



Te Ipukarea Society Inc
Caring for our Environment



Partnership for
nature and people

25th June, 2020

Submission on the proposed Amendment Bill to the Seabed Minerals Act 2019

Alex Herman
Seabed Minerals Commissioner

Kia orana Alex,

Please accept this submission on behalf of our two Non Government Organisations, Te Ipukarea Society and Korero o te Orau. Both organisations are registered with the Ministry of Justice, and active in environmental education and awareness. Apologies for any typos and continuity issues, but this was done in a very short time to meet your deadline, not allowing for a normal editing.

Firstly, we would like to thank yourself and the Minister for allowing a little time to get public submissions on these proposed changes to the Seabed Mining Act 2019. As you are aware, both our organisations made very substantive inputs to the original consultation on the 2019 Act, and believe we should have been consulted on these proposed amendments before they went to Parliament.

Below are our comments on the proposed amendments

1) Section 17 2 (d) on confidentiality. This is not a good amendment. It adds a new test for release that the information must (a) have been held for 5 years and (b) not be commercially sensitive. Commercially sensitive is not defined. There should be safeguards around this i.e. definitions of commercially sensitive, how the decision is made, by whom, a hearings process and transparency around all that. It tightens (against the public interest) commercial confidentiality provisions.

2) In the proposed section 17 2(f), there should be a category for release of information for public information, particularly where it is relevant to protection of the environment, as well as a process for determination of issues relating to release and confidentiality.

- it continues the term in the Act of "period agreed with the Applicant"

- it removes a requirement for written advice of compliance with the Environment Act

3). In section 18 1 b ii. This is an unnecessarily restrictive provision. It omits a mechanism from the Act which allowed representations from affected persons

4). In section 18, 1 3b. This is an unnecessarily restrictive provision. It allows for the person wishing information not to be disclosed by simply making the stated representations, without any transparency or public review – only guidelines to be later developed, but with no external review..

5). Section 18 A, Guidelines about confidential information.

The Guidelines have not yet been developed, and need to be subject to transparency and procedural safeguards. How can you ask Parliament to pass something they have not yet seen?

6). In section 19 5e, This is a very restrictive defence. There is no public interest defence, no good faith defence, no lawful purpose defence.

7). Section 25, 1 b I, engineering expertise should not replace governance expertise. If engineering is needed, add an extra person with that expertise

8). Section 31, 2 (b) This is not an appropriate amendment. It takes away the power of the panel to authorise the disclosure of information

9). In section 55 1 (d) (i)

This is not an acceptable amendment. It removes the 'public interest' test and substitutes it for a 'national interest' test which is much narrower. For instance, an Authority may not want to consider a socio-economic or cultural objection, or even an environmental objection, because it is considered local or community rather than national interest. Not issues with 2 other similar changes in section 117, and section 134, as referred to in 20, below

10) In section 76, (1). The addition of the word 'initial' may imply that a permit should be renewed. it is not necessary.

11). In 76, (3). Same issue with the word "initial" as above. Also this continues the term in the Act: "period agreed with the applicant". The Cook Island Government is the regulator, acting in the public interest. It should not be for the applicant to agree to the term.

12). Section 86, (10) The deletion of the requirement of written advice that renewed mining activities are permitted under the Environment Act introduces potential tension or conflict between the two processes. It is highly preferable that the mining licence is contingent on the Environment Act processes

13) Proposed change C.2, Schedule 2, Section 2 – You have changed the requirement to apply the precautionary approach, using the best available technology, to using the best available techniques, which isn't as rigorous. You have also taken out the requirement that this needs to be in line with international standards, inserting instead that it only need be in accordance with **any** guidelines or standards issued by the Cook Islands Government. The precautionary approach is an international principal, and we don't (to our knowledge) have any guidelines or standards on the precautionary approach, so this means that decision makers are able to establish them in future, with no clear parameters on what these guidelines should achieve. **Suggest changing it back to original wording.** If, as you said at the consultation, you may wish to apply stricter standards, then state **that these will be at least to international standards.**

14) Following your explanation at the consultation meeting, we don't see that the change of the title "pollution prevention" to "pollution control" poses that much of an issue, under proposed change C.3 for Schedule 2, given the requirements remain for the title holder to "prevent, reduce and control" pollution, with prevent coming first in both versions. However, again, there's the inclusion of "in line with any Cook Islands standards or guidelines," which leaves room for this to be weakened. **Suggest removing that addition so it's a general requirement to prevent, reduce and control.**

15) C.8, Section 12, Schedule 2 - takes out requirement for a work plan, but importantly, the requirement that said work plan includes an environmental monitoring and management plan. **We cannot accept the rationale provided that this is "covered adequately in draft regulations and the model licence, including the provision of environmental management plans where applicable and financial plans."** As you have mentioned in our meeting, this is a part of a whole package, and we need to see the whole package to be certain our concerns are

in fact covered elsewhere. We would also suggest that Parliament should also be provided the whole package for review, before passing these amendments.

16) Schedule 2 , -

-Clause 6, This should not be changed, as it weakens the requirement for rehabilitation.

17) – the proposal to repeal clause 9. This removes the requirement for an independent auditor. We believe an independent auditor is a necessity

18)-The proposal to replace clauses 12 to 18. This is a very significant amendment. It deletes requirements to carry out activities in accordance with the work plan and with due diligence and efficiency, and deletes references to the environmental management and monitoring plan and financial plan. We know you say some of this has been moved to the regulations, but until we see these we cannot agree with this change.

19) It also deletes a requirement to satisfy the Authority on financial and technical capacity

removes requirements on titleholder for reporting upon termination of title. Rationale here is activities are different so therefore doesn't make sense to have general reporting requirements, and that this is more appropriate with exploration licenses. We disagree, and consider that it's important to submit reports regarding data and value of resources mined, along with financial reports - whilst this is important for exploration licenses to enable determination of the granting of mining licenses, mining will be more intensive and extract far more than exploration will, so will be important for the development of the SBM sector going forward. **Suggest reinsertion of reporting requirements, perhaps tailored for mining licenses instead of exploration. We would be happy to suggest wording, that would be broad enough to meet the different activities.**

In addition, the Authority should approve all insurance contracts – clauses and amount.

20) As mentioned above, “public interest” replaced by “national interest” in certain places - National interest is much narrower, and is ultimately decided by government, and doesn't necessarily allow for public input. Public interest would allow for this, which is important going forward with such unchartered, potentially environmentally damaging activities. We would actually **recommend that a number of other occurrences of “national interest” in the 2019 Act, in particular those related to tendering and licencing, should be changed to “public interest”**. If this is not possible, provide a definition for “national interest” that would satisfy our concerns about what constitutes "national interest".

Thank you



Kelvin Passfield
For Te Ipukarea Society.