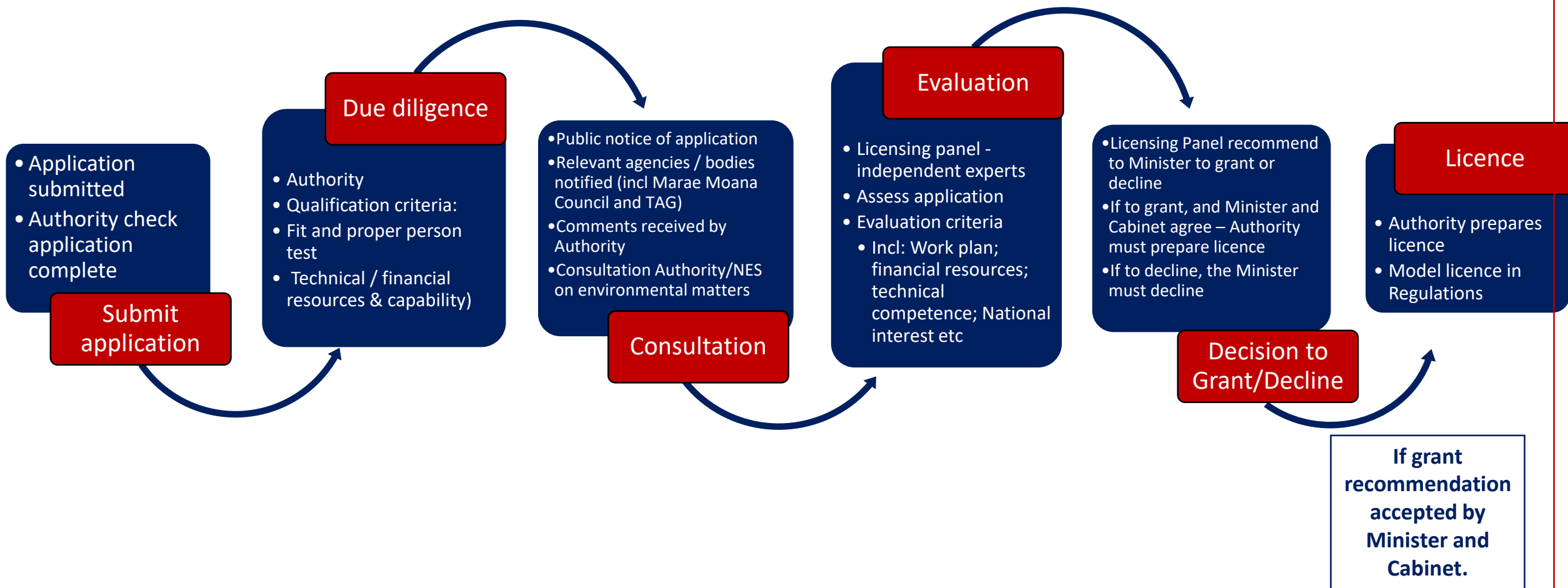
Te Ture Takere Moana 2019

- 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



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

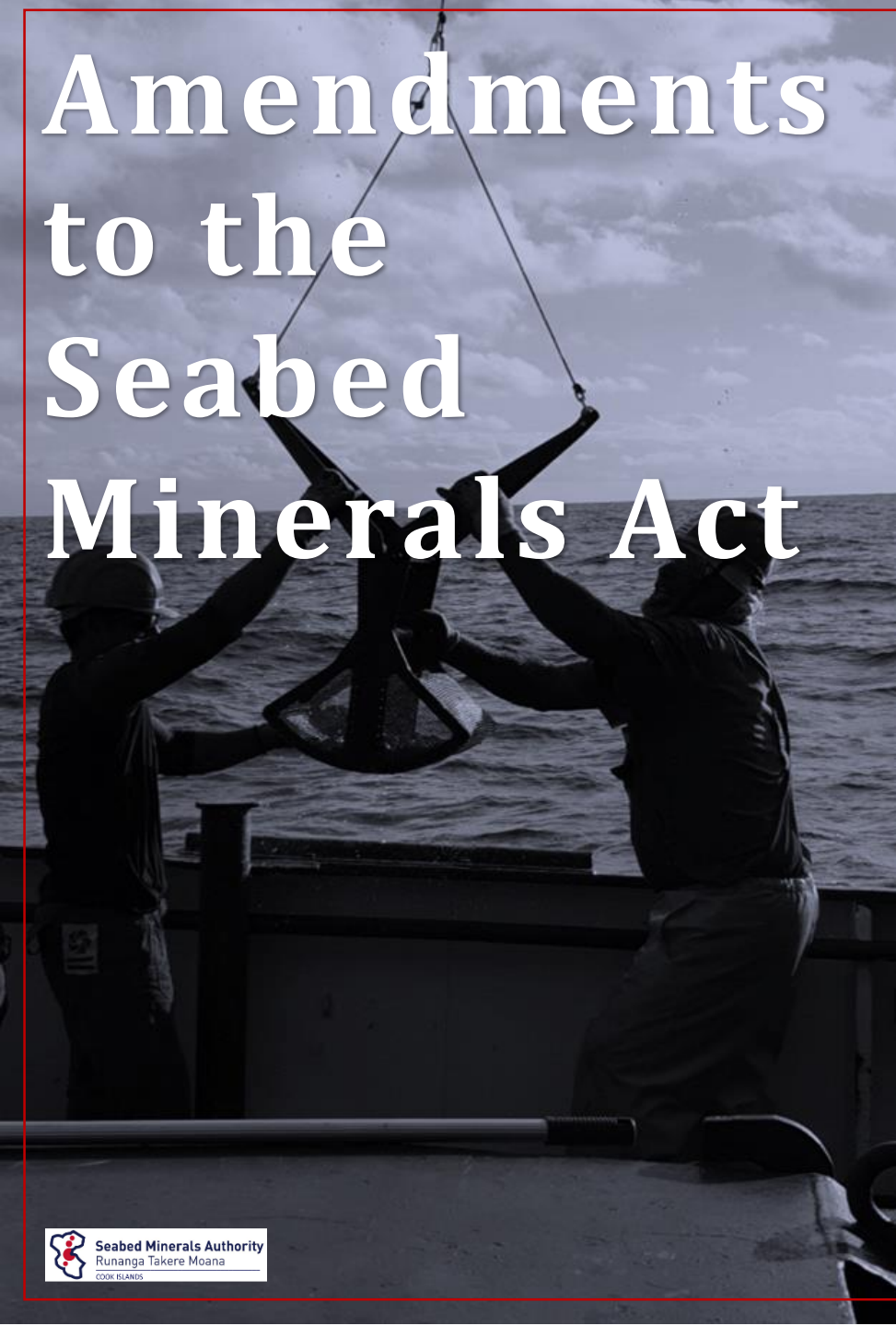
Other legislative work

- 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.**

Amendments to the Seabed Minerals Act



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

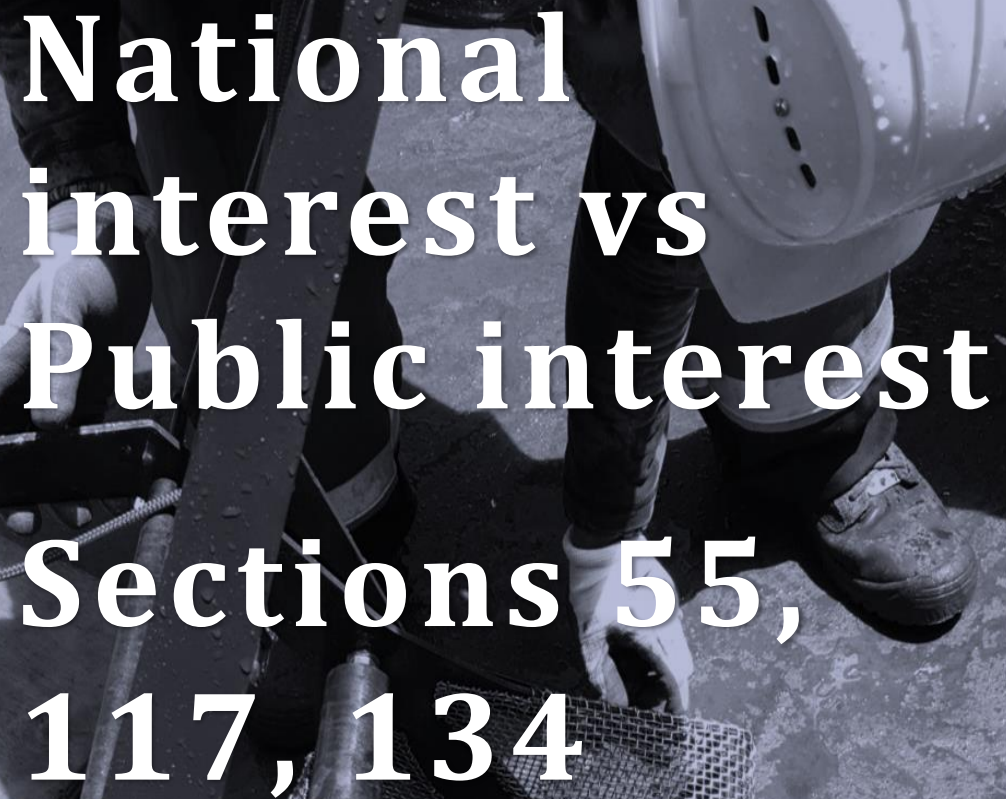
- Provides for **greater certainty and predictability** in an application or other process, which includes: **management of confidential information; Licensing Panel composition; renewals of licenses; and retention rights.**

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 taipu anga, e pera tetai au aka'tau anga tei oronga ia
- **Aka'meitaki** 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

Currently:

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

Licensing Panel composition Section 25

Currently:

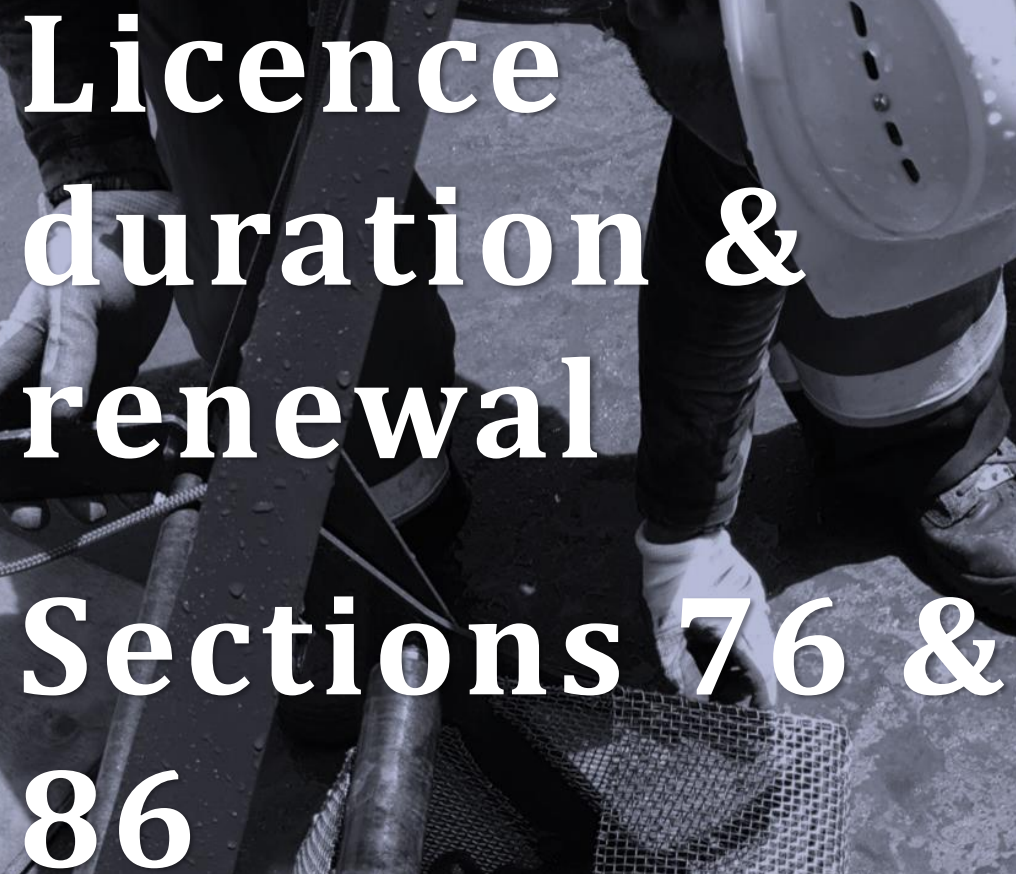
1. Extractives
2. Financial
3. Governance
4. Legal
5. Environmental
6. Maritime

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:

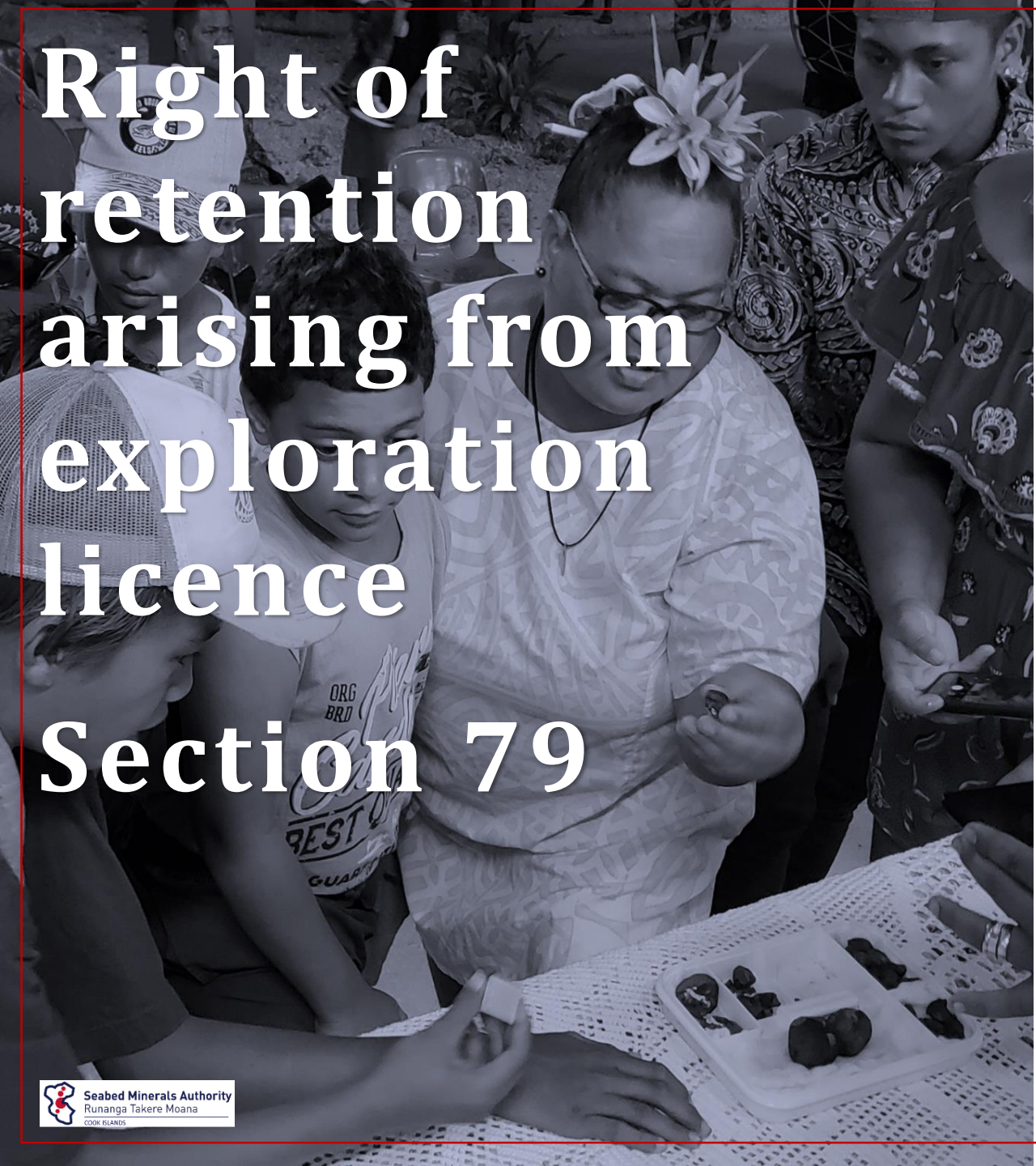
- Duration (section 76) and renewal (section 86) of exploration and mining licences
- Text on renewal of licences slightly ambiguous, could mean endless renewal
- On renewal of exploration & mining licences, this is discretionary – **may**

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'noonoo 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**.



C. Schedule 2

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**

Best available technology vs Best available techniques

Schedule 2, Clause 2

Currently:

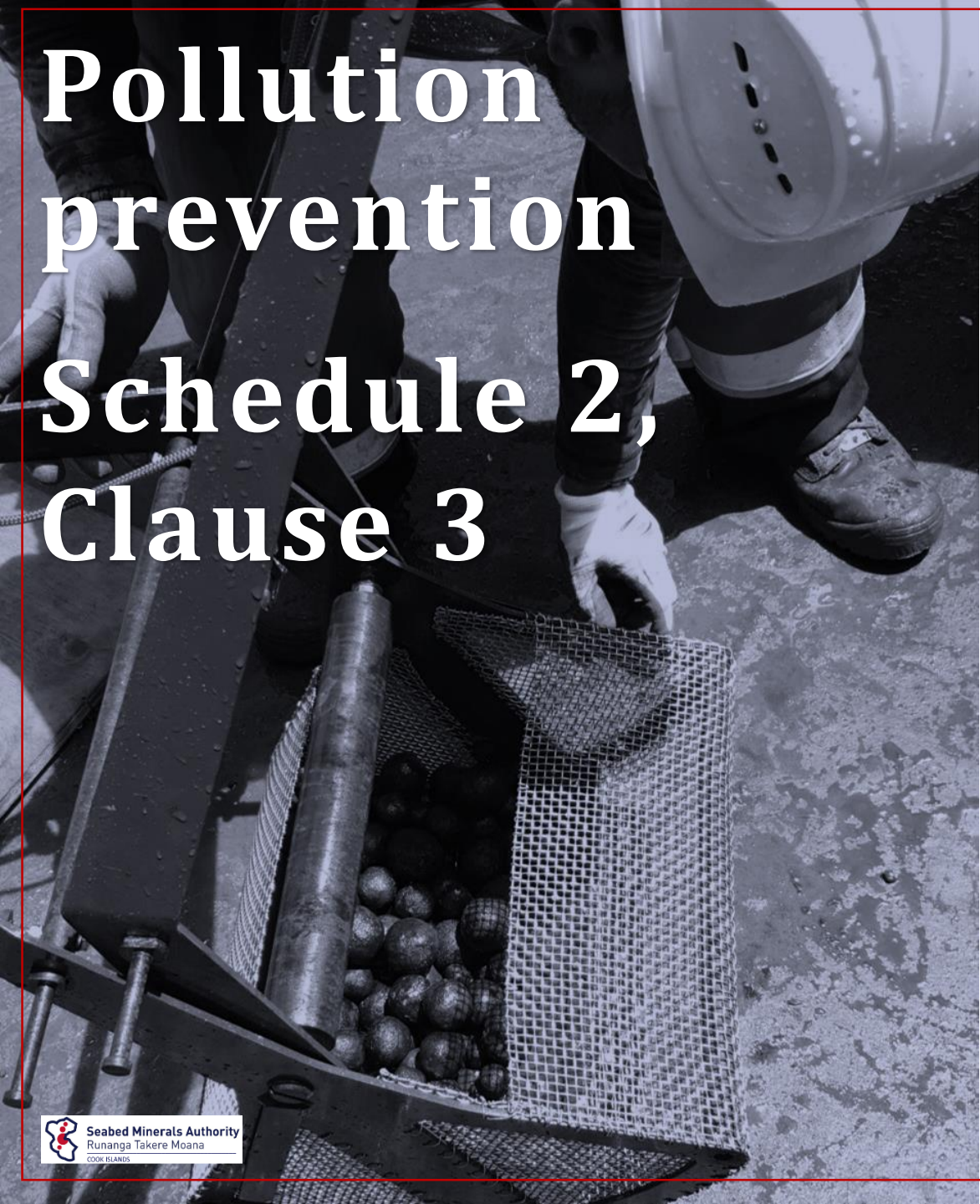
The title holder must apply the precautionary approach, and employ best environmental practice including **best available technology**...in accordance with prevailing international standards

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

Tuatāpapa no tetai au aka'tūkē'anga ki te Tuanga Rua

- Tu'anga Rua ote Ture – te au aka'noonoo 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**

Next steps – regulatory development

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



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