



## Seabed Minerals (Prospecting and Exploration) Regulations 2015

His Excellency, Tom Marsters

Queen's Representative

### Order in Executive Council

At Avarua, Rarotonga this

28<sup>th</sup>

day of

July,

2015

Present:

### His Excellency the Queen's Representative in Executive Council

Pursuant to section 332 of the Seabed Minerals Act 2009, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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**Regulations**

- 1 Title**  
These regulations are the Seabed Minerals (Prospecting and Exploration) Regulations 2015.
- 2 Commencement**  
These regulations come into force on the day after the date on which they are made.
- 3 Interpretation**
- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Seabed Minerals Act 2009
- Applicable Document** means,—
- (a) any document or other record, whether in printed or electronic form, that is required to be created, held or submitted by any person under the Act, Regulations or the Title; and
- (b) any Government record that reproduces any part of the substance of a document referred to in paragraph (a)
- Applicant** means a person who makes an Application
- Authority** means the Cook Islands Seabed Minerals Authority, established under section 16 of the Act
- Authority Representative** means the Commissioner and any,—
- (a) Officer;
- (b) inspector appointed for the purpose of Part 6.2 of the Act;
- (c) authorised person appointed for the purpose of Part 6.3 of the Act;
- (d) OHS inspector appointed for the purpose of Part 6.4 of the Act; or

- (e) other person lawfully performing Functions of the Authority under the Act

**Business Day** means a day that is not a weekend or a public holiday observed in the Cook Islands

**Closing Time** means the published date and time by which the Authority must receive Applications in response to an Invitation to Apply under section 100 of the Act

**Consult and Consultation** means to,—

- (a) provide appropriate access to up-to-date and comprehensive information in accessible terminology and format;
- (b) provide reasonable opportunity for those consulted to raise enquiries and to make known their views;
- (c) record those views in written form and, where appropriate, provide that record to Government and third parties;
- (d) consider those views in the Government's administration of Regulated Activities; and
- (e) continue or repeat these processes, as appropriate, if the subject matter of a prior Consultation substantially alters (including as a result of prior Consultation)

**Documentary Information** has the meaning given in section 297 of the Act

**Incident** means a situation where Regulated Activities result in,—

- (a) a marine incident or a marine casualty as defined in the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);
- (b) Serious Harm to the Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious Harm to the Environment is a reasonably foreseeable consequence of the situation; or
- (c) a breach of the obligations of the Cook Islands under international law

**Invitation to Apply** means an invitation for persons to apply for an Exploration Licence published in accordance with section 100 of the Act

**Licence** means an Exploration Licence

**Precautionary Approach** means the precautionary approach as reflected in principle 15 of the Rio Declaration

**Regulated Activities** means Seabed Minerals Activity and any activity conducted by or on behalf of a Title Holder that is incidental or ancillary to Seabed Minerals Activity, including the establishment and operation of,—

- (a) sampling or collecting systems and equipment;
- (b) processing facilities;
- (c) platforms and other installations;
- (d) other plant and machinery;
- (e) transportation systems, including in relation to the transportation of personnel to and from the location of Seabed Minerals Activity

**Rio Declaration** means the report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigendum), vol. I, Resolutions adopted by the Conference, resolution 1, annex I

**Sample** has the meaning given in section 7 of the Act and also includes sediment or Minerals recovered without the use of drilling or cutting

**Serious Harm** means an effect that represents a significant adverse change

**Title** means a Permit or an Exploration Licence

**Title Area** means the area of seabed covered by a Title

**Work Plan** means a schedule, plan or other document setting out a programme of works for the conduct of the Seabed Minerals Activity, which forms part of, or is proposed to be part of, a Title

**UN Convention on the Law of the Sea** means the United Nations Convention on the Law of Sea of 10 December 1982, as acceded to by the Cook Islands on 15 February 1995.

The following terms, where capitalised in these regulations, have the same meaning as given in section 7 of the Act,— **Application, Authority, Block, Board, Commissioner, Company, Cook Islands, Court, Enactment, Environment, Environment Act, Exploration Licence, Exploration Operations, Financial Year, Function, Gazette, Government, Holder, International Agreement, Mineral, Mining Licence, Officer, Permit, Pollution, Prescribed, Prospecting Operations, Public Service Act, Regulations, Responsible Minister, Retention Lease, Seabed Minerals Activity, Vessel.**

## Part 1 General Regulatory Provisions

### Subpart 1—Handling of Documentary Information and Samples

- 4 **Disclosure of data by the Authority**
- (1) In this subpart 1, **data** means details of Samples or Documentary Information created, received or otherwise held by the Authority pursuant to the Act.
  - (2) For the purpose of sections 298(2)(c) and 299(2)(c) of the Act, the Prescribed circumstances in which the Authority may make data publicly known, or disclose data to another person, are where,—
    - (a) the Title Holder to which the data relate has given prior written consent:
    - (b) it is a requirement under Cook Islands law, or otherwise necessary or expedient in the discharge of the Authority's Functions, to do so:
    - (c) the data are reasonably required by one or more Government agencies for the effective administration of Enactments:
    - (d) disclosure is required for reasonable records management purposes:
    - (e) the data are not indicated to be confidential, or are generally known or publicly available from other sources:
    - (f) the same data have previously been made available to the Government or another person without an obligation of confidence:

- (g) the data are biological or other data pertaining to the Environment of the Cook Islands; and
  - (h) the fifth anniversary of the data being provided to the Authority has passed, or the area to which the data relate is no longer covered by a Title, whichever occurs first.
- (3) Where the Authority discloses data to another person in a circumstance described in sub-regulation (2) without making those data publicly known, the Authority may make the disclosure subject to such terms and conditions as the Authority considers prudent.
- (4) A person to whom data are disclosed in a circumstance described in sub-regulation (2) may only,—
- (a) use the data for the purpose for which they were disclosed or, if no purpose was stated, for the effective administration of the Act and to ensure the conduct of Regulated Activities consistent with Enactments; or
  - (b) use or further disclose the data in accordance with the Act and regulations and any terms and conditions imposed by the Authority.
- (5) The Authority must not disclose data, or make data publicly known, that are marked as confidential, or that may reasonably be considered likely to be confidential, commercially sensitive, or proprietary, unless,—
- (a) the Authority has provided any person known to have rights in the data with a reasonable opportunity to explain why those data should not be disclosed as proposed by the Authority, and considered any explanation received; and
  - (b) where the Authority decides to continue with the disclosure of the data — the Authority has notified the person of the Authority's decision not less than five Business Days before the proposed disclosure.

- 5 **Strict liability for unauthorised disclosure of Documentary Information**  
A person who uses or discloses Documentary Information in breach of these regulations commits an offence of strict liability and is liable on conviction to a fine not exceeding 400 penalty units or imprisonment for a term not exceeding three years, or both.

## Subpart 2—Accountability measures

### 6 **Interpretation**

In this subpart,—

**conflict of interest** means a conflict between an individual's public duty and a private right or interest that could,—

- (a) influence the ability of that individual to perform his/her Functions under the Act; or
- (b) reasonably be perceived by another person to influence that ability

**indirect**, in relation to a right or interest, means an interest through a parent, spouse, de facto spouse, child, sibling, aunt, uncle, cousin or grandparent.

**7 Prohibition on the holding of rights or interests in Regulated Activities**

- (1) In this regulation, **Regulated Person** means a person engaged in the administration of Regulated Activities for or on behalf of the Government, each member of the Board and each sitting Member of Parliament.
- (2) Each Regulated Person must,—
  - (a) immediately disclose to the Commissioner or the responsible Minister any conflict of interest; and
  - (b) at the written request of the Commissioner or the responsible Minister, make a declaration as to conflicts of interest in such form as is reasonably specified in the request.
- (3) Subject to regulation 8, no Regulated Person and no person who has been a Regulated Person in the preceding six months may acquire or hold any direct or indirect right or interest in any Title or in relation to Regulated Activities.
- (4) Any document or transaction purporting to confer any right or interest contrary to this regulation is, by operation of this sub-regulation, legally null and void.
- (5) Without prejudice to the operation of the Proceeds of Crimes Act 2003, a person who breaches sub-regulation (3) commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding five years, or both.

**8 Authorised rights and interests**

- (1) Regulation 7 does not apply to the holding of a right or interest to the extent that the holding of the right or interest is authorised in writing by,—
  - (a) the Prime Minister — in the case of a holding of the Responsible Minister;
  - (b) the Responsible Minister — in the case of a holding of any other minister or the Commissioner; or
  - (c) the Commissioner — in the case of a holding of any other person to whom regulation 7 applies.
- (2) A person may only grant an authorisation under sub-regulation (1) if the person is satisfied on reasonable grounds that the holding of the right or interest does not create a conflict of interest.
- (3) In granting an authorisation under sub-regulation (1), the person must,—
  - (a) make the authorisation subject to such conditions as the person considers appropriate or necessary to mitigate the risk of a conflict of interest in relation to the right or interest; and
  - (b) record the reasonable grounds referred to in sub-regulation (2), including by reference to any conditions on the authorisation.
- (4) Where an authorisation is made under paragraph (1)(a) or (1)(b), the Prime Minister or Responsible Minister, as the case requires, must inform the Commissioner as soon as is practicable and provide relevant details for the purposes of a Gazette notice pursuant to sub-regulation (5).
- (5) The Commissioner must promptly publish in the Gazette, and not later than 15 Business Days after the date on which the authorisation was granted, a notice stating,—
  - (a) the name of each person in respect of whom an authorisation was granted under sub-regulation (1).



- (b) a description and extent of the right or interest in respect of which the authorisation was granted; and
  - (c) the grounds and reasoning on which the authorisation was granted.
- (6) Nothing in this Part affects a person holding a right or interest granted pursuant to a statutory appointment.

#### **9 Impartiality**

(1) In accordance with section 48 of the Public Service Act and for the purpose of paragraph 11 of the Code of Conduct established by that Act, each public servant carrying out Functions in relation to Regulated Activities under an Enactment or in relation to the administration of the Act must,—

- (a) carry out his or her Functions impartially;
  - (b) not confer on a person any benefit that is not permitted under the Act or another Enactment; and
  - (c) not impose on a person any detriment or disadvantage other than in accordance with the Act or another Enactment.
- (2) A person who wilfully or recklessly breaches sub-regulation (1) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding two years, or both.

#### **10 False and misleading statements**

A person who, in purported compliance with a requirement under the Act other than a requirement under sub-section 291(2), knowingly or recklessly provides the Authority with information that is false or misleading in a material particular, commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 1,000 penalty units.

#### **11 Destruction etc of Applicable Documents and Samples**

(1) A person who wilfully alters, suppresses, conceals, disposes of or destroys an Applicable Document or Sample without prior written consent of the Authority commits an offence, and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding five years, or both; or
  - (b) in any other case, to a fine not exceeding 5,000 penalty units.
- (2) It is a defence to a charge under sub-regulation (1) if the defendant can show that,—
- (a) the conduct complied with an Enactment;
  - (b) the conduct complied with the Government's published administrative practices in respect of Applicable Documents;
  - (c) in the case of the alteration, destruction or disposal of an Applicable Document, the person retained a copy containing the same Documentary Information as that contained in the Applicable Document;
  - (d) in the case of the alteration, destruction or disposal of a Sample, the person retained a representative portion of the Sample; or
  - (e) if the person is or was a Title Holder, the conduct was permitted by the terms of the Title.

### Subpart 3—Other regulatory provisions

**12 Documents to be in English language**

Any Applicable Document required to be provided to the Authority must be provided in the English language, or accompanied by a certified English translation.

**13 Required manuals and guidelines—confidentiality**

The Authority must, as soon as practicable, establish a manual or guidelines under section 20 of the Act governing the handling of data, which makes provision inter alia for the,—

- (a) storage of Documentary Information and Samples in secure facilities and the development of security procedures to prevent unauthorised access to, or removal of, that information and those Samples;
- (b) development and maintenance of—
  - (i) a classification system, inventory and access log system for all Documentary Information and Samples received; and
  - (ii) a protocol for the safe transportation and custody of such information (and any copies) and Samples at all times from the time of receipt of the information until final disposition or declassification of the information or Samples; and
- (c) training of persons lawfully having access to Documentary Information and Samples, and a requirement for such persons to provide a written declaration that,—
  - (i) acknowledges the person's legal obligation under the Act with respect to the handling of Documentary Information and Samples and the penalties for unlawful handling; and
  - (ii) agrees to comply with the Act, these regulations and any applicable manual or guideline established under this regulation to ensure the confidentiality of Documentary Information and Samples.

**14 Required guidelines—Environmental data**

The Authority must publish guidelines under section 20 of the Act that informs the nature, and method of collection, of Environmental data in the course of Exploration Operations.

**15 Process before refusing to grant certain Titles**

Before the Authority refuses to grant a Permit, or an Exploration Licence in respect of an Application under section 109 of the Act, the Authority must notify the Applicant in writing that,—

- (a) the Authority proposes to refuse to grant the Title to which the Application relates, and provide the reasons for the proposed refusal; and
- (b) provide the Applicant 30 Business Days to explain or clarify the Application in writing.

**16 Titles covering unauthorised areas**

If part of a Title Area includes or purports to include Blocks that are wholly or partially,—

- (a) outside of the national jurisdiction of the Cook Islands; or
  - (b) excluded under section 50 of the Act,—
- then the Title remains valid, but does not authorise Regulated Activities in relation to those Blocks.

**17 Dispute resolution**

Any dispute between the Government and a Title Holder arising in connection with the administration of the Act must be dealt with by,—

- (a) the parties attempting to reach settlement by mutual agreement or mediation; and in the event this is not successful then:
- (b) by Application to the Court.

**Part 2  
Prospecting**

**18 Application for Permit**

To be made in the approved form and manner in accordance with section 79 of the Act, an Application for a Permit must,—

- (a) include the information provided for in Schedule 1 to these regulations; and
- (b) be accompanied by the applicable Prescribed fee.

**19 Notice of Application**

(1) Upon,—

- (a) receipt by the Authority of an Application under section 109 of the Act; or
- (b) a determination by the Authority to invite Applications under section 100 of the Act,—

that includes any Block subject to a Permit, the Authority must notify the relevant Permit Holder or Holders as soon as is practicable.

**Part 3  
Application processes for Exploration Licences**

**Subpart 1—Applications for Exploration Licences**

**20 Applications for Exploration Licence**

(1) To be made in the approved form and manner in accordance with sections 102 and 110 of the Act, an Application for an Exploration Licence over a tender or reserve area block must,—

- (a) cover an area of no more than 144 contiguous Blocks;
- (b) include the information provided for in Schedule 2 to these regulations; and
- (c) be accompanied by the applicable Prescribed fee.

- (2) If required by the Authority, an Applicant must at its cost provide the Authority with access to software necessary to conduct text searches of the electronic version of any text document of an Application.
- (3) A person may apply for more than one Exploration Licence.

#### Subpart 2—Procedures for Applications under section 109

##### 21 Priority of right of section 109 Applications

- (1) For the purpose of dealing with multiple Applications pursuant to section 58 of the Act, the Authority must record the date and time that the Authority receives each Application that is made under section 109 of the Act.
- (2) In the event that the Authority cannot reasonably distinguish the order of receipt of two or more Applications made under section 109 of the Act that cover any of the same Block or Blocks, the Authority must assess the Applications competitively against each other consistent with the process for ranking multiple tender Applications in section 104 of the Act.
- (3) The Authority must postpone the time and date of receipt of an Application until the time and date that the Authority receives any information required for the Application to be both,—
  - (a) substantially in the approved manner and form; and
  - (b) meaningfully capable of assessment in accordance with the requirements of the Act and these Regulations.

#### Subpart 3—Conduct of tender round

##### 22 Public announcement of tender process

- (1) The Authority must not make a public announcement of a tender round under section 52 of the Act unless and until the Authority has received notification in writing from the Responsible Minister that he or she is satisfied that,—
  - (a) the information on the Mineral potential of the Blocks to be covered by the tender round is sufficient to justify a competitive tender; and
  - (b) the Invitation to Apply and tender document package are complete and fit for purpose.
- (2) Each Invitation to Apply must provide for the matters set out in Schedule 3.
- (3) Each tender document package must provide for the matters set out in Schedule 4.

##### 23 Notices of tender rounds

For the purpose of sections 52(2) and 100 of the Act, the public announcement of a tender round must state,—

- (a) that the tender is for the grant of Exploration Licences;
- (b) information identifying the Blocks over which Exploration Licences may be offered;
- (c) a Closing Time, no less than four months from the date of the public announcement;

- (d) that Applications submitted after the Closing Time will not be considered; and
- (e) the method by which interested persons can enquire about the Application process, obtain the relevant Invitation to Apply and purchase the relevant tender document package.

**24 Amendment and cancellation of tender round**

- (1) The Authority may by public announcement in accordance with section 52(2) of the Act and in accordance with any requirements in an Invitation to Apply, cancel a tender round at any time where, after Consultation with the Board and with the prior written agreement of the Responsible Minister, cancellation is determined to be in the national interest.
- (2) The Authority may, at any time before the Closing Time by public announcement in accordance with section 52(2) of the Act and in accordance with any requirements in an Invitation to Apply,—
  - (a) clarify or amend any aspect of the Invitation to Apply or tender document package; and
  - (b) extend the Closing Time to allow modification of Applications in light of any such clarification or amendment.
- (3) No cause of action lies against the Crown, any minister or any officer of the Crown in respect of losses caused by an amendment or cancellation of a tender round under this regulation.

**25 Advice and guidance on Applications**

The Authority may, at its discretion, provide advice and guidance to a potential Applicant in relation to matters concerning an Application under section 101 of the Act, provided any such advice or guidance is made contemporaneously accessible to all potential Applicants.

**Subpart 4—Administration of Applications**

**26 Conduct of tender**

The Authority must conduct any tender round under these regulations in a manner that facilitates,—

- (a) the objects of the Act;
  - (b) the promotion of competition between potential Applicants; and
  - (c) the conduct of a fair, accountable and transparent process,—
- and that takes into account as applicable the views of other parts of Government, and the views of the community.

**27 Receipt of Applications**

Upon becoming aware of the receipt of an Application for an Exploration Licence, the Authority must immediately make a written record of the date and time of receipt on the outside of the Application.

**28 Opening of Applications**

- (1) The Authority must immediately open any Application made under section 109 of the Act.

- (2) The Authority must open Applications made under section 101 of the Act that were received by the Closing Time,—
  - (a) promptly after the passing of the Closing Time; and
  - (b) in the presence of both the Commissioner and the Chair of the Board, or their delegated representative.
- (3) The Authority must follow any procedures stated in the Invitation to Apply in relation to the opening and handling of Applications made under section 101 of the Act that are received after the Closing Time.

## Part 4

### Assessment of Applications for Titles

#### Subpart 1—Assessment criteria for Exploration Licences over a tender or reserve area block

- 29 **Assessment criteria for an Application for an Exploration Licence over a tender or reserve area block**  
The following criteria must be applied by the Authority in any assessment of an Application for an Exploration Licence, including any ranking exercise under section 104 of the Act,—
- (1) **Financial resources:** whether the Applicant will be capable of committing or raising sufficient financial resources,—
    - (a) during the term of an Exploration Licence, to cover the estimated costs of the Regulated Activities and all other associated costs of complying with the terms and conditions of the Exploration Licence, including the payment of any applicable fees, charges, taxes, bond, insurance, or other Government imposed payments arising in relation to the Regulated Activities; and
    - (b) after the term of the Exploration Licence, to cover the estimated costs of closing the Regulated Activities, including the rectification of any harm to the Environment where applicable.
  - (2) **Technical competence:** whether the Applicant has the technical resources, and access to appropriate technical advice, to be capable of carrying out the proposed Regulated Activities in accordance with,—
    - (a) the Applicant's proposed Work Plan;
    - (b) best environmental practice and generally accepted industry standards; and
    - (c) the terms and conditions of the Act, these regulations and the Exploration Licence.
  - (3) **Previous Title obligations:** the extent to which the Applicant has satisfactorily,—
    - (a) fulfilled all past obligations under any Title granted under the Act and all past obligations relating to activities similar to the proposed Regulated Activities, including outside the Cook Islands; or

- (b) explained to the Authority the reasons for any failure to fulfil any past obligation referred to in paragraph (a) and the measures taken or put in place to guarantee that the same or similar failures will not re-occur in respect of the Regulated Activities proposed in the Application.
- (4) **Appropriate resourcing:** the extent to which, over the proposed Licence period, the Applicant will allocate its resources to perform efficiently the proposed Regulated Activities.
- (5) **Viability of operations:** the extent to which the Applicant's proposed Work Plan is reasonably likely to enable the Applicant, by the end of the Exploration Licence period to,—
- (a) apply for and obtain a Mining Licence under the Act; and
- (b) collect sufficient baseline data for an environmental impact assessment in relation to future Mining Operations.
- (6) **Valid Title Area:** the extent to which the Application proposes Exploration Operations in any Block where the Seabed Minerals Activity proposed by the Application is not permitted under the Act.
- (7) **Compliance:—**
- (a) the capability of the Applicant to conduct the proposed Regulated Activities in accordance with,—
- (i) enactments;
- (ii) the statutory and Licence conditions applicable to the Regulated Activities; and
- (iii) obligations of international law to which the Cook Islands is subject; and
- (b) the extent to which the Application complies with the requirements of the Act and these regulations pertaining to the making of Applications.
- (8) **Impact on other sea users:** the extent to which the proposed Regulated Activities will avoid conflict with the rights of existing or proposed other sea users, including navigation, submarine cabling, marine scientific research and cultural or commercial fishing; or the extent to which any such conflict is likely to be capable of resolution or mitigation, including through the imposition of conditions on any resulting Exploration Licence.
- (9) **Risk assessment:** on the basis of all the information available, the extent to which the proposed Regulated Activities pose a risk to the interests of the Cook Islands (including social, cultural, Environmental, economic and financial interests). Without limiting the generality of this criterion, the Authority must,—
- (a) take into account the extent to which it has sufficient information from the Applicant to carry out the necessary risk assessment;
- (b) apply the Precautionary Approach; and
- (c) consider the extent to which risks will be mitigated by compliance with the terms and conditions of any resulting Exploration Licence.
- (10) **National interest:** the extent to which the proposed Regulated Activities will promote the national interest, including by reference to,—
- (a) the benefits of the Applicant's proposals concerning the employment, training and capacity building of the Cook Islands community;

- (b) the expected effectiveness of the Applicant's plan to engage with the public of the Cook Islands;
- (c) the preservation and protection of the Environment;
- (d) the overall potential for the proposed Exploration Operations to contribute to the sustainable economic development of the Cook Islands, including by reference to,—
  - (i) the estimated potential economic value to the Cook Islands; and
  - (ii) the potential adverse impacts on both existing economic activity of the Cook Islands and the well-being of individuals, communities and cultural practices of the Cook Islands; and
- (e) the desirability of avoiding opportunities for anti-competitive practices, and of promoting competition for Seabed Minerals Activity in the Cook Islands.

## Subpart 2—Assessment of Applications for Titles

### 30 **Acknowledgement of Applications**

- (1) The Authority must give each Applicant written acknowledgement of receipt of their Application, specifying the date and time of receipt in respect of each tender or reserve area block covered by the Application and, in relation to an Application under section 109 of the Act, whether or not their Application has priority of right under section 58 of the Act.
- (2) The Authority must give an acknowledgement within ten Business Days of,—
  - (a) receipt of an Application made under section 78 or section 109 of the Act; or
  - (b) the Closing Time, in relation to Applications made under section 101 of the Act.

### 31 **Assessment of Applications**

The Authority must assess, in accordance with the Act and these regulations, all Applications received by the Authority that have been made in the approved form and manner.

### 32 **Time for completing assessment**

- (1) The Authority must use its best endeavours to complete its assessment of an Application within 120 Business Days after determining that the Application is substantially compliant with the applicable requirements of the Act and these regulations.
- (2) If the Authority's assessment is not completed within the time stated in sub-regulation (1), the Authority must inform the Applicant in writing and provide an estimated time for the completion, giving reasons for the delay as appropriate.



**33 Reassessment if Applicant withdraws from joint Application**

If the Applicants to a joint Application notify the Authority in accordance with the Act that one or more, but not all, of the Applicants withdraw from the Application, the Authority must re-assess the Application in accordance with the Act and these regulations based on the contributions of the remaining Applicants for the Application.

**34 Amendment of Applications during assessment**

- (1) Except in the circumstances in sub-regulations (3) and (4) or to correct a clerical error, the date of lodgement of an Application under section 109 of the Act is the date the Authority receives any material amendment to the Application.
- (2) Except in the circumstances in sub-regulation (4) or to correct a clerical error, an Applicant on a tender round under section 100 of the Act must not amend its Application after the relevant Closing Time.
- (3) With the Authority's prior written approval, an Applicant may amend an Application under section 109 of the Act without changing the date of lodgement if the amendment is justified by a change in circumstances occurring since the lodgement of the Application that materially affects the accuracy or viability of the Application.
- (4) The Authority may negotiate with an Applicant to amend an Application in order to improve the evaluation of the Application against the assessment criteria, including in response to the outcome of any community or Government Consultation processes and the negotiation of the terms of a Title.
- (5) Nothing in this regulation permits the Authority to approve or negotiate an amendment to an Application that would confer an unfair advantage on an Applicant relative to other Applicants.

**35 Matters to be taken into account**

In assessing Applications and making a final decision whether or not to issue an offer document for the grant of a Title, the Authority must take into account all amendments to the Application made during the assessment process and any relevant,—

- (a) information supplied by the Applicant;
- (b) recommendations of the Board;
- (c) information or submissions received from the public, or third parties in relation to the Application, excluding submissions that are reasonably determined by the Authority to be vexatious or repetitious;
- (d) Government or publicly available information;
- (e) analysis by the Authority of the Application against the assessment criteria, including in light of any expert report, analysis or advice obtained or held by the Authority to inform the assessment of the Application in accordance with the Act;
- (f) in relation to Applications for an Exploration Licence—matters arising in the course of the Government Consultation undertaken pursuant to paragraph (h):

- (g) in relation to the assessment of Applications made under section 101 of the Act—additional matters concerning assessment required in the Invitation to Apply; and
- (h) terms of the draft Title.

**36 Government Consultation**

- (1) For the purpose of section 18(2) of the Act, the Authority may consult with other agencies of the Government in relation to any Application for a Title.
- (2) The Authority may proceed on the basis that an agency of the Government has no comment on an Application if, within 20 Business Days of sending a request for comments, the Authority has received from the agency neither any comment nor a request for an extension of time.

**37 Community Consultation**

- (1) For the purpose of section 17(3) of the Act, the Authority may consult with the community in relation to any Application for a Title.
- (2) Before issuing an offer document in respect of an Application for an Exploration Licence, the Authority must provide the Board with a copy of the Application and a period of not less than 20 Business Days in which the Board members may make recommendations on the Application.
- (3) The Board must notify the Authority as soon as possible of,
  - (a) becoming aware that it is unable to provide its recommendations within the period specified for paragraph (2), together with the Board's reasons for the delay; and
  - (b) the expected period, that must not exceed a further 30 Days except with the leave of the Responsible Minister, in which it will provide its recommendations.
- (4) The obligation in paragraph (2) is subject to the Documentary Information provisions in Part 1, Subpart 1 of these regulations.

**38 Board recommendations**

- (1) Each Board member must give reasons for her or his views to the Chair of the Board to be included in the Board's recommendations Report to the Authority and the Responsible Minister.
- (2) At the conclusion of the assessment process managed by the Authority, the Authority must in its final report to the Responsible Minister state the extent to which the Authority proposes to adopt the recommendations of the Board in relation to an Application.
- (3) The Authority must ensure that a copy of the Authority's final report to the Responsible Minister is provided to the Board.

**39 Processing of section 109 Applications**

The processes and powers provided for in sections 103, 105 and 106 of the Act also apply in relation to Applications made under section 109 of the Act, with such modifications as are necessary to achieve the effective operation of those sections to an Application under section 109 of the Act.

**40 Review of decisions**

- (1) Any Applicant or any other interested party with legal standing who is dissatisfied with a decision on an Application may within 14 days, notify the Authority in writing that it intends to seek a review of the decision through the High Court, setting out the grounds for the review.
- (2) The Authority must, within 30 Business Days, complete an internal review of a decision and may establish an independent committee to assist with or to conduct this internal review.
- (3) The outcome of the internal review must be to amend, rescind and replace, or to affirm, the decision of the Authority, and that internal review outcome remains subject to administrative review, and judicial review.

**Part 5  
Exploration Licences**

*Licences*

**41 Maximum size of Title Area**

The Authority must not grant an Exploration Licence over a tender or reserve area in excess of 144 Blocks.

**42 Preparation of Licence**

For the purpose of making the assessment contemplated in regulation 35 in respect of an Exploration Licence, the Authority must reach agreement with the Applicant as to the terms of a draft Licence that,—

- (a) is based on the model Exploration Licence in Schedule 6;
- (b) contains a Work Plan based on the Work Plan proposed in the Application;
- (c) is consistent with Enactments; and
- (d) contains any additional conditions determined by the Authority to be necessary or expedient to promote or secure compliance with Enactments and the achievement of the objects of the Act, including conditions,—
  - (i) considered necessary to give effect to the Environment Act;
  - (ii) required to respond to issues identified in the Consultation undertaken in accordance with regulations 36 and 37;
  - (iii) to facilitate the Authority's monitoring of the Regulated Activities and the Applicant's future compliance with the Licence and Enactments.

**43 Negotiation of draft Licence**

Subject to regulation 44, the Authority and the Applicant must negotiate in good faith to agree on the terms and conditions of a draft Exploration Licence having regard to,—

- (a) the substance of the Application;
- (b) the Authority's assessment of the Application; and
- (c) the matters in regulation 42.

**44 Amendment of model Licence terms**

- (1) An Applicant may, in exceptional circumstances to be justified by the Applicant, make a request in writing to negotiate a departure from one or more of the terms or conditions of the model Exploration Licence set out in Schedule 6.
- (2) The Authority may agree to a request under sub-regulation (1) if that agreement is not contrary to the national interest having regard to the Authority's assessment of all implications of the amendment if made, including any precedent value of making such amendment, the impact on the Authority's administration of Regulated Activities under the Act, and legal and risk implications.
- (3) The Authority has absolute discretion in the national interest not to agree to an amendment.
- (4) A decision of the Authority not to agree to an amendment requested under this regulation is not subject to judicial review.

**45 Securities**

- (1) In addition to the financial security (relating to Environmental obligations) that may be required under section 303 of the Act, the Authority may negotiate other requirements for the execution of bonds, guarantees or other forms of security in respect of the performance or observance of one or more terms, undertakings or conditions of an Exploration Licence.
- (2) Each Exploration Licence must,—
  - (a) stipulate that the minister with responsibility for financial affairs will hold any amount paid by an Exploration Licence Holder by way of bond or other security in a secured interest-bearing account; and
  - (b) provide for,—
    - (i) the ministry responsible for financial affairs to repay any bond or other security to the Exploration Licence Holder upon compliance by the Exploration Licence Holder of the obligations that are the subject of the bond or security; or
    - (ii) the bond or security to be forfeited by the Exploration Licence Holder on such terms as reflect the extent of any non-compliance.

*Approval of Exploration Licences*

**46 Approval of draft Exploration Licence by Responsible Minister**

The Responsible Minister must approve the terms of the draft Exploration Licence before the Authority can issue an offer document.

**Part 6**

**Conduct of Seabed Minerals Activity**

**Subpart 1—Statutory conditions on Titles**

**47 Effect of conditions**

- (1) Each obligation imposed on a Title Holder over a tender or reserve area block under this Subpart is a statutory condition on the Title for the purpose of section 97(c) of the Act.
- (2) If a condition referred to in this Subpart is breached by a Title Holder, the Title does not authorise any Seabed Minerals Activity to which the condition relates while the breach continues.

**48 Compliance with laws**

A Title Holder must carry out the Regulated Activities,---

- (a) in compliance with the Act, regulations made under the Act and other Enactments; and
- (b) consistently with the obligations of the Cook Islands under,---
  - (i) the UN Convention on the Law of the Sea;
  - (ii) the Convention on Biological Diversity; and
  - (iii) any other International Agreement.

**49 Compliance with other regulatory instruments**

A Title Holder must identify and comply with,---

- (a) the terms and conditions of the Title;
- (b) the terms and conditions on any permit issued to the Title Holder under the Environment Act; and
- (c) the obligations required in other instruments, including permits, approvals, certifications and other forms of authorisation, applicable to the Title Holder under any other Enactment.

**50 Adherence to the Precautionary Approach**

In carrying out Regulated Activities, a Title Holder must apply the Precautionary Approach and employ best environmental practice, including best available technology, in accordance with prevailing international standards, so as to,---

- (a) avoid, remedy, mitigate or compensate for adverse effects of the Regulated Activities on the Environment; and
- (b) prevent, reduce and control Pollution and other hazards to the Environment, including waste material, arising from Regulated Activities.

**51 Diligence**

A Title Holder must,---

- (a) conduct Regulated Activities with due diligence and efficiency and in accordance with any approved Work Plan;
- (b) provide sufficient training, supervision and resources to its employees, agents, officers and associates to ensure compliance with the obligations of the Title Holder; and
- (c) exercise proactive due diligence to safeguard the health, safety and welfare of persons employed in Regulated Activities.

**52 Environmental management**

- (1) A Title Holder must, in conducting Regulated Activities,—
- (a) monitor the impact of the Regulated Activities and ensure that they do not cause Serious Harm to the Environment, save insofar as may have been permitted under the Environment Act;
  - (b) plan for the environmental management of the Regulated Activities, including relevant mitigation and prevention measures; and
  - (c) collect and analyse Environmental data consistent with any guidelines published for the purpose of this paragraph to enable future comprehensive environmental impact assessment and monitoring in relation to any future Mining Licence in the Title Area.
- (2) Any insurance or other security directed by the Authority under section 253 of the Act must cover claims made during,—
- (a) the period of the Regulated Activities; and
  - (b) a period of five years following the cessation of the Regulated Activities.

**53 Vessels and personnel**

- (1) A Title Holder must, at all material times, ensure that,—
- (a) any Vessels, installations and equipment engaged in Regulated Activities are in good repair and comply with,—
    - (i) the laws of the flag state relating to international vessel standards developed to ensure maritime safety and security, good working and living conditions and protection of the Environment; and
    - (ii) all relevant standards in international shipping conventions to which the Cook Islands is a contracting State; and
  - (b) working conditions for personnel engaged in Regulated Activities,—
    - (i) meet employment rules and health and safety standards in Enactments;
    - (ii) comply with the laws of the flag state relating to the safety of life at sea; and
    - (iii) comply with all relevant standards in international shipping conventions to which the Cook Islands is a contracting State.
- (2) Notwithstanding any penalty under another Enactment, a Title Holder that fails to comply with sub-regulation (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

**54 Avoiding Incidents and Serious Harm to other sea users**

- (1) A Title Holder must,—
- (a) not, without obtaining the prior written consent of the Authority, proceed or continue with Regulated Activities if the Title Holder is aware of evidence that proceeding or continuing makes it reasonably foreseeable that,—
    - (i) an Incident would occur; or
    - (ii) the Regulated Activities would result in a breach of section 48(1) of the Act;

- (b) develop, and at all times during the conduct of Regulated Activities be prepared to implement, an Incident management plan that,—
  - (i) has been approved in writing by the Authority and amended from time to time in accordance with the reasonable requirements of the Authority; and
  - (ii) is consistent with any relevant provision of the 'Seabed Mining Environmental Contingency Plan' developed in accordance with section 310 of the Act.
- (2) The Title Holder must ensure that any works or installations erected in the course of the Regulated Activities must be of such sort, placed, marked and buoyed, equipped and maintained so as to,—
  - (a) leave at all times safe and convenient channels for shipping; and
  - (b) not constitute an obstacle to established international shipping routes; and
  - (c) not cause a breach of section 48(1) of the Act.

**55 Reporting obligations**

(1) A Title Holder must,—

- (a) within one month of the end of each quarter submit a summary report to the Authority in such format as may be recommended from time to time by the Authority covering the licence holders programme of activities relating to the licence area during the quarter. The report will include list of all activities undertaken, a list of technical reports prepared and in progress;
  - (b) in respect of each Financial Year during which the Title Holder had obligations under the Title, submit to the Authority a written annual report, which must be submitted within one month of the expiry of the Financial Year or such other annual date specified in the Licence; and
  - (c) immediately notify the Authority in writing of any new information or data that materially affect,—
    - (i) the viability or appropriateness of the Work Plan; or
    - (ii) the Title Holder's ability to comply with its obligations under the Title; and
  - (d) notify the Authority of the details of any material change in the information contained in the Title Holder's Application, in writing and within 10 Business Days of becoming aware of the change; and
  - (e) within three months of the completion of Seabed Minerals Activity under an Exploration Licence, submit to the Authority a data summary report;
  - (f) when travelling to and from the licence area and during on-site exploration activities, the Title Holder shall submit to the Authority a written daily report on all activities carried out and locations including conditions of operations. The report will be sent to the Authority weekly or as practicable.
- (2) An annual report for the purpose of paragraph (1)(a) must be in the format required in any applicable guidelines made under section 20 of the Act and must include,—

- (a) details of the Regulated Activities undertaken, including a description of any variance from previously provided details of activities proposed to be carried out;
  - (b) a copy of all raw and processed Environmental, biological, hydrographic, geological, geophysical and geochemical data and information (including all maps, tables and diagrams, videos, photographs and other digital information) pertaining to,—
    - (i) the Seabed Minerals Activity;
    - (ii) any Sample or Mineral obtained during the reporting period (including quantities and locations); and
    - (iii) the results obtained from environmental monitoring programmes, including observations, measurements, evaluations and analyses of environmental parameters;
  - (c) the results and analyses obtained from the Seabed Minerals Activity, including any estimates of the economically recoverable quantities of Minerals;
  - (d) a list of the key personnel employed in the conduct of the Regulated Activities;
  - (e) a list of the equipment used or trialled in the conduct of the Regulated Activities and any analysis of the effectiveness of such equipment;
  - (f) a summary and breakdown of expenditure on the Regulated Activities, including a description of any variance from any forecast of expenditure previously provided;
  - (g) details of the employment of local staff, capacity building of Cook Islands nationals, procurement from local suppliers, and engagement with the community in relation to the Regulated Activities;
  - (h) details of the occurrence of and response to any Incidents:
    - (i) a summary of the proposed Regulated Activities, expenditure, cruises, and description of any known issues for the next reporting period;
    - (j) a statement of any material in the annual report that the Title Holder believes should not be published, and a justification for that belief;
  - (k) such other information that is required under the Title or that the Authority reasonably requires in writing.
- (3) Where a Title is granted less than three months before the end of any Financial Year, the Title Holder is entitled to roll-over its filing of its first report under this regulation to the subsequent Financial Year.
- (4) The data summary report for the purpose of paragraph (1)(d) must be in the format required in any applicable guidelines made under section 20 of the Act and must include,—
- (a) in respect of the Financial Year in which the Seabed Minerals Activity was completed—the information specified in subregulations (2)(a), (2)(b), (2)(c) and (2)(e);
  - (b) an estimate of the proven and inferred mineable deposits of Minerals in the Title Area, including details of the grade and quantity of Mineral reserves and the anticipated mining conditions;



- (c) details of the functional specifications for equipment used to carry out the Exploration Operations during the term of the Exploration Licence, but excluding equipment design data:
  - (d) details of the functional specifications identified for equipment required to carry out Mining Operations, including the results of tests conducted on equipment in the course of the Exploration Operations, but excluding equipment design data:
  - (e) a copy of the catalogue of all Samples recovered during Seabed Minerals Activity during the term of the Exploration Licence and a summary of the total number and weight of those Samples; and
  - (f) a statement on—
    - (i) how and where the Samples are stored:
    - (ii) arrangements for the Authority to access stored Samples; and
  - (g) such other information that is required under the Exploration Licence or that the Authority reasonably requires in writing in respect of the data summary report:
  - (h) a representative portion of seabed samples and cores of the polymetallic sulphides obtained in the course of exploration until the expiration of this contract to be kept in good condition and delivered to the Authority on request for analysis and storage.
- (5) Upon expiration or termination of a Title, the Title Holder, if it has not already done so, shall submit the following data and information to the Authority—
- (a) copies of all geological, environmental, geochemical and geophysical data including raw and processed digital data acquired by the Title Holder in the course of carrying out the programme of activities that are necessary for and relevant to the effective exercise of the powers and functions of the Authority in respect of the exploration area:
  - (b) copies of geological, environmental, geochemical geophysical, financial, economic and feasibility reports made by or for the Title Holder that are necessary for and relevant to the effective exercise of the powers and functions of the Authority in respect of the exploration area:
  - (c) the estimation of mineable deposits, when such deposits have been identified, which shall include details of the grade and quantity of the proven, probable and possible polymetallic nodules reserves and the anticipated mining conditions:
  - (d) information in sufficient detail on the equipment used to carry out the exploration work, including the results of tests conducted of proposed mining technologies, but not equipment design data:
  - (e) a statement of the total quantity of polymetallic nodules recovered as samples or for the purpose of testing; and
  - (f) a statement on how and where samples of cores are archived and their availability to the Authority.

**56 Notice of breach**

- (1) A Title Holder must notify the Authority in writing of any breach by the Title Holder of an obligation under the Title, within 2 Business Days of becoming aware of the breach.

- (2) A Title Holder that fails to comply with sub-regulation (1) commits an offence of strict liability and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
  - (b) in any other case, to a fine not exceeding 500 penalty units.

**57 Response to Incidents**

- (1) A Title Holder must, upon becoming aware of an Incident,—
- (a) notify the Authority immediately;
  - (b) immediately implement plans of the Title Holder approved by the Authority for responding to the Incident;
  - (c) take any other measures necessary in the circumstances to limit the adverse effects of the Incident.
- (2) A person who breaches sub-regulation (1) commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding one year, or both; or
  - (b) in any other case, to a fine not exceeding 5,000 penalty units.

Subpart 2—Other provisions relating to the conduct of Seabed Minerals Activity

**58 Indemnity**

- (1) A Title Holder, by virtue of its acceptance of a Title and by operation of this regulation, irrevocably indemnifies the Crown for the actual costs of fully repairing damage and any related direct economic loss, as well as all actions, proceedings, costs, charges, claims and demands made or brought by any third party arising out of any,—
- (a) failure of the Title Holder to ensure that the Regulated Activities comply with an Enactment or the Title;
  - (b) serious harm to the Environment caused by Seabed Minerals Activity conducted by the Title Holder; and
  - (c) negligent or wrongful acts or omissions of the Title Holder in the conduct of the Regulated Activities, or of its employees, officers, subcontractors, agents and associates.
- (2) Each joint Title Holder is jointly and severally liable under this regulation.
- (3) A Title Holder remains liable under this regulation notwithstanding the expiry, surrender, suspension or cancellation of the Title.

**59 Socially responsible conduct**

- (1) A Title Holder must conduct Regulated Activities in a manner that is respectful of the rights of the citizens of the Cook Islands community, taking into account any views expressed in any community Consultation process and any guidelines published by the Authority pursuant to section 20 of the Act.
- (2) A Title Holder must adopt a participatory and collaborative approach to the planning and development of Regulated Activities, in accordance with any general directions of the Authority given for the purpose of this regulation.

**60 Maintenance of records and Samples**

(1) For the purpose of section 127 of the Act, a Title Holder must, for each Title, maintain securely a complete and proper set of books, accounts, financial records, technical and performance data, and Samples consistent with international accounting and records management standards, and retain them for not less than five years following the surrender, expiry or cancellation of the Title.

(2) A person who breaches sub-regulation (1) commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding one year, or both; or

(b) in any other case, to a fine not exceeding 5,000 penalty units.

**61 Inconsistency of obligations**

(1) In the event of any inconsistency between the conditions of a Title and legislative requirements, then the legislative requirements prevail to the extent of the inconsistency, and the terms of the Title must be interpreted in a manner compatible with the legislative provisions.

(2) A Title Holder must promptly notify the Authority upon becoming aware of any inconsistency between,—

(a) any two legislative provisions applying to Seabed Minerals Activity; or

(b) a legislative provision and an obligation on a Title.

**62 Relinquishment of Title Area**

For the purpose of section 117 of the Act, the Blocks to be relinquished must be,—

(a) contiguous; and

(b) expressed by the Exploration Licence Holder by reference to one or more Blocks.

**63 Ownership of biological samples**

Any biological samples acquired by or on behalf of a Title Holder in the course of undertaking a Seabed Minerals Activity,—

(a) remain the property of the Authority; and

(b) must not be disposed of or removed from the Cook Islands without the prior written consent of the Authority.

**Part 7**

**Monitoring, Investigations and Enforcement**

**Subpart 1—General**

**64 Authority Representatives to avoid interferences with operations**

Authority Representatives must, except insofar as may be necessary for the performance of their Functions, avoid interference with the safe and normal conduct of Regulated Activities.

**65 Directions may require Title Holder to pay third parties**

For the purposes of section 266(1) of the Act, the Authority may give a direction requiring, in reasonable terms, the Title Holder to make payment to a third person to cover costs for which the Title Holder is liable.

**Subpart 2—Facilitation of the performance of the Authority's Functions**

**66 Removal of Samples for testing**

A person must permit any Inspector acting for the purposes of Part 6.2 of the Act to take possession of and remove Samples, of any substance obtained or held by the person, for the purposes of,—

- (a) analysis or testing in relation to an alleged or suspected breach of,—
  - (i) the Act or these Regulations; or
  - (ii) the Title; or
- (b) use in evidence in proceedings concerning an alleged or suspected breach of the Act, these regulations, or a Title.

**67 Notification to Authority of cruises**

A Title Holder must,—

- (a) notify the Authority of the proposed schedule for any cruises to be undertaken as part of the Regulated Activities, at least 90 days prior to the commencement;
- (b) immediately advise the Authority of any change to the schedule of a cruise; and
- (c) keep the Authority notified of all entries and departures into and out of the national jurisdiction of the Cook Islands, any port arrivals and departures, and daily position reports while within national jurisdiction.

**68 Conveyance etc of Authority Representatives**

A Title Holder must comply with any request of an Authority Representative that is reasonable in the circumstances for the performance of the Functions of the Authority Representative to be,—

- (a) conveyed to or from any Vessel or facility used for the Regulated Activities of the Title Holder, together with any necessary equipment; and
- (b) provided with appropriate accommodation and subsistence while on board any Vessel, installation or facility.

**69 Access to communication and navigation equipment**

A Title Holder must allow any Authority Representative access to and use of a relevant Vessel's, installation's or facility's,—

- (a) communication equipment and associated personnel, for the purpose of the reasonable transmission and receipt of messages; and
- (b) navigation equipment and associated personnel, when the Authority Representative deems such access and use necessary to determine the Vessel's, installation's or facility's location,—

where such access is required for the purposes of the performance of the Authority Representative's Functions under the Act, or personal communications that are reasonable in the circumstances.

## **Part 8**

### **Management of Incidents**

- 70 Authority to assist Title Holders**  
The Authority must provide administrative assistance to a Title Holder as is expedient to facilitate the Title Holder's efficient and effective response to an Incident.
- 71 Liaison with ministries responsible for shipping and the Environment**  
Upon being notified of the occurrence of an Incident, the Commissioner must immediately liaise with the ministry responsible for shipping matters and the ministry responsible for the Environment to determine whether the Incident is subject to the jurisdiction of the Seabed Minerals Authority and these regulations (hereinafter referred to as an 'SBM Incident').
- 72 Notification to Responsible Minister**
- (1) Upon determining that an SBM Incident has occurred, the Authority must immediately provide a notice to the Responsible Minister setting out,—
- (a) a summary of the known facts surrounding the SBM Incident, including location and any known effects on inter alia,—
    - (i) the Environment;
    - (ii) human health and safety;
    - (iii) any other nation's interests;
  - (b) the identity of any Title Holder implicated in, or directly affected by, the SBM Incident; and
  - (c) details of the person who notified the Authority of the SBM Incident, and the date and time that the notification was received by the Authority.
- (2) The Responsible Minister must notify the minister responsible for foreign affairs if a notice under sub-regulation (1) states that an SBM Incident has had, or is reasonably expected to have, substantial effects on persons or things under the jurisdiction of another nation.
- 73 Publication of the occurrence of Incidents**  
The Authority must notify the Board, and publish a summary, of the known facts surrounding an SBM Incident as soon as practicable after being notified of an Incident.
- 74 Inquiries into SBM Incidents**
- (1) The Authority must conduct an inquiry into any SBM Incident for the purposes of—
- (a) establishing and making publicly available facts and findings in respect of the SBM Incident;
  - (b) acquiring information to be used for the future management of the effects of the SBM Incident;

- (c) managing future risk of Incidents; and
  - (d) forming a view as to whether the Title Holder or any other person should be investigated for breaches of an Enactment or other legal obligation.
- (2) An inquiry into an SBM Incident must form a view on—
- (a) the circumstances of the SBM Incident;
  - (b) actual, likely, or possible causation and contributing factors of the SBM Incident;
  - (c) the extent of any harm to the Environment, any person or any interest arising from the SBM Incident;
  - (d) the effectiveness of the actions taken by any person to mitigate or remedy the harm caused by the SBM Incident;
  - (e) potential future consequences of the SBM Incident, and options for preventing or minimising those consequences;
  - (f) the implications of the SBM Incident for other Regulated Activities;
  - (g) whether the occurrence or severity of the SBM Incident was contributed to by one or more of,—
    - (i) the Title Holder, or any employee, contractor, agent, or associate of the Title Holder;
    - (ii) the Government;
    - (iii) any other person; and
  - (h) options for mitigating the risk of future Incidents, whether or not of a similar nature to the SBM Incident that is the subject of the inquiry.
- (3) Upon completion of an inquiry, the Authority must,—
- (a) prepare a report setting out its views and recommendations arising from the inquiry;
  - (b) make available to the public and the industry the final report including through publication on its website;
  - (c) take appropriate measures to update the 'Seabed Mining Environmental Emergency Contingency Plan' in light of the findings and recommendations of the inquiry; and
  - (d) provide a copy of the report to the Responsible Minister and the Board.
- (4) An inquiry must be conducted as soon as practicable after an SBM Incident.
- (5) The Authority may,—
- (a) conduct such an inquiry itself; or
  - (b) appoint a person to conduct it and make a report to the Authority.

## Part 9

### General and miscellaneous provisions

#### *Legal mechanisms*

#### 75 Application of Part 10 of the Act

The provisions in Part 10 of the Act apply in respect of Prescribed offences.

*Fees and forms*

- 76 **Prescription of fees**  
The fees in Schedule 5 are Prescribed for the purposes of the Act.
- 77 **No refund of Application fees**  
An Application fee is not subject to refund.
- 78 **Payment of fees**
- (1) Each fee is payable in advance.
  - (2) A recurrent annual fee for a Title is payable in advance before the anniversary of the commencement date of that Title.
- 79 **Prescription of various documents and forms**  
For the purpose of the Act, the following forms are Prescribed in Schedule 7.
- 80 **Form of financial security for environmental obligations - section 303(1)**  
The financial security to secure performance of environmental obligations is prescribed for the purpose of section 303(1) of the Act to be contained in guidelines issued by the Authority and contained in the terms and conditions to a Title.

## Schedule 1

### Applications for Prospecting Permit

For the purpose of section 79 of the Act, the approved form to apply for a Permit must require an Applicant to provide,—

- (1) the name, nationality and address of the Applicant and the contact details of the Applicant's designated representative in the Cook Islands; and
- (2) an overview of the Applicant's business interest in the Application; and
- (3) a response to the matters listed in paragraphs 79(c), (d) and (e) of the Act; and
- (4) details of any relevant resource data or feasibility studies in the Applicant's possession; and
- (5) a description of the likely impacts of the proposed Regulated Activities on the Environment;
- (6) details of the methods, vessels, equipment, installations, and any underwater vehicles/craft to be used in the proposed Regulated Activities including applicable details relating to,—
  - (a) type/class, flag state and identification number;
  - (b) identity of owner and operator, bareboat charter details and crew particulars; and
  - (c) evidence as to certification against international standards (SOLAS certificates, Load Lines certificates, TONNAGE certificates, MARPOL certificates); and
- (7) each cruise proposed at the time of Application, and details of any proposed ports of call; and
- (8) proposed measures to ensure that the Authority remains informed about the plans for, and actual conduct of, Prospecting Operations; and
- (9) expected dates and method of submission to the Authority of research results, samples, data assessments, and preliminary and final reports in connection with the Prospecting Operations; and
- (10) any proposed means to provide assistance to the Authority in data assessment or interpretation; and
- (11) for the purpose of enabling the Authority to enquire into the Applicant's track record in similar activities—details of any previous title, or equivalent right in any other jurisdiction, held by the Applicant; and
- (12) details of any other permits required under an Enactment (whether received or pending) for the proposed Regulated Activities; and
- (13) a written undertaking that the Applicant will,—
  - (a) comply with the applicable statutory conditions; and
  - (b) make available to the Authority all data that is relevant to the protection and preservation of the Environment; and
- (14) details of the Applicant's occupational health and safety policies and track-record; and
- (15) a description of the Applicant's capacity and plans to respond to Incidents and details of any relevant insurance; and



- (16) the details of any plan to involve the nationals of the Cook Islands in the Regulated Activities; and
- (17) a statement on any other matter the Applicant considers relevant to support the Application.

## Schedule 2

### Applications for Exploration Licence

#### Part 1 – Matters to be required in approved Application form

For the purpose of paragraphs 102(a) and 110(1)(a) of the Act, the approved form to apply for an Exploration Licence over a tender or reserve area block must require an Applicant to provide evidence of the following matters,—

- (a) information about the Applicants, including the name, corporate or management structure, nationality, shareholder information (if applicable) and contact details of,—
  - (i) each person making the Application; and
  - (ii) any other person (including juridical persons) that may substantially influence the ownership, administration or management of the applicant's business:
- (b) the name and contact details of a proposed designated representative of the Applicant located in the Cook Islands:
- (c) if the Application is made by more than one Applicant (joint Application), a description of the proposed role of each Applicant in, and contribution of each Applicant to, the conduct of the Regulated Activities, and the decision-making and management structures that govern the relationship between the Applicants:
- (d) a statement of the experience of each Applicant relevant to the proposed Regulated Activities:
- (e) a response to,—
  - (i) the matters required in paragraphs (c), (d), (e) and (f) of sections 102 and 110(1) of the Act over the term of the Licence; and
  - (ii) the assessment criteria in these regulations:
- (f) the key positions in charge of the proposed Regulated Activities, and the name, nationality, contact details and brief curriculum vitae of each person who will fill each key position where known:
- (g) a statement explaining how the proposed Regulated Activities will comply with Enactments, good industry practice and best environmental practice:
- (h) a description of the Blocks within which the proposed Exploration Operations will be conducted:
- (i) an explanation of the Applicant's current understanding about the prospectivity of those Blocks:
- (j) a copy of any feasibility or other studies previously conducted or obtained by the Applicant, and details of any study proposed to be conducted or obtained by the Applicant, in relation to the proposed Regulated Activities, including studies as to the efficacy of the proposed equipment and studies undertaken in respect of the Environmental, geophysical, technical and economic matters:

- (k) a proposed Work Plan that sets out—
  - (i) the stated objectives of the Work Plan;
  - (ii) details of the technical methodologies, equipment, and any installations to be used in the proposed Regulated Activities;
  - (iii) each cruise proposed at the time of Application, and details of any proposed ports of call;
  - (iv) the scope of, and timetable for, the proposed Regulated Activities, including programmes for,—
    - (A) seabed mapping;
    - (B) geological, geochemical, and biological sampling and processing, including anticipated quantity, number and methods of sampling;
    - (C) collection of oceanographic and Environmental baseline data, and impact and mitigation studies;
    - (D) geostatistical and quantitative resource determinations;
    - (E) economic modelling;
    - (F) mining feasibility studies;
    - (G) testing of shipboard processing and mining systems; and
    - (H) planned closure, decommissioning and rehabilitation works;
  - (v) the proposed timetable for completion of,—
    - (A) the Regulated Activities; and
    - (B) the processing and analysis of results of the proposed Exploration Operations;
  - (vi) the minimum expenditure proposed for each year of the Licence and for each major component of the Regulated Activities, with a brief explanation of the role (if any) of any expected expenditure fluctuations due to inflationary or exchange rate factors and the intensity of the Activities;
  - (vii) details of the flag state of vessels proposed to be used in the Regulated Activities, and the certification of vessels to international standards (eg SOLAS certificates, MARPOL certificates, Load Lines certificates, TONNAGE certificates);
- (l) a preliminary assessment of the possible Environmental impact of the proposed Regulated Activities including,—
  - (i) mitigation strategies for the protection of the Environment;
  - (ii) energy efficiency; and
  - (iii) prevention of pollution;
- (m) details of any plan (a 'Local Engagement Plan') to,—
  - (i) engage with, and provide information to, Cook Islands communities in respect of the Regulated Activities;

- (ii) employ or contract nationals of the Cook Islands in the Regulated Activities;
- (iii) provide training or capacity building to nationals of the Cook Islands; and
- (iv) procure local goods or services in connection with the Regulated Activities;
- (n) a description of any anticipated impacts on other sea users;
- (o) a statement of the insurances and bonds proposed by each Applicant in respect of the Regulated Activities;
- (p) a draft Incident management plan for responding to any Incidents arising from the proposed Regulated Activities;
- (q) details of the Applicant's occupational health and safety policies and track-record;
- (r) a statement as to whether any information set out in the Application is proposed by the applicant to be confidential and not subject to publication in accordance with these regulations;
- (s) any commitments to adhere to international standards, protocols, codes of practice or other relevant instruments;
- (t) details of any other permits required under an Enactment (whether received or pending) for the proposed Regulated Activities;
- (u) a declaration executed by each Applicant in the form specified by the Authority that, among other matters considered appropriate by the Authority, declares that the Application is true and accurate to the best knowledge and belief of each Applicant; and
- (v) a statement on any other matter the Applicant considers relevant to support the Application.

## Part 2 – Manner of applications

### *Part 2A – Applications under section 101 of the Act*

For the purpose of paragraph 102(b) of the Act, the approved manner of making an Application for an Exploration Licence over a tender or reserve area block under section 101 of the Act must require Applications to be,—

- (a) submitted in the English language;
- (b) sealed in an envelope or other container that,—
  - (i) identifies the relevant tender round; and
  - (ii) states the applicable Closing Time; and
  - (iii) displays no information that identifies the Applicant; and
- (c) submitted to the lodgement location specified in the Invitation to Apply before the Closing Time; --
- (d) submitted as,—

- (i) one hard copy authoritative 'original' of the Application in the approved form, and of each annex, attachment or other enclosure, verified and signed by an authorised officer or authorised representative of the Applicant; and
- (ii) nine hard copies of the 'original' of the Application and each annex, attachment or other enclosure; and
- (iii) one electronic copy of the Application and all text enclosures in a full text searchable format.

*Part 2B – Applications under section 109 of the Act*

For the purpose of paragraph 110(1)(b) of the Act, the approved manner of making an Application for an Exploration Licence under section 109 of the Act must require Applications to be,—

- (a) submitted in the English language;
- (b) sealed in an envelope or other container that identifies the Applicant, and
- (c) except as authorised in writing by the Authority, be submitted as,—
  - (i) one hard copy authoritative 'original' of the Application in the approved form, and of each annex, attachment or other enclosure, verified and signed by an authorised officer or authorised representative of the Applicant; and
  - (ii) nine hard copies of the 'original' of the Application and each annex, attachment or other enclosure; and
  - (iii) one electronic copy of the Application and all text enclosures in a full text searchable format.
- (d) be submitted at a lodgement location specified by the Authority from time to time that is suitable for the Authority to discharge its obligations under the Act in respect of the receiving and handling of Applications under section 109 of the Act.

### Schedule 3 Matters for Invitation to Apply (ITA)

Each ITA issued by the Authority must provide for all of the following matters,—

- (a) the information to be set out in the public announcement:
- (b) a general description of the scope and purpose of the tender process, including,—
  - (i) an overview of the scheme for Seabed Minerals Activity under the Act;
  - (ii) the Blocks covered by the process;
  - (iii) a summary of the known prospectivity of the Blocks covered by the tender process; and
  - (iv) a statement to the effect that the requirements under the Act for the issue of the ITA have been met:
- (c) details for the acquisition of the tender document package applicable to the Application process, including the cost (if any) of the tender document package;
- (d) details about the place of lodgement of Applications;
- (e) the Closing Time;
- (f) rules for amending the ITA and tender document package before the Closing Time;
- (g) a statement to the effect that Applicants should ensure that Applications contain sufficient information to enable the Authority to assess the Application against the assessment criteria, including in competition with other Applicants;
- (h) the assessment criteria set out in the Act and these regulations and any weighting of those criteria, unless the Authority considers the disclosure of any weightings to be contrary to the national interest;
- (i) confidentiality in relation to the Application process, including the confidentiality of information in the data package;
- (j) rules relating to the ownership of Applications and the intellectual property rights in Applications;
- (k) the probity of the Application process, including the management of conflicts of interest and rules in relation to improper conduct by Applicants (eg collusive tendering and seeking or obtaining improper assistance from Government officials);
- (l) the process for the assessment of Applications;
- (m) a copy of the model Exploration Licence proposed to govern the Regulated Activities conducted as a result of the tender round; and
- (n) any other process rules governing the conduct of the Application process, for example in relation to—

- (i) content and format requirements in addition to those specified in Schedule 2:
- (ii) a process for the registration of potential Applicants, and other interested parties, who will receive communications in relation to the tender process:
- (iii) communications between the Government (including the Authority) and potential Applicants, including in relation to amendments to the ITA and tender document package:
- (iv) due diligence requirements of potential Applicants in respect of Applications:
- (v) the conduct of presentations, demonstrations or tests in relation to the assessment of Applications:
- (vi) details of how the Authority will conduct the community and Government consultation processes required by the regulations:
- (vii) additional rules in relation to the handling of late Applications:
- (viii) the making of amendments to Applications, including minor corrections:
- (ix) the termination of the Application process:
- (x) the return of information at the conclusion of the Application process:
- (xi) best and final offer processes, as contemplated in subsection 104(6) of the Act:
- (xii) the terms and legal effect of the declaration of Applicants to accompany Applications:
- (xiii) the application of specified Enactments or policies of the Government to the tender process:
- (xiv) disclosure of information about Applications:
- (xv) Applicant referees, and the procedures for obtaining references:
- (xvi) additional rules governing the process for negotiating and granting licences as a result of the Application process:
- (xvii) procedures for the debriefing of Applicants:

**Schedule 4**  
**Matters for tender or reserve area document package**

Each tender or reserve area document package must include,—

- (a) information held by the Authority that is relevant to the geodetic, geophysical, geological, Environmental and other technical characteristics of the Blocks covered by the ITA, including the identification of any relevant publicly available or Government studies; and
- (b) such other documentation that the Authority determines to include in the tender or reserve area document package to assist with the preparation of Applications for Exploration Licences in the tender or reserve areas.



### Schedule 5 Fees

The fee specified in column B is payable in New Zealand Dollars and in accordance with the Act and regulations in respect of the corresponding matter specified in column A, —

Column A	Column B
Application for prospecting permit under section 56 of the Act	\$5,000
Grant of prospecting permit under section 312 of the Act	\$15,000
Renewal of prospecting permit under Section 56	\$15,000
Annual Fee prospecting permit (first and second term)	\$10,000
Purchase of tender or reserve area document package in connection with Application for an Exploration Licence under the Act (*refundable from any subsequent Exploration Licence Application fee payable)	\$25,000
Application for any Exploration licence or renewal for a block under the Act	\$50,000*
Grant of any Exploration licence under the Act	\$100,000
Application fee for approval of Transfer under Section 230 of the Act.	\$20,000
Annual holding fee for a prospecting permit under section 315 of the Act	\$75,000
Annual holding fee for an exploration licence under section 315 of the Act	\$75,000
Retention lease Application following on from an exploration licence under section 141 of the Act	\$50,000
Retention lease annual holding fee	\$75,000
Replacement of lost original document or instrument evidencing title under subsection 224(2) of the Act	\$100
Request for alteration of Register under paragraph 228(2)(b) of the Act	\$100
Request for entry of transfer of title on Register under subsection 236(3) of the Act	\$100
Request for entry of dealing on Register under subsection 245(3) of the Act	\$100

## Schedule 6 Model Exploration Licence

### Model Seabed Minerals Exploration Licence

The Cook Islands Seabed Minerals Authority ('the Authority') hereby consents to the conduct of Exploration Operations ('the Activities') and related Ancillary Operations (collectively 'the Regulated Activities') by [*name and registered address of Title Holder*] ('the Licensee'), represented by [*name and contact details of managing officer*] in [*location*] on [*dates of commencement and conclusion*], subject to the terms and conditions below.

- A) The Licensee must strictly adhere to—
- (a) the Work Plan;
  - (b) the most up to date timetable relating to the Work Plan;
  - (c) each plan for managing and mitigating Environmental impact;
  - (d) any Local Engagement Plan;
  - (e) any Occupational Health and Safety Plan; and
  - (f) any other aspects of the description of the Activities,—
- derived from the Application lodged by the Title Holder on [*date*], and included as Schedule 2 to this Licence;
- B) The Licence is granted on the following terms—
1. This Licence enters into force on [*insert date*] and shall remain in force until its surrender, cancellation or expiry in accordance with clause 7 of this Licence.
  2. This Licence—
    - (a) gives the Licensee exclusive rights of access to the Blocks of the seabed delineated in Schedule 1 to this Licence, for the purpose of the Activities ('Title Area');
    - (b) licenses extraction of Samples from the Title Area for the purpose of sampling, only insofar as is detailed in Schedule 2 to this Licence, or as may otherwise be agreed by the Authority in accordance with the Seabed Minerals Act 2009 ('the Act');
    - (c) gives the Licensee preferential rights to apply for a Mining Licence or Retention Lease within the Title Area in accordance with the Act, subject to the Licensee meeting the requirements for the grant of a Mining Licence applicable at the time of application; and
    - (d) [*Subject to advice of Government lawyers / finance officers that this is compatible with national law and policy*] acknowledges that the Licensee may freely import into [*Country*] and remit outside of [*Country*] funds and equipment as is necessary for the performance of the Regulated Activities.

3. The Authority hereby—
  - (a) guarantees the Licensee security of tenure for the continuing duration of the Licence, and will not suspend, revoke or vary the Licence before its end-date except in accordance with the terms of the Act; and
  - (b) undertakes that the Government of the Cook Islands will not permit any other entity to undertake seabed mineral research in the Title Area, or otherwise take action in the Title Area that might cause unreasonable interference with the Activities.
4. This Licence may be varied by the Authority giving written notice to the Title Holder where—
  - (a) the Title Holder and the Authority agree;
  - (b) the Title Holder commits a material breach of any condition of the Licence and the variation is in the national interest having regard to the objects of the Act;
  - (c) no material efforts have been made by the Title Holder to undertake the Activities for a period exceeding one year and that inactivity is not due to conditions of *force majeure*;
  - (d) any payment or other amount owed by the Title Holder to the Government of the Cook Islands is in arrears or unpaid for six months following the day on which it ought to have been paid;
  - (e) the variation is, in the reasonable opinion of the Authority, necessary to avoid: serious risk to the safety, health or welfare of any person, or the Environment; conflict with any international legal obligation of the Cook Islands; or any situation which may reasonably be expected to lead to a breach of international or domestic peace and security;and such variation may only occur where the Authority has first Consulted with the Title Holder in relation to the proposed variation.
5. This Licence may be cancelled or renewed in accordance with the Act and will otherwise expire upon [*insert date e.g. 5 years after the start date*].
6. Upon surrender, cancellation or expiry of this Licence, all rights granted under the Licence cease, but the Title Holder remains subject to any obligation arising out of the Licence that has not, in the view of the Authority, been satisfactorily discharged.
7. No oral understanding nor prior written agreement affects the terms, conditions or scope of this Licence.
8. Any dispute arising between the Title Holder and the Government of the Cook Islands touching or concerning the interpretation of this Licence and the rights and liabilities of either of the parties will be settled under the Act.

9. Any letter, application, request, notice, warning, report, or direction made or given under this Licence, or service of process or notification in any proceeding of any court or tribunal having jurisdiction, must be in writing and addressed in accordance with the details specified in this clause, and will be deemed served the day after delivery, if delivered by hand or email.

*[insert address for hand delivery and email address for both parties]*

C) The Title is granted on the following conditions—

1. The Title Holder must ensure that the persons conducting the Regulated Activities at all material times—
  - (a) undertake the Regulated Activities diligently and responsibly and in accordance with the terms of this Licence and the laws of the Cook Islands, including the Act and the statutory conditions prescribed by regulations made under the Act (including the provisions reproduced in Schedule 3 to this Licence);
  - (b) only release into the Environment substances of a rapidly biodegradable nature, except and only insofar as is detailed in Schedule 2 to this Licence;
  - (c) not proceed, without the prior written consent of the Authority, with the Regulated Activities if there is evidence indicating that to proceed is likely to cause harm to the environment of a nature that is not foreseen in Schedule 2;
  - (d) make every reasonable endeavour to cooperate with the Authority and facilitate the performance of its functions; and
  - (e) accept the regulatory control of the Authority over the Regulated Activities.
2. The Licensee must—
  - (a) meet or exceed the minimum expenditure commitments specified in Schedule 5 to this Licence. In the event that those commitments are not met due to reasons other than force majeure, the Performance Bond required under clause 4(l) of this Licence may be used to pay to the Authority the full amount of the shortfall;
  - (b) in respect of each three month period during which the Licensee engages in Seabed Minerals Activity, submit to the Authority a written report, which must be submitted within one month of the expiry of the period, that details the performance and results of Seabed Minerals Activities during that period;

- (c) maintain with a creditable provider and at its expense, comprehensive insurance to the reasonable satisfaction of the Authority with respect to its property, personnel and the Regulated Activities, and provide copies or access to relevant certificates and whole policies upon the Authority's request;
- (d) pay all fees required under the Act, [*and make payments in accordance with Schedule 4 to this Licence*];
- (e) submit annual reports to the Authority that, in addition to the requirements of the Seabed Minerals (Prospecting and Exploration) Regulations 2015, set out [*insert additional required content of the annual reports, or delete this condition*];
- (f) not assign, transfer, lease, sub-let or mortgage this Licence except in accordance with the Act;
- (g) not enter into a sub-contract in relation to the performance of the Regulated Activities except with the prior written consent of the Authority, which consent will not be taken to be valid if the sub-contract does not impose obligations on the subcontractor that are equivalent to the obligations under this Licence.

[*Insert signature clauses*]

[*Insert as Schedules to the Licence:*

1. *A chart of the Title Area.*

2.

(i) the work plan;

(ii) timetable;

(iii) plan for managing and mitigating environmental impact;

(iv) local engagement plan;

(v) occupational health and safety plan; and

(vi) any other aspects of the description of the Activities, derived from the application form of [*date*]

3. *List of statutory conditions*

*THIS IS FOR REFERENCE ONLY. THESE CONDITIONS ARE SUBJECT TO CHANGE IF THE ACT OR REGULATIONS ARE AMENDED.*

4. *Fees payable*

to the [*Insert bank account and bank name*] in [*local currency*] in respect of the Licence:

Performance Bond			Returnable upon successful completion of the Activities.
Environmental Bond			Returnable upon successful completion of the plan for managing and mitigating environmental impact, including any rehabilitation activities detailed in Schedule 2 to this Licence.

5. *Minimum Expenditure*

**Schedule 7**  
**Prescribed forms**

Name of document	Supporting provision
Form of titles	s65
Application for replacement of lost original document or instrument evidencing title	s224(2)
Application for approval of transfer of title	s232(1)(a)
Details of required for the purposes of an application for approval of a dealing relating to a title	s242(2)
Form of identity card for inspectors	s259(2)(a)
Form of identity card for OHS inspectors	s286(2)(a)

  
Clerk of the Executive Council

These regulations are administered by the Seabed Minerals Authority.  
These regulations were made on the 28<sup>th</sup> day of July 2015.