



22 June 2020

Dear Monica Evans,

**Re: Article: “Cook Islands to grant seabed mining exploration licenses within a year” published on 17 June 2020**

1. I write to you in reference to your article published on Mongabay<sup>1</sup> and republished on Ecowatch with permission.<sup>2</sup>

2. For the most part, the article reflects correctly the statements made by the Cook Islands Government, and the responses I provided to your questions, and I appreciated the opportunity to provide comments on behalf of the Seabed Minerals Authority (**the Authority**).

3. However, there are a number of areas in the article which are inaccurate, and thus misrepresent what our Government has recently said on this issue. I have set these out below.

4. I understand that seabed mineral recovery can be a contentious issue with polarised views given the positions taken by civil society groups. Therefore, in order to develop a meaningful and constructive dialogue on this topic, it is fundamental that statements and positions are fairly and accurately recorded.

**A. Misrepresentation: That the Government will issue mining licences in 5 years**

5. The Deputy Prime Minister, as the responsible Minister for seabed minerals sets Government’s policy for the sector. You have quoted both the Deputy Prime Minister’s statements in the recent Government media release on 23 May 2020,<sup>3</sup> and in his letter to the Cook Islands news editor on 4 June 2020.<sup>4</sup>

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<sup>1</sup> Link: <https://news.mongabay.com/2020/06/cook-islands-to-grant-seabed-mining-exploration-licenses-within-a-year/>

<sup>2</sup> Link: <https://www.ecowatch.com/cook-islands-mining-2646199832.html?rebelltitem=1#rebelltitem1>

<sup>3</sup> Link: <https://www.cookislandsnews.com/national/environment/item/77127-govt-pushing-forward-with-deep-sea-prospecting-plan>

<sup>4</sup> Link: <http://www.cookislandsnews.com/opinion/letters-to-the-editor/item/77261-mark-brown-seabeds-law-safeguards-our-oceans>

6. It is clear from his recent statements that Government will not allow the commercial recovery of nodules without sufficient research on how to address and minimise any potential environmental impacts. Neither the Deputy Prime Minister nor this Authority has put a definitive timescale on when, or even if commercial nodule recovery will occur. For that matter, neither has the International Seabed Authority.

7. We remain at an exploratory research phase. This will allow us to gather much needed scientific data and information to address the relevant environmental issues that are likely to be encountered in any future recovery phase. This must be completed comprehensively before we even entertain any application for a mining licence and consider its merits.

8. Nevertheless, your article makes the following statements—

- i. Sub-headline: *"The Cook Islands government will allow miners to prospect for minerals on its seabed, with an eye to commencing mining within five years."*
- ii. Main text: *"...says that even working out what those impacts might be will take a lot longer than the government's projected timescale of commencing mining in less than five years."*

9. Given Government's clear stance on this issue, the above statements are a misrepresentation.

10. The transition from an exploration licence to a mining licence is not a *fait accompli*, and it is certainly not time bound within five years as presented in your article. This is a misrepresentation which needs to be corrected.

**B. Misrepresentation: That the Government's interest in seabed minerals development is purely economic**

11. In my response to your question on why the Cook Islands government is interested in pursuing seabed mining, I listed four main factors. First, I reiterated that protection of the environment is crucial; I would also note that the environmental information that would be gathered and scientific advances made from seabed minerals activities is invaluable. Secondly, I highlighted the relevant economic considerations, including the need to diversify the Cook Islands economy. Thirdly, I stated that there would be capacity building opportunities as we seek to empower our people. And finally, I touched on the potential for the sector to contribute towards renewable energies and assist slowing climate change impacts.

12. Disappointingly, the article itself only references Government's economic reasons for developing its seabed minerals with no mention of the other three important factors. In particular—

- i. Sub-headline: *“Officials justify the decision on the need to ease the country’s economic dependence on tourism, which has taken a hit from coronavirus-related travel restrictions.”*
- ii. Main text: *Herman said those aspirations include creating new income streams because the country now earns almost 70% of its revenue from tourism.<sup>5</sup> It has suffered greatly from coronavirus-related travel restrictions, despite itself not recording a single case of COVID-19. “The seabed minerals sector will provide economic diversity that is critical for the Cook Islands’ future as a nation and lessens its reliance on tourism,” Herman said. “The recent COVID-19 pandemic has highlighted our vulnerability, and the need to diversify.”*

13. Leaving out the totality of the Government’s reasons for developing its seabed minerals sector gives the impression that the Government is only interested in this sector for economic reasons. This is untrue. The comments made about the Government only being interested in the money since the article’s publication proves my concern to be valid.

14. The question of why Government is interested in pursuing a particular endeavour is an important one. It needs to be reported accurately and fairly.

**C. Incorrect: Seabed Minerals Act 2019 licensing process by-passes Marae Moana Act 2017 process**

15. The article makes a number of assertions on the effect of the Seabed Minerals Act 2019 (**the Act**) on the Marae Moana process as follows—

- i. Sub-headline: *“The Cook Islands in 2017 designated its entire exclusive economic zone (EEZ) of nearly 2 million square kilometres (772,000 square miles) as a marine protected area, but in 2019 passed legislation effectively allowing the issuance of seabed mining permits to undercut that move.”*
- ii. Main text: *“But late last year, the government passed the Seabed Minerals Act 2019, which specifically allows the country’s Seabed Minerals Authority to bypass the Marae Moana Council and technical advisory group when designating areas for seabed minerals activities, and for this to occur before the marine spatial plan is in place.”*
- iii. Main text: *“So they’re going to give out mining exploration permits for areas which may in fact be places that should be protected under Marae Moana,” Kelvin Passfield, director of the local conservation group Te Ipukarea Society,*

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<sup>5</sup> I did not make this statement, please see below at paragraph [31].

*told Mongabay. The organization sits on the technical advisory group, but Passfield said the government has ignored its advice and that of other CSOs with marine conservation expertise, and that the advisory group had only met once in the past 12 months.”*

16. The statements above are factually and legally incorrect for the following reasons—
  - a. Section 8 of the Act specifically states that it is subject to the provisions of the Marae Moana Act 2017 (**the MM Act**). Therefore, activities undertaken under the Act must be consistent with the Marae Moana processes.
  - b. The Act actually goes a step further than its predecessor, the Seabed Minerals Act 2009. Under the 2009 Act, its objects under section 3 included to “*support the objectives of the marae moana under the Marae Moana Act 2017*”. This is a lesser obligation compared to the current legislation we have now. This improvement was highlighted during Bill consultations on the Act in 2018/2019.
  - c. Section 69 of the Act, states that no licence may be granted that “*would likely lead to a contravention of a declaration of a marine protected area, the Marae Moana Act 2017, or other zoning rules*”. This means that if an area has been designated under the MM Act as a zone where seabed mineral activities cannot occur, then a licence cannot be granted over that area.
  - d. Section 15 of the MM Act states that one of the functions of the Technical Advisory Group (**TAG**) is to comment on, inter alia, seabed mineral agreements. As such, the TAG will have the opportunity to comment on any proposed seabed mineral agreement which would include where the activity is proposed to take place.
17. The Act and MM Act are publicly available on the Authority’s website, so you can verify the above statements.
18. Whilst the national marine spatial plan (**MSP**) is still currently under development, it does not mean that no activities in our waters can take place. If that were the case, the fishery licences and shipping activities would have to halt.
19. It is however important that the seabed minerals activities are undertaken in line with the MSP process. In that regard, the Authority has, from the outset, kept the TAG informed on progress, and has already identified areas which it is considering for seabed minerals activities as requested by the Marae Moana office.

20. There is no reasoning presented in your article as to why the seabed licensing process will bypass the Marae Moana process, and given the comments above, it is clear this is not the case. The statements made in the article are legally and factually wrong.

21. If this issue had been raised with the Authority as a member of the TAG, or with the Marae Moana office, we would have been able to assist you in clarifying this.

**D. Incorrect: That Government are not prioritising gathering of environmental data**

22. The article repeats statements by Kelvin Passfield to the effect that Government are not prioritising the gathering of environmental data, and points to the two research cruises (by GSR in September 2019 and OML in December 2019) to illustrate that—

*Main text: "Passfield said while the government claims all parties want the same thing — more information — "they have not demonstrated this in their actions." Last year, it approved two short research cruises by different companies and "there was no requirement placed by Government on these cruises to collect any biological samples," he said. "Only nodule and sediment samples were taken, and this was just for analysis for mineral content, nothing biological."*

23. First, I want to clarify the process the two research cruises went through last year. The research was permitted by the National Research Committee (NRC) which sits with the Office of the Prime Minister. The activities proposed by the companies could be classified as marine scientific research, and the NRC granted the companies research permits, which included conditions.

24. I reiterate again that Government considers the information that can be gathered on our marine environment vital, not least because it will help guide Government's environmental management decisions and contribute significantly to our understanding of the marae moana.

25. Both companies were interested in gathering environmental data, however the major limiting factor for them was the local vessel (Grinna) they chartered to undertake their cruise. It is a vessel used locally to transport goods / people, and is not specially designed nor adequately outfitted with the necessary equipment for the gathering of environmental data.

26. The first cruise by GSR noted that they would not be able to collect fauna samples due to the limited equipment available on board the vessel.

27. The second cruise by OML faced similar difficulties, however they brought a marine biologist Dr Adrian Flynn on the cruise, and they were able to gather some environmental data in their sediment samples.

28. Upon their return, OML gave a presentation to Cook Islanders on some of their initial research findings, and Dr Flynn spoke about some of the environmental data they were able to gather.<sup>6</sup> I recall TIS members, including Kelvin Passfield attended that presentation.

29. Again I note, if this issue had been raised with the Authority or the Office of the Prime Minister who manages research permits granted in the Cook Islands, we would have been able to assist you in clarifying this.

30. In terms of the licensing process that the Authority will be managing, applicants for exploration licences will need to demonstrate how they will collect and analyse environmental baseline data.

#### **E. Other comments on the article**

31. To clarify, this quote was not sourced from me:

*“Herman said those aspirations include creating new income streams because the country now earns almost 70% of its revenue from tourism. It has suffered greatly from coronavirus-related travel restrictions, despite itself not recording a single case of COVID-19.”*

32. The photo used in the article is not in Cook Islands waters. It is a NOAA image taken north of the Cook Islands at a depth of 2,400 metres. Our nodules occur at depths of 4,500-6,000 metres. The image gives readers an inaccurate impression of what the marine environment looks like where Cook Islands nodules are located. I am happy to provide images of nodules within Cook Islands waters so that readers are provided with accurate images.

#### **F. Summary**

33. We encourage open and constructive dialogue on all matters affecting the Cook Islands community. Indeed it is often through this dialogue that information, knowledge and ways of doing things can be shared.

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<sup>6</sup> Here is a Cook Islands News article on the cruise: <https://www.seabedmineralsauthority.gov.ck/news-3/article21>

34. But that dialogue must be informed by accurate facts and the correct legal position.
35. In our digital age this particularly important given the instantaneous transmission of information (and misinformation) through social media platforms. Your article has been shared widely on social media through the Mongabay and Ecowatch platforms.
36. Consequently, it is not unreasonable and the cornerstone of responsible journalism that the Government's perspectives are portrayed fairly and accurately.
37. I am more than happy to contribute to and provide more commentary to Mongabay in the future.
38. In the meantime I would appreciate your addressing the necessary action to correct and clarify the matters presented above, which could include the publishing of the Q&A statement I forwarded to you; this would give your readers an accurate reflection of the facts and position.
39. I appreciate and thank you in advance for your cooperation in this matter.

Kia Manuia,

A handwritten signature in blue ink, consisting of stylized initials 'AH' followed by a long horizontal line extending to the right.

Alex Herman

Seabed Minerals Commissioner