



## Seabed Minerals (Exploration) Regulations 2020

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Sir Tom J. Marsters, KBE

Queen's Representative

### Order in Executive Council

At Avarua, Rarotonga this

day of

2020

**Present:**

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

Pursuant to section 178 of the Seabed Minerals Act 2019, 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 (Exploration) Regulations 2020.
- 2 Commencement**  
These regulations come into force on 22 October 2020.
- 3 Interpretation**
  - (1) In these regulations, unless the context otherwise requires,—  
**Act** means the Seabed Minerals Act 2019  
**applicable fee** means any application, annual or other fee determined by the Authority under, or prescribed in, regulations made under the Act  
**Authority representative** means the Commissioner and any officer, inspector, or other person lawfully performing functions of the Authority under the Act  
**block**—
    - (a) means any area of the seabed, identified as a block by co-ordinates on a map prepared by the Authority and situated wholly or partly in the Cook Islands or its exclusive economic zone; and

(b) includes a cell

**cell** means a part of a block

**closing time** means the published date and time by which the Authority must receive applications in response to an invitation to apply

**confidential information** means information that, under section 18 of the Act, must not be used or disclosed

**contingency plan** means a contingency plan approved under section 20(4) of the Act

**day** means any day except—

(a) a Saturday, Sunday, or holiday; and

(b) a day, or days in a period, during which Government offices are officially closed

**environmental approval** means a project permit or consent issued in accordance with the Environment Act 2003 and regulations made under that Act

**financial guarantee** means the insurance, bank guarantee, trust fund cash, or other form of security acceptable to the Authority that a licence holder may be required to provide as a security deposit under section 101 of the Act and as a condition of the licence

**good industry practice** means, in relation to seabed mineral activities, acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar or parallel activity, industry or sector

**incident response and management plan** means a plan prepared in accordance with Schedule 4

**invitation to apply** means an invitation under section 44 of the Act for persons to apply for an exploration licence

**licence holder** means the licensee whose name is entered in the register of titles as the person who holds the licence

**licensing panel** means the panel constituted under section 22 of the Act

**local engagement, training and business development plan** means a plan prepared in accordance with Schedule 5

**register of titles** means a register maintained and updated by the Authority in accordance with sections 48(2) and 49 of the Act

**reserved blocks** means blocks or cells that are subject to a declaration in force under section 42(1)(b)(ii) or (iii) of the Act

**retention area** means the blocks that are retained by the Authority under section 79 of the Act

**standard blocks** means blocks or cells designated for release by the responsible Minister under section 42(1)(a) of the Act but does not include—

(a) tender blocks; or

(b) reserved blocks

**Technical Advisory Group** means the Technical Advisory Group established by section 14 of the Marae Moana Act 2017

**tender blocks** means blocks or cells that are the subject of a tender round under section 44(2) of the Act.

- (2) Terms used in these regulations that are defined in the Act have the meanings given to them by the Act.

## Part 1

### Application for and grant of exploration licence over blocks

#### Subpart 1—Content of application for exploration licence

#### 4 Applications for exploration licence over blocks

- (1) An applicant may apply to the Authority for an exploration licence under section 59 of the Act over—
- (a) standard blocks; or
  - (b) reserved blocks; or
  - (c) tender blocks.
- (2) An application for an exploration licence must—
- (a) be made in accordance with the requirements in Schedule 1, and any applicable guidelines issued by the Authority; and
  - (b) specify the standard, reserved, or tender blocks covered by the application; and
  - (c) include—
    - (i) details of the activities that the applicant intends to carry out on the blocks; and
    - (ii) details of the amount of money that the applicant intends to spend on those activities; and
    - (iii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in activities authorised by the licence; and
    - (iv) details of the technical advice available to the applicant; and
    - (v) details of the financial resources available to the applicant; and
    - (vi) the information described in Schedule 1; and
  - (d) be accompanied by—
    - (i) maps in a specified format that relate to the blocks, and comply with these regulations; and
    - (ii) an exploration work plan prepared in accordance with Schedule 2; and
    - (iii) an environmental management programme prepared in accordance with Schedule 3; and
    - (iv) an incident response and management plan prepared in accordance with Schedule 4; and
    - (v) an occupational health and safety plan; and
    - (vi) a local engagement, training and business development plan prepared in accordance with Schedule 5; and

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- (vii) a schedule setting out the proposed relinquishment of blocks in the proposed exploration area; and
  - (viii) the applicable fee, or as required in the relevant tender notice.
- (3) An application for an exploration licence over tender blocks must also comply with the requirements in the relevant invitation to apply.
- (4) An application for an exploration licence over reserved blocks may only be made by a person who, in accordance with any declaration made under section 42(1)(b), is entitled to make an application.

### **5 Area covered by application**

- (1) An application must define the boundaries of the area and blocks that it covers by including a list of coordinates in accordance with the most recent generally accepted international standard used by the Authority.
- (2) Applications must,—
- (a) in the case of standard blocks, cover an area not exceeding the area of the blocks designated by the responsible Minister for release under section 42(1)(a) of the Act; or
  - (b) in the case of reserved blocks, cover an area not exceeding the area of the blocks subject to a declaration under section 42(1)(b)(ii) or (iii) of the Act; or
  - (c) in the case of tender blocks, cover an area not exceeding the area of the blocks stipulated in the tender notice.

## Subpart 2—Conduct of tender round in respect of tender blocks

### **6 Notice of tender round and invitation to apply**

- (1) For the purposes of section 45 of the Act, the public announcement of a tender round for an exploration licence in respect of tender blocks must specify—
- (a) information identifying the tender blocks over which the licence may be granted; and
  - (b) the period within which applications may be made; and
  - (c) the procedure that will be followed to allocate the licence; and
  - (d) that the tender will be determined on the basis of the following criteria:
    - (i) the qualification criteria under section 64 of the Act;
    - (ii) whether the applicant is a fit and proper person under section 65 of the Act;
    - (iii) the evaluation criteria set out in Schedule 7 and the relevant invitation to apply;
    - (iv) the nature and extent of the exploration activity proposed to be carried out; and
  - (e) where the applicant can obtain the invitation to apply and purchase the relevant tender document package.
- (2) An invitation to apply for titles referred to in section 44(1) of the Act must comply with Schedule 6 of these regulations.

Subpart 3—Opening, receipt, and acknowledgment of application for exploration licence

**7 Opening of application by Authority**

- (1) Subject to subclause (2), the Authority must immediately open any application it receives for an exploration licence.
- (2) The Authority must open applications made in response to a tender round that were received by the closing time—
  - (a) promptly after the passing of the closing time; and
  - (b) in the presence of the Commissioner, or the Commissioner’s delegated representative.
- (3) The Authority must follow any procedures stated in the invitation to apply in relation to the opening and handling of applications received in response to a tender round that are received after the closing time.

**8 Receipt, acknowledgement, and safe custody of applications by Authority**

- (1) On the receipt of an application for an exploration licence (whether delivered in hard copy form or electronically), the Authority must immediately make a written record of the date and time of receipt.
- (2) The Authority must give each applicant written acknowledgment of receipt specifying the date and time of receipt and within five (5) days after—
  - (a) the date it receives an application over standard or reserved blocks; or
  - (b) the closing date for applications made over tender blocks.
- (3) The Authority must place the application in safe custody and ensure the confidentiality of all confidential information contained in the application in accordance with its procedures.

Subpart 4—Further processing of application for exploration licence by the Authority

**9 Authority must determine if application complete**

- (1) The Authority must determine whether an application complies with the prescribed requirements and contains the prescribed information under the Act and these regulations.
- (2) That determination must be made within seven (7) days after—
  - (a) receiving an application; or
  - (b) the closing date of the tender round, if applicable.

**10 Authority may request applicant to complete application in approved manner and form**

- (1) If the Authority considers that an application does not comply with the prescribed requirements or does not contain the prescribed information the Authority must, in writing, request further information from or require the applicant to complete the application.
- (2) An applicant must, within five (5) days after receiving a request under subclause (1) provide the information or fulfil the prescribed requirements.



- (3) In accordance with section 63(2)(c) of the Act, the Authority may return an application without a decision or further processing of the application where the applicant fails to comply with subclause (2).

#### **11 Review of application by Authority**

- (1) This regulation applies if the Authority is satisfied that an application is complete.
- (2) The Authority must, within thirty (30) days after receiving the application or the closing date of any tender round as applicable, determine whether,—
  - (a) the qualification criteria in section 64 of the Act are met; and
  - (b) granting a licence would comply with section 69(1)(a) and (b) of the Act.
- (3) The Authority may—
  - (a) extend the 30-day period by an additional period not exceeding twenty (20) days:
  - (b) seek advice from relevant Crown agencies or engage independent experts as necessary in order to make the determination under subclause (2).
- (4) The Authority must, within the 30-day period (or any extended period under subclause (3)(a)), prepare a report providing an overview and assessment of the application and the applicant against the—
  - (a) section 64 qualification criteria; and
  - (b) the section 69(1)(a) and (b) restrictions.
- (5) If the Authority determines that one or more of the qualification criteria are not met or granting a licence would contravene section 69(1)(a) or (b) of the Act, the Authority must decline to grant the licence or return the application under section 67(1) of the Act.
- (6) If the Authority determines that the qualification criteria are met and granting a licence would not contravene section 69(1)(a) or (b), the Authority must within five (5) days of that determination, refer the application and the Authority's report to the licensing panel.

#### **12 Information to be considered by Authority**

- (1) This regulation applies when the Authority carries out functions under section 63(1) of the Act and regulation 11.
- (2) The Authority must consider—
  - (a) the information contained in the application, and any amendments to the application:
  - (b) any written information received in response to requests made by the Authority under section 63(2)(b):
  - (c) any written advice or comments received from relevant Crown agencies or recommendations from the Committee relating directly to the application:
  - (d) any expert report, analysis, or advice obtained or held by the Authority to inform the assessment of the application in accordance with the Act:
  - (e) any written information that the Authority receives pursuant to section 63(2)(d) of the Act:

- (f) any relevant and verifiable information relating to the applicant, or its affiliate or associate that is publicly available.

**13 Amendment of applications during assessment**

An applicant may, at any time before an application is considered by the licensing panel, amend an application—

- (a) to correct any error, if the effect of the correction is minor; or
- (b) to take account of any comments received from the public or Crown agencies under regulation 16(1).

Subpart 5—Licence decision-making: public consultation

**14 Licence decision-making: notice of application**

- (1) Within five (5) days after the date of the Authority’s determination under regulation 11(2), the Authority must, for the purposes of section 66(1)(b) of the Act—

- (a) give public notice of the application under regulation 15; and
- (b) serve a copy of the notice on—
  - (i) the responsible Minister for the Act;
  - (ii) the Ministry responsible for marine resources;
  - (iii) the Ministry responsible for finance and economic management;
  - (iv) the Ministry responsible for transport;
  - (v) the National Environment Service;
  - (vi) the Marae Moana Council and the Technical Advisory Group;
  - (vii) the Committee;
  - (viii) other agencies or persons that the Authority considers have existing interests that may be affected by the application.

- (2) At the same time as it notifies the public under subclause (1), the Authority must, pursuant to section 66(1)(a) of the Act, consult with the Ministry responsible for foreign affairs and immigration with a view to giving notice to any neighbouring State required to be notified under section 66(1)(a).

**15 Public notice by Authority**

For the purposes of section 66(1)(b) of the Act, to notify an application to the public the Authority must—

- (a) publish on its website a notice that includes—
  - (i) the applicant’s name and address; and
  - (ii) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
  - (iii) a summary of the application; and
  - (iv) a request that any person wishing to make comments regarding the application must make them in writing to an address specified by the Authority, and that the comments must be provided—
    - (A) in the approved form; and
    - (B) within twenty (20) days after the day on which the notice is published; and

- (b) publish a short summary of the notice, along with details of the Authority's website where the notice can be accessed, in one (1) or more newspapers circulating in the Cook Islands.

**16 Advising applicant of comments received**

- (1) Within five (5) days after the closing date for comments under regulation 15 (a)(iv), the Authority must forward to the applicant a list and copy of all the comments that it has received in relation to the public notice, including any written comments received from Crown agencies.
- (2) Following the review of any comments by the applicant, the applicant may within five (5) days after receiving the list and comments, —
  - (a) provide the Authority with its written response to the comments; or
  - (b) notify the Authority that it wishes to amend its application in the light of the comments, and submit any revised application within a period agreed with the Authority.
- (3) The Authority may direct the applicant to—
  - (a) consult directly with the submitter; and
  - (b) advise the Authority of the outcome of that consultation.

**17 Review and consideration of comments by Authority**

- (1) Within ten (10) days after the closing date for comments under regulation 15 (a)(iv), the Authority must—
  - (a) review the information contained in any comments submitted following the public notice under regulation 15 and any response from the applicant under regulation 16(2):
  - (b) consider any information in response to a notice under section 66(1)(a) of the Act:
  - (c) update the Authority's report for the licensing panel in the light of any comments or information, and send any revised report to the licensing panel:
  - (d) consider any recommendations made by the Committee under section 37(2) of the Act.
- (2) The Authority may decide not to review any submission that the Authority considers on reasonable grounds is—
  - (a) frivolous, vexatious, or repetitious; or
  - (b) is not relevant to the application.

**18 Consultation with National Environment Service**

- (1) The Authority must consult with the National Environmental Service as required by section 90(3) of the Act at the same time as it notifies the public under regulation 15.
- (2) An applicant may be invited by the Commissioner or the Director, National Environment Service to participate in the consultation.
- (3) Consultation may include the following subjects:
  - (a) the requirements of sections 36 and 36A of the Environment Act 2003, including the requirement for an environmental approval in respect of the proposed activities under a work plan, and the timing of its issue:

- (b) the requirement for any specific conditions in the licence or environmental approval relating to the protection of the marine environment:
  - (c) a review of the surveys, investigations and studies proposed in the environmental management programme attached to the application, including proposed baseline studies:
  - (d) any other matters relevant to the application.
- (4) The Authority must ensure that any comments or recommendations arising from consultation under this regulation are provided to the applicant and to the licensing panel at the same time as any revised report prepared by the Authority under regulation 17(1)(c).

## Subpart 6—Evaluation of application for exploration licence by licensing panel

### **19 Matters to be taken into account by licensing panel**

In evaluating an application or applications under sections 68 and 69 of the Act, and in deciding what recommendation to make to the responsible Minister under section 70(1) of the Act, the licensing panel must consider the following documents and information:

- (a) policy statements relating to the conduct of seabed mineral activities in the Cook Island's exclusive economic zone:
- (b) applicable Acts, regulations, rules, standards or procedures that are in force in the Cook Islands:
- (c) the application or any revised application:
- (d) the Authority's report:
- (e) any technical presentation made by the applicant to the licensing panel during the course of its evaluation:
- (f) advice, reports, or information sought by the Authority or licensing panel and received to verify, clarify or substantiate the information provided in an application:
- (g) information or advice received from Crown agencies, including any recommendations arising from consultations between the Authority and the National Environment Service under regulation 18:
- (h) a summary prepared by the Authority of the comments received under regulation 15 (a)(iv) in response to the public notice, and any written response thereto by the applicant under regulation 16(2)(a):
- (i) information supplied by the applicant in response to any requests for further information by the Authority under section 63(2)(b) of the Act or the licensing panel under section 68(2) of the Act.

### **20 Request for further information by licensing panel**

- (1) The licensing panel may request that an applicant provide further information relating to an application in accordance with section 68(2) of the Act.
- (2) A request must be made in writing to the applicant through the Authority and set out the panel's reasons for requesting further information.

- (3) An applicant who receives a request under this regulation must, within five (5) days after the date of the request from the Authority, —
  - (a) provide the information; or
  - (b) agree a reasonable time with the Authority within which the information will be provided by the applicant; or
  - (c) refuse to provide the information and state the reasons for the refusal.

**21 Evaluation of applications by licensing panel**

- (1) The licensing panel will, in accordance with section 30 of the Act, establish its own procedures in writing for evaluating an application or applications based on advice received from the Authority.
- (2) For the purposes of section 68(1)(a) of the Act, the licensing panel must evaluate an application against the evaluation criteria in Schedule 7, taking account of the applicable evaluation guidelines.
- (3) In the case of two or more competing applications in response to a tender round, the licensing panel must also assess and rank the applications competitively as set out in the relevant invitation to apply.
- (4) The chair of the licensing panel must prepare a report giving the panel's reasons for its recommendation to the responsible Minister under section 70(1) of the Act and against the relevant evaluation criteria.
- (5) The chair may, as part of that report and where the panel recommend the grant of an exploration licence, recommend any specific conditions that it considers appropriate to deal with likely adverse effects of the regulated activity on the marine environment or other marine users for consideration by the Authority under section 72(2)(c) of the Act and regulation 26(2).

**22 Licensing panel: Prescribed evaluation period**

The licensing panel must complete its duties under section 68 of the Act and make its recommendation to the responsible Minister under section 70(1) of the Act that the application be either granted or declined within fifty (50) days after the date the panel receives the application from the Authority under regulation 11(6).

Subpart 7—Licence decision-making: responsible Minister

**23 Time limits after responsible Minister receives recommendation from licensing panel**

- (1) This regulation applies when the responsible Minister receives a recommendation from the licensing panel under section 70(1) of the Act.
- (2) If the licensing panel recommends that the licence be declined, the responsible Minister must do so within ten (10) days after receiving the recommendation.
- (3) If the responsible Minister intends to follow a recommendation to grant a licence, the Minister must, within ten (10) days after receiving the recommendation, request the Authority to prepare the draft licence.

- (4) If the licensing panel recommends that a licence be granted and the responsible Minister disagrees with that recommendation, the Minister must refer the recommendation back to the panel within the (10) days after receiving the recommendation.

**24 Acceptance of provisional grant of licence over tender area blocks by preferred applicant**

- (1) This regulation applies where the responsible Minister intends, subject to the approval of Cabinet, to grant a licence in respect of tender blocks (a provisional grant).
- (2) The successful applicant under the tender round must provide written acceptance of the provisional grant to the Authority, within ten (10) days after being notified of the provisional grant of the licence.
- (3) If the provisional grant is not accepted by the applicant in accordance with subclause (2), the responsible Minister (with the agreement of Cabinet) may grant the licence to an alternate applicant for the licence under the tender round.
- (4) In granting a licence under subclause (3), the responsible Minister must follow any procedures and apply any relevant criteria specified in the relevant invitation to apply.

Subpart 8—Preparation of draft licence for exploration

**25 Draft licence**

- (1) Within ten (10) days after the responsible Minister requests the Authority to prepare a draft licence, the Authority must—
- (a) prepare a draft licence in accordance with this regulation; and
  - (b) seek the responsible Minister’s approval on—
    - (i) the terms and conditions of the draft licence; and
    - (ii) the final work plan and other plans annexed to the draft licence; and
  - (c) provide the applicant with the approved draft licence.
- (2) A draft exploration licence prepared by the Authority must—
- (a) comply with the section 72(1) and (2)(a) to (c) of the Act; and
  - (b) be based on the model exploration licence in Schedule 8 of these regulations.
- (3) The licence may include specific conditions in accordance with regulation 26.
- (4) Following agreement on the terms and conditions of the draft licence between the Authority and the applicant, the responsible Minister must, in accordance with section 73 of the Act, refer the draft licence to Cabinet for its approval of the licence terms.
- (5) Subclause (4) is subject to regulation 27 (Amendment of conditions of draft licence).

**26 Specific conditions of draft licence**

- (1) The Authority may include specific conditions in a draft exploration licence—
- (a) as a result of matters arising under section 72(2)(c) of the Act; or

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- (b) as considered necessary or expedient to promote compliance with the Act and its objectives taking account of—
  - (i) the recommendations received from the National Environment Service following consultation under regulation 18; and
  - (ii) any recommendations to the responsible Minister by the licensing panel under regulation 21(5); and
  - (iii) the applicant’s likely compliance with the licence terms; and
  - (iv) the applicant’s technical and financial capability and capacity; and
  - (v) any project or area-specific requirements.
- (2) Specific conditions may be included for the purpose of requiring the licence holder to, for example,—
  - (a) take out a certain category of insurance; or
  - (b) carry out certain work in or in relation to the licensed area or adjacent areas during the term of the licence; or
  - (c) lodge a financial guarantee in the agreed form and amount under regulation 28; or
  - (d) keep specific information; or
  - (e) undertake specific studies or analysis; or
  - (f) undertake specific monitoring or reporting for a defined period; or
  - (g) give the Authority, on request, specified information; or
  - (h) take specific steps to protect the marine environment of the licensed area, including conditions relating to minimising the effect on the environment of the licensed area and the area surrounding the licensed area of activities carried out in the licensed area; or
  - (i) take specific steps to consult with other marine users; or
  - (j) undertake specific education and awareness programmes; or
  - (k) pay a specified penalty if the licence holder does not comply with a licence condition.

### **27 Amendment of conditions of draft licence**

- (1) An applicant may request the responsible Minister to vary a condition in the draft licence, provided that the applicant has reasonable grounds for making such request.
- (2) The request must be made within ten (10) days after the date of receipt of the draft licence under regulation 25(1)(c).
- (3) In considering any request under subclause (1), the responsible Minister must consider—
  - (a) the grounds for the request provided by the applicant; and
  - (b) the advice of the Authority and other relevant Crown agencies; and
  - (c) the precedent value of making such a variation; and
  - (d) the impact on the Authority’s ability to regulate effectively the regulated activities under the Act.
- (4) The responsible Minister must give the applicant written notice of a decision under this regulation within ten (10) days after the receipt of any request under subclause (1).

**28 Financial guarantee**

- (1) In determining the requirement for any security deposit under section 101 of the Act, the Authority must take into account the following factors:
  - (a) the nature, stage, scale and likely impact of the proposed activities under a work plan on the marine environment or other marine users:
  - (b) the applicant's environmental performance record:
  - (c) the financial capacity of the applicant and its access to financial resources:
  - (d) the availability of relevant market instruments, such as insurance:
  - (e) the applicant's capacity to respond to incidents:
  - (f) the applicant's capacity to undertake any post closure monitoring:
  - (g) the technical and economic feasibility of rectifying any damage that may be caused to the marine environment:
  - (h) any environmental bond required or provided for in any environmental approval issued under the Environment Act 2003.
- (2) The terms and conditions relating to a financial guarantee, including the form, amount, use by the Authority, and conditions of discharge will form part of the specific conditions of a licence.
- (3) An applicant may, on reasonable grounds, request the responsible Minister to review a requirement to provide a financial guarantee or the amount of any proposed guarantee or a term or condition of the proposed guarantee in accordance with regulation 27.
- (4) Any financial guarantee must be held by the Ministry responsible for finance and economic management in accordance with its policy and procedures, and in the case of cash, held in a secured interest-bearing account.
- (5) Nothing in this regulation precludes the Authority from imposing a financial guarantee during the term of the licence or adjusting the amount of an original guarantee where there has been a material change in circumstances, including—
  - (a) a change in the financial capacity of the licence holder; or
  - (b) a change in the scope, nature and magnitude of the activities under a work plan.
- (6) The application of this regulation is subject to the applicable guideline issued by the Authority.

Subpart 9—Licence decision-making: Cabinet

**29 Time limit for approval of draft licence terms by Cabinet**

- (1) Subject to subclause (2), Cabinet must decide whether to approve the terms of the draft licence within ten (10) days after the date of referral of the draft licence by the responsible Minister under regulation 25(4).
- (2) The prescribed period in subclause (1) may be extended by a further ten (10) days, where Cabinet seeks an opinion from the Crown Law Office under section 73(2) of the Act.



**30 Notification of licence decision to applicant**

For the purposes of section 74 of the Act, the Authority must provide and publish a written statement of reasons for the decision to grant or decline a licence application within five (5) days after the decision is made by the responsible Minister (with the agreement of Cabinet).

Subpart 10—Time limits for review of licence decision

**31 Review of licence decision**

- (1) For the purposes of section 75(1) of the Act, the prescribed time within which an applicant may apply to the responsible Minister for a review of a licence decision ends ten (10) days after the date on which the applicant is notified of the decision.
- (2) For the purposes of section 75(2)(a) of the Act, the prescribed period within which the responsible Minister must refer a request for review to the licensing panel is twenty (20) days after receiving the application for review.
- (3) For the purposes of section 75(2)(b) of the Act, the prescribed period within which the responsible Minister must affirm the decision or submit a new or amended recommendation to Cabinet is twenty (20) days after the Minister receives a recommendation from the licensing panel as a result of a referral under subclause (2).

Subpart 11—Dealing with applications

**32 Duty to deal with applications promptly**

- (1) Cabinet, the responsible Minister, the Authority, the licensing panel, and other relevant Crown agencies must deal with any application for an exploration licence as promptly as is reasonably practicable in the circumstances and within the prescribed periods under these regulations.
- (2) However, an application is not required to be dealt with within a prescribed period where exceptional circumstances exist because the nature, complexity, or volume of applications demand a longer period for review or determination than the relevant prescribed period.
- (3) If an application is not dealt with within a prescribed period the Authority must inform applicants of the reasons justifying any extension of time and the date on which the relevant determination is expected.

Subpart 12—Signature, registration, and publication of licence

**33 Signing of licence**

- (1) Following Cabinet's approval of the licence terms, the licence may be signed on behalf of the Crown by the responsible Minister.
- (2) The designated representative must sign the licence on behalf of the applicant.
- (3) On signing the licence, the licence holder must pay the applicable fee for the grant of an exploration licence.

**34 Licence to be entered in the register of titles**

The Authority must, within five (5) days after the last signature to the licence or payment of the applicable fee under regulation 33(3), whichever is later, enter a copy of the exploration licence in the register of titles.

**Part 2**

**Obligations relating to the conduct of exploration under licence**

**Subpart 1—General**

**35 Adherence to qualification and evaluation criteria during term of licence**

- (1) Pursuant to section 117(1)(b) of the Act, a licence holder must satisfy the qualification and evaluation criteria on a continuous basis for the term of the licence, and any renewal of the licence.
- (2) The licence holder must notify the Authority within forty-eight (48) hours after it becomes aware of any information or circumstance that could materially affect its ability to satisfy the qualification criteria.
- (3) A licence holder that fails to comply with subclause (2) commits an offence and is liable on conviction to a fine not exceeding \$250,000.

**36 Work practices under a work plan - general**

The licence holder, including any affiliate or associate of the holder, in carrying out the regulated activity in the licensed area under an approved work plan, must take all reasonable and necessary steps—

- (a) to ensure that the activities are carried out with due diligence and efficiency and according to good industry practice; and
- (b) to maintain in good repair all equipment and installations in the licensed area;
- (c) to provide sufficient training, supervision and resources to their employees, agents, officers, affiliates and associates to ensure compliance with the licence; and
- (d) to safeguard the health, safety and welfare of persons engaged in the regulated activity, including observing of internationally recognised labour standards; and
- (e) to avoid, mitigate, or remedy adverse effects of the regulated activity on the marine environment; and
- (f) to remove from the licensed area any structure, equipment, or other property that—
  - (i) belongs to the person, or is under the person’s control; and
  - (ii) is not being used, or is not going to be used, in connection with the regulated activity.

**37 Adherence to conditions of environmental approval**

- (1) A licence holder must adhere to and conduct all regulated activity under the licence in accordance with the conditions of any environment approval.
- (2) The conditions of any environmental approval under subclause (1) are incorporated by reference into the terms and conditions of the licence.

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- (3) A licence holder that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$250,000.

### **38 Obligations of associates and affiliates**

- (1) Any agreement or other arrangement between the licence holder and associates or affiliates engaged or to be engaged in all or part of the regulated activity must contain appropriate terms by which the associate or affiliate acknowledges the terms and conditions of the licence, to the extent applicable to the activities undertaken by the affiliate or associate.
- (2) A licence holder must ensure that all affiliates and associates—
- (a) undertaking work and tasks authorised by the licence are made aware of the terms and conditions of the licence, and any subsequent revisions or amendments; and
  - (b) undertake their operations to ensure compliance with the terms and conditions, the Act and these regulations.
- (3) A licence holder who delegates, contracts, or otherwise arranges for work or tasks under the licence to be carried out by an affiliate, associate, or other third party is not discharged from the licence holder's obligations under the Act, these regulations, and the licence.
- (4) A licence holder must notify the Authority in writing of any proposed changes to the affiliates or associates that will carry on any regulated activity on behalf of the licence holder not less than thirty (30) days before the suggested date of implementation of the proposed change. The Authority may at any time request that the licence holder provides it with further information to determine that the licence holder continues to satisfy the qualification criteria under section 64 of the Act.
- (5) A direction to a licence holder under section 112 of the Act extends to any affiliate or associate carrying on the regulated activity for or on behalf of the licence holder, and the licence holder must give a copy of the direction to the affiliate or associate.
- (6) Nothing in this regulation precludes the Authority or an inspector from issuing a direction directly to any affiliate or associate under section 112 of the Act.
- (7) A licence holder that fails to comply with any of subclauses (1), (2) and (4) commits an offence and is liable on conviction to a fine not exceeding \$250,000.

### **39 Regulated activities logbook**

- (1) A licence holder must, in respect of the regulated activity, keep a logbook on board any vessel in an electronic form in accordance with any applicable guideline.
- (2) A copy of the logbook must be provided within forty-eight (48) hours after any request is made by the Authority.
- (3) The logbook must contain the following minimum information:
- (a) the date of the activity undertaken, and the date recorded:
  - (b) a description of the type of activity and the methods used to under the activity:
  - (c) details of the person or persons undertaking the activity:

- (d) the location (coordinates) of the activity;
  - (e) a general description of the area and marine environment encountered;
  - (f) a description of likely effects of the activity on the marine environment;
  - (g) details of any measures taken to avoid, mitigate, or remedy adverse effects on the marine environment;
  - (h) details of any encounters with other marine users.
- (4) A licence holder that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

**40 Interference with other marine-based activities in the licensed area**

- (1) A licence holder must ensure that the regulated activity is not carried out in the licensed area or adjacent areas in a way that interferes with—
- (a) navigation; or
  - (b) marine scientific research; or
  - (c) fishing or aquaculture; or
  - (d) submarine cables, including their laying or maintenance; or
  - (e) other regulated activity; or
  - (f) any marine-based activities that someone else is lawfully carrying out, to a greater extent than is necessary for—
    - (i) the reasonable exercise of the licence holder’s rights under the licence; or
    - (ii) the performance of the licence holder’s duties under the licence.
- (2) It is the responsibility of a licence holder to consult and cooperate with other marine users and relevant Crown agencies potentially affected by the regulated activity with a view to agreeing any necessary measures that will minimise any adverse impact to other marine users and to any unnecessary interference with the conduct of the regulated activity.
- (3) The Authority must provide administrative assistance to the licence holder and other marine users that is necessary to facilitate any consultation and cooperation between the licence holder, other marine users, relevant Crown agencies and, where applicable, the Technical Advisory Group.
- (4) A licence holder that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$250,000.

**Subpart 2—Record keeping and reporting obligations**

**41 Keeping of records**

- (1) Pursuant to clause 9 of Schedule 2 of the Act, a licence holder must maintain accurate financial and accounting records.
- (2) The records must—
- (a) be in a currency agreed upon by the Authority; and
  - (b) comply with applicable Cook Islands law; and
  - (c) support all fiscal returns or any other accounting reports required by the Authority and relevant Crown agencies in relation to the regulated activity.

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- (3) The financial and accounting records must include information that fully discloses actual and direct expenditures for the regulated activity, including—
  - (a) capital expenditure; and
  - (b) operating expenditure; and
  - (c) other information that will facilitate an effective audit of the licence holder's expenditures by the Authority and other Crown agencies.
- (4) A licence holder must keep, in the Cook Islands, complete, accurate, and up to date technical and commercial data and records of all regulated activity under the licence, including—
  - (a) maps:
  - (b) geological, geophysical, environmental, technical and other data:
  - (c) records and interpretations:
  - (d) mineral analyses:
  - (e) market statistics and reports:
  - (f) all other documents demonstrating compliance with the requirements of the Act, these regulations, and any other applicable enactments.
- (5) A licence holder must supply and file technical and commercial information, reports, returns, and statements in accordance with the Act, these regulations, the conditions of the licence, and other applicable law.
- (6) Despite any penalty under another enactment, a licence holder that fails to comply with this regulation commits an offence and is liable on conviction to a fine not exceeding \$100,000.

### **42 Collection, record, analysis and keeping of samples**

- (1) A licence holder may collect samples in quantities that are stipulated in the licence.
- (2) The Authority may, in accordance with regulation 50, set standards for collecting and classifying samples in order to ensure a consistent approach to data collection and analysis between licensed areas and between licence holders.
- (3) A licence holder must record the date, location, and type of samples collected.
- (4) To the extent reasonably practicable, a licence holder must retain and preserve the integrity of a representative portion of samples of the licensed seabed minerals, together with biological samples, obtained in the course of exploration.
- (5) Samples must be taken and maintained in a manner that—
  - (a) is in accordance with section 95(2) of the Act and this regulation; and
  - (b) takes into account any applicable guidelines issued by the Authority or the National Environment Service (and the guidelines must allow the licence holder to maintain the samples itself or to have such maintenance performed on its behalf in whole or in part by a third party).
- (6) Upon request of the Authority, the licence holder must deliver to the Authority for analysis a portion of any sample obtained during the course of exploration.
- (7) A licence holder must, subject to reasonable notice, permit full access by the Authority to the samples and the records relating to samples retained by the licence holder or third party.

- (8) The Authority may require that samples be analysed by a certified laboratory and that the laboratory provide a copy of the analysis to the Authority.
- (9) A licence holder that fails to comply with subclauses (5) to (7) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

**43 Data and information reporting**

- (1) A licence holder must make available a copy of all raw and processed environmental, biological, hydrographic, geological, geophysical, and geochemical data and information (including maps, tables and diagrams, videos, photographs, other digital media and studies, observations, measurements, evaluations, sample analyses, and results of environmental monitoring activities) collected or prepared under a work plan to the Authority and submit such data and information in accordance with the Authority's reporting requirements and data submission standards, where applicable.
- (2) The data and information contemplated by subclause (1) must be submitted to the Authority as soon as practicable during the course of each calendar year, taking account of the generally accepted time for the processing and analysis of the data and information.

**44 Annual report and data submission**

- (1) A licence holder must submit annual reports to the Authority and, if not already done, copies of data collected and processed under the work plan during the relevant calendar year.
- (2) Pursuant to clause 17(4) of Schedule 2 of the Act, annual reports must be submitted within three (3) months of the calendar year end and must include—
  - (a) a full report of exploration activities carried out during the year, including the results and conclusions of surveys and any other operations; and
  - (b) details of any variance from the approved work plan; and
  - (c) details of the equipment used to carry out the regulated activity that is operating at the end of the period; and
  - (d) a detailed statement of financial expenditures during the year against projected expenditures; and
  - (e) a description of the exploration activities planned for the following year and any proposed modification to the work plan for the Authority's consideration; and
  - (f) a budget for exploration activities planned for the following year; and
  - (g) details about how it executed and complied with the approved environmental management programme, including baseline data collected and the results of any environmental monitoring activities; and
  - (h) details of incidents arising during the period and actions taken in connection with the incident response and management plan; and
  - (i) information on compliance with health, labour and safety standards; and
  - (j) details relating to the implementation of the local engagement, training and business development plan; and
  - (k) a statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions; and

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- (l) evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period; and
  - (m) details of any changes made in connection with affiliates or associates engaged by the licence holder during the period; and
  - (n) the results of exploration, including updated data and information on the abundance, grade and quality of resources and reserves identified in accordance with the International Seabed Authority's reporting standard for mineral exploration results assessments, mineral resources, and mineral reserves (Annex V to document ISBA/21/LTC/15); and
  - (o) a statement that the licence holder's financing plan is adequate for the following period; and
  - (p) a statement that the licence holder has to the best of its knowledge and belief complied with the terms and conditions of the licence, the Act and these regulations, including that it continues to satisfy the qualification and evaluation criteria under the Act; and
  - (q) a reconciliation of data and studies supplied to the Authority by the licence holder during the relevant calendar year and as part of the annual report.
- (3) The licence holder must supply all information and data to the Authority in accordance with the applicable guidelines for annual reports and data submission standards issued by the Authority.
  - (4) The licence holder must pay to the Authority the applicable annual licence fee.
  - (5) Nothing in this regulation precludes the Authority from requesting more frequent progress reports in respect of the regulated activity under the licence.

### Subpart 3—Variation of licence terms and conditions

#### **45 Variation of licence conditions**

- (1) The Authority may notify a licence holder that the Commissioner intends to review the conditions of a licence (or retention) at any time—
  - (a) to ensure that the conditions are consistent with prescribed standards or guidelines issued after the grant of the licence; or
  - (b) to deal with any likely adverse effects on the marine environment, other marine users, or health and safety that arise and that—
    - (i) were not anticipated when the licence was granted; or
    - (ii) are of a scale or intensity that was not anticipated when the licence was granted; or
  - (c) if the information made available to the Authority and licensing panel by the applicant for the purposes of the application contained inaccuracies that materially influenced the decision made on the application and the effects of the exercise of the licence are such that it is necessary to apply more appropriate conditions; or

- (d) if information becomes available to the Authority that was not available to the Authority or licensing panel when the licence was granted and the information shows that more appropriate conditions are necessary to deal with the effects of the exercise of the licence.
- (2) The notice must identify the conditions to be reviewed, give reasons for the review and may propose new conditions.
- (3) When reviewing the conditions of a licence, the Authority—
  - (a) must have regard to whether the activity allowed by the licence will continue to be viable after the proposed change of conditions; and
  - (b) may take into account the manner in which the seabed mineral activities have been undertaken under the licence; and
  - (c) may seek responses from the licence holder on the proposed change of conditions.
- (4) The Commissioner must make recommendations to the responsible Minister for any proposed variation to the licence conditions for the responsible Minister's and Cabinet approval.

**46 Request for variation, suspension or cancellation of conditions of licence by licence holder**

- (1) A licence holder may request the responsible Minister to vary, suspend or cancel a licence condition (with the approval of Cabinet), provided that the applicant has reasonable grounds for making such request.
- (2) In considering any request under subclause (1), the responsible Minister must consider—
  - (a) the grounds for the request provided by the licence holder; and
  - (b) the advice from the Authority and any other relevant Crown agencies.
- (3) If the responsible Minister varies, suspends or cancels a licence condition, the Authority must give the licence holder written notice that—
  - (a) specifies the conditions which have been varied, suspended or cancelled; and
  - (b) specifies any conditions to which the variation or suspension is subject.
- (4) The Authority must, within five (5) days after giving the licence holder written notice under subclause (3), make an entry of the variation, suspension or cancellation in the register of titles.

Subpart 4—Transfer of licence

**47 Application for approval of transfer**

- (1) A transfer of a licence must not be registered by the Authority unless Cabinet has given its prior agreement to the transfer pursuant to section 102 of the Act and in accordance with this regulation.
- (2) A licence holder and transferee must apply jointly in writing to the Authority for the approval of the transfer.
- (3) The application must be accompanied by—
  - (a) a certified copy of the transfer document:



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- (b) evidence of consent to the transfer from the beneficiary of an encumbrance, if any, recorded in the register of titles:
  - (c) a statement about—
    - (i) the technical qualifications of the transferee:
    - (ii) the financial resources of the transferee:
  - (d) a statement about the reasons for the transfer and activities to be conducted by the transferee for the remaining term of the licence:
  - (e) other information prescribed in Schedule 1 of these regulations to enable the Authority to determine sufficiently that the transferee meets the qualification criteria in section 64 of the Act:
  - (f) an undertaking that the transferee assumes all of the obligations of the transferor:
  - (g) the applicable fee.
- (4) The application may include a statement of any matter that the applicants wish the Authority and Cabinet to take into account in deciding whether to agree to the transfer.
- (5) If the Authority requests further information pursuant to section 102(2)(d) of the Act, the transferor or transferee must, within ten (10) days after receiving a request, provide the information requested.

### **48 Decision-making on application for approval of transfer**

- (1) The Authority must, within thirty (30) days after receiving a transfer application, determine whether the transferee meets the qualification criteria in section 64 of the Act.
- (2) If the Authority determines that the transferee meets the qualification criteria, the Authority must, within five (5) days after making the determination, refer the application and the Authority's recommendation to Cabinet, including any conditions that the Authority considers necessary or desirable for any approval.
- (3) If the Authority determines that the transferee does not meet one or more of the qualification criteria, the Authority must notify the responsible Minister within five (5) days after making the determination.
- (4) Within fourteen (14) days after the Authority refers the application under subclause (2), Cabinet must—
  - (a) agree to the transfer; or
  - (b) refuse to agree to the transfer.
- (5) If Cabinet agrees to the transfer, the Authority must endorse a copy of the transfer document and record the entry of the transfer in the register of titles within five (5) days after Cabinet's decision.
- (6) If Cabinet refuses to agree to the transfer, the Authority must make a note of that refusal in the register within five (5) days after Cabinet's decision.
- (7) The Authority must give an applicant written notice of Cabinet's decision within five (5) days after the decision is made.

## Subpart 5—Change of ownership, constitution or control of licence holder

**49 Notification of change by licence holder**

- (1) For the purposes of section 169(1) of the Act (relating to a change of ownership, constitution, control, or corporate organisation), a notification by the licence holder must—
  - (a) be given as soon as possible, and where practicable before the change, but in any event not later than twenty (20) days after the licence holder becomes aware, or ought reasonably to have become aware, of the significant change; and
  - (b) be accompanied by—
    - (i) a copy of any agreement or other relevant document that specifies the change; and
    - (ii) full particulars of the new owners or controllers, including their beneficial owners; and
  - (c) include a statement—
    - (i) from the licence holder that it has the financial capability to comply with obligations under the licence; and
    - (ii) in the case of the change of control of a guarantor of any security deposit under section 101 of the Act, a statement from the guarantor that it has the financial capability to meet its obligations under a guarantee.
- (2) A licence holder must, if requested to do so by the Authority, provide to the Authority other information or documents relevant to the matters referred to in section 169(2) of the Act.
- (3) For the purposes of section 169(1) of the Act, significant change includes, when—
  - (a) the licence holder is bought by or transferred to another person;
  - (b) there is a 50% or more change in the voting rights of the licence holder; or
  - (c) there is a change in any associate involved in the management of the applicant's business; or
  - (d) there is a change in control of a person (guarantor) providing a security deposit under section 101 of the Act.
- (4) The licence holder must pay the applicable fee for any change to the register of titles.

**Part 3**  
**Standards and guidelines**

**50 Standards and guideline documents**

- (1) A licence holder may be required to adopt standards in accordance with these regulations or the terms and conditions of a licence.
- (2) Standards are legally binding on a licence holder, and may include—
  - (a) qualitative or quantitative standards; and
  - (b) methods for the collection, analysing, classifying, and reporting of information; and
  - (c) other technical standards.

- (3) Pursuant to section 11(e) of the Act, the Authority may also, from time to time, issue guidelines of a technical or administrative nature to help support the implementation of the Act, regulations, standards and the terms and conditions under a licence.
- (4) Standards or guidelines may be incorporated by reference into these regulations or the terms and conditions of a licence and may include—
  - (a) standards or guidance documents of international, regional or national organisations, with or without modification; and
  - (b) standards or guidance documents of any State or regional jurisdiction, with or without modification; and
  - (c) standards or guidelines issued by the Authority.
- (5) Prior to issuing a standard or technical guideline, the Authority must—
  - (a) notify persons who are likely to be affected by the standard or technical guideline; and
  - (b) provide those persons a reasonable opportunity to comment on the content of the proposed standard or technical guideline; and
  - (c) consult with recognised experts in the field on the content of the proposed standard or technical guideline; and
  - (d) consider the relevant guidelines or recommendations issued by the International Seabed Authority as representing internationally agreed standards and recommended practices and procedures.

## **Part 4**

### **Review and modification of work plan**

#### **51 Review of work plan**

- (1) A licence holder and the Authority must conduct a joint review of the work plan and the licence holder's performance under the work plan in accordance with section 87 of the Act, and at intervals specified in the licence.
- (2) The Authority may also review the regulated activity under a work plan including where—
  - (a) there is a proposed material change to the work plan contemplated by regulation 52; or
  - (b) an incident has occurred; or
  - (c) a direction is issued by the Authority or an inspector under section 112 of the Act; or
  - (d) there is a change in ownership or access to financial resources which may impact the financial capability of a licence holder; or
  - (e) there are or likely to be operational management changes, including changes to affiliates or associates engaged in the regulated activity; or
  - (f) a new or previously unforeseen environmental risk has been identified in the conduct of the regulated activity.
- (3) The Authority may invite representatives from relevant Crown agencies to participate in the joint review.
- (4) A review under section 87 will be conducted in accordance with the applicable guidelines.

**52 Modification of work plan**

- (1) A licence holder must not modify the work plan without the prior written consent of the Authority, except for a minor modification that is necessary and prudent—
  - (a) to respond to temporary operating conditions according to good industry practice; or
  - (b) to make proactive operational changes to protect the marine environment or other marine users; or
  - (c) to safeguard the health, safety, and welfare of persons engaged in the regulated activity.
- (2) The licence holder must report to the Authority any minor modification to a work plan within forty-eight (48) hours after making the modification.
- (3) If the Authority, on reasonable grounds, taking account of any applicable guidelines, considers that any minor modification reported under subclause (2) constitutes a material change to the work plan, it must request the licence holder to make an application under subclause (4).
- (4) If a licence holder proposes to modify a work plan, and the proposed modification constitutes a material change (taking account of any applicable guidelines), the licence holder must apply for the Authority's prior written consent to the proposed modification.
- (5) An application for the Authority's consent to modify a work plan under subclause (4) must include—
  - (a) a full description of the proposed modifications for which a revision of the work plan is being sought; and
  - (b) a detailed description of how the proposed modifications are likely to impact the marine environment, other marine users and the health and safety of persons involved in the conduct of the regulated activity to which the modification relates; and
  - (c) how the proposed modifications will affect the financing of the regulated activity to which the modification relates; and
  - (d) any other impact the proposed modifications are likely to have on the regulated activity; and
  - (e) any other matters that the Authority may reasonably require.
- (6) Where a joint review under regulation 51 or application under subclause (4) leads to a material change in the work plan, the Authority must notify the responsible Minister and relevant Crown agencies within five (5) days after the change is approved.
- (7) The Authority must consult with the National Environment Service—
  - (a) about any material change to a work plan; and
  - (b) as to whether any variation to the environmental management programme or environment approval is required.
- (8) In this regulation, **work plan** includes the other plans annexed to a licence.

## **Part 5**

### **Monitoring, inspections, and enforcement**

#### Subpart 1—Facilitation of the performance of the Authority’s functions

##### **53 Notification to Authority of cruises**

A licence holder must—

- (a) notify the Authority of the proposed schedule for a cruise to be undertaken as part of the regulated activity at least twenty (20) days before the cruise commences; and
- (b) immediately advise the Authority if there is a change to the schedule of a cruise, within—
  - (i) seven (7) days before the departure; and
  - (ii) twenty-four (24) hours where a cruise is underway; and
- (c) keep the Authority notified of all entries and departures into and out of the Cook Islands, and any port arrivals and departures; and
- (d) ensure that all vessels engaged in the regulated activity—
  - (i) are fitted with, and maintain in operation, a vessel management system; and
  - (ii) transfer daily position reports to the Authority or its designated agency, while within Cook Islands jurisdiction.

##### **54 Transfer of Authority representatives**

- (1) A licence holder must, to the extent practicable, comply with any reasonable request of a representative of the Authority to be—
  - (a) transferred to or from any vessel or facility used for the regulated activity, together with any necessary equipment; and
  - (b) provided with the appropriate accommodation and subsistence while on board that vessel or facility.
- (2) An Authority representative may only make a request under subclause (1) for the purpose of performing the representative’s functions under the Act and the regulations.

##### **55 Access to communication and navigation equipment**

- (1) A licence holder must, in respect of a vessel, installation, or facility, allow an Authority representative access to and use of all of the following:
  - (a) communication equipment and associated personnel, for the purpose of the reasonable transmission and receipt of messages;
  - (b) navigation equipment and associated personnel, when necessary to determine the location of the vessel, installation, or facility.
- (2) An Authority representative may only require access under subclause (1) for the purpose of performing the representative’s functions under the Act, or for personal communications that are reasonable in the circumstances.

## Subpart 2—Inspections and inspectors

### **56 Inspections: general**

The Authority, in consultation with relevant Crown agencies, must establish appropriate mechanisms and procedures for the conduct of inspections under Part 7 of the Act, including matters relating to—

- (a) the relevant qualifications and experience of persons appointed as inspectors under section 21(3) of the Act; and
- (b) the supervision and direction of inspectors; and
- (c) a code of conduct for inspectors; and
- (d) the inspection programme and schedule based on a risk-based approach to compliance and enforcement; and
- (e) cooperation with relevant Crown agencies; and
- (f) the placing of observers on board vessels engaged in the regulated activity.

### **57 Inspectors to report**

- (1) At the conclusion of an inspection, the inspector must prepare a report that includes the inspector's general findings and any recommendations for improvements in procedures or practices by the licence holder.
- (2) The inspector must send the report to the Authority, and the Authority must send a copy of the report for review and comment to—
  - (a) the licence holder; and
  - (b) the responsible Minister; and
  - (c) relevant Crown agencies.
- (3) The Authority must then consider any directions issued under section 112 of the Act and determine whether further regulatory action is warranted, including under sections 115, 116 and 117 of the Act.

## **Part 6 Incidents and incident management**

### Subpart 1—Responding to and management of incidents

### **58 Avoiding and responding to incidents**

A licence holder must,—

- (a) not proceed or continue with the regulated activity if the licence holder is aware of evidence that proceeding or continuing makes it reasonably foreseeable that—
  - (i) an incident will occur; or
  - (ii) the regulated activity will result in a breach of the terms and conditions of the licence.
- (b) at all times during the conduct of regulated activity maintain the currency and adequacy of, and be prepared to implement, the incident response and management plan that—

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- (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 best practice; and
- (ii) is consistent with any relevant provision of the contingency plan:
- (c) ensure that any works or installations erected in the course of the regulated activity are of such sort, placed marked and buoyed, equipped and maintained so as to,—
  - (i) leave at all times safe and convenient channels for shipping; and
  - (ii) not constitute an obstacle to established international shipping routes; and
  - (iii) not cause a breach of the Act:
- (d) give notice of any proposed works or installations to the government entity responsible for any submarine cable, where the licence holder proposes to undertake any works or erect any installations within one nautical mile of any submarine cable, and with a view to, where applicable, concluding a crossing agreement or agreeing appropriate measures with that owner to reduce the risk of damage to any submarine cable.

### **59 Notifying and responding to incidents**

- (1) A licence holder must, on becoming aware of an incident in relation to the regulated activity of the licence holder—
  - (a) notify the Authority immediately by telephone, and within twenty-four hours in writing; and
  - (b) implement immediately the approved incident response and management plan of the licence holder; and
  - (c) take other steps that are necessary in the circumstances to limit the adverse effects of the incident; and
  - (d) undertake promptly, and within any time frame stipulated, any instructions received from the Authority in consultation with affected Crown agencies under the contingency plan; and
  - (e) record the incident in an incidents register, which is a register to be maintained by the licence holder on board any vessel or installation used for the purposes of conducting the regulated activity.
- (2) Nothing in this regulation exempts the master or operator of a vessel from notifying an accident or incident as required by the Maritime Transport Act 2008.
- (3) A person who breaches subclause (1) commits an offence and is liable on conviction—
  - (a) in the case of an individual, to a fine not exceeding \$250,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$1,000,000.

**60 Authority to assist licence holders**

Pursuant to section 20(2) of the Act, the Authority must provide administrative assistance to a licence holder (or other marine users affected by the incident) that is expedient to facilitate the licence holder's efficient and effective response to an incident, consistent with the requirements of the contingency plan.

**61 Notification to affected persons**

- (1) On being notified by the licence holder or other person that an incident has occurred, the Authority must, as soon as practicable and within twenty-four (24) hours, notify—
  - (a) any affected licence holder; and
  - (b) the responsible Minister; and
  - (c) the Ministry of Transport, the National Environment Service and other affected Crown agencies; and
  - (d) the Committee; and
  - (e) other marine users or persons directly affected or likely to be directly affected by the incident.
- (2) The notification under subclause (1) should, where practicable, set out—
  - (a) details of the person who notified the Authority of the incident, and the date and time that the notification was received by the Authority; and
  - (b) a summary of the known facts surrounding the incident, including the location and any known or likely effects on the marine environment, human health and safety, marine users or another State's interest; and
  - (c) the identity of the licence holder responsible for, or directly affected by, the incident; and
  - (d) any recommended action to be taken by each affected Crown agency under the contingency plan.
- (3) The Authority must notify the Ministry of Foreign Affairs and Immigration if an incident has had, or is reasonably expected to have, substantial effects on persons or things under the jurisdiction of another State.

**Subpart 2—Inquiries into incidents**

**62 Inquiries into incidents**

- (1) Pursuant to section 20(3) of the Act, the Authority must initiate an inquiry into any incident with a view to—
  - (a) establishing available facts and findings in respect of the incident; and
  - (b) acquiring information to be used for the future management of the effects of the incident; and
  - (c) avoiding, minimising and managing the future risk of incidents; and
  - (d) forming a view as to whether the licence holder or any other person should be investigated for breaches of an enactment or other legal obligation.
- (2) As part of any inquiry into an incident, the Authority must form a view on—
  - (a) the facts and circumstances of the incident; and



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- (b) the actual, likely, or possible causes of and contributing factors to the incident; and
  - (c) the extent of any harm to the environment, any person, or any interest arising from the incident; and
  - (d) the actions taken in response to the incident and the effectiveness of those actions taken by any person to mitigate or remedy the harm caused by the incident; and
  - (e) potential future consequences of the incident, and options for preventing or minimising those consequences; and
  - (f) the implications of the incident for other regulated activities; and
  - (g) whether the occurrence or severity of the incident was contributed to by one (1) or more of the following:
    - (i) the licence holder, an employee, affiliate or an associate of the licence holder;
    - (ii) a Crown agency;
    - (iii) any other person; and
  - (h) options for mitigating the risk of future incidents, whether or not of a similar nature to the incident that is the subject of the inquiry; and
  - (i) the adequacy of the contingency plan; and
  - (j) the adequacy, where applicable, of the incident response and management plan of the relevant licence holder.
- (3) After completing an inquiry, the Authority must—
- (a) prepare a report setting out its findings, views and recommendations, if any, arising from the inquiry; and
  - (b) suggest any modification, including revised measures or procedures, to the contingency plan for approval by the responsible Minister under section 20(4) of the Act or the relevant incident response and management plan; and
  - (c) provide a copy of the report to the responsible Minister, the Committee and affected Crown agencies; and
  - (d) make available to the public the final report, including through publication on its website; and
  - (e) consider any action to be taken under sections 112, 115, 116 or 117 of the Act.
- (4) An inquiry must be conducted as soon as practicable after an incident.
- (5) The Authority may—
- (a) conduct the inquiry itself or appoint a person to conduct it and make a report to the Authority; and
  - (b) invite any person contributing to or directly affected by the incident, representatives of affected Crown agencies, and other persons having knowledge or facts of the incident to present information in the inquiry.

**Part 7**  
**Application for and grant of renewal of exploration licence or retention of blocks**

Subpart 1—Application for and grant of renewal of exploration licence

**63 Application for renewal of exploration licence**

- (1) An application for the renewal of an exploration licence under section 86 of the Act must be—
  - (a) made using the approved application form provided by the Authority and must be lodged with the Authority at least ninety (90) days before the expiry of the existing licence; and
  - (b) be accompanied by the applicable fee.
- (2) The application must include details of—
  - (a) a proposed plan, showing the exploration area and blocks in question; and
  - (b) the period for which the renewal is required; and
  - (c) reasons why a renewal is sought; and
  - (d) a report describing the activities carried out by the applicant under the licence during its current term, the exploration results and the amount of money spent in relation to the blocks covered by the licence; and
  - (e) a report describing the extent of compliance with the requirements of the terms and conditions of the licence and the environmental approval, including compliance with the requirements of—
    - (i) the work plan; and
    - (ii) the environmental management programme; and
    - (iii) the occupational health and safety plan; and
    - (iv) the local engagement, training and business development plan; and
  - (f) a report of any incidents, and the response and management of such incidents; and
  - (g) the details and outcomes of any public outreach programmes held; and
  - (h) the activities that the applicant intends to carry out under the licence during the renewal term applied for; and
  - (i) the amount of money that the applicant intends to spend on those activities during the renewal term applied for; and
  - (j) where applicable, the blocks that the applicant nominates for relinquishment in accordance with the conditions of the licence and section 78 of the Act; and
  - (k) any proposed variation in the conditions of the licence or work plan; and
  - (l) any variation to an existing financial guarantee, extending such for the duration of the renewal or, alternatively, a new financial guarantee; and
  - (m) any other information that the applicant thinks is relevant.

**64 Decision on renewal**

- (1) On receipt of an application for renewal under section 86(1) of the Act, the Authority must—
  - (a) acknowledge receipt of the application within five (5) days after its receipt; and
  - (b) review the application within twenty (20) days after acknowledgement of receipt of the application; and
  - (c) determine whether the applicant continues to satisfy the qualification criteria under section 64 of the Act; and
  - (d) determine whether the applicant satisfies the requirements of section 86(4) of the Act.
- (2) Within five (5) days after making a determination under subclause (1)(c) and (d), the Commissioner must recommend to the responsible Minister whether to grant a renewal of the exploration licence under section 86(4) of the Act.
- (3) Where the requirements of section 86(4) of the Act are met, including payment of the applicable fee, the responsible Minister must, subject to Cabinet's approval, grant a renewal of the licence—
  - (a) on the terms and conditions determined by the Authority; and
  - (b) for the renewal period in accordance with section 86(5) of the Act.
- (4) The Authority must, within five (5) days after the approval of Cabinet, record the renewal in the register of titles.

Subpart 2—Application to request retention of blocks

**65 Request for retention of specified blocks under section 79(1) of the Act**

A licence holder may, under section 79(1)(a) of the Act, request a retention of specified blocks held under an exploration licence.

**66 Form of application**

- (1) An application to request the retention of blocks must—
  - (a) be made using the approved application form provided by the Authority; and
  - (b) specify the blocks for which the request is made and be accompanied by maps relating to the specified blocks; and
  - (c) include details of—
    - (i) the reasons why the applicant is applying for a retention rather than a mining licence; and
    - (ii) the seabed minerals that the applicant has identified and evaluated and that the applicant believes is commercially viable in the longer term; and
    - (iii) the applicant's assessment of the present and potential commercial viability of the recovery of the seabed minerals; and
    - (iv) the overall work programme that the applicant has already carried out under the exploration licence on the blocks covered by the retention application; and

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- (v) the amount of money that the applicant has already spent under the exploration licence on and in connection with the blocks covered by the retention application; and
  - (vi) the activities that the applicant intends to carry out on the blocks covered by the application, including further research and environmental monitoring in order to establish the commercial viability of mining seabed minerals in the blocks associated with the retention; and
  - (vii) the amount of money that the applicant intends to spend on and in connection with those activities; and
  - (viii) any changes to the persons who are likely to be involved in activities authorised by the retention; and
  - (ix) the financial resources available to the applicant; and
  - (x) a report reflecting the extent of compliance under the relevant licence.
- (2) The applicant must pay the applicable fee.

### **67 Diligent steps**

For the purposes of section 79(3)(a) of the Act, in assessing whether a licence holder is taking diligent steps towards applying for a mining licence, the Authority must consider the extent to which the licence holder has completed activities under the licence, and that the licence holder has—

- (a) collected and analysed data and information to at least a pre-feasibility study level in all material respects; and
- (b) completed in all material respects the studies and investigations relating to an environmental impact assessment study for a mining licence application; and
- (c) established the existence of seabed mineral resources or reserves that have the potential for commercial recovery.

### **68 Good grounds**

For the purposes of section 79(3)(b) of the Act, good grounds for a licence holder not yet applying for a mining licence include—

- (a) the need to obtain government approvals relating to environmental protection before mining activities can commence; or
- (b) the need to carry out further evaluation in order to establish the commercial viability of a mineral deposit found in the licensed area; or
- (c) the need to develop technologies before mining activities can commence; or
- (d) the need to arrange finance, or to secure additional capital reserves, before mining activities can commence; or
- (e) the existence of economic considerations (for example, the prevailing condition of the commodity market for the minerals concerned) that effectively preclude mining activities in the immediate future; or
- (f) the existence of political considerations that effectively preclude mining activities in the immediate future.

**69 Approval and cancellation of retention and retention conditions**

- (1) The Authority must approve the retention if satisfied that the applicant licence holder—
  - (a) has complied with the terms and conditions stipulated in the licence; and
  - (b) meets the requirements of regulation 66; and
  - (c) meets the requirements of section 79(3)(a) or (b) of the Act; and
- (2) When approving a retention, the Authority must specify—
  - (a) the blocks covered by the retention (the **retention area**); and
  - (b) the term of the retention under section 79(1)(a) of the Act; and
  - (c) the activities, if any, that may be carried out under the retention; and
  - (d) the terms and conditions of the retention; and
  - (e) the applicable fee payable.
- (3) A retention is subject to the continuing obligations at the date of termination of the licence to which the retention relates, including obligations relating to the management and monitoring of the marine environment.
- (4) Subject to section 118 of the Act, the Authority in consultation with the responsible Minister may cancel a retention if the retention holder—
  - (a) breaches a term or condition of the retention; or
  - (b) contravenes a provision of the Act or these regulations.
- (5) The holder of a retention must submit a six (6)-monthly progress report to the Authority indicating—
  - (a) the efforts undertaken by the retention holder to ensure that an application for a mining licence in respect of the retention area will be made before the expiry of the retention; and
  - (b) that the grounds for which the retention was granted by the Authority remain valid.

**70 Request for renewal of retention**

- (1) A request to renew a retention must be lodged in the same manner as an application for a retention under regulation 66 and must include—
  - (a) an updated report of the circumstances which prevailed at the time of issuing of the retention; and
  - (b) the period and reasons for the retention renewal being sought, subject to subclause (3).
- (2) A retention may only be extended by the Authority if the holder of the retention—
  - (a) has complied with the terms and conditions of the first retention; and
  - (b) continues to meet the requirements of section 79(2)(a) or (b) of the Act.
- (3) A retention may be extended once for a period not exceeding two (2) years.

## Part 8

### Obligations following expiration, surrender or termination of licence

- 71 Data and information to be submitted on expiration of the licence**
- (1) Upon expiration or termination of a licence, a licence holder must submit the following data and information to the Authority (to the extent it has not previously been submitted):
- (a) a final report containing a summary of all surveys and other operations carried out by or on behalf of the licence holder together with the results and conclusions of such surveys:
  - (b) copies of geological, environmental, geochemical, and geophysical data (including raw and processed digital data) acquired by the licence holder in the course of carrying out activities under the approved work plan and in respect of the project area:
  - (c) copies of all geological, environmental, geochemical, geophysical, financial, economic, and pre-feasibility reports made by or for the licence holder under the approved work plan:
  - (d) a statement of the seabed mineral resource estimates including the estimation method used, and the resource/reserve classification reported in accordance with the International Seabed Authority's reporting standard for mineral exploration results assessments, mineral resources and mineral reserves (Annex V to document ISBA/21/LTC/15):
  - (e) the anticipated mining conditions:
  - (f) information in appropriate 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:
  - (g) a statement of the total quantity of polymetallic nodules recovered as samples or for the purpose of testing:
  - (h) a statement on how and where samples are archived and their availability to the Authority:
  - (i) a list of any reports, analyses, or results that are yet to be finalised by the licence holder and an estimated date by which the reports, analyses, or results will be submitted to the Authority.
- (2) The data and information referred to in this regulation must also be submitted to the Authority if, prior to the expiration of the licence, the licence holder—
- (a) applies for a retention or approval and grant of a mining licence; or
  - (b) renounces its rights or relinquishes blocks in the exploration area and the data and information relates to the renounced area or relinquished blocks.
- 72 Obligations following expiry, surrender or termination**
- On the expiration, surrender, or termination of the licence, the licence holder must—
- (a) remove all unused property, equipment, and vessels within three (3) months after the expiry or termination of the licence or other such period as determined by the Authority; and

- (b) make the licensed area safe to the reasonable satisfaction of the Authority; and
- (c) comply with the environmental management programme and the conditions of any environmental approval regarding closure requirements and post-closure monitoring; and
- (d) otherwise comply with the applicable laws of the Cook Islands.

**73 Direction to rehabilitate exploration area**

- (1) The Authority may, by written notice given to a licence holder, direct the licence holder to take specified steps, within the period specified in the notice, to rehabilitate an area that has been damaged or affected by the regulated activity carried on by the licence holder, to the extent that rehabilitation is technically and economically feasible.
- (2) If a licence holder fails to comply with a direction given to the licence holder under subclause (1), the Authority may take any action necessary in accordance with section 114 of the Act.
- (3) Any action taken under subclause (2) may be funded from the financial guarantee provided by the licence holder.

**Part 9  
Information-gathering and management**

**74 Information management – protection of confidential information**

- (1) The Authority is responsible for maintaining the confidentiality of information received by the Authority and must not, except in accordance with sections 17 and 18 of the Act and these regulations, disclose or publish any information to any person external to the Authority.
- (2) The Authority must establish and maintain procedures governing the classification and handling of information by staff of the Authority, consultants engaged by the Authority, members of the licensing panel, and other persons participating in any activity or programme of the Authority or any person discharging a function under the Act.
- (3) The procedures must include—
  - (a) the storage and maintenance of information in secure facilities, the development of security procedures to prevent unauthorised access to or removal of information and the development of procedures to ensure the safe and secure dissemination of information; and
  - (b) the development and maintenance of a classification, log, and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition; and
  - (c) the training of persons who have access to information and samples.
- (4) A person who is authorised under the Act and these regulations to access information must not disclose the information except as permitted under the Act and these regulations.

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- (5) The Authority, pursuant to section 17(4) of the Act, must require any person who is authorised to access information to make a written declaration witnessed by the Commissioner or the Commissioner's authorised representative to the effect that the person authorised to access the information—
  - (a) acknowledges their legal obligation under section 18 of the Act and these regulations with respect to the non-disclosure of information; and
  - (b) agrees to comply with the applicable procedures established to ensure the confidentiality of such information; and
  - (c) agrees to use the data for the purpose for which it was 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.
- (6) The licensing panel must protect the confidentiality of information submitted to it pursuant to the Act and these regulations, and must not disclose or use, even after the termination of their functions, any—
  - (a) trade secret or other commercially sensitive information which is transferred to the Authority or the panel; and
  - (b) other information coming to their knowledge by reason of their duties under section 68 of the Act.
- (7) The Commissioner and staff of the Authority must not disclose or use, even after the termination of their functions with the Authority, any—
  - (a) trade secret, or other commercially sensitive information transferred to the Authority; or
  - (b) other information coming to their knowledge by reason of their employment with the Authority.

### **75 Information management – disclosure**

- (1) Pursuant to section 17(3)(a) of the Act, the Authority must make publicly available the following kinds of information:
  - (a) information that must be disclosed or published under Cook Islands law;
  - (b) environmental information.
- (2) Pursuant to section 17(3)(b) of the Act, the Authority must make publicly available information for either of the following purposes:
  - (a) it must be disclosed to protect the marine environment, other marine users or human health and safety, including in connection with an incident; or
  - (b) it is necessary for the formulation by the Authority and Crown agencies of policies, regulations, guidelines, and procedures concerning the protection of the marine environment and of human health and safety.
- (3) The Commissioner may prohibit or restrict the publication or communication of any information supplied to it, or obtained by it, in the course of proceedings, whether or not the information may be material to an application.
- (4) The Authority may provide a Crown agency with information that the Authority holds and that the Commissioner considers may assist the Authority or the agency in the performance or exercise of its functions, duties or powers under the Act or applicable law relating directly to the regulated activity.



- (5) A person or an agency that receives information provided under these regulations must not disclose the information to any other person.
- (6) Where any information submitted to the Authority is specified as confidential information pursuant to section 18(2) of the Act, the Authority must review the basis for the designation in accordance with section 18A of the Act.
- (7) If the Authority objects to a designation of information as confidential, the Authority must, within thirty (30) days after receiving the information, consult with the submitter about—
  - (b) the nature of the information; and
  - (a) whether the information constitutes confidential information pursuant to section 18(1) of the Act, taking account of the guidelines developed under section 18A of the Act and good regulatory practice.

**76 Disclosure of payments**

All payments made by the licence holder, or any of its affiliates or associates to the Authority or relevant Crown agencies in connection with the regulated activities under the Act, these regulations, and any other enactment of the Cook Islands are public information.

**Part 10  
General provisions**

Subpart 1—Applicable documents

**77 Documents to be in English language**

Any document that must be provided to the Authority under the Act or these regulations must be provided in the English language or be accompanied by a certified English translation.

Subpart 2—Service of documents

**78 Service of documents**

- (1) If a notice or other document is to be served by the Authority on a person for the purposes of the Act and these regulations, it may be served—
  - (a) by—
    - (i) sending it to the electronic address or addresses specified in the licence; or
    - (ii) delivering it to the business or registered office of the licence holder in the Cook Islands as specified in the licence; and
  - (b) requesting confirmation of receipt of the notice or other document.
- (2) If a notice or other document is to be served on the Authority by a licence holder for the purposes of the Act and these regulations, it may be served—
  - (a) by—
    - (i) sending it to the electronic address or addresses specified in the licence; or
    - (ii) delivering it to the Authority’s principal place of business in the Cook Islands as specified in the licence; and

- (b) requesting confirmation of receipt of the notice or other document.
- (3) Where the Authority or person does not confirm receipt within seven (7) days after the sending of an electronic mail or the expected delivery date to the place of business or registered office, the sender must contact the other party by telephone or in person to confirm receipt.

## **Part 11**

### **Other matters relating to regulations**

#### **79 Procedure for amending regulations**

- (1) The Authority must keep under review the adequacy of these regulations in the light of new knowledge, technology and standards, and requirements or recommended practices of international and national organisations, bodies and agencies in the field of seabed mineral exploration and recovery.
- (2) Before making any recommendation to amend these regulations, the Commissioner must provide persons who are likely to be directly affected by proposed revisions adequate time and opportunity to comment on the subject matter of possible changes, including—
  - (a) the responsible Minister for the Act; and
  - (b) the Committee; and
  - (c) the Technical Advisory Group; and
  - (d) licence holders; and
  - (e) relevant Crown agencies.
- (3) The Commissioner may take into account any comments received from persons under subclause (2) before making a recommendation to amend these regulations.
- (4) However, the Commissioner is not required to comply with subclause (2) if recommending an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes or to amend any inconsistency with the Act.
- (5) Nothing in this regulation precludes any person described in subclause (2) from requesting the Commissioner to review these regulations under subclause (1).

#### **80 Revocation**

The Seabed Minerals (Prospecting and Exploration) Regulations 2015 are revoked.

## **Schedule 1**

### **Requirements for exploration licence application**

#### **Part 1—General requirements about application**

- 1. Application to be in form and include information required by this Schedule**  
For the purpose of section 62 of the Act, an application for the grant of an exploration licence, whether over tender, reserved, or standard blocks, must include the information described in this Schedule.
- 2. Applicant must complete digital application form**  
The applicant must also complete a digital application form, as required by the Authority. The form will capture certain information required under Part 2 below.
- 3. Information does not need to be in particular form**  
The applicant is not required, unless otherwise specified, to provide the information in a particular form or layout it but it must be presented in a clear and logical manner, including, where applicable, an explanation as to why the applicant is unable to provide the information requested.
- 4. Applicant may be required to provide additional information relating to other enactments**  
The applicant may be required to provide additional information under the Environment Act 2003 and regulations made under that Act, and other enactments relating to the regulated activity.
- 5. Attachments**

  - (1) The application must list all the attachments and annexes (all data and information should be submitted in hard copy and in a digital format specified by the Authority).
  - (2) The application may include any other information the applicant wishes the Authority and licensing panel to consider in support of its application.

#### **Part 2—Content of application**

- 6. Information concerning applicant**  
An application must include the following information about the applicant:

  - (a) full legal name of applicant:
  - (b) Cook Islands company registration number (and attach a copy of applicant's certificate of registration and memorandum and articles of incorporation):
  - (c) details of applicant's shareholders including a copy of the shareholders' agreement (if applicable):

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- (d) details of applicant's ultimate parent company (if applicable) and the date and country of incorporation of the parent as well as the registered address and headquarters of the parent, including the details of all the parents where the applicant is not wholly owned by one parent:
- (e) details of any change of name the applicant has made since incorporation:
- (f) details of the applicant's beneficial owners:
- (g) directors' names, dates of birth, nationalities, occupations and places of primary residence:
- (h) street address of applicant:
- (i) registered address in Cook Islands (if different from applicant's street address):
- (j) telephone number:
- (k) email address:
- (l) name of applicant's designated representative:
- (m) street address of applicant's designated representative:
- (n) postal address of applicant's designated representative (if different from street address):
- (o) telephone number of applicant's designated representative:
- (p) email address of applicant's designated representative:
- (q) applicant's principal bankers:
- (r) applicant's principal auditors:
- (s) details of any subsidiaries or joint venture partners or other interests the applicant has.

### **7. Information relating to the area under application**

An application must define the boundaries of the blocks under application by attaching a list of geographical coordinates (in accordance with the World Geodetic System 84).

### **8. Technical information**

- (1) An application must include the information described in subclause (2), which will be used to determine that an applicant has or will have access to sufficient expertise and technical resources to carry out the proposed work plan.
- (2) The following technical information is required:
  - (a) detailed documentary evidence of the applicant's technical capability, or access to technical capability, to conduct the proposed activities, including evidence of—
    - (i) the current and previous operating experience (that is, day-to-day management of activities) of the applicant and any affiliates or associates under paragraph (d), in exploring for or recovering seabed minerals, or comparable exploration or recovery operations in similar physical conditions (water depth, distance from land), or relevant extractive industry experience in the last ten (10) years, including details of—
      - (A) mineral discoveries made; and

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- (B) mineral production activities; and
- (C) related levels of investment made in exploration or production development activities; and
- (ii) the experience of the applicant and any affiliates or associates under paragraph (d) in collecting and analysing resource data and environmental baseline data, conducting environmental assessments, and in environmental monitoring and reporting; and
- (iii) the applicant's data management practices, including quality assurance and quality control processes; and
- (b) a general description of the technology, equipment (such as vessel and surveying equipment), and methods expected to be used in carrying out the proposed work plan and other relevant non-proprietary information about the characteristics of that technology, including technology to monitor environmental parameters:
- (c) where applicable, evidence of the applicant's ownership of intellectual property, or licences in respect of intellectual property, relating to the equipment or methods to be used to under paragraph (b):
- (d) a description of how the applicant's technical capability will be provided through the use of in-house expertise, including affiliates, associates, and consultants in respect of the proposed regulated activity:
- (e) details (skills, experience, technical qualifications, and competencies) of key personnel (management and technical personnel (by subject-matter areas)) who will be engaged by the licence holder, its affiliates or associates, together with an organisational structure chart incorporating hierarchical decision-making responsibilities:
- (f) details of processes and systems in place or being implemented for the supervision of operations, including operational management of in-house and external expertise, in accordance with good industry practice:
- (g) a general description of the applicant's technical capability to respond to any incident or activity that may cause serious harm to the marine environment or adversely impact other marine users:
- (h) an explanation of the applicant's current understanding about the prospectivity of the blocks under application:
- (i) copies of any technical studies and surveys undertaken by or made available to the applicant in respect of the blocks under application, together with any technical assessments and modelling undertaken in preparing the application:
- (j) details of the applicant's internationally accredited certification standards (including for example, the International Organization for Standardization or equivalent) and any independent verification of the standards adopted:
- (k) details of the applicant's policy with regard to employing new or advanced technology and the applicant's track record in introducing new technology to operations.

**9. Financial information**

- (1) An application must include the information described in subclause (2), which will be used to determine that an applicant has or will have access to sufficient financial resources to carry out the proposed work plan, environmental management programme and other financial obligations arising under a licence, and to support the commitments presented in the financing plan.
- (2) The following financial information is required:
  - (a) copies of the applicant's audited financial statements for the most recent five (5) years, that,—
    - (i) conform with internationally accepted accounting principles; and
    - (ii) are certified by an appropriately qualified firm of public accountants; and
    - (iii) include balance sheets and profit-and-loss statements:
  - (b) where the applicant is a group of companies, investors, or potential investors, copies of audited financial statements for the applicant's shareholders, parent company, and relevant affiliates for the most recent five (5) years, that meet the requirements in paragraph (a)(i) to (iii):
  - (c) where the applicant is a subsidiary company of a group of companies, a group structure chart showing the parent company, principal operating subsidiaries, and management structures:
  - (d) detailed information and evidence about how the applicant intends to finance the work plan, including, where applicable,—
    - (i) details of the amount of any committed borrowings from banks or other financial institutions, together with the terms and conditions of that borrowing; and
    - (ii) evidence of any cash or near cash reserves, guarantees, lines of credit, letters of support, agreements, or other arrangements and understandings between the applicant and any persons, including directors or shareholders, undertaking to finance the applicant:
  - (e) details of current borrowing and the applicant's borrowing history, including details of any defaults together with any credit rating reports and credit reference checks and bank references:
  - (f) details of any issue of additional share capital proposed and evidence that funds have been irrevocably committed to the share issue:
  - (g) where the applicant is held by a State or State owned enterprise, details from the State about how the applicant will be funded, including a statement by a duly authorised official of the State certifying that the applicant has access to sufficient financial resources:
  - (h) where applicable, the nature and terms of any financial guarantee to be provided or details of proposed insurance products in respect of the financing of exposure to risk commensurate with the proposed work plan:
  - (i) a description of the applicant's financial capacity or access to financial resources to—
    - (i) respond to any incident or activity which may cause serious harm to the marine environment or adversely impact other marine users; and

- (ii) to implement the incident response and management plan:
- (j) a list of any current or known future financial commitments or contingent liabilities, and a statement on whether these are likely to materially affect the applicant's financial capability to meet licence obligations, including commitments and liabilities of persons who may finance the applicant:
- (k) details of the applicant's tax filings within the last five (5) years:
- (l) information on planned mergers, acquisitions, and dispositions as well as any medium-term plans which are expected to alter materially the financial status of the applicant or financial guarantor.

**10. Labour standards and practices**

An application must include evidence of the applicant's labour standards and practices to be adopted and applied during the conduct of the proposed activities, and details of any significant employee and industrial relations issues in the past 5 years.

**11. Occupational health and safety, and environmental, capability and systems**

- (1) An application must include the information described in subclause (2), which will be used to determine that an applicant has capability and systems necessary to meet likely occupational health and safety and environmental requirements, including the applicant's ability to meet or exceed international standards in respect of these requirements.
- (2) The following occupational health and safety and environmental information is required:
  - (a) details of similar activities undertaken in the Cook Islands or internationally, including a summary of the occupational health and safety and environmental regulatory environments in which the activities were undertaken:
  - (b) details of the applicant's understanding of the Cook Islands regulatory requirements relating to occupational health and safety and the environment, as they apply to the regulated activity:
  - (c) a description of the occupational health and safety and environmental risks associated with the activities under the proposed work plan and environment management programme, together with proposed management of those risks:
  - (d) a description of the occupational health and safety and environmental systems, processes, and capabilities the applicant has in place to meet the requirements and manage the risks during the conduct of the activities proposed in the proposed work plan and environmental management programme, including details and evidence of—
    - (i) the policies in relation to occupational health and safety:
    - (ii) the policies in relation to environmental management and performance:
    - (iii) the management structure (directors and managers) identifying specific responsibilities for occupational health and safety and environmental risk management:

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- (iv) the occupational health and safety and environmental management systems adopted or to be adopted:
  - (v) the key personnel with relevant qualifications and experience to meet occupational health and safety and environmental requirements and manage risks:
  - (vi) the occupational health and safety and environmental certifications held:
  - (e) evidence of the successful delivery of plans for the closure and rehabilitation of areas where activities similar to the regulated activity took place:
  - (f) details of any incidents related to occupational health and safety or the environment that have occurred in the applicant's, associates' or affiliates' operations in the last five (5) years and any investigation reports from such incidents:
  - (g) copies of any occupational health and safety and environmental verification reports (for example, compliance audits) and quality assurance documents produced in the last five (5) years.
- (3) If the applicant does not currently have the appropriate occupational health, safety and environmental systems, processes, capabilities or personnel necessary to comply with the requirements and manage the risks, the applicant must set out the process and timeframe by which the appropriate systems, processes, and capabilities will be put in place or suitable personnel engaged.

### **12. Governance and risk management model**

- (1) An application must include the information in subclause (2), which will be used to determine that an applicant is governed by a corporate structure and risk management model, and staffed, in a way that is appropriate for the proper performance of obligations under the licence, including the management of affiliates and associates.
- (2) The following governance and risk management information is required:
- (a) details and evidence of the applicant's risk management standards and internal systems and processes adopted:
  - (b) details of the applicant's corporate governance model and structure, including—
    - (i) risk oversight committees and reporting structures up to and including board, or equivalent, level:
    - (ii) copies of any internal policies, procedures, or codes of conduct in relation to—
      - (A) ethical business practices; and
      - (B) risk control and fraud mitigation; and
      - (C) whistleblowing; and
      - (D) anti-bribery and corruption:
  - (c) a statement on the applicant's understanding of the opportunity and risks posed to the interests of the Cook Islands (including social, cultural, environmental, economic, and financial interests) and any proposed mitigation measures:



- (d) details of any membership of national or international industry and other associations or bodies, and any standards, codes of conduct or practice adopted or principles adhered to;
- (e) a copy of the applicant's (or where relevant affiliates or associates of the applicant) Corporate Social Responsibility (CSR) reports or a detailed description of its CSR initiatives for the past 5 years.

**13. Current and previous licences, approvals, and consents held and compliance history**

- (1) An application must include the information in subclause (2), which will be used to determine whether the applicant is a fit and proper person to hold a licence, and to indicate whether an applicant is likely to comply with and give proper effect to the work plan and the terms and conditions of a licence if granted.
- (2) The following information about current and previous licences, approvals, consents held, and compliance history is required:
  - (a) details of any approvals, including licences, permits, consents, or other permissions, held or previously held by the applicant in the Cook Islands or internationally relating to sea- or land-based mineral activities or comparable activities relevant to the application, including approvals held or previously held by affiliates or associates who are or are likely to be engaged in the regulated activity or involved in the management of the applicant's business:
  - (b) details of—
    - (i) any approvals held in the Cook Islands or internationally that have been cancelled for non-compliance; and
    - (ii) any enforcement action taken or current investigation by a regulator, whether in the Cook Islands or elsewhere, in respect of the breach of an approval or enactment, if the breach relates to any of the following:
      - (A) matters contemplated by section 65(1)(a) of the Act;
      - (B) any mining, occupational health and safety, or environmental legislation;
      - (C) non-compliance with any reporting, monitoring, or payment obligations;
      - (D) non-compliance with any work plan commitment or condition of an environmental approval;
      - (E) where applicable, details of the corrective action taken by the applicant, its affiliate or associate and enforcement action taken by a regulator, including details of any penalty imposed; and
    - (iii) any convictions described in section 65(1)(ii) and (iii) of the Act; and
  - (c) evidence of tax compliance; and

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- (d) details of any existing or threatened litigation, administrative or regulatory proceedings, investigations or governmental actions involving the applicant or any member of its board or senior management in connection with the affairs of the applicant in any jurisdiction; and
- (e) details of any consent, decree, judgment, order, settlement, or other similar agreements by which the applicant or any of its assets is bound; and
- (f) details of any sanctions against the applicant or any member of its board or senior management by a regulatory agency or an international institution, such as the World Bank, for the past ten (10) years; and
- (g) if the company or firm is subject to USA Securities and Exchange Commission rules, latest evidence that the entity is SOX (Sarbanes-Oxley Act) compliant; and
- (h) where applicable, evidence of compliance with latest securities and capital market regulatory filing by the applicant's shareholders.

### 14. Viability of operations

An application must include the following information:

- (a) commentary in support of the proposed work plan and timeframe covering—
  - (i) the extent to which the plan is reasonably likely to result, at the end of a licence period, in the identification of commercially recoverable seabed minerals; and
  - (ii) the likelihood of the applicant making an application for a mining licence; and
  - (iii) the collection of sufficient environmental baseline data and conduct of studies to inform the compilation of an environmental impact assessment for a future mining operation:
- (b) details of any existing projects and ventures, future commitments and risks which may affect the applicant's ability to implement a proposed work plan under a licence:
- (c) an outline of the potential technology considered or likely to be deployed by the applicant under any future mining licence for the recovery of the seabed minerals, including expected value chain and likely processing methodologies.

### 15. Compliance

An application must include a statement about how the proposed regulated activity—

- (a) will comply with relevant enactments; and
- (b) will be conducted in accordance with good industry practice and best environmental practice.

### 16. National interest

An application must include the following information:

- (a) information about how the applicant has considered and will ensure that the granting of any licence is demonstrably in the Cook Islands national interest as required by section 69 of the Act, in particular—

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- (i) information about how the local engagement, training, and business development plan will provide economic and other benefits to the Cook Islands; and
  - (ii) evidence of past success in the sourcing of local goods and services used in operations; and
  - (iii) evidence of past success in local employment and transfer of technology and skills to local persons; and
  - (iv) using examples, information about how any risks to the environment or society can be mitigated;
  - (v) evidence of effective engagement with host and affected communities in the past; and
  - (vi) using examples, information about how the grant of a licence has the potential to contribute to the ecologically sustainable use of the Cook Islands exclusive economic zone and promotion of the purpose and principles of the Marae Moana Act 2017:
- (b) information that will assist the Authority to determine how the applicant's operations will promote seabed mineral activities in the Cook Islands.

### **17. Genuine intent to undertake and fulfil work plan**

- (1) An application must include a statement by the applicant that it genuinely intends to undertake and fulfil its exploration work programme under the proposed work plan, with a view to applying for a mining licence at the end of the term of any exploration licence or on a subsequent renewal.
- (2) The statement must include examples to demonstrate the intention, including the delivery of previous comparable work programmes or delivery under existing comparable work programmes.

### **18. Undertakings**

An application must have attached to it a written undertaking that—

- (a) the content of the application is true and accurate to the best of the applicant's belief; and
- (b) the applicant intends to conduct the regulated activity in a responsible manner in accordance with the Act, other laws of the Cook Islands, and the terms and conditions of the licence; and
- (c) the applicant has not engaged in and will not engage in any activity related to the application or under any licence granted in exchange for any improper benefit of the type contemplated by clause 16 of Schedule 2 of the Act.

## **Part 3—Manner of submission of applications**

### **19. Application in response to tender round**

The approved manner of making an application for an exploration licence over tender blocks in response to the public announcement of a tender round under section 45 of the Act requires applications to be,—

- (a) submitted in the English language or in any other language together with a certified English translation; and

- (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 specified closing time; and
- (d) submitted as,—
  - (i) one (1) hard copy 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) two (2) hard copies of the original of the application and each annex, attachment or other enclosure; and
  - (iii) one (1) electronic copy of the application and all text enclosures in a full text searchable format.

**20. Application in respect of standard blocks or reserved blocks**

The approved manner of making an application for an exploration licence over standard blocks or reserved blocks requires applications to be,—

- (a) submitted in the English language or in any other language together with a certified English translation; and
- (b) sealed in an envelope or other container that identifies the applicant; and
- (c) submitted to the lodgement location specified by the Authority on its website; and
- (d) submitted as,—
  - (i) one (1) hard copy 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) two (2) hard copies of the original of the application and each annex, attachment or other enclosure; and
  - (iii) one (1) electronic copy of the application and all text enclosures in a full text searchable format.

## **Schedule 2**

### **Exploration work plan**

**1. Content of exploration work plan**

An exploration work plan must, taking into account the applicable guidelines, include—

- (a) the stated objectives of the work plan; and
- (b) a general description of the proposed exploration programme, including the work programme of activities for the immediate five-year period, such as studies to be undertaken in respect of the environmental, technical, economic and other appropriate factors which must be taken into account in exploration; and
- (c) details of the technical methodologies, equipment, and any installations to be used in the proposed regulated activity; and
- (d) details of the proposed cruise schedule at the time of application, and details of any proposed ports of call; and
- (e) the scope of, timetable and key milestones for, the proposed regulated activity, including programmes for—
  - (i) seabed mapping; and
  - (ii) geological, geochemical, and biological sampling and processing, including anticipated quantity, number, and methods of sampling; and
  - (iii) geo-statistical and quantitative resource determinations; and
  - (iv) economic modelling; and
  - (v) pre-feasibility studies; and
  - (vi) testing of collector systems and equipment and of shipboard processing; and
- (f) planned closure, decommissioning and, where applicable, rehabilitation works; and
- (g) the proposed timetable for completion of—
  - (i) the regulated activity; and
  - (ii) the processing and analysis of results of the proposed exploration operations; and
- (h) a schedule of minimum yearly expenditures in respect of the programme of activities for the immediate five-year period for each major component of the regulated activity; and
- (i) a financing plan, to include—
  - (i) details and costing to implement the work plan; and
  - (ii) details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed regulated activity; and
  - (iii) details and costing of regulatory requirements relevant to the proposed regulated activity, including the cost of the preparation and implementation of the environmental management programme and the local engagement, training and business development plan; and

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- (iv) details regarding other relevant costing, including capital expenditure requirements; and
- (v) details of the applicant's resources or proposed mechanisms to finance the proposed regulated activity; and
- (j) a risk management plan specifying the measures the applicant will use to eliminate or minimise identified risks and monitor performance.

### **Schedule 3**

## **Environmental management programme**

**1. Purpose of environmental management programme**

An environmental management programme—

- (a) establishes a proposed programme of work for environmental baseline studies, environmental assessment, and the management of potential environmental impacts of exploration activities on the marine environment; and
- (b) is subject to the requirements of the Environment Act 2003, associated regulations and applicable guidelines; and
- (c) is considered by the National Environment Service and the National Environment Council in connection with the application for environmental approval.

**2. Content of environmental management programme**

An environmental management programme must, taking into account applicable guidelines, include—

- (a) a statement of the environmental objectives for the proposed regulated activity; and
- (b) a comprehensive description of the programme for oceanographic and environmental baseline studies that would enable an understanding of the overall character of the licensed area and enable assessment of the potential environmental impact including, but not restricted to, the impact on biodiversity, of the proposed exploration activities, taking into account any applicable guidelines issued by the National Environment Service; and
- (c) a statement of the anticipated costs in respect of the environmental management programme; and
- (d) a description of the marine environment likely to be affected by the proposed regulated activity; and
- (e) an environmental risk assessment of the possible impact of the proposed exploration activities on the marine environment; and
- (f) a description of the social, historical and cultural aspects; and
- (g) a description of the proposed technical and management measures and methods to be used for the prevention, reduction and control of pollution and other hazards, as well as other likely impacts, to the marine environment arising from exploration based on the environmental risk assessment; and
- (h) a risk assessment and description of any anticipated impacts on other marine users, and proposed measures to address such impacts; and
- (i) details of the proposed environmental management system to be adopted; and
- (j) an outline of the roles and responsibilities of personnel accountable for the implementation, management, and review of risk assessment and management; and

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- (k) an environmental awareness plan for personnel to be engaged in the regulated activity; and
- (l) details of any public outreach, awareness, and education undertaken and a plan for the same to be undertaken, including consultation undertaken or proposed with other marine users, and the outcome of any such consultation.



## **Schedule 4**

### **Incident response and management plan**

#### **1. Content of incident response and management plan**

An incident response and management plan must—

- (a) be prepared in accordance with good industry practice, taking account of the applicable guidelines and the contingency plan; and
- (b) provide an effective plan of action for the applicant's efficient response to incidents and events, including processes by which the applicant will work in close cooperation with the Authority, other competent Crown agencies and, where applicable, regional emergency response organisations; and
- (c) include the following information:
  - (i) the overall aims and objectives and arrangements for controlling the risk of incidents:
  - (ii) relevant codes, standards and protocols:
  - (iii) organisational structure and personnel roles and responsibilities:
  - (iv) details of individuals authorised to initiate response mechanism(s):
  - (v) details of control mechanisms in place during the course of normal operations:
  - (vi) details of the safety management system:
  - (vii) details of the environmental management system:
  - (viii) a description of the exploration operations and equipment, including emergency response equipment:
  - (ix) a risk assessment, including a description of all foreseeable incidents, an assessment of their likelihood, consequences and associated control measures, including those due to normal operations of the vessel(s) such as oil spills and leaks:
  - (x) the number of persons that can be present on the vessel(s) engaged in regulated activity at any time:
  - (xi) a description of the arrangements to protect persons on the vessel(s), and to ensure their safe escape, evacuation and rescue:
  - (xii) details of arrangements for the maintenance of control systems to monitor the marine environment in the event of an incident:
  - (xiii) details of the emergency response plan:
  - (xiv) details of the known natural marine environmental conditions that may influence the efficiency of response equipment or the effectiveness of a response effort:
  - (xv) information and measures relating to the prevention of incidents which could result in serious harm to the marine environment or damage to submarine cables or to a marine user:
  - (xvi) an assessment of pollution hazards and the measures to prevent or reduce such hazards:
  - (xvii) details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning:

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- (xviii) details of arrangements for coordinating any emergency response:
- (xix) details of training programmes for personnel:
- (xx) description of the monitoring of performance under the plan:
- (xxi) details of audit and review processes of the plan.

### **2. Application of content requirements**

The content for an incident response and management plan set out in clause 1 of this Schedule is indicative until the responsible Minister finalises and approves a contingency plan under section 20(4) of the Act.

## Schedule 5

### Local engagement, training, and business development plan

#### Content of local engagement, training, and business development plan

A local engagement, training and business development plan must include details of proposed plans to—

- (a) engage with, and provide information to, the Cook Islands communities in respect of the regulated activity; and
- (b) employ or contract nationals of the Cook Islands in the regulated activity; and
- (c) provide comprehensive training or capacity development to nationals of the Cook Islands; and
- (d) procure local goods or services in connection with the regulated activity.

**Schedule 6**  
**Matters relating to invitation to apply for applications for titles**  
**under section 45(2) of the Act**

**1. Content of invitation to apply**

- (1) For the purposes of section 45(2) of the Act, each invitation to apply (ITA) must provide for the following matters:
- (a) the information to be set out in the public announcement under section 45 of the Act:
  - (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; and
    - (ii) the blocks to be covered by the licence; and
    - (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) the period within which applications may be submitted:
  - (e) details about where to submit applications:
  - (f) rules for amending the ITA and tender document package before the closing time:
  - (g) confidentiality requirements in relation to the application process, including the confidentiality of information in the document package:
  - (h) rules relating to the ownership of applications and the intellectual property rights in applications:
  - (i) requirements to ensure the probity of the application process, including the management of conflicts of interest and rules in relation to improper conduct by applicants (for example, collusive tendering and seeking or obtaining improper assistance from Government officials):
  - (j) a statement to the effect that applicants should ensure that applications contain sufficient information to enable the Authority and licensing panel to assess the application against the qualification criteria and evaluation criteria respectively, including in competition with other applicants:
  - (k) the evaluation criteria set out in these regulations and any weighting of those criteria:
  - (l) the process for assessing applications:
  - (m) any other process rules governing the conduct of the application process, for example, rules about—
    - (i) content and format requirements in addition to those specified in this Schedule; or

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- (ii) a process for the registration of potential applicants, who will receive communications in relation to the tender process; or
- (iii) communications between the Authority and potential applicants, including in relation to amendments to the ITA and tender document package; or
- (iv) due diligence requirements of potential applicants in respect of applications; or
- (v) the conduct of presentations, demonstrations or tests (where applicable) in relation to the assessment of applications; or
- (vi) details of how the Authority will conduct the public notification processes as required by the Act and the regulations; or
- (vii) the making of amendments to applications, including minor corrections; or
- (viii) the termination of the application process; or
- (ix) the return of information at the conclusion of the application process; or
- (x) the terms and intended legal effect of the declaration of applicants to accompany applications; or
- (xi) the application of relevant enactments or policies of the Government to the tender process; or
- (xii) disclosure of information about applications; or
- (xiii) applicant referees, and the procedures for obtaining references; or
- (xiv) additional rules governing the process for negotiating and granting licences as a result of the application process; or
- (xv) procedures for the debriefing of applicants.

### 2. **Content of tender package**

Each tender 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) other documentation that the Authority decides to include in the tender blocks document package to assist with the preparation of applications.

**Schedule 7**  
**Prescribed evaluation criteria for the purposes of section 68(1)(a) of the Act**

**1. Evaluation criteria**

- (1) The criteria in this clause must be applied by the licensing panel in its evaluation of an application for an exploration licence, taking into account the guidelines for the evaluation of exploration applications.
- (2) *Proposed work plan and viability of exploration operation*: the extent to which the applicant's proposed work plan is—
  - (a) a logical, well developed and timely exploration work plan demonstrating that it is reasonably likely to enable the applicant, by the end of the exploration licence period to—
    - (i) make a commercially justifiable decision to develop the seabed minerals; and
    - (ii) apply for and obtain a mining licence under the Act; and
    - (iii) have collected sufficient baseline data for an environmental impact assessment in relation to future mining operations; and
  - (b) prepared in accordance with good industry practice and provides for exploration over the full extent of the seabed area to which the application relates; and
  - (c) inclusive of realistic and minimum exploration expenditure commitments for each phase and major components of exploration; and
  - (d) the extent to which, over the proposed licence period, the applicant will allocate its resources to perform efficiently the proposed regulated activity.
- (3) *Financial resources*: whether the estimated expenditure and financing plan is compatible with the proposed regulated activity and work plan and whether the applicant has access to or will be capable of committing or raising sufficient financial resources, in particular—
  - (a) during the term of an exploration licence, to cover the estimated costs of the regulated activity and all other associated costs of complying with the terms and conditions of the exploration licence according to the financing plan, including the payment of any applicable fees, charges, taxes, bond, insurance, or other Government imposed payments arising in relation to the regulated activity; and
  - (b) after the term of the exploration licence, to cover the estimated costs of closing the regulated activity, including, where applicable, the rectification of any harm to the environment; and
  - (c) to respond to any incident.
- (4) *Technical competence*: whether the applicant has the technical resources, and access to appropriate technical advice, to be capable of carrying out the proposed regulated activity in accordance with—
  - (a) the proposed work plan; and
  - (b) good industry practice; and
  - (c) best environmental practice; and

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- (d) relevant health and safety standards and practice; and
  - (e) the Act, these regulations and the terms and conditions of an exploration licence; and
  - (f) the incident response and management plan.
- (5) *Compliance*: the capability of the applicant to conduct the proposed regulated activity in accordance with—
- (a) enactments; and
  - (b) the statutory and licence conditions applicable to the regulated activity; and
  - (c) international law obligations to which the Cook Islands is subject; and
  - (d) the requirements of the Act and these regulations pertaining to the making of applications.
- (6) *Risk assessment and management*: the capability and capacity of the applicant to—
- (a) adopt generally accepted risk assessment and risk management standards; and
  - (b) to put in place risk management systems and plan to effectively implement the proposed work plan, including assessing and managing risk relating to the impact of the regulated activity on —
    - (i) the marine environment; and
    - (ii) other marine users; and
    - (iii) the health and safety of persons engaged in the regulated activity.
- (7) *National interest*: the extent to which the applicant and proposed regulated activity will promote the national interest, including by reference to—
- (a) the benefits of the applicant’s proposals concerning the employment, training and capacity development of the Cook Islands community; and
  - (b) the expected effectiveness of the applicant’s plan to engage with the public of the Cook Islands; and
  - (c) 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 to diversify the Cook Islands economy; and
  - (d) the potential positive and negative impacts on both existing economic activity of the Cook Islands and the well-being of individuals, communities and cultural practices of the Cook Islands.

## Schedule 8 Model exploration licence



**Licence number— [ ]**

### 1. Introduction

This is a licence granted by the responsible Minister on behalf of the Crown authorising the licence holder to carry on exploration activities for which a licence is required under Part 4 of the Seabed Minerals Act 2019.

#### 1.1 Licence number

The licence number for this licence is [ ].

#### 1.2 Licence holder

The licence holder is the company set out below—

Company name	
Company registration number	
Registered address	
E-mail address	
Designated representative	
Position within company	

#### 1.3 Licence date

Version	
Licence start date	
Licence end date	
Date of original issue	
Date of variation issue	

#### 1.4 Licence validity and renewal

This version of this licence is valid from the licence start date to the licence end date.

This version of this licence supersedes any earlier version of this licence.

This licence may be renewed in accordance with the Act and the regulations.



**1.5 Licence rights**

This licence gives the licence holder, subject to the Act and the regulations, the exclusive right to—

- (a) conduct exploration over the blocks of the Cook Islands seabed delineated in annex 1 to this licence; and
- (b) apply for successive renewals of the licence; and
- (c) request a retention in respect of specified blocks; and
- (d) apply for a mining licence.

**1.6 Specified seabed minerals covered by this licence**

This licence authorises exploration for polymetallic nodules in the licensed area.

**2. General**

**2.1 Interpretation**

In this licence, terms are as defined in section 6 of the Seabed Minerals Act 2019 (“the Act”) and the Seabed Minerals (Exploration) Regulations 2020 (“the regulations”) and—

“licensed activities” means the exploration activities, and associated regulated activity set out in the work plan annexed to this licence

“licence holder” means the company named in clause 1.2 above to whom this licence is granted

“Authority” means the Seabed Minerals Authority.

All geographical co-ordinates in this licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless stated otherwise.

**2.2 Authority contact**

Except where otherwise indicated, the main point of contact with the Authority and the address for email and postal correspondence and the serving of notices under the Act and the regulations is—

**Attention— Seabed Minerals Commissioner**  
**The Cook Islands Seabed Minerals Authority**  
**Avarua, Rarotonga, Cook Islands PO Box 733**  
**Tel— (+682) 29 193**  
**Email— sbma@cookislands.gov.ck**

**3. Licensed activities**

**3.1 Licensed activities authorised**

The licensed activities are authorised and must be carried out in accordance with this licence, and only in the licensed area.

**3.2 Licensed area**

The licensed area allocated to the licence holder is the area defined by the coordinates listed in annex I to this licence.

#### **4. Implementation of work plan**

The licence holder must continuously and actively conduct exploration in accordance with the approved work plan and good industry practice, and comply with the following documents annexed to this licence:

- (a) the incident response and management plan:
- (b) the occupational health and safety plan:
- (c) the environmental management programme:
- (d) the local engagement, training and business development plan.

#### **5. Licence conditions**

##### **5.1 General conditions**

###### **5.1.1 General duties of licence holders**

The general duties of licence holders set out in Schedule 2 of the Act are incorporated by reference in this licence.

The licence holder, its employees and agents, and its affiliates and associates must comply with the terms and conditions of this licence, the regulations, the applicable standards, the Act, and any other laws relating to the regulated activity.

###### **5.1.2 Commencement of activities**

Unless otherwise agreed in writing with the Authority, the licence holder must commence exploration in accordance with the time schedule stipulated in the work plan annexed to this licence and must adhere to any time periods or modifications to time periods provided for by this licence.

###### **5.1.3 Expenditure commitments**

The licence holder must carry out the programme of activities set out in the approved work plan and, in carrying out those activities, spend in each licence year at least the amount specified in the approved work plan, or any agreed review thereof, in actual and direct exploration spending.

###### **5.1.4 Notification of commencement**

The licence holder must notify the Authority before the first instance of any regulated activity commences. This notice must be received by the Authority not less than thirty (30) days before the regulated activity commences.

###### **5.1.5 Licence conditions— affiliates and associates**

The licence holder is responsible for compliance with the Act, the regulations, the terms and conditions of this licence and other law, including the acts or omissions of its affiliates and associates.

The licence holder is not discharged from any obligation arising under this licence by contracting a third party to perform the relevant obligation.

###### **5.1.6 Financial guarantee**

This licence may require the licence holder to lodge a financial guarantee.

The form, amount, subject-matter, timing of lodgement, terms of release, and other conditions of the guarantee will be recorded as a specific condition under clause 5.2 of this licence.

Where applicable, no regulated activity may commence or continue unless the licence holder has provided for a financial guarantee in accordance with this licence and the regulations.

**5.1.7 Vessels**

The licence holder must notify the Authority in writing of any vessel being used to carry on any regulated activity under this licence on behalf of the licence holder. That notification must be received by the Authority no less than twenty (20) days before each cruise commences. Notification must include the master's name, vessel type, vessel IMO number, vessel flag, vessel owner or operating company, dates of entry and departure from Cook Island's jurisdiction, any scheduled ports of call, and details of persons aboard.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments is read and understood by the masters of any vessel being used to carry on any regulated activity and that a copy of this licence is held on board any such vessel.

**5.1.8 Notification of material matters**

If the licence holder becomes aware of new information or a change of circumstance which materially affects or is likely to materially affect the basis for granting this licence or the viability and appropriateness of the work plan or the licence holder's ability to comply with the obligations under this licence, then the licence holder must notify the Authority at the earliest opportunity, and within five (5) days of becoming aware of the new information or change of circumstance. Failure to do so may lead to enforcement action.

**5.1.9 Modification to work plan**

The licence holder must not amend, alter or vary the work plan, except in accordance with the Act and the regulations.

**5.1.10 Samples: licence quantities**

This licence authorises the removal of material from the seabed or subsoil in the licensed area but only in such quantity as is reasonably necessary for the exclusive purpose of sampling, assaying, and analysis of the specified seabed mineral or as stipulated in the licence conditions.

The licence holder must ensure that no person sells any material that was removed from the seabed or subsoil.

**5.1.11 Project permit or consent under the Environment Act 2003**

This licence, and the conduct of all regulated activity under it, is subject to obtaining and complying with any environmental approval required and granted under the Environment Act 2003, including any conditions attaching to the approval.

**5.1.12 Use of local goods and services**

The licence holder undertakes in accordance with the local engagement, training and business development plan, when purchasing goods and services required with respect to the regulated activity, to give preference, at comparable quality, delivery schedule, and price, to goods produced in the Cook Islands and services provided by local citizens or businesses, subject to technical acceptability and availability of the relevant goods and services in the Cook Islands.

**5.1.13 Surrender, cancellation or expiry of this licence**

Upon any surrender, cancellation or expiry of this licence, all rights granted to the licence holder under this licence cease, but the licence holder will remain subject to any continuing obligations arising out of this licence at the date of surrender, cancellation or expiry.

**5.1.14 Review of work plan**

Subject to section 87 of the Act and the regulations, and any specific review requirements under clause 5.2 to this licence, the licence holder and the Authority will undertake a joint review of the work plan, the exploration activities conducted under the work plan, and the licence conditions within six (6) months following—

- (a) the first anniversary of this licence; and
- (b) the third anniversary of this licence.

**5.2 Specific conditions**

This clause sets out conditions specific to the licence holder and the project.

Licence holder and project-specific conditions	
5.2.1	The licence holder must [ ] Reason— [-----]
5.2.2	The licence holder must [ ] Reason— [-----]
5.2.3 et al	[Etc.]

**5.3 Relinquishment conditions**

The licence holder will relinquish blocks in the licensed area according to section 78 of the Act and the terms and schedule of relinquishment annexed to this licence.

**6. Compliance and enforcement**

This licence and its terms and conditions are issued under and subject at all times to the Act and the regulations, as amended from time to time.

Any breach of the Act, the regulations and the licence terms and conditions may lead to enforcement action being taken by the Authority. This can include the issuing of written warnings or directions by the Authority under the Act, the variation, suspension or cancellation of the licence under section 117 of the Act, the imposition of penalties, and institution of criminal proceedings.

**7. Force majeure**

If the licence holder or the Authority is prevented from complying with this licence, in whole or in part, by an event or circumstance of force majeure, it must give written notice to the other as soon as practicable after its occurrence. The notice must specify the nature of the event or circumstance, what is required to remedy the event or circumstance – if remedy is possible, the estimated time to cure or overcome the event or circumstance, and the obligations that cannot be properly or timely performed on account of the event or circumstance. The obligations of that party other than the payment of

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money due, the performance of which are prevented by the force majeure event or circumstance will be suspended during the continuance of such force majeure.

The term of the licence will be automatically extended for the period of the force majeure.

If an obligation is suspended by reason of force majeure for more than one (1) year, the licence holder and the Authority will enter into good faith negotiations to vary the terms and conditions of the licence to reflect the changes circumstances.

For the purposes of this licence, “force majeure” means an event or condition that the licence holder could not reasonably be expected to prevent or control; provided that the event or condition was not caused by licensee action, omission, negligence or by a failure to observe good industry practice.

### **8. Governing language**

This licence is provided and executed in the English language only.

### **9. Governing law**

This licence will be governed by and construed in accordance with the laws of the Cook Islands.

### **10. Annexes to this licence**

Annex 1: coordinates and illustrative chart of the licensed area:

Annex 2: the approved work plan reflecting the current five-year programme of activities (as may be revised from time to time):

Annex 3: the approved environmental management programme:

Annex 4: the approved incident response and management plan:

Annex 5: the approved occupational health and safety plan:

Annex 6: the approved local engagement, training and business development plan:

Annex 7: terms and schedule of relinquishment

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**Clerk of the Executive Council**

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These regulations are administered by the Seabed Minerals Authority.  
These regulations were made on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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