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SEABED MINERALS

ANALYSIS

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A BILL INTITULED

AN ACT to provide for the management of the seabed minerals of the Cook Islands and for related purposes and matters incidental thereto.

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the Authority of the same as follows:

CHAPTER 1 - INTRODUCTION

Part 1.1 – Legislative Formalities and Background

1. Short title - This Act may be cited as the Seabed Minerals Act 2009.
2. Commencement - (1) This Act shall come into force on a date appointed by the Queen's Representative by Order in Executive Council.
 (2) Despite subsection (1) and without limiting the application of section 12 of the Acts Interpretation Act 1924, upon the passing of this Act, the power to appoint the Authority, Commissioner, Board, officers and employees of the Cook Islands Seabed

Minerals Authority may be exercised for the purpose of bringing this Act into operation on the date of its coming into force.

3. Objects of this Act - (1) The objects of this Act are -

- (a) to establish a legal framework for the efficient management of the seabed minerals of the Cook Islands;
- (b) to provide for the management of the seabed minerals of the Cook Islands in a manner that is consistent with Government policy;
- (c) to ensure that seabed minerals activity is carried out in manner that is consistent with internationally accepted rules, standards, principles and practices;
- (d) to promote transparency in decision-making on matters concerning the management of the seabed minerals of the Cook Islands;
- (f) to implement measures to maximise the benefits of seabed mineral activity for present and future generations of Cook Islanders; and,
- (g) to promote a co-operative approach to the management of the seabed minerals of the Cook Islands involving government and island communities.

(2) In order to achieve its objects, the Act *inter alia* -

- (a) establishes a system for the allocation of titles in the form of permits, licences and leases under which title holders will be authorised to engage in seabed mineral activity under specific and enforceable conditions;
- (b) creates a register of titles and provides for the registration of dealings and interests in titles;
- (c) creates new regulatory bodies to administer the titles system established by this Act;
- (d) creates offences in respect of activities carried out in breach of the provisions of the Act;
- (e) provides for the protection of the environment through the continued application of the provisions of the Environment Act including environmental impact assessment and project permitting;
- (f) provides for the payment of royalty, fees, and rents in respect of seabed minerals activity in the Cook Islands; and,
- (g) provides for the management of information, and addresses issues relating to confidentiality and copyright.

4. Act to bind the Crown - This Act shall bind the Crown but nothing in this Act renders the Crown liable to be prosecuted for an offence.

5. Ownership of Minerals - (1) All rights to the Seabed of the Cook Islands and its mineral resources are hereby vested in the Crown to be managed on behalf of the people of the Cook Islands.

(2) The regulation and management of the minerals of the Seabed of the Cook Islands shall be exercised in accordance with the provisions of this Act.

6. Simplified outline - The following is a simplified outline of this Act -

This Act establishes a system for regulating the following activities in respect of the minerals of the seabed of the Cook Islands through the conferral of rights under a title -

- (a) prospecting for minerals;
- (b) exploration for minerals;
- (c) recovery of minerals; and,
- (d) retention of areas of minerals of known commercial value where recovery is not currently economically viable.

The administration of this Act is the responsibility of the Cook Islands Seabed Minerals Authority, which is established under this Act.

This Act provides for the grant of the following titles by the Authority -

- (a) a prospecting permit;
- (b) an exploration licence;
- (c) a mining licence; and,
- (d) a retention lease.

The Act provides for the appointment of a Seabed Minerals Commissioner with responsibility for the operation of the Authority.

Seabed Minerals Officers appointed by the Commissioner will exercise the day-to-day administrative functions and powers of the Authority, including powers of monitoring, compliance and enforcement conferred by the Act.

The Cook Islands Seabed Minerals Advisory Board created under this Act provides a formal avenue for consultation between the Authority and the community concerning the management of the seabed minerals of the Cook Islands.

Part 1.2 – Interpretation

Division 1 - General

7. Interpretation - (1) In this Act, unless the context otherwise requires -

"application" means an application made under a provision of this Act;

"body corporate" means a company, partnership, or any other legal person;

"block" means a block constituted in the manner provided by section 12 of this Act;

"Constitution" means the *Constitution of the Cook Islands*;

"continental shelf" has the meaning given to it by section 2 of the *Continental Shelf Act 1964*;

"Cook Islands" has the meaning given to it in Article 1 of the Constitution;

"Cook Islands Geodetic Datum" means the World Geodetic System (WGS 84);

"Cook Islands Seabed Minerals Authority" or **"Authority"** means the Cook Islands Seabed Minerals Authority established under section 16 of this Act;

"Cook Islands Seabed Minerals Advisory Board" or **"Board"** means the Cook Islands Seabed Minerals Advisory Board established under section 33 of this Act;

"company" includes an international company, a limited liability company and a foreign limited liability company;

"Court" means the High Court of the Cook Islands except where otherwise provided;

"datum" means a reference frame for defining geographic coordinates;

"enactment" means any Act of the Parliament of the Cook Islands, Ordinance, Act of the Parliament of New Zealand in force in the Cook Islands and any Proclamation, Order, Regulations or Rule of any Islands Council, Ordinance or By-Law and includes any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom being an Act in force for the Cook Islands, and any Regulations, Rule, Order or instrument made thereunder;

"Environment" has the same meaning as in the Environment Act;

"Environment Act" means the *Environment Act 2003*;

"Environment Protection Fund" means the Environment Protection Fund established under section 61 of the Environment Act;

"exploration operations" means operations associated with the search for minerals in a title area with exclusive rights, and includes operations involving the analysis of minerals and mineral deposits, the testing of collecting systems and equipment, processing facilities and transportation systems, and the carrying out of studies on environmental, technical, economic, commercial and other factors necessary to be undertaken prior to the commencement of recovery operations;

"expiry date" in relation to a title granted under this Act means the date on which a title ceases to be in force;

"exclusive economic zone" has the meaning given by section 8 of the *Territorial Sea and Exclusive Economic Zone Act 1977*;

"exempt vessel" in relation to a safety zone, means a vessel -

- (a) that is excluded from the operation of this Act in relation to that safety zone because -
 - (i) the vessel is specified in the notice establishing the safety zone; or,
 - (ii) the vessel is included in a class of vessels specified in the notice establishing the safety zone; or
- (b) for which a written authorisation of the Authority under this Act is in force in relation to the safety zone;

"exploration licence" means an exploration licence granted under this Act;

"financial year" means a period of 12 months ending on the 30th of June;

"foreign-flag vessel" means a vessel that -

- (a) under the law of a foreign country, is entitled to fly the flag of that country; and,
- (b) is flying that flag;

"function" includes a power or duty;

"Gazette" means the Gazette or a supplement to the Cook Islands Gazette;

"Government" means the Government of the Cook Islands;

"Government vessel" means -

- (a) a vessel that is beneficially owned by a government body; or,
- (b) a vessel the whole possession and control of which is for the time being vested in a government body;

"geographic coordinate" includes -

- (a) a meridian of longitude by itself; and,
- (b) a parallel of latitude by itself;

"graticular section" means a graticular section referred to in section 13 of this Act;

"holder" means in relation to a title the person whose name is shown in the Register as the holder of the title;

"internal waters" has the meaning given by section 4 of the *Territorial Sea and Exclusive Economic Zone Act 1977*;

"International Agreement" means a treaty or other international instrument concluded between the Cook Islands and another State which is prescribed in the regulations;

"international company" has the meaning given by section 2 of the *International Companies Act 1981-1982*;

"international partnership" has the meaning set out in section 8 of the *International Partnerships Act 1984*;

"lease area" means an area constituted by a block or blocks covered by a retention lease;

"licence" means an exploration licence or a mining licence granted under this Act;

"licence area" means an area constituted by a block or blocks covered by an exploration licence or a mining licence granted under this Act;

"limited liability company" has the meaning given to that term in the *Limited Liability Companies Act 2008*;

"limited partnership" has the meaning given by section 53 of the *International Partnerships Act 1984*;

"management plan" means a management plan referred to in section 37 of the Environment Act;

"Marine Pollution Act" means the *Prevention of Marine Pollution Act 1998*;

"master" in relation to a vessel, means the person having command or charge of the vessel;

"mine waste" means the residue produced as a direct result of recovery operations and, includes sediments, rock, coral, carbonates, sand, slime, or any other substances that are discarded in the course of operations associated with recovery operations;

"mineral" means a naturally occurring substance or naturally occurring mixture of substances, including in the form of coal, clay, evaporates, gravel, limestone, oil-shale, sand, shale, rock, and polymetallic nodules;

"mining area" means an area or areas of the Seabed of the Cook Islands constituted by a block or blocks in respect of which a mining licence is in force;

"mining licence" means a mining licence granted under this Act;

"owner" in relation to a vessel, means -

- (a) if the vessel is being operated by a person who -
 - (i) does not own the vessel; and
 - (ii) has the whole possession and control of the vessel;the person operating the vessel; or
- (b) in any other case-the person who owns the vessel;

"partnership" means a partnership, international partnership, limited partnership, joint venture, syndicate or association entered into for the purpose of carrying on a business or a single transaction with a view to a profit and evidenced by an instrument but does not include -

- (a) a joint venture of trustees where that joint venture relates only to a common fund for mixing of trustees funds;
- (b) a company;
- (c) a corporation sole;

"permit" means a prospecting permit granted under this Act;

"permit area" means an area constituted by a block or blocks in respect of which a prospecting permit is in force;

"person" means any natural person, partnership, company, trust, estate, custodian, nominee, trustee, executor, administrator, fiduciary, or any other individual or entity in its own or any representative capacity;

"prescribed" means prescribed by this Act or by regulations made under this Act;

"petroleum" means -

- (a) a hydrocarbon or a mixture of hydrocarbons whether in solid, inert, liquid or gaseous form; or
- (b) a mixture of one or more hydrocarbons and one or more of the following whether in solid, inert, liquid or gaseous form -
 - (i) hydrogen sulphide;
 - (ii) nitrogen;
 - (iii) helium; and,
 - (iv) carbon dioxide.

"programme of recovery operations" means -

- (a) a programme of intended recovery operations prepared by the holder of a mining licence; but,
- (b) where the programme is amended pursuant to this Act, means the programme as so amended;

"prospecting permit" means a prospecting permit granted under this Act;

"prospecting operations" means operations associated with the search for minerals on the Seabed of the Cook Islands including estimation of composition, sizes and distribution of minerals and their economic values, without any exclusive rights;

"protected area" means a protected area referred to in section 41 of the Environment Act;

"pollution" means pollution as that term is defined in section 2 of the Environment Act;

"polymetallic nodules" means any deposit or accretion of nodules, on or just below the surface of the seabed, which contain ore and manganese hydroxides;

"project permit" means a project permit granted under the Environment Act;

"Public Service Act" means the *Public Service Act 2009*;

"recovery operations" means any activity that is directly related to the recovery of minerals including, but not limited to, mining and other operations to extract a mineral from its natural state on the seabed or from the subsoil of the Seabed of the Cook Islands;

"Register" means the Register established under section 219 of this Act;

"regulations" means regulations prescribed under this Act;

"responsible Minister" means the Minister of the Crown charged by the Prime Minister with responsibility for the administration of this Act;

"retention lease" means a retention lease granted under this Act;

"safety zone" means an area that has been declared a safety zone under this Act;

"sample" includes a core or cutting from the Seabed of the Cook Islands;

"Seabed of the Cook Islands" means the seabed and subsoil of the inland waters, territorial sea, exclusive economic zone and the continental shelf of the Cook Islands;

"seabed minerals activity" means activities associated prospecting operations, exploration operations or recovery operations in respect of minerals on the Seabed of the Cook Islands and includes the carrying out of a seismic survey, or any other kind of survey or the taking of samples with the intention that the survey data or information derived from the samples as the case may be, for the purpose of discovering minerals;

"Seabed Minerals Agreement" means an Agreement referred to in section 204 of this Act;

"Seabed Minerals Commissioner" or **"Commissioner"** means the Seabed Minerals Commissioner appointed under section 24 of this Act;

"Seabed Minerals Officer" or **"Officer"** means a Seabed Minerals Officer appointed under section 29, or a person deemed to be a Seabed Minerals Officer under section 31 of this Act;

"Shipping Act" means the *Shipping Act 1988*;

"territorial sea" has the meaning given in section 3 of the *Territorial Sea and Exclusive Economic Zone Act 1977*;

"terrorist activity" includes an activity involving extortion;

"title" means a licence, permit or lease granted under this Act;

"vessel" means every description of craft used, or capable of being used, in marine transportation and includes fishing vessels, hovercraft, non-displacement vessels and mobile offshore units, but does not include vessels under construction but not yet launched;

"**title area**" means a permit area, licence area or lease area.

(2) In this Act, *Notes* that appear are explanatory only and are no more than a guide to readers.

8. Infrastructure facilities - (1) For the purposes of this Act, an infrastructure facility is a facility, structure, installation or equipment for engaging in any of the activities to which subsection (2) applies, so long as -

- (a) the facility, structure or installation rests on the Seabed of the Cook Islands; or
- (b) the facility, structure, equipment or installation is fixed or connected to the Seabed of the Cook Islands (whether or not the facility is floating); or,
- (c) the facility, structure, equipment or installation is attached or tethered to a facility, structure or installation referred to in paragraph (a) or (b).

(2) This subsection applies to the following activities -

- (a) remote control of facilities, structures, equipment or installations used to recover minerals in a licence area;
- (b) processing minerals recovered from the Seabed of the Cook Islands, including -
 - (i) converting minerals into another form by physical or chemical means, or both; and,
 - (ii) partial processing of minerals;
- (c) storing minerals before they are transported to another place;
- (d) preparing minerals for transport to another place; and,
- (e) activities related to any of the above;

but, except as mentioned in paragraph (a), this subsection does not apply to exploring for, or recovering, of minerals.

9. Application of Act - This Act applies to -

- (a) all individuals, whether or not Cook Island citizens, and whether or not resident in the Cook Islands; and,
- (b) all bodies corporate, whether or not incorporated or carrying on business in the Cook Islands.

10. Act does not apply to exploration for or recovery of petroleum - This Act does not apply to the exploration for or recovery of petroleum.

Note: For *petroleum* see **section 7** (Interpretation).

Division 2 – Datum Provisions

11. Graticulation of Earth's surface - For the purposes of this Act, the surface of the Earth is taken to be divided -

- (a) by the meridian of Greenwich and by meridians that are at an angular distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude; and,
- (b) by the equator and by parallels of latitude that are at an angular distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude;

into sections called graticular sections each of which is bounded:

- (c) by portions of 2 of those meridians that are at an angular distance from each other of 5 minutes of longitude; and,
- (d) by portions of 2 of those parallels of latitude that are at an angular distance from each other of 5 minutes of latitude.

12. Cook Islands Geodetic Datum - For the purposes of this Act, the position on the surface of the Earth of a graticular section or block is to be determined by reference to the Cook Islands Geodetic Datum.

Note: For *Cook Islands Geodetic Datum* see section 7 (Interpretation).

13. Blocks - For the purposes of this Act -

- (a) a graticular section constitutes a block;
- (b) a reference in this Act to a block that is constituted by a graticular section includes a reference to a block that is constituted by the area of a part only, or by the areas of parts only, of a graticular section;
- (c) a reference in this Act to a graticular section that constitutes a block includes a reference to -
 - (i) a graticular section only part of which constitutes a block; or,
 - (ii) a graticular section only parts of which constitute a block.

Note: A block is constituted for the purposes of this section as follows -

- (a) assume that there is laid over the offshore area a grid constituted by -
 - (i) lines running along meridians drawn through each degree of longitude and the minutes between those degrees; and
 - (ii) lines running along parallels drawn through each degree of latitude and the minutes between those degrees; and,
- (b) take a bounded space defined by the grid;
- (c) the seabed and subsoil within the area that is under that space is a block.

14. Use of certain geodetic coordinates specified in an International Agreement -
 (1) This section applies if, for the purposes of this Act or the regulations, or for the purposes of an instrument under this Act or the regulations, it is necessary to determine the position on the surface of the Earth of -

- (a) a point or line specified in an International Agreement; or,
- (b) a point on, or part of, such a line.

- (2) That position must be determined in accordance with -
 - (a) that International Agreement; or,
 - (b) if that Agreement is varied in accordance with the Agreement as varied for the time being.

15. Variation of applications for titles – use of Cook Islands Geodetic datum - The regulations may authorize the Cook Islands Seabed Minerals Authority to issue an instrument varying an application for title for the sole purpose of re-labeling a block, point, line or area by reference to geographic coordinates based on the Cook Islands Geodetic Datum.

Part 1.3 – Regulatory Bodies
Division 1 – Cook Islands Seabed Minerals Authority
Subdivision A – Establishment and functions

16. Establishment of the Cook Islands Seabed Minerals Authority - (1) This section establishes a body called the Cook Islands Seabed Minerals Authority.

- (2) The Authority -
 - (a) is a statutory agency of the Government of the Cook Islands;
 - (b) is a body corporate with perpetual succession and a common seal;
 - (c) is capable of holding real and personal property and of suing and being sued; and,
 - (d) is capable of doing and suffering all such other acts and things as corporations may lawfully do and suffer.
- (3) The Head of the Authority shall be the Seabed Minerals Commissioner.
- (4) The staff of the Authority shall be composed of persons engaged under the Public Service Act.

Note: Section 24 provides for the appointment of the *Seabed Minerals Commissioner*.

(5) The seal of the Authority must be kept in such custody as the Commissioner directs, and must not be used except as authorised by the Commissioner.

(6) The Authority shall be based in Rarotonga with separate offices of the Authority to maintain a presence in the northern and southern island groups of the Cook Islands.

(7) The establishment of offices under subsection (6) shall be as prescribed.

17. Functions of the Cook Islands Seabed Minerals Authority - (1) The functions of the Authority are to -

- (a) regulate seabed mineral activity in the Cook Islands in accordance with this Act and the regulations;

- (b) ensure that the provisions of this Act relating to the conduct of seabed minerals activity in the Seabed of the Cook Islands are implemented and complied with in accordance with this Act and the regulations;
 - (c) make recommendations concerning the negotiation and conclusion of Seabed Mineral Agreements;
 - (d) recommend regulations to be made under this Act;
 - (e) promote co-operation amongst government ministries, departments, local authorities, the private sector, research bodies, non-governmental and other organisations, concerning seabed minerals of the Cook Islands;
 - (f) assist in the provision of training in skills associated with the performance or exercise of the functions of the Authority;
 - (g) provide secretarial and administrative services (including technical advice) to the Board connected with the exercise of its functions under this Act;
 - (h) do anything that is incidental or conducive to the performance of any of the foregoing functions.
- (2) In performing its functions, the Authority shall -
- (a) take into account the following -
 - (i) official government policy in relation to the regulation and management of the seabed minerals of the Cook Islands conveyed to it in writing by the responsible Minister; and,
 - (ii) lawful directions issued to it by the Commissioner under this Act;
 - (iii) recommendations issued to it by the Board; and,
 - (b) Seek expert advice (including, but not limited to, economic, legal and technical) concerning the management of the minerals of the Seabed of the Cook Islands at all times where such advice is required and is reasonably available.
- (3) In the exercise of its functions under this Act, the Authority shall, except where the circumstances require the immediate exercise of any power, at all times have regard to the principle that it may better serve the community by consultation, negotiation and education.

Subdivision B – Powers of the Authority

18. General Powers of the Authority - (1) The Authority shall have the power to do all things necessary or convenient to be done for in connection with the performance of its functions including power to -
- (a) enter into contracts;

- (b) erect buildings and structures and carry out works in the public interest;
- (c) accept gifts, devises and bequests, and act as trustee of money or other property vested in the Authority upon trust;
- (d) promote the wise use of the seabed minerals of the Cook Islands and regulate the use of those resources as provided in this Act;
- (e) for the purpose of enforcing the provisions of this Act, prosecute and sue any person, body corporate or group of persons, whether incorporated or not, including the Crown, its agents, servants and agencies.

(2) The Authority may perform any of its functions in collaboration with a Government agency, instrumentality or department.

19. Regulatory Powers of the Authority - The Authority shall exercise regulatory powers in connection with the performance of its functions including (but not limited to) power to -

- (a) administer titles in accordance with this Act;
- (b) give directions and take steps necessary to ensure that the terms and conditions of titles granted under this Act are complied with in accordance with the Act;
- (c) obtain information in relation to minerals, mineral deposits and seabed mineral operations in accordance with this Act;
- (d) monitor and evaluate seabed mineral activity in the Cook Islands in accordance with the provisions of this Act.
- (e) enforce this Act in accordance with the provisions of the Act.

20. Preparation of manuals and guidelines - (1) The Authority may publish and disseminate manuals and guidelines relating to seabed minerals activity.

(2) In developing manuals and guidelines for the purposes of subsection (1), the Authority shall ensure that any such publications are consistent with guidelines issued by other Government departments, agencies and authorities.

Subdivision C – Review of Authority

21. Reviews of operations of Authority - (1) The responsible Minister must cause to be conducted reviews of the operations of the Authority in relation to Safety Authority waters.

(2) The responsible Minister must cause to be prepared a report of a review under subsection (1).

(3) The first review is to relate to the 3-year period beginning on 1 January 2010, and is to be completed within 6 months, or such longer period as the responsible Minister allows, after the end of that 3-year period.

(4) Subsequent reviews are to relate to successive 3-year periods, and must be completed within 6 months, or such longer period as the responsible Minister allows, after the end of the 3-year period to which the review relates.

(5) For the purposes of this section, a review is *completed* when the report of the review is made available to the responsible Minister.

(6) Without limiting the matters to be covered by a review under subsection (1), the review must include an assessment of the effectiveness of the Authority in implementing the provisions of this Act.

(7) The responsible Minister must cause a copy of the report of a review under subsection (1) to be laid before the Parliament within 15 sitting days after the report of the review is made available to the responsible Minister.

Subdivision D – Records of Decisions of the Authority

22. Records of decisions of Authority - (1) The Authority must cause to be kept written records of the decisions of the Authority.

(2) A record kept under subsection (1) is *prima facie* evidence that the decision was duly made as recorded if the record is signed by a person who was an Officer of the Authority at the time when the decision was made.

23. Signature of documents - (1) If a document is signed by, on behalf of, the Authority, the document is taken to have been duly executed by the Authority.

(2) The document is taken to be in accordance with a decision of the Authority unless the contrary is proved.

Division 2 - Seabed Minerals Commissioner

Subdivision A – Establishment and Appointment

24. Appointment of Seabed Minerals Commissioner - (1) The responsible Minister shall from time to time with the concurrence of Cabinet and subject to requirements of the Public Service Act, appoint a suitably qualified person to be the Seabed Minerals Commissioner.

(2) The Commissioner shall -

- (a) enter into an employment contract with the responsible Minister, subject to the provisions of the Public Service Act;
- (b) be appointed for a term not exceeding three (3) years specified in the contract, but shall be eligible for reappointment;
- (c) be paid remuneration and allowances as specified in the employment contract;
- (d) be required to enter into a performance agreement with the responsible Minister; and,
- (e) may resign from office by giving notice in writing to the responsible Minister;

- (f) may be suspended from office by the responsible Minister only on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct; and,
- (g) may be removed from office by the responsible Minister, with the concurrence of Cabinet, only on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct.

Subdivision B – Functions and Powers of Commissioner

25. Functions of the Seabed Minerals Commissioner - (1) The Commissioner shall be responsible to the Minister for the efficient and proper administration and management of the Authority in accordance with and under this Act.

(2) The Commissioner must prepare a corporate plan for the Authority at least once every 3 years and give the plan to the responsible Minister.

(3) The plan must cover a period of at least 3 years.

(4) The plan must include details of the following matters -

- (a) the Authority's operational environment;
- (b) the Authority's strategies;
- (c) performance indicators for the Authority;
- (d) a review of performance against previous corporate plans; and,
- (e) human resource strategies and industrial relations strategies.

(5) The plan must also cover any other matters required by the responsible Minister, which may include further details about the matters in subsection (3).

26. Power of Appointment - (1) The Commissioner is an Employer for the purposes of section 2 of the Public Service Act and may from time to time by instrument in writing appoint the following officers and inspectors for the purposes of administering and enforcing the provisions of this Act -

- (a) Seabed Mineral Officers;
- (b) inspectors; and,
- (c) OHS inspectors.

(2) The Commissioner may engage consultants to perform services for the Authority where necessary for the effective performance of any of the functions and powers of the Authority under this Act.

(3) The Commissioner may engage (by secondment or other temporary arrangement) officers and employees of other Cook Islands departments, agencies and authorities, where necessary for the effective performance of the functions and powers of the Authority under this Act.

27. Delegation of powers by the Commissioner - (1) The Commissioner may by instrument in writing, delegate to any Officer of the Authority, all or any of the Commissioner's powers and functions under this Act, except this power of delegation.

(2) A power or function delegated by the Commissioner shall be exercised or performed in accordance with the instrument of delegation.

(3) A delegation made under this section is revocable at will, and shall not prejudice or prevent the exercise or performance by the Commissioner of the power or function.

28. Requirement to prepare annual report - (1) The Commissioner must, within 3 months after the end of each financial year or within any further period the responsible Minister may allow, prepare and present to the responsible Minister an annual report giving full details of all activities undertaken by the Authority under this Act during that financial year, including audited statements of –

- (a) financial positions;
- (b) financial performance;
- (c) cash flows;
- (d) borrowings;
- (e) commitments;
- (f) specific fiscal risks;
- (g) accounting policies;
- (h) outputs and outcomes actually achieved,

together with such other statements as are consistent with generally accepted accounting practice.

(2) The responsible Minister must lay a copy of the report before Parliament –

- (a) at the expiry of 14 days after the Minister receives it if Parliament is then sitting; or
- (b) if Parliament is not sitting immediately on the commencement of the next sitting of Parliament.

Division 3 – Seabed Minerals Officers

29. Seabed Minerals Officers - (1) The Commissioner may from time to time by instrument in writing appoint Seabed Minerals Officers for the purposes of administering and enforcing the provisions of this Act.

(2) The Commissioner shall cause to be issued to each Officer appointed under subsection (1) an identity card in such form as the Commissioner deems fit.

(3) An Officer appointed under subsection (1) is an employee in the service of a statutory agency of the Government of the Cook Islands for the purposes of the Public Service Act.

(4) An Officer shall be employed by the Commissioner on terms and conditions specified in a contract of employment, subject to the provisions of the Public Service Act.

(5) The Commissioner may remove or suspend an Officer appointed under subsection (1) on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct, in addition to any other grounds specified in the contract of employment.

30. Functions of Officers - An Officer shall perform the functions of the Authority -

- (a) on or in relation to any part of the Cook Islands to which this Act applies; and,
- (b) under the general direction of the Commissioner.

31. Persons Deemed Officers - The following persons shall be deemed an Officer for the purpose of this Act -

- (a) the Commissioner;
- (b) any constable designated in writing by the Commissioner; and,
- (c) any constable assisting or accompanying an Officer in the exercise or performance of functions or powers conferred under this Act.

32. Judicial notice of signature of Officer of Authority - (1) All courts must take judicial notice of -

- (a) the signature of a person who is, or has been an Officer of the Authority; and,
- (b) the fact that the person is, or was at a particular time an Officer of the Authority.
- (2) In this section *court* includes a person authorised to receive evidence -
 - (a) by a law or under an enactment of the Cook Islands; or
 - (b) by consent of the parties.

***Division 4 – Cook Islands Seabed Minerals Advisory Board
Subdivision A – Establishment and Composition of the Board***

33. Cook Islands Seabed Minerals Advisory Board - (1) There is established a Cook Islands Seabed Minerals Advisory Board.

(2) The Board shall be composed and function in accordance with the provisions of this Act and shall operate as the official avenue for consultation between the Government and the community on matters concerning the regulation and management of the seabed minerals of the Cook Islands.

34. Functions of the Board - (1) The functions of the Board are to -

- (a) provide recommendations to the Authority in connection with the management of the seabed mineral resources of the Cook Islands;

- (b) provide recommendations to the Authority on the grant, renewal, suspension and cancellation of titles and on the negotiation and conclusion of Seabed Mineral Agreements;
 - (c) perform such other functions as are assigned to it in accordance with the provisions of this Act or the regulations.
- (2) In the exercise of its functions under sub-section (1), the Board shall ensure that a copy of every recommendation made to the Authority is provided to the responsible Minister.

35. Composition of Board - The Board shall be composed of -

- (a) a Chair, who shall be a person appointed by the responsible Minister;
- (b) the Seabed Minerals Commissioner, who shall be the Secretary of the Board;
- (c) 5 members representing the island communities of the Cook Islands; and,
- (d) such number of additional members as may be prescribed.

36. Membership - All appointments to the Board shall be by name and recorded in an instrument of appointment published by *Gazette* Notice issued by the responsible Minister.

Subdivision B – Procedures of the Board

37. Rules of Procedure of the Board - (1) The Cook Islands Seabed Minerals Advisory Board shall meet at least quarterly in every financial year.

- (2) The performance by the Board of its functions shall not be affected by -
- (a) a vacancy in its membership; or,
 - (b) a defect in the appointment of a person to be a member of the Board.
- (3) The Rules of Procedure of the Board shall be prescribed.
- (4) The prescribed rules of procedure must determine matters relating to the operation of the Board including (but not limited to) the following -
- (a) procedures for convening Board meetings;
 - (b) the constitution of a quorum for a Board meeting;
 - (c) procedures for conducting Board meetings, including (but not limited to) the way the Board may resolve matters;
 - (d) disclosure of interests;
 - (e) Board records;
 - (f) reporting requirements, including (but not limited to) report to the responsible Minister and to the public.

Subdivision C – Terms and conditions for Board members

38. Term of appointment and related matters for Board members - (1) A Board member (including the Chair) is to be appointed on a part-time basis.

(2) A Board member holds office for the period that is specified in the instrument of appointment, which must not exceed 3 years.

39. Chair of the Board - (1) The Chair of the Board shall hold office for such period of at most three (3) years as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) The office of the Chair shall become vacant -

- (a) if he or she accepts any office the holding of which, if he/she were not a member of the Board, would make him/her ineligible for appointment to the office of Chair of the Board;
- (b) if he or she resigns the office of Chair of the Board or is removed from office under section 40.

40. Suspension and Removal of member of Board - A member of the Board (including the Chair) may be removed or suspended from the Board by the responsible Minister in the following circumstances -

- (a) if he or she is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (b) if he or she is incapacitated by prolonged physical or mental illness from performing his or her duties as Chair of the Board;
- (c) if he or she has, in the opinion of the responsible Minister, conducted himself or herself in a manner that is incompatible with the duties and responsibilities of a member of the Board;
- (d) if he or she has, failed to disclose an interest in accordance with rules on the disclosure of interests contained in prescribed rules of procedure; or,
- (e) in the opinion of the responsible Minister, conducted him or herself in a manner that has or is likely to bring the Board into disrepute.

41. Remuneration and allowances of Board members - A Board member (including the Chair) is to be paid the remuneration that is prescribed.

42. Leave of absence of Board members - (1) The responsible Minister may grant leave of absence to the Chair of the Board on the terms and conditions that the responsible Commonwealth Minister determines.

(2) The Chair of the Board may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

43. Resignation of Board members - A Board member (including the Chair) may resign his or her appointment by giving the responsible Minister a written notice of such intention to resign.

44. Other terms and conditions of Board members - A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the responsible Minister.

45. Acting Board members - (1) The responsible Minister may appoint a person to act as the Chair of the Board -

- (a) during a vacancy in the office of Chair of the Board, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chair of the Board is absent from duty or from the Cook Islands, or is, for any reason, unable to perform the duties of the office.

(2) The responsible Minister may appoint a person to act as a Board member (other than the Chair of the Board) -

- (a) during a vacancy in the office of a Board member (other than the Chair of the Board), whether or not an appointment has previously been made to the office; or,
- (b) during any period, or during all periods, when a Board member (other than the Chair of the Board) is absent from duty or from the Cook Islands, or is, for any reason, unable to perform the duties of the office.

(3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because -

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or,
- (d) the occasion to act had not arisen or had ceased.

CHAPTER 2 – REGULATION OF ACTIVITIES RELATING TO SEABED MINERALS

Part 2.1 – Introduction

46. Simplified outline - The following is a simplified outline of this Chapter -

This Chapter provides for the grant of the following titles -

- (a) a prospecting permit (Division 2, Subdivision 1);
- (b) an exploration licence (Division 2, Subdivision 2);
- (c) a mining licence (Division 2, Subdivision 5);

(d) a retention lease (Division 2, Subdivision 4);

Titles are granted by the Cook Islands Seabed Authority subject to this Part and to any conditions of the title.

A prospecting permit authorises the permittee to search for minerals in the permit area on a non-exclusive basis.

A prospecting permit is renewable.

The title holder may apply for an exploration licence.

An exploration licence authorises the title holder to engage in exploration operations in the licence area on an exclusive basis.

An exploration licence is renewable.

The exploration licensee may apply for a mining licence or a retention lease in respect of a location.

A retention lease is granted if the recovery of a mineral is not commercially viable in the short term, but is likely to become commercially viable within the long term.

The exploration licensee or a retention lessee may apply for a mining licence.

A mining licence authorises the licensee to engage in the mining and recovery of minerals in an area that has been declared a location (see Part 2.4).

A mining licence is renewable.

47. Prospecting, exploration or recovery of minerals without appropriate title - (1)
A person must not engage in seabed minerals activity unless the activities have been authorised under a title granted to that person under this Act.

(2) A person who does not comply with subsection (1) commits an offence -

| | |
|---------------------------------------|-----------------------|
| Maximum penalty for an individual: | 1,000 penalty units. |
| Maximum penalty for a body corporate: | 10,000 penalty units. |

Note: Section 319 provides the level of a *penalty unit*.

(3) Strict liability applies to subsection (2).

48. Title does not authorise unnecessary interference with other activities in the title area - (1) A person contravenes this section if -

- (a) the person carries out activities under a title granted under this Act; and,
- (b) those activities interfere with -
 - (i) navigation; or
 - (ii) fishing; or
 - (iii) the conservation of the resources of the sea or the seabed; or
 - (v) any activities that someone else is lawfully carrying out; and,
- (c) the interference is greater than is necessary for -
 - (i) the reasonable exercise of the person's rights under the title; or
 - (ii) the performance of the person's duties under the title.

(2) A person who does not comply with subsection (1) commits an offence -

| | |
|---------------------------------------|----------------------|
| Maximum penalty for an individual: | 300 penalty units. |
| Maximum penalty for a body corporate: | 3,000 penalty units. |

Note: Section 319 provides the level of a *penalty unit*.

(3) Strict liability applies to subsection (2).

49. Release of Acreage - (1) The responsible Minister may designate an area or areas of the Seabed of the Cook Islands to be released for the purpose of seabed minerals activity under this Act.

- (2) The designation of an area under subsection (1) shall be designated -
 - (a) by notice published in the *Gazette*; and,
 - (b) by notice published in a national newspaper of the Cook Islands.

(3) A Notice issued by the responsible Minister under sub-section (1) shall describe the area or areas to be released by reference to a block or blocks, including geographical coordinates and the form of identification.

50. Release of Acreage – Areas excluded - Notwithstanding section 49, the responsible Minister must not designate any of the following areas as an area or areas to be released for the purpose of seabed minerals activity -

- (a) any area that has been designated a protected area under the Environment Act; and,
- (b) any area in respect of which a management plan is in effect under the Environment Act.

51. Minister may declare acreage for tender - (1) The responsible Minister may designate by *Gazette* Notice -

- (a) an area or areas of the Seabed of the Cook Islands to be reserved for a tender round to be administered by the Authority; and,
- (b) specify the category of title or titles in respect of which bids may be submitted under the tender round.

(2) The responsible Minister shall not make a designation under subsection (1) that would be incompatible with the continued enjoyment of an existing title granted under this Act.

(3) It shall be a requirement that project permit procedures specified under the Environment Act be applied to any area or areas that are considered for designation under subsection (1) prior to the designation of the area or areas under subsection (1).

(4) A Notice issued by the responsible Minister under sub-section (1) shall describe the area or areas to be reserved for tender by reference to a block or blocks, including geographical coordinates and form of identification.

52. Tendering for title - (1) The Authority may seek tenders in respect of a block or blocks that have been reserved for tender through the public announcement of a tender round.

(2) For the purposes of this Act, the ***public announcement*** of a tender round means an announcement by the Authority made -

- (a) by notice published in the *Gazette*; and,
- (b) by notice published in a national newspaper of the Cook Islands; and,
- (c) by notice published in international publications (including mining sector related publications) determined by the Authority.

(3) Tenders sought under subsection (1) shall be made and assessed in accordance with prescribed tender procedures.

53. Reservation of Blocks - (1) If the following conditions are satisfied in relation to a particular block.

- (a) there is no title over the block;
- (b) there are no pending applications for a title over the block;

the Authority may, by notice published in:

- (c) the *Gazette*; and,
- (d) a national newspaper of the Cook Islands;

declare that the block is not to be subject to the grant of a title under the Act.

(2) If a declaration under subsection (1) is in force in relation to a block a title must not be granted over that block

(3) Subsection (2) has effect despite any other provision of this Act.

Part 2.2 – Standard Procedures

Division 1–Applications

54. Simplified outline - The following is a simplified outline of this Part -

This Part sets out the standard procedures that apply to applications for titles under this Act, including the following matters -

- (a) then making of applications in an approved manner;
- (b) the payment of application fees; and,
- (c) requirements concerning offer documents;

The Cook Islands Seabed Authority can request further information from an applicant for the purposes of the Act.

This Part also sets out requirements for consultation that are to be applied by the Authority when it makes certain application decisions under this Act.

55. Application to be made in an approved manner - (1) This section applies to an application for the grant (including renewal) of a title under this Act.

- (2) The application must be made in an approved manner.

56. Application fee - (1) This section applies to an application for a title under this Act.

(2) The application must be accompanied by the fee (if any) prescribed by the regulations.

- (3) Different fees may be prescribed for different applications.

- (4) To avoid doubt, a fee is in addition to -

(a) the amount that a person specifies in an application as the amount that the person is prepared to pay for -

- (i) a prospecting permit; or,
- (ii) an exploration licence; or,
- (iii) a retention lease; or,
- (iv) a mining licence.

57. Application may set out additional matters - The applicant for the grant (including renewal) of a title under this Act may set out any additional matters that the applicant wishes to be considered.

58. How multiple applications are dealt with - If a block is covered by 2 or more applications for a permit, licence or lease, the Authority must deal with the applications in the order in which they are received.

59. Authority may require further information - (1) This section applies to -

- (a) an application for the grant or renewal of a title under this Act; and,
- (b) an application for the variation of a mining licence.

(2) The Authority may, by written notice given to the applicant, require the applicant to give the Authority, within the period specified in the notice, further information in connection with the application.

(3) If the applicant breaches the requirement, the Authority may, by written notice given to the applicant -

- (a) refuse to consider the application; or,
- (b) refuse to take any action, or any further action, in relation to the application.

(4) Subsection (3) has effect despite any provision of this Act that requires the Authority to -

- (a) consider the application; or,
- (b) take any particular action in relation to the application.

Division 2 – Offer Documents

60. Offer documents - (1) This section applies to an offer document that relates to an application for the grant or renewal of a title under this Act.

(2) The Authority must not issue an offer document to an applicant for a title under this Act unless and until the Authority is satisfied that the applicant has complied with the environmental impact assessment and permitting requirements of the Environment Act.

(3) The offer document must contain -

- (a) a summary of the conditions to which the permit, licence or lease will be subject; and,
- (b) a statement to the effect that the application will lapse if the applicant does not make a request under subsection (4).

(4) The table has effect -

| Acceptance of offer by applicant | | | |
|-----------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Item | Column 1 | Column 2 | Column 3 |
| | If an offer document relates to an application for the grant of... | the applicant may, within... | by written notice given to the Authority, request the Authority to grant the applicant... |
| 1 | a prospecting permit | whichever of the following periods is applicable: (a) 30 days after the offer document was | the permit. |

| | | | |
|----------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| | | given to the applicant; (b) such longer period, not more than 60 days after the offer document was given to the applicant, as the Authority allows; | |
| 2 | renewal of a prospecting permit | 30 days after the offer document was given to the applicant, | the renewal of the permit. |
| 3 | an exploration licence | 30 days after the offer document was given to the applicant, | the licence. |
| 4 | renewal of an exploration licence | 30 days after the offer document was given to the applicant, | the renewal of the licence. |
| 5 | a retention lease | whichever of the following periods is applicable: (a) 30 days after the offer document was given to the applicant; (b) such longer period, not more than 60 days after the offer document was given to the applicant, as the Authority allows; | the lease. |
| 6 | renewal of a retention lease | 30 days after the offer document was given to the applicant, | the renewal of the lease. |
| 7 | a mining licence | whichever of the following periods is applicable: (a) 90 days after the | the licence. |

| | | | |
|----------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| | | offer document was given to the applicant; (b) such longer period, not more than 180 days after the offer document was given to the applicant, as the Authority allows; | |
| 8 | renewal of a mining licence | 30 days after the offer document was given to the applicant, | The renewal of the licence. |

(5) The Authority may allow a longer period under paragraph (b) of column 2 of items 1 and 5 of the table only on written application made by the applicant within the period of 30 days mentioned in paragraph (a) of that column.

(6) The Authority may allow a longer period under paragraph (b) of column 2 of item 7 of the table only on written application made by the applicant within the period of 90 days mentioned in paragraph (a) of that column.

(7) If an applicant does not make a request under an item of the table within the period applicable under column 2 of the table, the application lapses at the end of that period.

Division 3 – Consultation on Application Decisions

61. Consultation - adverse decisions - (1) This section applies to a decision set out in the table, and the *affected person* in relation to that decision is set out in the table.

| Decisions and affected persons | | | |
|---------------------------------------|---------------------------------------------------|-----------------------------------------|------------------------|
| Item | Column 1 | Column 2 | Column 3 |
| | Provision under which the decision is made | Decision of the Authority | Affected person |
| 1 | section 92 | refusal to renew a prospecting permit | the permittee |
| 2 | section 121 | refusal to renew an exploration licence | the licensee |
| 3 | section 156 | refusal to renew a retention lease | the lessee |
| 4 | section 199 | refusal to renew a mining licence | the licensee |

| | | | |
|---|-------------|--------------------------------------------------------------|------------------|
| 5 | Section 181 | Refusal to grant a mining licence to an exploration licensee | the licensee |
| 6 | section 210 | Cancellation of a title | the title-holder |

- (2) Before making the decision the Authority must -
- (a) by written notice given to the affected person, give at least 30 days notice of the Authority's intention to make the decision; and,
 - (b) give a copy of the notice to such other persons (if any) as the Authority thinks fit.
- (3) The notice must -
- (a) set out details of the decision that is proposed to be made; and
 - (b) set out the reasons for the proposal; and
 - (c) invite a person to whom the notice, or a copy of the notice, has been given to make a written submission to the about the proposal; and,
 - (d) specify a time limit for making that submission.
- (4) In deciding whether to make the decision, the Authority must take into account any submissions made in accordance with the notice.

Part 2.3 – Titles

62. Simplified outline - The following is a simplified outline of this Part -

This Part provides information on the various titles that are available under this Act under which authorisation may be provided by the Authority to a person to carry out prospecting, exploration and recovery operations under the Act.

This Part also defines the title-holder, the title-area and the nature of associates of a title-holder.

This Part provides also that a title granted under this Act must include certain information.

63. Titles - (1) The following categories of titles may be granted under this Act -
- (a) a prospecting permit;
 - (b) an exploration licence;
 - (c) a mining licence;
 - (d) a retention lease.

Note 1: A prospecting permit is designed to cover the phase of operations involving the search for minerals (such as scientific investigations and reconnaissance surveys) on a non-exclusive basis.

Note 2: An exploration licence is designed to cover the exploration phase of a project and authorises:

- exploration; and,
- the recovery of mineral samples.

Note 3: A retention licence is designed to ensure the retention of rights pending the transition of a project from the exploration phase to the commercial mining phase and authorises:

- exploration; and,
- the recovery of minerals but not as part of a commercial mining operation.

Note 4: A mining licence is designed to cover the commercial mining phase of a project and authorises:

- exploration; and,
- full commercial recovery.

Note 5: A project might make use of any of the following 4 licence arrangements:

- a prospecting permit leading to an exploration licence;
- an exploration licence leading to a mining licence;
- an exploration licence leading to a retention lease and then a mining licence;
- a mining licence (without progressing through an exploration licence/retention lease stage).

Note 6: A permit, licence or lease is granted over a particular area (constituted by blocks).

Note 7: Even though a person has a permit, licence or lease, the person must not interfere unnecessarily with navigation, fishing, resource conservation or other activities in the area.

64. Titles—Holder and title-areas - (1) For the purposes of this Act, the holder of a title is the person whose name is on the Register as the registered holder of the title.

Note: Chapter 5 deals with registration under this Act.

- (2) A title may be held by more than one person.
- (3) For the purposes of this Division, the table has effect -

| Holder and title area | | | |
|------------------------------|---------------------------------------------|--------------------------------|------------------------------------|
| Item | In the case of... | the <i>holder</i> is... | the <i>title area</i> is... |
| 1 | A prospecting permit | the permittee | The permit area |
| 2 | An exploration licence, or a mining licence | The licensee | The licence area. |
| 3 | A retention lease | The lessee | The lease area |

65. Form of title - Subject to the provisions of this Act, a title granted under this Act shall be in the prescribed form, which shall include -

- (a) the name and registered address of the holder;
- (b) the date of the grant of the title;
- (c) the duration of the title and expiry date;

- (d) a description of the area or areas, block or blocks in respect of which the title is granted;
- (e) where applicable, the mineral or minerals in respect of which the title is granted; and,
- (f) the terms and conditions subject to which the rights given by the title may be exercised.

66. Term of title - For the purposes of this Act the table has effect -

| Term of title. | | |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item | A reference in this Act to... | is a reference to... |
| 1 | the term of: (a) a prospecting permit; or (b) an exploration licence; or (c) a mining licence; or, (d) a retention lease. | the period during which the permit, licence or lease remains in force. |
| 2 | a year of the term of: (a) a prospecting permit; or (b) an exploration licence; or (c) a mining licence; or, (d) a retention lease. | a period of one year beginning on: (a) the day on which the permit, licence or lease comes into force; or, (b) <u>any anniversary of that day.</u> |
| 3 | the expiry date of: (a) a prospecting permit; or (b) an exploration licence; or (c) a mining licence; or, (d) a retention lease. | the day on which the permit, licence or lease ceases to be in force. |

67. Shares in a title - (1) A person has a share in a title if the person is the title-holder or one of several holders of the title.

(2) If a holder is entitled to a particular percentage of the value of the rights conferred by a title, that percentage is the holder's share in the title.

Note: A sole holder has a 100% share in the title.

- (3) If -
 - (a) a person is a registered holder of a title; and
 - (b) the person is shown in the Register as being entitled to a specified percentage of the value of the rights conferred by the title;

the person's share in the title is taken to be the percentage specified in the Register.

68. Associates of title-holder - (1) For the purposes of this Act, the following are

the associates of a title-holder -

- (a) associated contractors of the holder;
- (b) associated agents of the holder;
- (c) associated agents of associated contractors;
- (d) associated employees of the holder;
- (e) associated employees of associated contractors;
- (2) A person is an **associated contractor** of the holder if -
 - (a) the person enters an agreement with the holder for carrying out activities under the title; or,
 - (b) the person enters an agreement with a person who is an associated contractor under paragraph (a) or this paragraph for carrying out activities under the title.
- (3) A person is an **associated agent** of the holder if the person is the agent of, or acts on behalf of, the holder in relation to carrying out activities under the title.
- (4) A person is an **associated agent of an associated contractor** if the person is the agent of, or acts on behalf of, the associated contractor in relation to carrying out activities under the title.
- (5) A person is an **associated employee** of the holder if the person is employed by the holder and, in the course of that employment, carries out activities under the title.
- (6) A person is an **associate employee of an associate contractor** if the person is employed by the associate contractor and, in the course of that employment, carries out activities under the title.

69. Variation of titles - If a title is varied in accordance with this Act, a reference in this Act to the permit, licence or lease is a reference to the permit, licence or lease as varied.

70. Renewal of titles - (1) For the purposes of this Act, the table has effect -

| Renewal of titles | | |
|--------------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Column 1 | Column 2 |
| Item | A reference in this Act to... | is a reference to... |
| 1 | the renewal, or the grant of a renewal, of a prospecting permit. | the grant of a prospecting permit over some or all of the blocks specified in the permit, to begin on: <ul style="list-style-type: none"> (a) the day after the expiry date of the permit; or (b) the day after the expiry date of the permit granted on a previous renewal of the permit mentioned in column 1. |

| | | |
|---|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | the renewal, or the grant of a renewal, of a retention lease. | the grant of the lease over all of the blocks in relation to which the lease was in force, to begin on: (a) the day after the expiry date of the lease; or (b) the day after the expiry date of the lease granted on a previous renewal of the lease. |
| 3 | the renewal, or the grant of a renewal, of an exploration licence or a mining licence. | the grant of a mining licence over the block or blocks specified in the licence mentioned in column 1, to begin on: (a) the day after the expiry date of the licence mentioned in column 1; or (b) the day after the expiry date of the mining licence granted on a previous renewal of the licence mentioned in column 1. |

Part 2.4 – Granting and Renewal of Titles
Division 1 – Prospecting Permits
Subdivision 1 – Preliminary

71. Simplified outline - The following is a simplified outline of this Subdivision -

This Part provides for the grant of prospecting permits over blocks in the Seabed of the Cook Islands on a non-exclusive basis.

A prospecting permit authorises the permittee to engage in prospecting operations in the block or blocks in the permit area.

72. Rights conferred by prospecting permit - (1) The registered holder of a prospecting permit shall enjoy non-exclusive rights to undertake prospecting operations in the block or blocks covered by the permit.

(2) The enjoyment of rights referred to in sub-section (1) is subject to the provisions of this Act and the regulations.

73. Duration of prospecting permit - (1) The duration of a prospecting permit is determined using the following table -

Duration of Prospecting Permit

| Item | This kind of permit... | remains in force... |
|-------------|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | An original prospecting permit. | for the period of 2 years beginning on: (a) the day on which the permit is granted; or (b) if a later day is specified in the permit as the day on which the permit is to come into force--that later day. |
| 2 | A prospecting permit granted by way of renewal | for the period of 2 years beginning on: (a) the day on which the permit is granted; or (b) if a later day is specified in the permit as the day on which the permit is to come into force--that later day. |

(2) Subsection (1) has effect subject to this Chapter.

(3) A prospecting permit must not be renewed more than twice in respect of the same block or blocks that form a prospecting area.

Note 1: For a special rule the extension of the duration of a prospecting permit pending decisions on renewal applications see **section 85**.

Note 2: For a special rule on the extension of the duration of a prospecting permit where the holder applies for an exploration licence see **section 90**.

74. Matters to be specified in a prospecting permit - A prospecting permit must specify -

- (a) the blocks covered by the permit;
- (b) the term and expiry date of the permit;
- (c) the permit conditions, including any conditions relating to the conservation, management and protection of the environment.

75. Expiry of Permit - A prospecting permit expires if -

- (a) the term of the permit ends without the permit being renewed; or
- (b) the holder surrenders the permit; or
- (c) an exploration licence, mining licence or retention lease is granted over the blocks in the permit area of the prospecting permit; or,

- (d) the permit is cancelled.
76. Automatic expiry of prospecting permit when other titles take effect - If -
- (a) a prospecting permit is in force under this Act; and
 - (b) the Authority grants an exploration licence over all or some of the blocks in the prospecting permit area; and,
 - (c) the exploration licence comes into force;
- the prospecting permit expires in relation to the blocks covered by the licence.

77. Minerals obtained under prospecting permit - (1) Any minerals acquired in the course of undertaking prospecting operations shall -
- (a) remain the property of the Authority; and,
 - (b) shall not be disposed of or removed from the Cook Islands without the consent of the Authority.
- (2) Subsection (1)(b) does not apply to any prescribed quantity of minerals obtained by the permittee for the exclusive purpose of sampling, assaying, analysis or other similar examination.

Subdivision B – General Applications

78. Application for prospecting permit - (1) A person may apply to the Authority for a prospecting permit over a block or blocks if -
- (a) the block is vacant; and
 - (b) the block is not excluded.

Note: For *excluded blocks* see section 81.

- (2) A block is vacant if no exploration licence, retention lease or mining licence is in force over the block.

79. Application – required information - The application made under section 78 must -
- (a) be made in accordance with the approved form;
 - (b) be made in the approved manner;
 - (c) specify the blocks for which the application is made; and
 - (d) include details of -
 - (i) the prospecting operations that the applicant intends to carry out;
 - (ii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in the operations authorised by the permit;
 - (iii) the technical advice available to the applicant;
 - (v) the financial resources available to the applicant; and,
 - (vi) if the permit is to be held by more than one person—the share of the licence that each prospective holder will hold; and,

- (e) be accompanied by maps that:
 - (i) relate to the blocks; and,
 - (ii) comply with any guidelines or directions issued by the Authority; and,
- (f) specify an address for service of notices under this Act and the regulations.

Note 1: Section 55 contains additional provisions about application procedures.

Note 2: Section 56 requires the application to be accompanied by an application fee.

Note 3: Section 59 enables the Authority to require the applicant to give further information.

80. Grant of prospecting permit – offer document - (1) This section applies if an application for the grant of a prospecting permit has been made in accordance with this Act.

- (2) The Authority may -
 - (a) subject to section 60, give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant a prospecting permit over the block or blocks specified in the offer document; or
 - (b) by written notice given to the applicant, refuse to grant a prospecting permit to the applicant.

81. Blocks which are excluded - (1) A block is excluded if -

- (a) a prospecting permit over a block has been surrendered or cancelled; and,
 - (b) a period of 30 days after the day on which the permit was surrendered or cancelled has not ended.
 - (2) A block is excluded for a particular applicant if -
 - (a) the applicant previously applied for a prospecting permit over the block; and
 - (b) the application was refused; and,
 - (c) a period of 6 months after the day on which the previous application was refused has not ended.
 - (3) A block is excluded for a particular applicant if -
 - (a) the applicant was previously the holder of a title in respect of that block; and
 - (b) the previous title was surrendered or cancelled.
 - (4) A block is excluded for a particular applicant if -
 - (a) the applicant was previously a holder of a title over the block; and
 - (b) the holder was -
 - (i) required by the conditions attaching to the title; or,
 - (ii) given a direction;
- to provide the Authority with information; and
- (c) the holder provided the information; and
 - (d) the holder surrendered the licence or lease; and,

- (e) a period of 6 months from the day on which the title-holder provided the information has not ended.

82. Authority may determine that excluded block is available - (1) A person who wants to apply for a prospecting permit over a block that is excluded may apply to the Authority for a determination under subsection (2).

(2) The Authority may determine that the person may apply for the permit over the block despite section 81.

(3) A determination by the Authority under subsection (2) must be made in writing and notified in the *Gazette* and a national newspaper of the Cook Islands.

83. Refusal to grant prospecting permit - Where an application for a prospecting permit has been made under this Act, and the Authority is not satisfied as to the matters referred to in section 79 in relation to the application, the Authority must by written notice given to the applicant refuse to grant a prospecting permit to the applicant.

84. Grant of prospecting permit – If -

- (a) an applicant for a prospecting permit has been given an offer document under section 80; and,
 - (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section;
- the Authority must grant the applicant a prospecting permit.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period—see **subsection 60(7)**.

Subdivision C – Renewal of Prospecting Permit

85. Application for renewal of prospecting permit - (1) A permittee may apply to the Authority for the renewal by the Authority of the permit in relation to such of the blocks the subject of the permit as are specified in the application.

Note 1:Section 55 contains additional provisions about application procedures.

Note 2:Section 56 requires the application to be accompanied by an application fee.

Note 3:Section 59 enables the Authority to require the applicant to give further information.

(2) An application to renew a prospecting permit must be made at least 90 days before the expiry date of the permit.

(3) Despite subsection (2), the Authority may accept an application to renew a prospecting permit if the application is made -

- (a) later than 90 days before the expiry date of the permit; and,
 - (b) before the expiry date of the permit.
- (4) If -
- (a) a permittee makes an application to renew the permit; and
 - (b) the permit would, apart from this subsection, expire -

(i) before the Authority grants, or refuses to grant, the renewal of the permit; or,
 (ii) before the application lapses;

the permit continues in force -

(c) until the Authority grants, or refuses to grant, the renewal of the permit; or,
 (d) until the application so lapses;

whichever happens first.

86. Application for renewal of permit – required information - An application for the renewal of a prospecting permit made under section 85 shall be accompanied by -

- (a) a report on the progress of prospecting operations;
- (b) a statement of costs incurred in the course of undertaking operations;
- (c) particulars of the programme of prospecting operations that the applicant proposes to carry out during the renewal period; and,
- (d) a description and coordinates of the block or blocks in respect of which renewal is sought.

87. Renewal of prospecting permit- offer document - (1) This section applies if an application for the renewal of a prospecting permit has been made under section 85.

- (2) The Authority may -
 - (a) subject to section 60, give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to renew a prospecting permit over the block or blocks specified in the offer document; or,
 - (b) by written notice given to the applicant, refuse to grant a prospecting permit to the applicant.

Note 1: Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under section 59 to provide further information, the Authority may refuse to give the applicant an offer document-see subsection 59(3).

88. Refusal to grant prospecting permit-renewal - Where an application for the renewal of a prospecting permit has been made under section 85 and the Authority is not satisfied as to the matters referred to in section 86 in relation to the application, the Authority must by written notice given to the applicant refuse to grant a renewal of a prospecting permit.

Note: Consultation procedures apply – see section 61.

89. Grant of prospecting permit – If -

- (a) an applicant has been given an offer document under section 87; and,
- (b) the applicant has made a request under section 60 in relation to the

offer document within the period applicable under that section; the Authority must renew a prospecting permit.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period—see **subsection 60 (7)**.

90. Extension of prospecting permit if holder applies for exploration licence –
Where -

- (a) a prospecting permit over a block or blocks cannot be renewed or further renewed; and,
- (b) before the time when the permit would, apart from this subsection, expire, the holder applies to the Authority for the grant of an exploration licence over the block or one or more of the blocks;

the table has effect –

Extension of Prospecting Permit

| Item | In this case... | the permit continues in force over the block or blocks covered by the application until... |
|-------------|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 1 | The Authority decides to grant an exploration licence over the block or one or more of the blocks. | the licence is granted, the permit holder withdraws the application or the application lapses. |
| 2 | the application is for an exploration licence and the Authority decided not to grant the licence. | notice of the decision is given to the permit holder. |

Subdivision D – Obligations attaching to Prospecting Permit

91. Conditions of prospecting permit - (1) The Authority may grant or renew a prospecting permit subject to whatever conditions the Authority thinks appropriate.

(2) If the Authority grants or renews a permit subject to conditions, the conditions must be specified in the permit.

(3) Without limiting subsection (1), the Authority may attach the following kinds of conditions to the grant or renewal of a permit -

- (a) a condition requiring the permittee to take out insurance as required by the Authority;

- (b) a condition requiring the permittee to carry out certain work in or in relation to the permit during the term of the permit and to comply with directions concerning that work given in accordance with this Act;
 - (c) a condition requiring the permittee to lodge a security with the Authority;
 - (d) a condition requiring the permittee to keep specified information;
 - (e) a condition requiring the permittee to give to the Authority on request, specified information in accordance with this Act;
 - (f) a condition requiring the permittee to take steps to protect the environment of the permit area, including conditions relating to -
 - (i) protecting wildlife; or,
 - (ii) minimising the effect on the environment of the permit area, including the establishment of buffer zones.
 - (g) a condition requiring the permittee to repair any damage to the environment caused by activities in the permit area;
 - (h) a condition requiring the permittee to pay a specified penalty to the Government if the permittee does not comply with a condition.
- (4) A condition under paragraph (3)(c) must specify -
- (a) the amount of the security required; and
 - (b) the kind of security required; and
 - (c) the manner and form in which the security is to be lodged.

(5) Without limiting paragraph (3)(c), a condition under that paragraph may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify -

- (a) the kind of person who is to give the guarantee; and
- (b) the terms of the guarantee.

92. General Obligations of Permit Holder - (1) The sources of obligations associated with a prospecting permit are -

- (a) the permit conditions;
- (b) obligations arising from directions given by the Authority; and,
- (c) obligations imposed by this Act and the regulations.

(2) If a permit has 2 or more holders, all of the holders are jointly and severally bound by the obligations that attach to the permit.

Division 2 – Exploration Licences
Subdivision A – Preliminary

93. Simplified outline - The following is a simplified outline of this Subdivision -

This Part provides for the grant of exploration licenses over blocks in the Seabed of the Cook Islands.

An exploration licence authorises the licensee to engage in exploration operations in blocks covered by the licence area on an exclusive basis.

94. Rights Conferred by Exploration Licence - (1) The registered holder of an exploration licence shall enjoy exclusive rights to carry out exploration and prospecting operations in the block or blocks in the licence area in accordance with the provisions of this Act.

(2) The licensee may, in the exercise of the rights conferred under an exploration licence establish and maintain collecting systems and equipment, platforms, installations, processing facilities, transportation systems and other plant and machinery required to carry out exploration operations.

95. Exploration Licence – minerals obtained – (1) Any minerals acquired in the course of undertaking operations under an exploration licence -

- (a) remain the property of the Government; and,
- (b) must not be disposed of or removed from the Cook Islands without the consent of the Authority.

(2) A person who does not comply with subsection (1) commits an offence -

Maximum penalty for individuals: 300 penalty units.

Maximum penalty for body corporate: 3,000 penalty units

Note: Section 319 provides the level of a *penalty unit*.

(3) Strict liability applies to subsection (2).

(4) Subsection (1)(b) does not apply to any prescribed quantity of minerals obtained by the licensee for the exclusive purpose of sampling, assaying, analysis or other similar examination.

96. Duration of an exploration licence - The duration of an exploration licence is determined using the following table -

Duration of exploration licence

| Item | This kind of licence... | remains in force... |
|-------------|---------------------------------|--------------------------------------------------------------------------------|
| 1 | An original exploration licence | for the period of 4 years beginning on: (a) the day on which the licence is |

| | | |
|----------|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | granted; or (b) if a later day is specified in the licence as the day on which the licence is to come into force-that later day. |
| 2 | An exploration licence granted by way of renewal | for the period of 2 years beginning on: (a) the day on which the licence is granted; or (b) if a later day is specified in the licence as the day on which the licence is to come into force-that later day. |

(2) Subsection (1) has effect subject to this Chapter.

Note 1:For a special rule about the extension of the duration of an exploration licence if the holder applies for a mining licence or a retention lease see **section 118**.

Note 2:For a special rule about the extension of the duration of an exploration licence pending decisions on renewal applications see: **section 119**.

97. Matters to be specified in an exploration licence - An exploration licence must specify -

- (a) the blocks covered by the licence; and
- (b) the term of the licence; and,
- (c) the licence conditions.

98. Blocks which are excluded - (1) A block is excluded if -

- (a) an exploration licence over a block has been surrendered or cancelled; and,
- (b) a period of 30 days after the day on which the licence was surrendered or cancelled has not ended.
- (2) A block is excluded for a particular applicant if -
 - (a) the applicant previously applied for an exploration licence over the block; and
 - (b) the application was refused; and,
 - (c) a period of 6 months after the day on which the previous application was refused has not ended.
- (3) A block is excluded for a particular applicant if -
 - (a) the applicant was previously the holder of a title in respect of that block; and
 - (b) the previous title was surrendered or cancelled.
- (4) A block is excluded for a particular applicant if -
 - (a) the applicant was previously a holder of a title over the block;

- and
 - (b) the holder was -
 - (i) required by the conditions attaching to the title; or,
 - (ii) given a direction;
- to provide the Authority with information; and
- (c) the holder provided the information; and
 - (d) the holder surrendered the licence or lease; and,
 - (e) a period of 6 months from the day on which the title-holder provided the information has not ended.

99. Authority may determine that excluded block is available - (1) A person who wants to apply for an exploration licence over a block that is excluded may apply to the Authority for a determination under subsection (2).

(2) The Authority may determine that the person may apply for the licence over the block despite section 102.

(3) A determination by the Authority under subsection (2) shall be made in writing and shall be notified in the *Gazette* and publicised in a national newspaper of the Cook Islands.

Subdivision B – Applications by Tender

100. Exploration licence – invitation to tender - (1) The Authority may, by notice published in accordance with section 49 -

- (a) invite applications for the grant by the Authority of an exploration licence over a block, or any or all blocks, specified in the notice; and,
 - (b) specify a period within which applications may be made.
- (2) If the Authority has published a notice under subsection (1) inviting applications for the grant of an exploration licence over a block, the block must not be specified in another notice under subsection (1) of this section at any time during the period specified in the subsection (1) notice.

Number of blocks

(3) The Authority shall determine the maximum and minimum number of blocks specified in an application under this section.

(4) The blocks specified in an application under this section must be blocks that are constituted by graticular sections that -

- (a) constitute a single area; and,
 - (b) are such that each graticular section in that area has a side in common with at least one other graticular section in that area.
- (5) For the purposes of subsection (4), a block immediately adjoins another block if the graticular section that constitutes or includes that block and the graticular section that constitutes or includes that other block -
- (a) have a side in common; or,
 - (b) are joined together at one point only.

(6) Subsection (4) does not apply to applications if the Authority, for reasons that the Authority thinks sufficient, includes in the subsection (1) notice a direction that subsection (4) does not apply to those applications.

101. Application for exploration licence over tender block - If a tender block licence notice has been published inviting applications for an exploration licence, a person may apply for the licence.

102. Application for tender exploration licence – required information - An application made for the purposes of section 101 must -

- (a) be made in accordance with the approved form; and
- (b) be made in the approved manner; and
- (c) specify the blocks for which the application is made; and
- (d) include details of -
 - (i) the exploration operations that the applicant intends to carry out; and
 - (ii) 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 the operations authorised by the licence; and
 - (iv) the technical advice available to the applicant; and
 - (v) the financial resources available to the applicant; and,
 - (vi) if the licence is to be held by more than one person—the share of the licence that each prospective holder will hold; and
- (e) be accompanied by maps that -
 - (i) relate to the blocks; and
 - (ii) comply with any guidelines or directions issued by the Authority; and
- (f) specify an address for service of notices under this Act and the regulations.

103. Grant of tender exploration licence – offer document - (1) This section applies if an application for the grant of an exploration licence has been made under section 101.

- (2) The Authority may -
 - (a) give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant an exploration licence over the block or blocks specified in the offer document; or,
 - (b) by written notice given to the applicant, refuse to grant an exploration licence to the applicant.

Note 1:Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under **section 59** to provide further information, the Authority may refuse to give the applicant an offer document – see **subsection 59(3)**.

104. Ranking of multiple applicants for tender exploration licence - (1) This section applies if -

- (a) the Authority publishes a notice under subsection 100(1) inviting applications for the grant of an exploration licence;
- (b) at the end of the period specified in the notice, 2 or more applications have been made under section 101 for the grant of an exploration licence over the same block or blocks.

(2) The Authority may give an offer document under section 103 to whichever applicant, in the Authority's opinion, is most deserving of the grant of the exploration licence

(3) In determining which of the applicants is most deserving of the grant of the exploration licence, the Authority must have regard to criteria made publicly available by the Authority.

(4) For the purposes of this section, the Authority may rank the applicants in the order in which, in the Authority's opinion, they are deserving of the grant of the exploration licence, with the most deserving applicant being ranked highest.

(5) The Authority may exclude from the ranking any applicant who, in the Authority's opinion, is not deserving of the grant of the exploration licence.

(6) If the Authority -

- (a) has considered the information accompanying the applications; and
- (b) is of the opinion that 2 or more of the applicants are equally deserving of the grant of the exploration licence;

the Authority may, by written notice given to each of those applicants, invite them to give the Authority details (the work/expenditure details) of their proposals for additional work and expenditure in relation to the block or blocks concerned.

(7) A notice under subsection (6) must -

- (a) specify the kinds of work/expenditure details that the Authority considers to be relevant in determining which of the applicants is most deserving of the grant of the exploration licence; and,
- (b) specify the period within which the work/expenditure details must be given to the Authority.

(8) If an applicant gives work/expenditure details to the Authority, and those details are -

- (a) of a kind specified in the notice; and
- (b) given within the period specified in the notice;

the Authority must have regard to the details in determining which of the applicants is most deserving of the grant of the exploration licence.

105. Refusal to grant exploration licence – If -

- (a) an application for an exploration licence has been made under section 101; and
- (b) the Authority is not satisfied as to the matters referred to in subsection 102) in relation to the application;

the Authority must, by written notice given to the applicant, refuse to grant a prospecting permit to the applicant.

106. Grant of exploration licence – If -

- (a) an applicant has been given an offer document under section 103; and,
- (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section;

the Authority must grant the applicant an exploration licence over the block or blocks specified in the offer document.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period—see **subsection 60 (7)**.

107. Withdrawal of application for tender exploration licence - (1) This section applies if the Authority publishes a notice under subsection 100 (1) inviting applications for the grant of an exploration licence.

(2) If a person has made an application, the person may, by written notice given to the Authority, withdraw the application at any time before an exploration licence is granted as a result of the application.

(3) If 2 or more persons have made a joint application, all of those persons may, by written notice given to the Authority withdraw the application at any time before an exploration licence is granted as a result of the application.

(4) If -

- (a) a joint application was made under section 101 for the grant of an exploration licence; and,
- (b) all of the joint applicants, by written notice given to the Authority, inform the Authority that one or more, but not all, of them, as specified in the notice, withdraw from the application;

then -

- (c) the application continues in force as if it had been made by the remaining applicant or applicants; and
- (d) if the Authority had given the joint applicants an offer document in relation to the application-the Authority is taken to have given the offer document to the remaining joint applicants.

108. Effect of withdrawal or lapse of application - (1) This section applies if -

- (a) 2 or more applications have been made for the grant of an exploration licence over the same block or blocks; and,
- (b) one or more, but not all, of the applications are withdrawn or have lapsed.
- (2) A withdrawn or lapsed application is taken not to have been made.
- (3) If the Authority gave an offer document in relation to withdrawn or lapsed application, the Authority is taken not to have given an offer document in relation to the withdrawn or lapsed application.
- (4) If the applicant, or one of the applicants, whose application had been withdrawn had requested the Authority under section 106 to grant an exploration licence to the applicant concerned, the request is taken not to have been made.
- (5) If the following conditions are satisfied in relation to a remaining applicant -
 - (a) the Authority had refused to grant an exploration licence to the remaining applicant;
 - (b) the Authority did not exclude the remaining applicant from the ranking under subsection 104(5);
 the refusal is taken not to have occurred.

Subdivision C – General Applications

109. Application for exploration licence – block not reserved for tender - (1) A person may apply to the Authority for an exploration licence over a block if -

- (a) the block is vacant; and
- (b) the block is not excluded.

Note: For *excluded blocks* see **section 98**.

(2) A block is vacant if no exploration licence, retention lease or mining licence is in force over the block or blocks.

110. Application – required information - (1) The application made under section 109 must -

- (a) be made in accordance with the approved form; and
- (b) be made in the approved manner; and
- (c) specify the blocks for which the application is made; and
- (d) include details of -
 - (i) the exploration operations that the applicant intends to carry out;
 - (ii) the amount of money that the applicant intends to spend on those activities;
 - (iii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in the operations authorised by the licence;

- (iv) the technical advice available to the applicant;
- (v) the financial resources available to the applicant;
- and,
- (vi) if the licence is to be held by more than one person—
the share of the licence that each prospective holder
will hold; and
- (e) be accompanied by maps that -
 - (i) relate to the blocks; and
 - (ii) comply with any guidelines or directions issued by the
Authority; and
- (f) specify an address for service of notices under this Act and the
regulations.

Note 1: Section 55 sets out standard application procedures.

Note 2: Paragraph (c): the Authority may, after consulting the applicant, vary the blocks applied for (see: section 55).

(2) The applicant may include in the application any other information
that the applicant thinks is relevant.

(3) The application must be lodged with the Authority.

111. Application must be advertised - (1) The applicant for an exploration licence
must advertise the application in a national newspaper of the Cook Islands.

(2) The advertisement published under subsection (1) must contain -

- (a) the applicant's name and address; and
- (b) a map and description of the blocks applied for that are
sufficient for the blocks to be identified; and
- (c) the address of the Authority; and
- (d) a statement -
 - (i) that the applicant has applied for an exploration licence
over the blocks described in the notice; and,
 - (ii) that invites comment from the public on the
application; and
 - (iii) that requests that comments be sent to the applicant and
the Authority within 30 days after the day on which the
advertisement is published.

(3) The advertisement must be published as soon as possible after the
applicant applies for an exploration licence.

(4) Subject to subsection (5), the advertisement must be published within
14 days after the day on which the applicant lodges the application.

(5) If -

- (a) the applicant applies to the Authority within the 14 day period
referred to in subsection (4) for an extension of the period; and
- (b) the Authority extends the period;

the advertisement must be published within the period as extended by the Authority.

Subdivision D – Renewal of Exploration Licence

112. Application for renewal of exploration licence - (1) A licensee may apply to the Authority for the renewal of an exploration licence in relation to such of the blocks the subject of the licence as are specified in the application.

Note 1: Section 55 contains additional provisions about application procedures.

Note 2: Section 56 requires the application to be accompanied by an application fee.

- (2) Subsection (1) has effect subject to section 117 (Relinquishment).
- (3) An application to renew an exploration licence must be made at least 90 days before the expiry date of the licence.
- (4) Despite subsection (3), the Authority may accept an application to renew an exploration licence if the application is made -
 - (a) later than 90 days before the expiry date of the licence; and
 - (b) before the expiry date of the licence.
- (5) If -
 - (a) an exploration licensee makes an application to renew the licence; and
 - (b) the licence would, apart from this subsection, expire -
 - (i) before the Authority grants, or refuses to grant, the renewal of the licence; or
 - (ii) before the application lapses;the licence continues in force:
 - (c) until the Authority grants, or refuses to grant, the renewal of the licence; or
 - (d) until the application so lapses;whichever happens first.

113. Application for renewal of exploration licence - information required - An application for the renewal of an exploration licence under section 112 must -

- (a) be made in accordance with the approved form;
- (b) be made in the approved manner;
- (c) specify the blocks which the application is made; and
- (d) include details of -
 - (i) the exploration operations that the applicant carried out under the exploration licence including a statement of costs incurred in the course of undertaking operations;
 - (ii) a description of the exploration operations that the applicant proposes to carry out during the renewal period;

- (iii) a description of the mineral(s) in respect of which the licence is sought;
- (iv) a proposed programme of exploration operations that outlines operation plans during the period of renewal;
- (v) a plan giving particulars of the applicant's proposals with respect to the employment and training of Cook Island citizens;
- (vi) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
- (vii) the amount of money that the applicant intends to spend on exploration activities;
- (viii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in the operations authorised by the licence;
- (ix) the technical advice available to the applicant;
- (x) the financial resources available to the applicant; and,
- (xi) if the licence is to be held by more than one person—the share of the licence that each prospective holder will hold; and,
- (e) be accompanied by a description and coordinates of the area or areas of the Seabed of the Cook Islands in respect of which a renewal of the licence is sought, including maps that -
 - (xii) relate to the blocks; and,
 - (xiii) comply with any guidelines or directions issued by the Authority; and
- (f) specify an address for service of notices under this Act and the regulations.

114. Grant of renewal – offer document - (1) This section applies if an application for the renewal of an exploration licence has been made under section 112.

- (2) The Authority may -
 - (a) give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant a renewal of the exploration licence over the block or blocks specified in the offer document; or,
 - (b) by written notice given to the applicant, refuse to grant an exploration licence to the applicant.

Note 1: Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under section 59 to provide further information, the Authority may refuse to give the applicant an offer document - see subsection 59(7).

115. Refusal to grant renewal – If -

- (a) an application for the renewal of an exploration licence has been made under section 112; and,

(b) the Authority is not satisfied as to the matters referred to in section 113 in relation to the application;
the Authority must, by written notice given to the applicant, refuse to grant a renewal to the application the applicant.

Note: Consultation procedures apply – see **section 61**.

116. Grant of renewal of exploration licence – If -

- (a) an applicant has been given an offer document under section 114; and,
- (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section;

the Authority must grant the applicant a renewal of the exploration licence over the block or blocks specified in the offer document.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period - see **subsection 60(7)**.

117. Relinquishment - (1) This section sets out the standard halving rules that apply when an exploration licence is renewed.

(2) This section applies to -

- (a) an application for renewal of an exploration licence that is capable of being renewed; and,
- (b) an application for renewal that is covered by item 1 or 2 of the table in subsection (3).

(3) The maximum number of blocks in relation to which an application for a renewal of an exploration licence may be made is worked out using the table -

| Maximum number of blocks | | |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Item | In this case... | the maximum number of blocks is... |
| 1 | the number of blocks in relation to which the licence is in force is a number (the <i>divisible number</i>) that is divisible by 2 without remainder | One-half of the divisible number. |
| 2 | the number of blocks in relation to which the licence is in force is a number that is one less or one more than a number (the <i>divisible number</i>) that is divisible by 4 without remainder | One-half of the divisible number |

(2) The Authority may -

- (a) give permission for the surrender of blocks in a licence area if the licence area remaining after the proposed surrender would not consist of more than 3 blocks; or
- (b) give permission for a licence area to be reduced by less than

50% if the Authority considers that there are special circumstances present in relation to the renewal application.

Subdivision E – Extension of Term of Exploration Licence

118. Extension of duration of exploration licence if licensee applies for mining licence or retention lease - (1) Where -

- (a) an exploration licence over a block or blocks cannot be renewed or further renewed; and,
- (b) before the time when the licence would, apart from this subsection, expire, the licence registered holder applies to the Authority for the grant of a mining licence or a retention lease over the block or one or more of the blocks;

the table has effect –

Extension of Exploration Licence

| Item | In this case... | the licence continues in force over the block or blocks covered by the application until... |
|-------------|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 1 | The Authority decides to grant a mining licence or a retention lease over the block or one or more of the blocks. | the lease or licence is granted, the holder withdraws the application or the application lapses. |
| 2 | the application is for a retention lease and the Authority decided not to grant the licence. | the end of the period of one year after the day on which the notice of refusal was given to the holder. |
| 3 | the application is for a mining licence and the Authority decided not to grant the licence. | notice of the decision is given to the holder. |

119. Extension of exploration licence - activities disrupted - (1) If -

- (a) an exploration licence authorises the licensee to carry out an

activity; and,
 (b) circumstances beyond the control of the licensee prevent the licensee from carrying out the activity;
 the licensee may apply to the Authority for an extension of the licence.

- (2) The application must be made -
 - (a) within 30 days after the day on which the licensee first became aware of the circumstances; and,
 - (b) before the licence expires.
- (3) The application must be lodged with the Authority.

120. Grant of licence extension -- activities disrupted - (1) Subject to subsection (2), if a licensee applies for an extension under section 119, the Authority -

- (a) must grant an extension of the licence if the Authority is satisfied that -
 - (i) the holder is unable to carry out the activities authorised by the licence; and,
 - (ii) the holder is unable to do so because of circumstances beyond the holder's control; and
 - (iii) the period during which the holder is unable to do so -
 - (A) occurs while the licence is in force; and
 - (B) does not occur during any excluded time; and
- (b) must refuse the application for extension if the Authority is not satisfied of the matters referred to in paragraph (a).
- (2) The period for which the extension is granted must not be longer than the disruption period for the licence less any excluded time for the licence.
- (3) The extension may be granted subject to whatever conditions the Authority thinks appropriate.
- (4) In this section -

"disruption period" for a licence means the period during which the licensee is unable to carry out activities authorised by the licence because of circumstances beyond the holder's control.

"excluded time" for a licence means any period during which the licence was in force prior to the disruption period.

121. Extension of licence - other circumstances - (1) A licensee may apply to the Authority for an extension of the licence if the Authority -

- (a) suspends a licence condition; or,
- (b) exempts the licensee from complying with a licence condition.
- (2) The application -
 - (a) must be made not later than 90 days before the licence expires; and,

- (b) must be lodged with the Authority.

122. Grant of licence extension - the circumstances - (1) Subject to subsection (2), if a licensee applies for an extension under section 121, the Authority -

- (a) may grant an extension of the licence; or,
- (b) may refuse to grant an extension of the licence.

(2) The extension must not be for a period that is longer than the period of the suspension or exemption.

(3) The extension may be granted subject to whatever conditions the Authority thinks appropriate.

Subdivision F – Obligations attaching to Exploration Licence

123. General obligations - (1) The sources of obligations associated with an exploration licence are -

- (a) the licence conditions; and
- (b) obligations arising from directions given by the Authority; and,
- (c) obligations imposed by this Act and the regulations.

(2) If a licence has 2 or more holders, all of the holders are jointly and severally bound by the obligations that attach to the licence.

124. Conditions of exploration licence - (1) The Authority may grant or renew an exploration licence subject to whatever conditions the Authority thinks appropriate.

(2) If the Authority grants or renews a licence subject to conditions, the conditions must be specified in the licence.

(3) Without limiting subsection (1), the Authority may attach the following kinds of conditions to the grant or renewal of a licence.

(4) Without limiting subsection (1), the Authority may attach the following kinds of conditions to the grant or renewal of a licence -

- (a) a condition requiring the licensee to take out insurance as required by the Authority;
- (b) a condition requiring the licensee to carry out certain work in or in relation to the licence during the term of the licence; and to comply with directions concerning that work given in accordance with this Act;
- (c) a condition requiring the licensee to lodge a security with the Authority;
- (d) a condition requiring the licensee to keep specified information;
- (e) a condition requiring the licensee to give to the Authority on request, specified information in accordance with this Act;
- (f) a condition requiring the licensee to give employment preferences to qualified Cook Island resident to the maximum

- extent possible;
 - (g) a condition requiring the licensee to give preference to the maximum extent possible -
 - (i) to materials and products made in the Cook Islands; and,
 - (ii) to service providers located in the Cook Islands and owned and operated by Cook Islanders.
 - (h) a condition requiring the licensee to conduct training programmes for the benefit of employees; and
 - (i) a condition requiring the licensee to take steps to protect the environment of the licence area including conditions relating to -
 - (i) protecting wildlife; or
 - (ii) minimising the effect on the environment of the licence area and the area surrounding the licence area.
 - (j) a condition requiring the licensee to repair any damage to the environment caused by activities in the licence area;
 - (k) a condition requiring the licensee to pay a specified penalty to the Government if the licensee does not comply with a condition.
 - (5) A condition under paragraph (4)(c) must specify -
 - (a) the amount of the security required; and
 - (b) the kind of security required; and
 - (c) the manner and form in which the security is to be lodged.
 - (6) Without limiting paragraph (4)(c), a condition under that paragraph may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify -
 - (a) the kind of person who is to give the guarantee; and
 - (b) the terms of the guarantee.
 - (7) In making a decision about the conditions to which an exploration licence granted on renewal will be subject, the Authority must have regard to -
 - (a) the investment of the licensee, or of any former licensee, during the term of -
 - (i) the original exploration licence; or
 - (ii) any exploration licence granted on a previous renewal;
 where the investment relates to -
 - (iii) operations authorised by the licence concerned; or
 - (iv) any other development connected with those operations; and
 - (b) such other matters (if any) as the Authority considers relevant.
125. Automatic suspension of conditions if licence rights are suspended – If -
- (a) the Authority suspends particular rights under an exploration licence;

and

(b) a licence condition is affected by the suspension;
the licence condition is suspended for the period of the suspension of the rights.

126. Conditions – work practices - If a person who is -

- (a) a licensee; or
- (b) an associate of the holder;

carries out activities in the licence area that are authorised by the licensee, the person must take all reasonable steps -

- (c) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the seabed mining industry; and
- (d) to protect the health, safety and welfare of people engaged in the activities in and about the licence area; and
- (e) to maintain in good repair all structures and equipment brought into the licence area by the person; and
- (f) to remove from the licence area any infrastructure facilities, vessel, 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 activities.

127. Exploration licence holder must keep specified records - The holder of an exploration licence must -

- (a) keep whatever records, cores and samples;
- (b) give whatever records, cores and samples to the Authority for inspection; and,
- (c) make whatever returns;

are necessary to comply with -

- (d) the regulations; or
- (e) the licence conditions; or
- (f) a direction given by the Authority.

128. Expiry of Exploration Licenses - An exploration licence expires if -

- (a) the term of the licence ends without the licence being renewed; or
- (b) the holder surrenders the licence; or
- (c) a retention lease is granted over the blocks in the licence area of the exploration licence; or
- (d) a mining licence is granted over the blocks in the licence area of the exploration licence; or,
- (e) the licence is cancelled.

129. Automatic expiry of exploration licence when retention lease takes effect – If

-

- (a) an exploration licence in force under this Act; and
 - (b) the Authority grants a retention lease over all or some of the blocks in the exploration licence area; and,
 - (c) the retention lease comes into force;
- the exploration licence expires in relation to the blocks covered by the retention lease.

130. Automatic expiry of exploration licence when mining licence takes effect – If

- (a) an exploration licence in force under this Act; and
 - (b) the Authority grants a mining licence over all or some of the blocks in the exploration licence area; and,
 - (c) the mining licence comes into force;
- the exploration licence expires in relation to the blocks covered by the mining licence.

Division 3 – Locations

131. Simplified outline - The following is a simplified outline of this Division -

If a mineral deposit is identified in an exploration licence area, the licensee may declare a location over the block or blocks in which the mineral deposit is located.

Generally, blocks must be nominated for declaration by the licensee.

The Authority may require the licensee to nominate the blocks.

The declaration may be revoked or varied in certain circumstances.

132. Nomination of blocks as a location - (1) If -

- (a) a mineral deposit is identified in an exploration licence area; and,
 - (b) the licensee or another person has, whether in or outside the licence area recovered minerals from the deposit;
- the licensee may nominate, for declaration as a location -
- (c) if the mineral deposit is located in only one block in the licence area - that block; or,
 - (d) if the mineral deposit extends to 2 or more blocks in the licence area - those blocks.
- (2) A nomination under this section must be -
- (a) in writing; and
 - (b) given to the Authority.

133. Requirement to nominate blocks as a location - (1) If -

(a) the Authority is of the opinion that an exploration licensee is entitled to nominate a block or blocks under subsection 132(1); and,
(b) the licensee has not done so;
the Authority may, by written notice given to the licensee, require the licensee to nominate the block or blocks within -

- (c) 90 days after the day on which the notice was given; or,
(d) such longer period, not more than 180 days after the day on which the notice was given, as the Authority allows.

(2) The Authority may allow a longer period under paragraph (1)(d) only on written application made by the licensee within the period of 90 days mentioned in paragraph (1)(c).

(3) If the licensee does not comply with the requirement, the Authority may, by written notice given to the licensee, nominate the block or blocks for declaration as a location.

134. Declaration of location - (1) If -

- (a) an exploration licensee has made a nomination under section 132; and,
(b) the Authority is of the opinion that the licensee is entitled under that section to nominate the block or blocks specified in the nomination;

the Authority must, by writing, declare the nominated block or blocks to be a location.

(2) A copy of a declaration under subsection (1) must be published in the *Gazette*.

(3) The Authority may form an opinion for the purposes of this section if the Authority considers that there are reasonable grounds for doing so having regard to any information the Authority has, whether given by the licensee or otherwise.

(4) If the Authority has made a nomination under section 133, the Authority must, by notice published -

- (a) in the *Gazette*; and,
(b) in a national newspaper of the Cook Islands;

declare the nominated block or blocks to be a location.

135. Revocation of declaration - (1) If -

- (a) an exploration licence is in force over a block that constitutes, or the blocks that constitute, a location; and
(b) the licensee requests the Authority to revoke the declaration of the location;

the Authority may, by writing, revoke the declaration of the location.

(2) A copy of a revocation under subsection (1) is to be published in the *Gazette*.

- (3) If -
- (a) a block or blocks constituting or forming part of a location was or were the subject of an exploration licence or a retention lease; and,
 - (b) that block is, or those blocks are, no longer the subject of the permit or lease;
- the Authority must, by notice published in the *Gazette* -
- (c) in a case where that block constitutes, or those blocks constitute, that location - revoke the declaration of that location; or
 - (d) in a case where that block forms, or those blocks form, part of that location - revoke the declaration of that location to the extent to which the declaration relates to that block or those blocks.
- (4) Subsection (3) does not apply in relation to a block if -
- (a) a person has applied for the grant of a mining licence over the block, and the Authority has not made a decision in relation to the application; or
 - (b) a mining licence is in force in relation to the block
- (5) Subsection (3) does not apply in relation to a block if -
- (a) a person has applied for the grant of a retention lease over the block and the Authority has not made a decision in relation to the application; or,
 - (b) a retention lease is in force in relation to the block.
- (6) If a retention lease is granted in relation to a block or blocks forming part of a location, the Authority must, by notice published in the *Gazette*, revoke the declaration of the location to the extent to which the declaration relates to the block that is, or the blocks that are, not within the retention lease area.
- (7) If -
- (a) the Authority refuses to grant a retention lease in relation to a block or blocks constituting or forming part of a location; and
 - (b) the reason, or one of the reasons, for the refusal is that the Authority is not satisfied as to the matter referred to in subsection 143(2) (which deals with commercial viability);
- the Authority must, by notice published in the *Gazette*, revoke the declaration of that location.

Note: If an exploration licence is in force over a block that constitutes a location, and the licensee's application for a retention lease over the block is rejected as mentioned in subsection (7), and the licensee wants to apply for a mining licence, then the licensee must re-nominate the block for declaration as a location before the licensee applies for the mining licence.

- (8) If -
- (a) an application for the grant of a mining licence has been

- made under this Act; and,
- (b) the application specifies 2 or more blocks; and
- (c) a mining licence is granted in respect of -
 - (i) only one of the blocks; or
 - (ii) some, but not all, of the blocks; and
- (d) the remaining block or blocks form part of a location;

the Authority must, by notice published in the *Gazette*, revoke the declaration of the location to the extent to which the declaration relates to the remaining block or blocks.

136. Variation of declaration of location - (1) If an exploration licence is in force over a block that constitutes, or blocks that constitute, a location, the Authority may, by writing, vary the declaration of the location -

- (a) by adding to the location a block -
 - (i) that is in the licence area; and,
 - (ii) to which, in the opinion of the Authority, a mineral deposit within the location extends; or
 - (b) by deleting from the location a block to which, in the opinion of the Authority no mineral deposit within the location extends.
- (2) A copy of a variation under subsection (1) is to be published in the *Gazette*.
- (3) The Authority may vary a declaration only if -
- (a) the licensee requests the variation; or
 - (b) all of the following conditions are satisfied -
 - (i) the Authority gives the licensee written notice of the proposed variation, identifying the block to be added to, or deleted from, the location;
 - (ii) the notice invites the licensee to give the Authority a submission about the proposed variation;
 - (iii) the notice specifies a time limit for making the submission;
 - (iv) the Authority has considered any submission made in accordance with the notice.
- (4) The time limit must be at least 30 days after the notice is given.

(5) The Authority may form an opinion for the purposes of this section if the Authority considers that there are reasonable grounds for doing so having regard to any information the Authority has, whether given by the licensee or otherwise.

Division 4 – Retention Leases

Subdivision A – Preliminary

137. Simplified outline - The following is a simplified outline of this Division -

This Part provides for the grant of retention lease over a block in the Seabed of the Cook Islands.

A retention lease is designed to allow an exploration licence holder to retain rights over an area if -

The holder has identified and evaluated a mineral deposit in a location; and

Recovery of the deposit is not commercially viable in the short term for some reason (for example: political situation, prevailing situation in the commodity market for particular minerals, the need to arrange finance or build up capital reserves, the need to develop new technologies or the impending development of new technologies); and

There is a reasonable prospect of the recovery of the deposit in the longer term

A retention lease authorises the lessee to retain title to a lease area on an exclusive basis and to explore for minerals in that area on an appraisal basis.

The criteria for granting retention lease over a block

The block contains minerals of potential commercial significance; and,
mining and recovery of minerals is not currently commercially viable, but is likely to become commercially viable within 8 years.

138. Rights conferred by retention lease - (1) A retention lease authorises the lessee, in accordance with the conditions (if any) to which the lease is subject -

- (a) to explore for minerals in the lease area;
- (b) to recover minerals on an appraisal basis in the lease area; and,
- (c) to carry on such operations, and execute such works, in the lease area as are necessary for those purposes.

(2) A retention lease must not authorise the recovery of minerals as part of a commercial mining operation.

(3) If a lease is expressed to restrict the kind of minerals covered by the lease, the lessee is not permitted to explore for, or to recover, minerals not covered by the lease.

(4) A restriction on the kind of minerals covered by the lease may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).

(5) For the purposes of subsection (3), the lessee does not recover an excluded mineral if, in the course of exploring for, or recovering, another mineral the lessee recovers some excluded mineral.

(6) The rights conferred on the lessee by subsection (1) are subject to this Act and the regulations.

139. Duration of retention lease - (1) The duration of an exploration licence is determined using the following table -

| Duration of retention lease | | |
|------------------------------------|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item | This kind of lease... | remains in force... |
| 1 | An original retention lease | for the period of 3 years beginning on: (a) the day on which the lease is granted; or (b) if a later day is specified in the lease as the day on which the lease is to come into force--that later day. |
| 2 | A retention lease granted by way of renewal | for the period of 2 years beginning on: (a) the day on which the lease is granted; or (b) if a later day is specified in the lease as the day on which the lease is to come into force--that later day. |

(2) Subsection (1) has effect subject to this Chapter.

Note 1: For a special rule about the extension of the duration of a retention lease if the lessee applies for a mining licence, see **section 151**.

Note 2: For a special rule about the extension of the duration of a retention lease pending decisions on renewal applications, see **section 148**.

Note 3: For the revocation of a retention lease, see **section 163**.

Note 4: For a special rule about when a retention lease ceases to be in force following the grant of a mining licence, see **section 164**.

140. Specific Condition of retention leases – re-evaluation of commercial viability - (1) A retention lease is subject to a condition that if the Authority gives the lessee a written notice requesting the lessee to -

(a) re-evaluate the commercial viability of mining in the lease

area; and,

- (b) inform the Authority in writing of the results of the re-evaluation

the lessee must comply with the request within -

- (c) the period of 90 days after the notice is given; or
- (d) such longer period as the Authority allows.

(2) The Authority may allow a longer period under paragraph (1)(d) only on written application made by the lessee within the period of 90 days mentioned in paragraph (1)(c).

(3) If a retention lessee has complied with a subsection (1) request during the term of the lease, the Authority must not give the lessee a further subsection (1) request during that term.

(4) Despite subsection (2), the condition mentioned in subsection (3) does not need to be specified in the lease.

Subdivision B – Applications for Retention Leases

141. Application for retention lease by the holder of an exploration licence - (1) If an exploration licence is in force over a block that constitutes, or the blocks that constitute, a location, the licensee may, within the application period, apply to the Authority for the grant by the Authority of a retention lease over that block or over one or more of those blocks.

Note: For application period, see **subsection (3)**.

- (2) An application under this section must be accompanied by details of -
 - (a) the applicant's proposals for work and expenditure in relation to the area comprised in the block or blocks specified in the application; and
 - (b) the current commercial viability of the recovery of minerals from that area; and,
 - (c) the possible future commercial viability of the recovery of minerals from that area.

Note 1: **Section 55** contains additional provisions about application procedures.

Note 2: **Section 56** requires the application to be accompanied by an application fee.

Note 3: **Section 59** enables the Authority to require the applicant to give further information.

- (3) The application period for an application under this section is -
 - (a) the period of 1 year after the day (the declaration day) on which the block that constitutes the location concern was, or the blocks that constitute the location concerned were, declared to be a location; or
 - (b) such longer period, not more than 3 years after the declaration

day, as the Authority allows.

(4) The Authority may allow a longer period under paragraph (3)(b) only on written application made by the licensee within the period of 1 years mentioned in paragraph (3)(a).

142. Application must be advertised - (1) The applicant must advertise the application made under section 141 in a national newspaper of the Cook Islands.

(2) The advertisement published under subsection (1) must contain -

- (a) the applicant's name and address; and
- (b) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
- (c) the address of the Authority; and
- (d) a statement -
 - (i) that the applicant has applied for an exploration licence over the blocks described in the notice; and,
 - (ii) that invites comment from the public on the application; and
 - (iii) that requests that comments be sent to the applicant and the Authority within 30 days after the day on which the advertisement is published.

(3) The advertisement must be published as soon as possible after the applicant applies for an exploration licence.

(4) Subject to subsection (5), the advertisement must be published within 14 days after the day on which the applicant lodges the application.

(5) If -

- (a) the applicant applies to the Authority within the 14 day period referred to in subsection (4) for an extension of the period; and,
- (b) the Authority extends the period;

the advertisement must be published within the period as extended by the Authority.

143. Grant of retention lease - offer document - (1) This section applies if an application for the grant of a retention lease has been made under section 141.

(2) The Authority may -

- (a) give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant a retention lease over the block or blocks specified in the offer document; or,
- (b) by written notice given to the applicant, refuse to grant a retention lease to the applicant.

Note 1: Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under section 59 to provide further information, the Authority may refuse to give the applicant an offer document - see subsection 59(3).

144. Grounds for granting retention lease - (1) The Authority may issue an *offer document* to an applicant under section 143 only if it is satisfied that -

- (a) the applicant has identified and evaluated a significant mineral deposit; and
- (b) there are *reasonable grounds* for the applicant not applying immediately for a mining licence.

(2) Without limiting subsection (1), reasonable grounds for not applying immediately for a mining licence include the following -

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

145. Refusal to grant retention lease – If -

- (a) an application for a retention lease has been made under section 141; and,
- (b) the Authority is not satisfied as to the matters referred to in subsection 141(2) in relation to the application;

the Authority must, by written notice given to the applicant, refuse to grant a retention lease to the applicant.

Note: Consultation procedures apply – see section 61.

146. Grant of retention lease – If -

- (a) an applicant has been given an offer document under section 143; and
- (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section;

the Authority must grant the applicant a retention lease.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period - see **subsection 60(7)**.

Subdivision C – Renewal of Retention Leases

147. Application for renewal of retention lease - (1) The holder of a retention lease may apply to the Authority for the renewal of the lease.

(2) An application to renew a retention lease must be made -

- (a) not more than 12 months before the expiry date of the lease; and,
- (b) at least 180 days before the expiry date of the lease

(3) Despite subsection (2), the Authority may accept an application to renew a retention lease if the application is made -

- (a) later than 180 days before the expiry date of the lease; and,
- (b) before the expiry date of the lease.

(4) An application to renew a retention lease must be made in the prescribed form and be accompanied by details of -

- (a) the lessee's proposals for work and expenditure in relation to the lease area; and,
- (b) the current commercial viability of recovery of minerals from the lease area.
- (c) the possible future commercial viability of recovery of minerals from the lease area.

148. Extension of duration of retention lease pending decision on application - (1)
If -

- (a) a retention lessee makes an application to renew the lease under section 147; and,
- (b) the lease would, apart from this subsection, expire -
 - (i) before the Authority grants, or refuses to grant, the renewal of the lease; or,
 - (ii) before the application lapses;

the lease continues in force,

- (c) until the Authority grants, or refuses to grant, the renewal of the lease; or,
- (d) until the application so lapses;

whichever happens first.

(2) Subsection (1) has effect subject to this Chapter.

149. Matters to be taken into account in deciding whether to renew retention lease
 - In determining whether to renew the lease, the Authority must have regard to -
- (a) whether mining activities are commercially viable in the retention lease area; and
 - (b) whether the applicant has complied with -
 - (i) this Act; and
 - (ii) the regulations; and
 - (iii) any lease conditions.

150. Renewal of retention lease – offer document - (1) This section applies if an application to renew a retention lease has been made under section 147.

- (2) If -
 - (a) each of the following has been complied with -
 - (i) the conditions to which the retention lease is, or has from time to time been, subject;
 - (ii) directions given to the holder by the Authority;
 - (iii) the regulations; and,
 - (b) the Authority is satisfied that recovery of minerals from the lease area -
 - (i) is not, at the time of the application, commercially viable; and
 - (ii) is likely to become commercially viable within the period of 5 years after that time;

the Authority may give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to renew the lease.

Note: Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

- (3) If -
 - (a) any of -
 - (i) the conditions to which the retention lease is, or has from time to time been, subject; or
 - (ii) the provisions of this Act; or,
 - (iii) the provisions of the regulations have not been complied with; and
 - (b) the Authority is satisfied that there are sufficient grounds to warrant the granting of the renewal of the retention lease; and
 - (c) the Authority is satisfied that mining of minerals from the lease area -
 - (i) is not, at the time of the application, commercially viable; and,
 - (ii) is likely to become commercially viable within the period of 5 years after that time;

the Authority may give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to renew the lease.

Note: Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

151. Extension of retention lease if lessee applies for mining licence - (1) If -

- (a) a retention lease is in force over a block or blocks; and,
- (b) before the time when the lease would, apart from this subsection, expire, the lessee applies to the Authority for the grant by the Authority of a mining licence over the block or one or more of the blocks;

the table has effect -

Duration of retention lease

| Item | In this case... | The lease continues in force over a block or blocks covered by the lease until... |
|-------------|-------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| 1 | The Authority gives the lessee an offer document relating to a mining licence | The licence is granted, the lessee withdraws the application, or the application lapses. |
| 2 | The Authority decides not to grant the mining licence to the lessee. | Notice of the decision is given to the lessee. |

152. Refusal to renew retention lease - (1) This section applies if an application to renew a retention lease has been made under section 147.

(2) If -

- (a) any of -
 - (i) the conditions to which the retention lease is, or has from time to time been, subject; or
 - (ii) the provisions of this Act; or,
 - (iii) the provisions of the regulations have not been complied with; and,
- (b) the Authority is not satisfied that there are sufficient grounds to warrant the granting of the renewal of the retention lease;

the Authority must, by written notice given to the applicant, refuse to renew the lease.

Note: Consultation procedures apply-see section 61.

(3) If the Authority is satisfied that recovery of minerals from the lease area is, at the time of the application, commercially viable, the Authority must, by written notice given to the applicant, refuse to renew the lease.

Note: Consultation procedures apply – see section 61.

(4) If the Authority is satisfied that recovery of minerals from the lease area is unlikely to become commercially viable within the period of 3 years after the time of the application, the Authority must, by written notice given to the applicant, refuse to renew the lease.

Note: Consultation procedures apply – see section 61.

(5) A notice of refusal under subsection (3) must contain a statement to the effect that the lessee may, within 12 months after the notice was given, apply for a mining licence over one or more of the blocks comprised in the lease.

(6) If -

- (a) the Authority makes a decision under subsection (3) refusing to renew the lease; and
- (b) a notice of refusal is given to the applicant; and
- (c) within 12 months after the notice was given, the lessee applies for a mining licence over one or more of the blocks comprised in the lease; and,
- (d) the lease would, apart from this subsection, expire -
 - (i) before the Authority grants, or refuses to grant, the mining licence; or
 - (ii) before the application lapses;

the lease continues in force until -

- (e) the Authority grants, or refuses to grant, the mining licence; or
- (f) the application lapses;

whichever happens first.

(7) If -

- (a) the Authority makes a decision under subsection (3) refusing to renew the lease;
- (b) a notice of refusal is given to the applicant;
- (c) subsection (6) does not apply; and,
- (d) the lease would, apart from this subsection, expire within 12 months after the notice was given;

the lease continues in force until the end of the 12-month period beginning on the day on which the notice was given

153. Renewal of retention lease – If -

- (a) an applicant has been given an offer document under section 150; and,

(b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under this section; the Authority must renew the retention lease.

Note: If the applicant does not make a request under section 60 within the period applicable under that section, the application lapses at the end of that period - see subsection 60 (7).

Subdivision D – Revocation of Retention Lease

154. Notice of intention to revoke retention lease - (1) This section applies if –

- (a) a retention lessee has been given a notice under subsection 140 (1) during the term of the lease;
- (b) the lessee has carried out, and has informed the Authority of the results of, the re-evaluation required by the notice;
- (c) the lessee has not made an application to renew the lease; and,
- (d) after consideration of –
 - (i) the results of the re-evaluation referred to in paragraph (b); and,
 - (ii) such other matters as the Authority thinks it;

the Authority is of the opinion that the recovery of minerals from the lease area is commercially viable.

Note: Subsection (3) deals with re-evaluation of the commercial viability of mining in the lease area.

(2) The Authority may give the lessee, and such other persons (if any) as the Authority thinks appropriate, a written notice –

- (a) telling the recipient of the notice that the Authority –
 - (i) has formed the opinion that recovery of minerals from the lease area is commercially viable; and
 - (ii) proposes to revoke the lease; and
 - (b) inviting the recipient of the notice to make a written submission to the Authority about the proposal to revoke the lease; and
 - (c) specifying a time limit for making that submission.
- (3) The time limit must be at least 30 days after the notice given.

155. Revocation of retention lease - (1) If -

- (a) a notice under subsection 154(2) is given to -
 - (i) the lessee; or,
 - (ii) the lessee and one or more other persons; and,
- (b) either -
 - (i) the lessee does not make a submission in accordance with the notice; or,
 - (ii) the Authority, after consideration of any submissions made in accordance with the notice, determines that the lease should be revoked;

the Authority must, by written notice given to the lessee, revoke the lease.

(2) If -

- (a) a retention lease is revoked under subsection (1); and
- (b) the lessee applies for a mining licence in relation to one or more of the blocks comprised in the lease within the period of 12 months beginning on the day on which the notice of revocation was given the revocation of the lease takes effect:
- (c) when the Authority grants, or refuses to grant, the mining licence; or
- (d) when the application lapses;

whichever happens first.

(3) If -

- (a) a retention lease is revoked under subsection (1); and,
- (b) the lessee does not apply for a mining licence in relation to one or more of the blocks comprised in the lease within the period of 12 months beginning on the day on which the notice of revocation was given; the revocation of the lease takes effect at the end of that 12-month period.

(4) If a retention lease is revoked under subsection (1), the lease continues in force until the revocation takes effect in accordance with subsection (2) or (3).

156. Significant changes in circumstances to be reported to Authority - (1) A retention lease holder must notify the Authority of any change of circumstances that significantly affects the long term viability of mining activities in the retention lease area.

Note: The Authority may cancel the retention lease if it believes that circumstances have changed so that mining activities can now commence (see **section 166**).

(2) Subsection (1) applies to a change of circumstances whether favourable or unfavourable to the long-term viability of mining activities in the retention lease area.

157. Requirement to apply for mining licence - (1) This section applies where the Authority is satisfied that it has become technically possible and commercially viable for a

mineral deposit that is the subject of a retention lease to be mined or recovered during the term of the lease.

(2) The Authority may require the lessee to apply for a mining licence in respect of the minerals specified in the notice before the end of the period specified in the notice.

(3) If the lessee fails to comply with a notice served in accordance with subsection (2), the Authority may thereafter cancel the lease at any time.

(4) No compensation shall be payable under this Act if a retention lease is cancelled in accordance with sub-section (3).

Subdivision E – Obligations attaching to Retention Lease

158. General obligations - (1) The sources of obligations associated with a retention lease are -

- (a) the lease conditions;
- (b) obligations arising from directions given by the Authority; and,
- (c) obligations imposed by this Act and the regulations.

(2) If a lease has 2 or more holders, all of the holders are jointly and severally bound by the obligations that attach to the lease.

159. Conditions of retention lease - (1) The Authority may grant or renew a retention lease subject to whatever conditions the Authority thinks appropriate in addition to the Specific condition imposed under section 140 of this Act.

(2) If the Authority grants or renews a lease subject to conditions, the conditions must be specified in the lease.

(3) Without limiting subsection (1), the Authority may attach the following kinds of conditions to the grant or renewal of a lease:

(4) Without limiting subsection (1), the Authority may attach the following kinds of conditions to the grant or renewal of a lease -

- (a) a condition requiring the lessee to take out insurance as required by the Authority;
- (b) a condition requiring the lessee to carry out certain work in or in relation to the lease during the term of the lease and to comply with directions concerning that work given in accordance with this Act;
- (c) a condition requiring the lessee to lodge a security with the Authority;
- (d) a condition requiring the lessee to keep specified information;
- (e) a condition requiring the lessee to give to the Authority on request, specified information in accordance with this Act;
- (f) a condition requiring the lessee to give employment preferences to qualified Cook Island resident to the maximum extent possible;

- (g) a condition requiring the lessee to give preference to the maximum extent possible -
 - (i) to materials and products made in the Cook Islands; and,
 - (ii) to service providers located in the Cook Islands and owned and operated by Cook Islanders.
- (h) a condition requiring the lessee to conduct training programmes for the benefit of employees; and
- (i) a condition requiring the lessee to take steps to protect the environment of the lease area including conditions relating to -
 - (i) protecting wildlife; or
 - (ii) minimising the effect on the environment of the lease area and the area surrounding the lease area.
- (j) a condition requiring the lessee to prevent and mitigate damage to the environment caused by activities in the licence area;
- (k) a condition requiring the lessee to pay a specified penalty to the Government if the lessee does not comply with a condition.
- (5) A condition under paragraph (4)(c) must specify -
 - (a) the amount of the security required;
 - (b) the kind of security required; and,
 - (c) the manner and form in which the security is to be lodged.
- (6) Without limiting paragraph (4)(c), a condition under that paragraph may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify -
 - (a) the kind of person who is to give the guarantee; and,
 - (b) the terms of the guarantee.
- (6) In making a decision about the conditions to which a retention lease granted on renewal will be subject, the Authority must have regard to -
 - (a) the investment of the lessee, or of any former lessee, during the term of -
 - (i) the original retention lease; or
 - (ii) any mining lease granted on a previous renewal, where the investment relates to:
 - (iii) operations authorised by the lease concerned; or
 - (iv) any other development connected with those operations; and
 - (b) such other matters (if any) as the Authority considers relevant.

160. Automatic suspension of conditions if lease rights are suspended – If -

- (a) the Authority suspends particular rights under a retention lease; and,
- (b) a lease condition is affected by the suspension;

the lease condition is suspended for the period of the suspension of the rights.

161. Conditions – work practices - (1) If a person who is -

- (a) a lessee or
- (b) an associate of the holder;

carries out activities in the lease area that are authorised by the lease, the person must take all reasonable steps -

- (c) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the seabed mining industry; and
- (d) to protect the health, safety and welfare of people engaged in the activities in and about the lease area;
- (e) to maintain in good repair all structures and equipment brought into the lease area by the person; and,
- (f) to remove from the lease area any infrastructure facilities, vessel, 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 activities.

162. Retention lease holder must keep specified records - (1) The holder of a retention lease must -

- (a) keep whatever records, cores and samples; and
- (b) give whatever records, cores and samples to the Authority for inspection; and
- (c) make whatever returns;

are necessary to comply with -

- (d) the regulations; or
- (e) the lease conditions; or
- (f) a direction given by the Authority.

163. Expiry date of retention lease - A retention lease expires if -

- (a) the term of the lease ends without the lease being renewed; or
- (b) the holder surrenders the lease; or
- (c) a retention lease is granted over the blocks in the lease area of the exploration licence; or
- (d) a mining licence is granted over the blocks in the lease area of the exploration lease; or,
- (e) the lease is cancelled.

164. Automatic expiry of retention lease when mining licence takes effect – If -

- (a) a retention lease is in force under this Act; and
- (b) the Authority grants a mining licence over all or some of the blocks in the retention lease area; and,
- (c) the mining licence comes into force;

the retention lease expires in relation to any block covered by the mining licence.

Subdivision F – Cancellation of Retention Lease

165. Cancellation of retention lease – breach of condition etc - (1) Subject to subsection (3), the Authority may cancel a retention lease if the lease holder -

- (a) breaches a lease condition; or
- (b) contravenes a provision of this Act or the regulations; or.
- (c) breaches a condition attached to an approval.

(2) If the Authority proposes to cancel a lease under subsection (1), the Authority must give the holder a written notice that informs the holder of the proposed cancellation.

(3) The notice must -

- (a) specify the reason for the proposed cancellation; and
- (b) invite the holder to make submissions in relation to the proposed cancellation; and
- (c) specify the day by which submissions should be given to the Authority; and
- (d) specify an address where submissions are to be lodged.

(4) The day specified under paragraph (3)(c) must be not less than 60 days after the day on which the notice is given.

(5) The Authority may cancel the lease only if -

- (a) the holder has been given a notice under subsection (3); and
- (b) the Authority has considered -
 - (i) any submission made by the holder; and
 - (ii) any steps taken by the holder to remedy the circumstances that led to the proposal to cancel the lease and to prevent those circumstances from happening again; and
- (c) the Authority is satisfied that no special circumstances exist that justify the lease not being cancelled.

166. Cancellation of retention lease – mining activities viable - (1) If the Authority believes that mining activities should commence in a retention lease area, the Authority must ask the lessee to explain why the lessee should not apply for a mining licence over the retention lease area.

(2) A request under subsection (1) must -

- (a) be in writing; and
- (b) specify the day by which the holder should give the explanation to the Authority.

(3) The day specified under paragraph (2)(b) is to be at least 30 days after the day on which the request is given to the holder.

- must -
- (4) An explanation provided in response to a request under subsection (1)
 - (a) be in writing; and
 - (b) be given to the Authority.
 - (5) The Authority may cancel the retention lease if -
 - (a) the holder is given a request under subsection (1); and
 - (b) either -
 - (i) the holder does not give the Authority an explanation in response to the request by the day specified in the request; or
 - (ii) the holder gives the Authority an explanation in response to the request but the Authority does not consider the explanation to be satisfactory.
 - (6) If the Authority cancels a retention lease under subsection (5), the Authority may specify the day on which the cancellation takes effect.
 - (7) Without limiting subsection (6), the Authority, in determining the day on which the cancellation is to take effect, may have regard to the time needed by the holder to obtain the grant of a mining licence over the retention lease area.

167. Obligations of former retention lease holders and former associates - (1)
 Subject to subsection (4), if -

- (a) a person was -
 - (i) a retention lease holder; or
 - (ii) an associate of a retention lease holder; and
 - (b) the lease -
 - (i) expires; or
 - (ii) is cancelled; or
 - (iii) is surrendered; and
 - (c) an obligation associated with the lease arising out of -
 - (i) a lease condition; or
 - (ii) a direction given by the Authority in relation to the lease; or
 - (iii) this Act or the regulations;
- has not been discharged; and,
- (d) the person was bound by that obligation when the person was the lease holder or an associate;
- the person remains bound by the obligation until the obligation is discharged.
- (2) Subsection (1) does not continue an obligation to carry out exploration operations.
 - (3) Subsection (1) continues an obligation that a person had to carry out exploration or recovery activities in a particular manner if the person carries them out.
 - (4) The Authority may determine that the person is not subject to -
 - (a) a particular obligation under this section; or
 - (b) all the person's remaining obligations under this section.

- (5) A determination under subsection (4) is to be in writing.

Division 5 – Mining Licences
Subdivision A – Introduction

168. Simplified outline - The following is a simplified outline of this Division -

This Part provides for the grant of mining licences over a block in the Seabed of the Cook Islands.

A mining licence authorises the licensee to recover minerals in the licence area on an exclusive basis.

A mining licence may be granted to -

- (a) the holder of an exploration licence over the block;
- (b) the holder of a retention lease over the block;
- (c) an applicant that has submitted a bid in respect of acreage released by the Authority.

169. Rights conferred by mining licence - (1) A mining licence authorises the licensee, in accordance with the conditions to which the licence is subject -

- (a) to recover minerals in the licence area;
- (b) to carry out exploration operations for minerals in the licence area; and,
- (c) to carry on such operations, and execute such works, in the licence area as are necessary for those purposes.

- (2) The rights conferred on the licensee by subsection (1) are subject to this Act and the regulations.

170. Duration of mining licence - (1) The duration of a mining licence is determined using the following table -

| Duration of mining licence | | |
|-----------------------------------|--------------------------------|----------------------------|
| Item | This kind of licence... | remains in force... |

| | | |
|---|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | An original mining licence | for the period of 15 years , or for the forecasted life of the mineral operations, whichever is the shorter, beginning on: (a) the day on which the licence is granted; or (b) if a later day is specified in the licence as the day on which the licence is to come into force--that later day. |
| 2 | A mining licence granted by way of renewal | for the period of 10 years, or the remaining forecasted life of mineral operations, whichever is the shorter, beginning on: (a) the day on which the licence is granted; or (b) if a later day is specified in the licence as the day on which the licence is to come into force--that later day. |

(2) Subsection (1) has effect subject to this Chapter.

Note 1: For a special rule about the extension of the duration of a mining licence pending decisions on renewal applications see **section 194**

171. Rights to minerals recovered - (1) Any minerals recovered by the holder of a mining licence from a block covered by the licence become the property of the holder when they are recovered.

(2) If the mining licence authorises the exploration for and recovery of minerals only of a particular kind, subsection (1) only applies to the recovery of minerals of that kind.

(3) The minerals recovered are not subject to the rights of any other person.

(4) Nothing in this section affects the operation of section 302.

(5) Subsection (4) does not apply to rights that licence holder transfers to the other person.

Subdivision B – Application by holder of Exploration licence

172. Application for mining licence by exploration licensee or retention lessee – (1) An exploration licensee or a retention lessee may apply to the Authority for the grant of a mining licence over a block or over one or more of those blocks in respect of which the licence or lease is in force and where the recovery of minerals is commercially viable.

(2) At any time before an offer document relating to the application is given to the applicant, the applicant may, by written notice given to the Authority, vary the number of blocks specified in the application.

(3) A variation of an application must be made in an approved manner.

(4) A variation of an application may set out any additional matters that the applicant wishes to be considered.

(5) An application, or a variation of an application, under this section must be accompanied by the required information specified in section 173 of this Act.

Note 1: Section 55 contains additional provisions about application procedures.

Note 2: Section 56 requires the application to be accompanied by an application fee.

Note 3: Section 59 enables the Authority to require the applicant to give further information.

173. Application for mining licence – application to include certain matters - (1)
An application made for the purposes of section 172 must -

- (a) be made in accordance with the approved form; and
- (b) be made in the approved manner; and
- (c) specify the blocks which the application is made; and
- (d) include details of -
 - (i) the seabed mineral activity and recovery operations that the applicant intends to carry out;
 - (ii) a description of the mineral(s) in respect of which the licence is sought;
 - (iii) a proposed programme of recovery operations that outlines recovery forecasts and operation plans, including the options for minerals beneficiation;
 - (iv) a plan giving particulars of the applicant's proposals with respect to the employment and training of Cook Island citizens;
 - (v) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
 - (vi) the amount of money that the applicant intends to spend on those activities;
 - (vii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in the operations authorised by the licence;
 - (viii) the technical advice available to the applicant;
 - (ix) the financial resources available to the applicant; and,
 - (x) if the licence is to be held by more than one person—the share of the licence that each prospective holder will hold; and,

- (e) be accompanied by a description and coordinates of the area or areas of the Seabed of the Cook Islands in respect of which the licence is sought, including maps that -
 - (xii) relate to the blocks; and,
 - (xiii) comply with any guidelines or directions issued by the Authority; and
- (f) specify an address for service of notices under this Act and the regulations.

174. Application must be advertised - (1) The applicant must advertise the application made under section 172 in a national newspaper of the Cook Islands.

(2) The advertisement must contain -

- (a) the applicant's name and address; and
- (b) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
- (c) the address of the Authority; and
- (d) a statement -
 - (i) that the applicant has applied for a mining licence over the blocks described in the notice; and,
 - (ii) that invites comment from the public on the application; and
 - (iii) that requests that comments be sent to the applicant and the Authority within 30 days after the day on which the advertisement is published.

(3) The advertisement must be published as soon as possible after the applicant applies for a mining licence.

(4) Subject to subsection (5), the advertisement must be published within 14 days after the day on which the applicant lodges the application.

(5) If -

- (a) the applicant applies to the Authority within the 14 day period referred to in subsection (4) for an extension of the period; and
- (b) the Authority extends the period;

the advertisement must be published within the period as extended by the Authority.

175. Application for mining licence – offer document - If -

- (a) an application for the grant of a mining licence has been made under section 172; and
- (b) the Authority is satisfied that the area comprised in the block, or any one or more of the blocks, specified in the application contains minerals; and,
- (c) the Authority considers that the applicant's proposals for work and expenditure in relation to the area comprised in the block or blocks covered by the application or the varied application, as the case may be, are acceptable; then,

the Authority must give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant a mining licence over the block or blocks as to which the Authority is so satisfied.

Note 1: **Section 60** sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under **section 59** to provide further information, the Authority may refuse to give the applicant an offer document—see **subsection 59 (3)**.

176. Consideration of Applications - The Authority shall not issue an *offer document* to an applicant for a mining licence unless the Authority is satisfied that -

- (a) the area or areas of the Seabed of the Cook Islands in respect of which the mining licence is sought is reasonable having regard to the applicant's proposed programme of recovery operations;
- (b) the applicant has adequate financial resources, technical competence and seabed minerals activity experience to carry out the proposed programme of recovery operations;
- (c) the applicant has applied for a project permit under the Environment Act in respect of the applicant's proposed recovery operations;
- (d) the applicant's proposals with respect to the procurement of local goods and services are acceptable; and,
- (e) the applicant's proposals with respect to employment and training of Cook Islanders are acceptable.

177. Refusal to grant mining licence – If -

- (a) an application for a mining licence has been made under section 172; and,
- (b) the Authority is not satisfied as to the matters referred to in section 173 in relation to the application;

the Authority must, by written notice given to the applicant, refuse to grant a mining licence to the applicant.

Note: Consultation procedures apply – see **section 61**.

178. Grant of mining licence – If -

- (a) an applicant has been given an offer document under section 175; and,
- (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section;

the Authority must grant the applicant a mining licence.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period—see **subsection 60(7)**.

Subdivision C – Application for tender Mining Licence

179. Announcement of tender mining licence round - (1) The Authority may, by public announcement made in accordance with section 49 of this Act invite applications for the grant by the Authority of a tender mining licence over a block, or any or all blocks specified in the notice.

(2) The notice published under subsection (1) shall specify a period within which applications may be made together with terms of reference.

(3) If the Authority has published a notice under subsection (1) inviting applications for the grant of a mining licence over a block, the block must not be specified in another notice under subsection (1) of this section at any time during the period specified in the subsection (1) notice.

(4) The Authority shall determine the maximum and minimum number of blocks specified in an application under this section.

(5) The blocks specified in an application under this section must be blocks that are constituted by graticular sections that -

- (a) constitute a single area; and,
- (b) are such that each graticular section in that area has a side in common with at least one other graticular section in that area.

(6) For the purposes of subsection (4), a block immediately adjoins another block if the graticular section that constitutes or includes that block and the graticular section that constitutes or includes that other block -

- (a) have a side in common; or,
- (b) are joined together at one point only.

(7) Subsection (5) does not apply to applications if the Authority, for reasons that the Authority thinks sufficient, includes in the subsection (1) notice a direction that subsection (5) does not apply to those applications.

180. Matters to be determined by Authority - If the Authority proposes to invite applications for the grant of a tender mining licence, the Authority must, before inviting the applications, determine -

- (a) the procedure and criteria that the Authority will adopt to allocate the licence; and
- (b) the amount of security that will be required for the licence; and
- (c) the licence conditions.

181. Application for tender mining licence - If a tender block licence notice has been published inviting applications for a mining licence, a person may apply for the licence.

182. Tender mining licence applications-required information - An application made for the purposes of section 181 must -

- (a) be made in accordance with the approved form; and
- (b) be made in the approved manner; and
- (c) specify the blocks which the application is made; and
- (d) include details of -

- (i) the seabed mineral activity and recovery operations that the applicant intends to carry out; and
- (ii) 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 the operations authorised by the licence; and
- (iv) the technical advice available to the applicant; and
- (v) the financial resources available to the applicant; and,
- (vi) if the licence is to be held by more than one person—the share of the licence that each prospective holder will hold; and,
- (e) be accompanied by maps that -
 - (i) relate to the blocks; and
 - (ii) comply with any guidelines or directions issued by the Authority; and
- (f) specify an address for service of notices under this Act and the regulations.

183. Grant of tender mining licence - offer document - (1) This section applies if an application for the grant of a mining licence has been made under section 181.

- (2) The Authority may -
 - (a) give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant an mining licence over the block or blocks specified in the offer document; or
 - (b) by written notice given to the applicant, refuse to grant a mining licence to the applicant.

Note 1: Section 60 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under section 59 to provide further information, the Authority may refuse to give the applicant an offer document-see subsection 59(3).

184. Ranking of multiple applicants for tender mining licence - (1) This section applies if -

- (a) the Authority publishes a notice under subsection 179 (1) inviting applications for the grant of a tender mining licence; and,
- (b) at the end of the period specified in the notice, 2 or more applications have been made under section 1 for the grant of a mining licence over the same block or blocks.

(2) The Authority may give an offer document under section 183 to whichever applicant, in the Authority's opinion, is most deserving of the grant of the mining licence.

(3) In determining which of the applicants is most deserving of the grant of the mining licence, the Authority must have regard to criteria made publicly available by the Authority.

(4) For the purposes of this section, the Authority may rank the applicants in the order in which, in the Authority's opinion, they are deserving of the grant of the mining licence, with the most deserving applicant being ranked highest.

(5) The Authority may exclude from the ranking any applicant who, in the Authority's opinion, is not deserving of the grant of the mining licence.

(6) If the Authority -

- (a) has considered the information accompanying the applications; and,
- (b) is of the opinion that 2 or more of the applicants are equally deserving of the grant of the mining licence;

the Authority may, by written notice given to each of those applicants, invite them to give the Authority details (the work/expenditure details) of their proposals for additional work and expenditure in relation to the block or blocks concerned.

(7) A notice under subsection (6) must -

- (a) specify the kinds of work/expenditure details that the Authority considers to be relevant in determining which of the applicants is most deserving of the grant of the mining licence; and,
- (b) specify the period within which the work/expenditure details must be given to the Authority.

(8) If an applicant gives work/expenditure details to the Authority, and those details are -

- (a) of a kind specified in the notice; and,
- (b) given within the period specified in the notice;

the Authority must have regard to the details in determining which of the applicants is most deserving of the grant of the mining licence.

185. Refusal to grant tender mining licence – If -

- (a) an application for a tender mining licence has been made under section 181; and,
- (b) the Authority is not satisfied as to the matters referred to in section 182 in relation to the application;

the Authority must, by written notice given to the applicant, refuse to grant a mining licence to the applicant.

Note: Consultation procedures apply – see **section 61**.

186. Grant of tender mining licence - (1) If -

- (a) an applicant has been given an offer document under section 183; and,

- (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section -

the Authority must grant the applicant a mining licence over the block or blocks specified in the offer document.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period-see **subsection 60(7)**.

187. Withdrawal of application for tender mining licence - (1) This section applies if the Authority publishes a notice under subsection 179(1) inviting applications for the grant of a tender mining licence.

(2) If a person has made an application, the person may, by written notice given to the Authority, withdraw the application at any time before a mining licence is granted as a result of the application.

(3) If 2 or more persons have made a joint application, all of those persons may, by written notice given to the Authority withdraw the application at any time before an mining licence is granted as a result of the application.

(4) If -

- (a) a joint application was made under section 181 for the grant of a tender mining licence; and,
- (b) all of the joint applicants, by written notice given to the Authority, inform the Authority that one or more, but not all of them, as specified in the notice, withdraw from the application;

then -

- (c) the application continues in force as if it had been made by the remaining applicant or applicants; and
- (d) if the Authority had given the joint applicants an offer document in relation to the application-the Authority is taken not to have given the offer document to the joint applicants.

188. Effect of withdrawal or lapse of application for tender mining licence - (1) This section applies if -

- (a) 2 or more applications have been made for the grant of a mining licence over the same block or blocks; and,
- (b) one or more, but not all, of the applications are withdrawn or have lapsed.

(2) A withdrawn or lapsed application is taken not to have been made.

(3) If the Authority gave an offer document in relation to withdrawn or lapsed application, the Authority is taken not to have given an offer document in relation to the withdrawn or lapsed application.

(4) If the applicant, or one of the applicants, whose application had been withdrawn had requested the Authority under section 181 to grant a mining licence to the applicant concerned, the request is taken not to have been made.

- (5) If the following conditions are satisfied in relation to a remaining applicant -
- (a) the Authority had refused to grant a mining licence to the remaining applicant;
 - (b) the Authority did not exclude the remaining applicant from the ranking under subsection 184(5);
- the refusal is taken not to have occurred.

189. Exploration licence or retention lease transferred - transferee to be treated as applicant - (1) This section applies if a transfer of an exploration licence or retention lease is registered under this Act -

- (a) after an application has been made -
 - (i) for the grant of a mining licence over a block in relation to which the exploration licence is in force; or
 - (ii) for the grant of a mining licence over a block in relation to which the retention lease is in force; and,
 - (b) before any action has been taken by the Authority in relation to the application.
- (2) After the transfer -
- (a) in the case of an application under section 172-that section has effect in relation to the application as if any reference in subsection (3) of that section to the applicant were a reference to the transferee; and,
 - (b) in all cases-the sections of this Part have effect in relation to the application as if any reference in those sections and that Part to the applicant were a reference to the transferee.

Subdivision D – Mineral Discoveries

190. Newly discovered minerals - (1) The registered holder of a mining licence shall notify the Authority of the discovery of any mineral to which the licence does not relate.

- (2) Notification for the purposes of subsection (1) shall -
 - (a) be given within thirty (30) days of the discovery, and,
 - (b) include such particulars of the location and the circumstances of the discovery as may be prescribed or otherwise requested by the Authority.
- (3) Subject to sub-sections (1) and (2), the registered holder of the mining licence may apply to the Authority to include a mineral discovery in the mining licence.
- (4) An application to include a mineral discovery made under sub-section (3) shall be in the prescribed form and shall include a revised proposed programme of recovery operations relating to the discovered mineral or minerals.
- (5) Upon receipt of an application under sub-section (4), the Authority shall -

- (a) advise the Commissioner of the discovery; and,
 - (b) advise the Board of the discovery.
- (6) To an application to include a mineral discovery under an existing mining licence.

Subdivision E – Curtailment and Suspension of Operations

191. Cessation, suspension, or curtailment of recovery operations - (1) The licensee shall give the Authority notice of any intention the registered holder has to cease, suspend, or curtail mining from recovery operations carried out pursuant to the licence.

(2) For the purposes of subsection (1), the licensee shall give notice of at least -

- (a) twelve (12) months if cessation of mining is intended;
- (b) six (6) months if suspension of mining is intended; or,
- (c) three (3) months if curtailment in mining is intended.

(3) A notice given under subsections (1) and (2) shall include a statement that sets out the technical and economic basis for the proposed cessation, suspension or curtailment of mining.

(4) Upon receipt of a notice given in accordance with this section, the Authority shall -

- (a) investigate the circumstances leading to the proposed cessation, suspension or curtailment of mining;
- (b) advise the Commissioner of the proposed cessation, suspension or curtailment of mining; and,
- (c) advise the Cook Islands Seabed Minerals Advisory Board of the proposed cessation, suspension or curtailment of mining.

(5) The Authority may approve the cessation, suspension or curtailment of mining proposed by the licensee subject to the licensee complying with such conditions as the Authority may reasonably determine.

Subdivision F – Renewal of Mining Licence

192. Application for renewal of mining licence - (1) The licensee may apply to the Authority for the renewal by the Authority of the licence in relation to such of the blocks the subject of the licence as are specified in the application.

Note 1: Section 55 contains additional provisions about application procedures.

Note 2: Section 56 requires the application to be accompanied by an application fee.

(2) An application to renew a mining licence must be made at least 180 days before the expiry date of the licence.

(3) Despite subsection (2), the Authority may accept an application to renew an exploration licence if the application is made -

- (a) later than 180 days before the expiry date of the licence; and,

- (b) before the expiry date of the licence.
 - (4) If -
 - (a) a mining licensee makes an application to renew the licence; and
 - (b) the licence would, apart from this subsection, expire -
 - (i) before the Authority grants, or refuses to grant, the renewal of the licence; or
 - (ii) before the application lapses;
- the licence continues in force -
- (c) until the Authority grants, or refuses to grant, the renewal of the licence; or
 - (d) until the application so lapses;
- whichever happens first.

193. Application for renewal of mining licence – required information - (1) An application for the renewal of a mining licence made under section 192 must -

- (a) be made in accordance with the approved form;
- (b) be made in the approved manner;
- (c) specify the blocks which the application is made; and
- (d) include details of -
 - (i) the seabed mineral activity and recovery operations that the applicant carried out under the original mining licence;
 - (ii) a description of seabed mineral activity and recovery operations that the applicant proposes to carry out during the renewal period;
 - (iii) a description of the mineral(s) in respect of which the licence is sought;
 - (iv) a proposed programme of recovery operations that outlines recovery forecasts and operation plans, including the options for minerals beneficiation during the period of renewal;
 - (v) a plan giving particulars of the applicant's proposals with respect to the employment and training of Cook Island citizens;
 - (vi) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
 - (vii) the amount of money that the applicant intends to spend on those activities;
 - (viii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in the operations authorised by the licence;

- (ix) the technical advice available to the applicant;
- (x) the financial resources available to the applicant; and,
- (xi) if the licence is to be held by more than one person—the share of the licence that each prospective holder will hold; and,
- (e) be accompanied by a description and coordinates of the area or areas of the Seabed of the Cook Islands in respect of which a renewal of the licence is sought, including maps that -
 - (xii) relate to the blocks; and,
 - (xiii) comply with any guidelines or directions issued by the Authority; and
- (g) specify an address for service of notices under this Act and the regulations.

194. Grant of renewal – offer document - (1) This section applies if an application for the renewal of a mining licence has been made under section 192.

- (2) The Authority may -
 - (a) give the applicant a written notice (called an *offer document*) telling the applicant that the Authority is prepared to grant the applicant a renewal of the licence over the block or blocks specified in the offer document; or
 - (b) by written notice given to the applicant, refuse to grant an exploration licence to the applicant.

Note 1: Section 61 sets out additional requirements for offer documents (for example, a requirement that an offer document must contain a summary of conditions).

Note 2: If the applicant breaches a requirement under section 59 to provide further information, the Authority may refuse to give the applicant an offer document—see subsection 59(3).

195. Refusal to grant renewal of mining licence – If -

- (a) an application for the renewal of a mining licence has been made under section 192; and
- (b) the Authority is not satisfied as to the matters referred to in section 193 in relation to the application;

the Authority must, by written notice given to the applicant, refuse to grant a renewal to the applicant.

Note: Consultation procedures apply – see section 61.

196. Grant of renewal of mining licence - If -

- (a) an applicant has been given an offer document under section 194; and,
- (b) the applicant has made a request under section 60 in relation to the offer document within the period applicable under that section –

the Authority must grant the applicant a renewal of the mining licence over the block or blocks specified in the offer document.

Note: If the applicant does not make a request under **section 60** within the period applicable under that section, the application lapses at the end of that period—see **subsection 60(7)**.

Subdivision G – Obligations attaching to Mining Licence

197. Sources of obligations - (1) The sources of obligations associated with a mining licence are -

- (a) the licence conditions;
 - (b) obligations arising from directions given by the Authority; and,
 - (c) obligations imposed by this Act and the regulations.
- (2) If a licence has 2 or more holders, all of the holders are jointly and severally bound by the obligations that attach to the licence.

198. Conditions of mining licence - (1) The Authority may grant or renew a mining licence subject to whatever conditions the Authority thinks appropriate.

(2) If the Authority grants or renews a licence subject to conditions, the conditions must be specified in the licence.

(3) Without limiting subsection (1), the Authority may attach the following kinds of conditions to the grant or renewal of a licence -

- (a) a condition requiring the licensee to take out insurance as required by the Authority;
- (b) a condition requiring the licensee to carry out certain work in or in relation to the licence during the term of the licence; and to comply with directions concerning that work given in accordance with this Act;
- (c) a condition requiring the licensee to lodge a security with the Authority;
- (d) a condition requiring the licensee to keep specified information;
- (e) a condition requiring the licensee to give to the Authority on request, specified information in accordance with this Act;
- (f) a condition requiring the licensee to give employment preferences to qualified Cook Island resident to the maximum extent possible;
- (g) a condition requiring the licensee to give preference to the maximum extent possible -
 - (i) to materials and products made in the Cook Islands; and,
 - (ii) to service providers located in the Cook Islands and owned and operated by Cook Islanders.
- (h) a condition requiring the licensee to conduct training programmes for the benefit of employees; and

- (i) a condition requiring the licensee to take steps to protect the environment of the licence area including conditions relating to -
 - (i) protecting wildlife; or,
 - (ii) minimising the effect on the environment of the licence area and the area surrounding the licence area.
- (j) a condition requiring the licensee to prevent and mitigate damage to the environment;
- (k) a condition requiring the licensee to pay a specified penalty to the Government if the licensee does not comply with a condition.
- (4) A condition under paragraph (3)(c) must specify -
 - (a) the amount of the security required; and
 - (b) the kind of security required; and
 - (c) the manner and form in which the security is to be lodged.
- (5) Without limiting paragraph (3)(c), a condition under that paragraph may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify -
 - (a) the kind of person who is to give the guarantee; and
 - (b) the terms of the guarantee.
- (6) In making a decision about the conditions to which a mining licence granted on renewal will be subject, the Authority must have regard to -
 - (a) the investment of the licensee, or of any former licensee, during the term of -
 - (i) the original mining licence;
 - (ii) any mining licence granted on a previous renewal; where the investment relates to -
 - (A) operations authorised by the licence concerned; or
 - (B) any other development connected with those operations; and,
 - (b) such other matters (if any) as the Authority considers relevant.

199. Automatic suspension of conditions if licence rights are suspended – If -

- (a) the Authority suspends particular rights under an mining licence; and
- (b) a licence condition is affected by the suspension;

the licence condition is suspended for the period of the suspension of the rights.

200. Work practices - If a person who is -

- (a) a licensee or
- (b) an associate of the holder;

carries out activities in the licence area that are authorised by the licensee, the person must take all reasonable steps -

- (c) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the mining industry; and
- (d) to protect the health, safety and welfare of people engaged in the activities in and about the licence area; and
- (e) to maintain in good repair all structures and equipment brought into the licence area by the person; and
- (f) to remove from the licence 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 activities.

201. Licence holder must keep specified records etc. - The holder of a mining licence must -

- (a) keep whatever records, cores and samples; and
- (b) give whatever records, cores and samples to the Authority for inspection; and
- (c) make whatever returns;

are necessary to comply with -

- (d) the regulations; or
- (e) the licence conditions; or
- (f) a direction given by the Authority.

Subdivision H – Expiry of Mining Licence

202. Expiry of mining licence - A mining licence expires if -

- (a) the term of the licence ends without the licence being renewed; or
- (b) the holder surrenders the licence; or
- (c) a retention lease is granted over the blocks in the licence area; or
- (d) the licence is cancelled.

203. Obligations of former mining licence holders and former associates - (1)
Subject to subsection (4), if -

- (a) a person was -
 - (i) a mining licence holder; or
 - (ii) an associate of a mining licence holder; and
- (b) the licence -
 - (i) expires; or
 - (ii) is cancelled; or
 - (iii) is surrendered; and
- (c) an obligation associated with the licence arising out of -
 - (i) a licence condition; or
 - (ii) a direction given by the Authority in relation to the licence; or

- (iii) this Act or the regulations;
- has not been discharged; and,
- (d) the person was bound by that obligation when the person was the licence holder or an associate;
- the person remains bound by the obligation until the obligation is discharged.
- (2) Subsection (1) does not continue an obligation to carry out exploration or recovery activities.
 - (3) Subsection (1) continues an obligation that a person had to carry out exploration or recovery activities in a particular manner if the person carries them out.
 - (4) The Authority may determine that the person is not subject to -
 - (a) a particular obligation under this section; or
 - (b) all the person's remaining obligations under this section.
 - (5) A determination under subsection (4) is to be in writing.

CHAPTER 3 – SEABED MINERAL AGREEMENTS

Part 3.1 – Introduction

Division 1 – Negotiation and Mandatory Terms

204. Power to Negotiate Mineral Agreements - (1) The Minister may, on behalf of the Government, negotiate and enter into a Seabed Minerals Agreement with an applicant or registered holder of any of the following titles -

- (a) an exploration licence; or
- (b) a mining licence; or,
- (c) a retention lease;

in accordance with the provisions of this Act.

(2) The process of negotiating and concluding an Agreement referred to in subsection (1) shall be managed by the Cook Islands Seabed Minerals Authority under this Act.

205. Mandatory Terms of Seabed Mineral Agreements - (1) A Seabed Mineral Agreement entered into under this Act may contain terms and conditions relating to rights and obligations of a titleholder including *inter alia* provisions concerning -

- (a) the calculation and payment of royalties, taxes, fees and other fiscal impositions;
- (b) the circumstances or the manner in which a discretion conferred under this Act is to be exercised;
- (c) requirements relating to project financing and reporting;
- (d) subject to the requirement of the Environment Act, environmental obligations and liabilities; and,
- (d) procedures on the settlement of disputes.

206. Execution of Seabed Mineral Agreements - The Minister shall not execute a Seabed Minerals Agreement on behalf of the Government unless the Board has been furnished with a copy of the text of the proposed agreement and, the Board has made recommendations concerning the Agreement.

207. Consistency with legislation - (1) A provision of a Seabed Minerals Agreement that is inconsistent with a provision of this Act is of no legal effect.

(2) A provision of a Seabed Minerals Agreement cannot absolve a party to it from compliance with a legislative requirement or obligation under the laws of the Cook Islands.

Division 2 – Model Seabed Minerals Agreement

208. Model Seabed Minerals Agreement - (1) A model Seabed Minerals Agreement shall be prescribed from time to time and form Schedule 1 to this Act.

(2) A Seabed Minerals Agreement executed by the Minister shall contain terms based on the provisions of the prescribed model Seabed Minerals.

209. Schedule to have effect - Schedule 1 has effect subject to section 337.

CHAPTER 4 – VARIATION, SUSPENSION AND CANCELLATION OF CONDITIONS AND TITLES

Part 4.1 – Variation of Conditions of Titles

Division 1 – Variation of Conditions

210. When the conditions of a title may be the subject of a variation, suspension or exemption - (1) This section applies if an event specified in the table happens, or a circumstance specified in the table exists -

| When the conditions of a title may be the subject of a variation, suspension or exemption | | |
|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Item | Title | Event or circumstance |
| 1 | A prospecting permit, exploration licence, mining licence or a retention lease | The permittee, licensee or lessee applies in writing to the Authority for — |

| | | |
|----------|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | (a) a variation or suspension of any of the conditions to which the permit, lease or licence is subject; or (b) exemption from compliance with any of the conditions to which the permit, lease or licence is subject. |
| 2 | A prospecting permit, an exploration licence or mining licence | the permit or licence is: (a) partly cancelled; or (b) partly revoked; or (c) partly surrendered. |
| 3 | a retention lease | the lease is partly revoked. |
| 4 | A prospecting permit, an exploration licence, a retention lease or a mining licence | The permittee, licensee or lessee consents to the making of a determination. |
| 5 | A prospecting permit, an exploration licence, a retention lease or a mining licence | the permit, lease or licence is taken to continue in force until the Authority grants, or refuses to grant, the renewal of the permit, lease or licence. |

- (2) The Authority may, by written notice given to a title holder -
- (a) vary;
 - (b) suspend; or,
 - (c) exempt the title holder from compliance with;

any of the conditions to which the title is subject, on such conditions (if any) as are specified in the notice.

(3) Subsection (2) does not authorise the giving of a notice to the extent that it would affect -

- (a) a condition of a prospecting permit, exploration licence, a retention lease or mining licence requiring compliance; or,
- (b) the term of an exploration licence, retention lease, or mining licence.

(4) A variation of a mining licence under this section takes effect on the day on which notice of the variation is published in the *Gazette*.

(5) A variation of a prospecting permit, exploration licence or retention lease under this section takes effect on the day on which notice of the variation is given to the holder.

Division 2 – Surrender of Title

211. Application for consent to surrender title - (1) The table has effect -

| Surrender | | |
|------------------|------------------------------------|-------------------------------------------------------------------------------------------|
| Item | The registered holder of... | may apply to the Authority or consent to surrender... |
| 1 | A prospecting permit | the permit as to some or all of the blocks in relation to which the permit is in force. |
| 2 | An exploration licence | the licence as to some or all of the blocks in relation to which the licence is in force. |
| 3 | a mining licence | the licence as to some or all of the blocks in relation to which the licence is in force. |
| 4 | a retention lease | the lease. |

(2) An application under subsection (1) must be in writing.

212. Consent to surrender title - (1) This section applies if an application is made under section 211 for consent to surrender a title.

- (2) The Authority may, by written notice given to the applicant -
 - (a) give consent; or
 - (b) refuse to consent

(3) The Authority may consent to the surrender sought by the application only if the registered holder of the permit, licence or lease -

(a) has paid all fees and amounts payable by the holder under the following Acts -

(i) this Act; and,

(ii) any other enactment;

or has made arrangements that are satisfactory to the Authority for the payment of those fees and amounts; and

(b) has complied with the conditions to which the permit, lease or licence is subject and with the provisions of this Act; and

(c) has -

(i) to the satisfaction of the Authority removed or caused to be removed from the surrender area all property brought into the surrender area by any person engaged or concerned in the operations authorised by the permit, licence or lease; or

(ii) made arrangements that are satisfactory to the Authority in relation to that property; and

(d) has provided, to the satisfaction of the Authority for the conservation and protection of the environment in the surrender area;

but, if the registered holder has complied with those requirements, the Authority must not unreasonably refuse consent to the surrender.

213. Surrender of title - (1) This section applies if the Authority consents under section 212 to the surrender, in whole or in part, of a permit, licence or lease.

(2) The registered holder of the permit, lease or licence may, by written notice given to the Authority surrender the whole or the part, as the case may be, of the permit, licence or lease.

(3) The surrender takes effect on the day on which notice of the surrender is published in the *Gazette*.

Division 3 – Suspension

214. Suspension of rights - (1) If the Authority is satisfied that it is necessary to do so in the national interest, it must, by written notice given to the registered holder of the permit, licence or lease suspend, either -

(a) for a specified period; or

(b) indefinitely;

any or all of the rights conferred by a prospecting permit, an exploration licence or a retention lease.

(2) If any rights are suspended under subsection (1), any conditions that must be complied with in the exercise of those rights are also suspended.

Division 4 - Cancellation

215. Cancellation of titles - (1) Subject to subsection (5), the Authority may cancel a title (permit, licence or lease) if the holder -

- (a) breaches a licence condition; or,
- (b) contravenes a provision of this Act or the regulations.

(2) If the Authority proposes to cancel a title under subsection (1), the Authority must give the holder a written notice that informs the holder of the proposed cancellation.

(3) The notice must -

- (a) specify the reason for the proposed cancellation;
- (b) invite the holder to make submissions in relation to the proposed cancellation;
- (c) specify the day by which submissions should be given to the Authority; and,
- (d) specify an address where submissions are to be lodged.

(4) The day specified under paragraph (3)(c) must be not less than 60 days after the day on which the notice is given.

(5) The Authority may cancel the title only if -

- (a) the holder has been given a notice under subsection (2);
- (b) the Authority has considered -
 - (i) any submission made by the holder; and,
 - (ii) any steps taken by the holder to remedy the circumstances that led to the proposal to cancel the permit, licence or lease and to prevent those circumstances from happening again; and
- (c) the Authority is satisfied that no special circumstances exist that justify the title not being cancelled.

216. Effect of Cancellation - (1) The table has effect -

| Cancellation | | |
|---------------------|--------------------------------------------|------------------------------------------------------------------------------------------------|
| Item | If there is a ground for cancelling | The Authority may, by written notice given to the registered holder... |
| 1 | a prospecting permit | cancel the permit as to some or all of the blocks in relation to which the permit is in force. |

| | | |
|----------|------------------------|--------------------------------------------------------------------------------------------------|
| 2 | an exploration licence | cancel the licence as to some or all of the blocks in relation to which the licence is in force. |
| 3 | a mining licence | cancel the licence as to some or all of the blocks in relation to which the licence is in force. |
| 4 | a retention lease | cancel the licence as to all of the blocks in relation to which the licence is in force. |

Note: Consultation procedures apply—see **section 61**.

(2) In exercising a power conferred by subsection (1), the Authority must take into account any action taken by the registered holder -

- (a) to remove the ground of cancellation; or
- (b) to prevent the recurrence of similar grounds.

(3) A cancellation takes effect on the day on which notice of the cancellation is published in the *Gazette*.

217. Cancellation of title not affected by other provisions - (1) If -

- (a) a person who was the holder of a permit, licence or lease under this Act has not complied with a provision of this Act; and,
- (b) the holder has been subject to the application of a penalty under this Act in relation to that non-compliance;

the Authority may exercise a power of cancellation under subsection 215(1) on the ground of that non-compliance, even though the holder has been convicted of that offence.

(2) If -

- (a) a person who was the holder of title under this Act has not complied with a provision of this Act; and,
- (b) the Authority has exercised a power of cancellation under section 215 on the ground of that non-compliance;

the person may be convicted of an offence relating to the non-compliance, even though the Authority has exercised that power of cancellation.

(3) If -

- (a) a person who was the holder of a permit, licence or lease under this Act has not paid an amount payable by the person under:
 - (i) this Act; or
 - (ii) another prescribed enactment

within the period of 90 days after the day on which the amount became payable; and

- (b) either -

- (i) judgment for the amount has been obtained; or
- (ii) the amount, or any part of the amount, has been paid or recovered;

the Authority may exercise a power of cancellation under subsection 214(1) on the ground of that non-payment, even though -

- (c) judgment for the amount has been obtained; or
 - (d) the amount, or a part of the amount, has been paid or recovered.
- (4) If -
- (a) a person who was the holder of a title under this Act has not paid an amount payable by the person under -
 - (i) this Act; or,
 - (ii) any other enactment;

within the period of 90 days after the day on which the amount became payable; and

- (b) the Authority exercised a power of cancellation under subsection 215(1) on the ground of that non-payment;

the person continues to be liable to pay -

- (c) that amount; and,
- (d) any late payment penalty relating to that amount;

even though the Authority has exercised that power of cancellation.

CHAPTER 5 – REGISTRATION AND DEALINGS

Part 5.1 – Register of Titles

Division 1 - Introduction

218. Simplified Outline - The following is a simplified outline of this Chapter -

The Authority must keep a Register of Titles, which is a public document.

The Authority must enter title details in the Register through an instrument called a *memorial*

A transfer of title must be approved by the Authority, and the instrument of transfer registered under this Chapter.

A dealing in a title must be approved by the Authority, and evidence of the dealing registered under this Chapter.

The Authority has the power to correct errors in the Register and to issue *Evidentiary Certificates* relating to titles, instruments and dealings contained in the Register.

Division 2 – Establishment of Register of Titles

219. Register of Titles - (1) The Authority shall maintain a Register of Titles (the *Register*).

(2) The Register shall be a public document and may be inspected at reasonable hours by any person.

Division 3 – Entry of Information in Register

220. Entries in Register – general - (1) The Authority must enter in the Register a memorial for each title.

(2) The memorial must comply with the table -

| Content of memorial | | |
|----------------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item | In the case of... | the memorial must... |
| 1 | A title. | (a) Specify the name of the registered holder of the title. (b) set out an accurate description (including, where convenient, a map) of the title area. (c) specify the duration of the title. |
| 2 | a prospecting permit, an exploration licence, a mining licence, a retention lease | The permit area, the licence area or lease area as the case may be. |
| 3 | A title. | (a) set out such other matters and things as are required by this Act to be entered in the Register; (b) set out such further matters relating to the registered holder, or to the conditions of the title as the Authority considers proper and expedient in the public interest. |

- (3) The Authority must enter in the Register a memorial of -
- (a) a notice or instrument -
 - (i) varying; or
 - (ii) cancelling (to any extent); or
 - (iii) surrendering (to any extent); or

- (iv) otherwise affecting;
- a title; or,
- (b) a notice or instrument varying or revoking a notice or instrument referred to in paragraph (a).

Note 1: Subparagraph (a)(iv) would cover, for example, a notice terminating a mining licence, or a notice revoking a retention lease.

221. Copy of title may be entered instead of memorial - It is a sufficient compliance with the requirements of this Act if the Authority enters a copy of the title, notice or instrument in the Register.

222. Date of entry to be endorsed - The Authority must endorse on -
 (a) the memorial; or
 (b) the copy of the title, notice or instrument;
 a memorandum of the date on which the memorial or copy was entered in the Register.

223. Power to correct Register - Where the Authority is satisfied -
 (a) that a mistake has been made in the Register; or,
 (b) that a matter has been incorrectly entered or recorded in a memorial,
 the Authority shall notify by notice in writing, the person or persons affected by the mistake or error and, shall promptly rectify the error by correcting the mistake or entry in the Register.

224. Replacement of originals - (1) This section applies where the Authority is satisfied that an original of any document or instrument evidencing any title granted under this Act, or transfer of a title, has been lost or destroyed or rendered illegible.

(2) The Authority shall, at the request of the registered holder of the title in the prescribed form and upon payment of the prescribed fee -
 (a) prepare, endorse, certify and issue to the registered holder a copy of the original; and,
 (b) enter details of the copy in the Register.

Division 4 – Devolution of Title

225. Application to have name entered on the Register as the holder of a title - (1)
 If the rights of the registered holder of a particular title have devolved on a person by operation of law, the person may apply to the Authority to have the person's name entered in the Register as the holder of the title.

(2) The application must be in writing.

226. Entry of name in the Register - (1) This section applies if an application is made under section 225 in relation to a title.

(2) If -

- (a) the Authority is satisfied that the rights of the holder have devolved on the applicant by operation of law; and,
 - (b) the applicant has paid the prescribed fee;
- the Authority must enter the name of the applicant in the Register as the holder of the title.
- (3) On that entry being made, the applicant becomes the registered holder of the title.

Division 5 – Change in name of body corporate

227. Application to have new name entered on the Register - (1) If -
- (a) a body corporate is the registered holder of a particular title; and,
 - (b) the body corporate has changed its name;
- the body corporate may apply to the Authority to have its new name substituted for its previous name in the Register in relation to that title.
- (2) The application must be in writing.

228. Alteration in the Register - (1) This section applies if a body corporate makes an application under section 227 to have its new name substituted for its previous name in the Register in relation to a particular title.

- (2) If -
 - (a) the Authority is satisfied that the body corporate has changed its name; and,
 - (b) the body corporate has paid the prescribed fee;
 The Authority must make the necessary alterations in the Register.

Part 5.2 – Evidentiary Certificates

229. Application for production of Evidentiary Certificate – (1) A person may apply to the Authority for an evidentiary certificate that shall be received in administrative, court or arbitration proceedings as evidence of the following matters -

- (a) the grant, transfer, suspension, cancellation or termination of a title under this Act;
- (b) that an area was, or areas were, the subject of a title on a date specified in the Certificate;
- (c) that a mineral(s) or mineral deposit(s) specified in the Certificate was the subject of a title;
- (d) that a person named in the certificate is or was the registered holder of a title;
- (e) that a term or condition specified in the Certificate is or was a condition of a title; and,
- (f) that a certificate of surrender was issued with respect to a block or blocks, or any part thereof, on a date specified in a certificate.

- (2) The application must be in writing.

Part 5.3 – Transfer of Titles

230. Approval and registration of transfers - A transfer of a title is of no force until -
- (a) it has been approved by the Authority; and,
 - (b) an instrument of transfer is registered as provided by this Part.

231. Application for approval of transfer - (1) One of the parties to a proposed transfer of a title may apply to the Authority for approval of the transfer.
- (2) The application must be in writing.

232. Documents to accompany application - (1) An application for approval of a transfer made under section 231 must be accompanied by -
- (a) an instrument of transfer in the prescribed form executed by -
 - (i) the registered holder or, if there are 2 or more registered holders, by each registered holder; and
 - (ii) the transferee or, if there are 2 or more transferees, by each transferee; and
 - (b) if the transferee, or one or more of the transferees, is not a registered holder or are not registered holders of the title-a document setting out -
 - (i) the technical qualifications of that transferee or those transferees; and
 - (ii) details of the technical advice that is or will be available to that transferee or those transferees; and
 - (iii) details of the financial resources that are or will be available to that transferee or those transferees; and
 - (c) a copy of each of the following -
 - (i) the application;
 - (ii) the instrument referred to in paragraph (a);
 - (iii) the document referred to in paragraph (b).

233. Time limit for application - (1) An application for approval of a transfer made under section 231 must be made within -
- (a) 90 days after the day on which the party who last executed the instrument of transfer so executed the instrument of transfer; or,
 - (b) such longer period as the Authority allows.
- (2) The Authority may allow a longer period under paragraph (1)(b) only if there are sufficient grounds to warrant allowing the longer period.

234. Date of application to be entered in Register - If an application is made for approval of a transfer, the Authority -

- (a) must enter a memorandum in the Register of the date on which the application was lodged; and,
- (b) may make such other notation in the Register as the Authority considers appropriate.

235. Approval of transfer - (1) This section applies if an application is made for approval of a transfer.

- (2) The Authority must -
 - (a) approve the transfer; or
 - (b) refuse to approve the transfer.
- (3) The Authority must, by written notice given to the applicant, notify the applicant of the Authority's decision.
- (4) If the Authority decided not to approve the transfer, the Authority must make a notation of the refusal in the Register.

236. Registration of transfer - (1) This section applies if the Authority approves the transfer of a title.

- (2) The Authority must immediately endorse on -
 - (a) the instrument of transfer; and,
 - (b) the copy of the instrument of transfer;a memorandum of approval.
- (3) On payment of the prescribed fee Authority must enter in the Register a memorandum of -
 - (a) the transfer; and,
 - (b) the name of the transferee or of each transferee.
- (4) On the entry in the Register of the memorandum -
 - (a) the transfer is taken to be registered; and,
 - (b) the transferee becomes the registered holder, or the transferees become the registered holders, of the title.
- (5) If the transfer is registered -
 - (a) the copy of the instrument of transfer endorsed with the memorandum of approval must be -
 - (i) retained by the Authority; and
 - (ii) made available for inspection in accordance with this Chapter; and
 - (b) the instrument of transfer endorsed with the memorandum of approval must be returned to the person who applied for approval of the transfer.

237. Instrument of transfer does not create an interest in the title - The mere purported execution of an instrument of transfer of a title creates no interest in the title unless the transfer has been approved by the Authority and registered in accordance with this Part.

238. Limit on effect of approval of transfers - The approval of a transfer of a title

does not give the transfer any force, effect or validity that the transfer would not have had if this Chapter had not been enacted.

Part 5.4 – Dealings
Division 1 – Introduction

239. Dealings to which this Part applies - This Part applies to a dealing (other than a transfer of a title) that would have one or more of the effects set out in the table -

| Effects of dealings | |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item | Effect |
| 1 | The creation or assignment of an interest in an existing title. |
| 2 | The creation or assignment of a right (conditional or otherwise) to the assignment of an interest in an existing title. |
| 3 | The determination of the manner in which persons may: (a) exercise the rights conferred by an existing title; or (b) comply with the obligations imposed by an existing title; or (c) comply with the conditions of an existing title; (including the exercise of those rights, or the compliance with those obligations or conditions, under cooperative arrangements to produce minerals). |
| 4 | The creation or assignment of an interest in relation to an existing permit, licence or lease under this Act, where the interest is: (a) an overriding royalty interest; or (b) a payment; or (c) a net profits interest; or, (d) a carried interest. |
| 5 | The creation or assignment of an interest that is similar to an interest covered by item 4, where the interest relates to: (a) minerals produced from operations authorised by an existing mining licence; or (b) revenue derived as a result of the carrying out of operations authorised by an existing mining licence. |
| 6 | The creation or assignment of an option (conditional or otherwise) to enter into a dealing, where the dealing would have one or more of the effects referred to in items 1, 2, 3, 4 and 5. |
| 7 | The creation or assignment of a right (conditional or otherwise) to enter into a dealing, where the dealing would have one or more of the effects referred to in items 1, 2, 3, 4 and 5. |
| 8 | The alteration or termination of a dealing, where the dealing would have one or more of the effects referred to in items 1, 2, 3, 4, 5, 6 and 7. |

Division 2 – Approval of Dealings

240. Dealings of no force unless registered - A dealing is of no force, in so far as the dealing would have an effect of a kind referred to in the table in section 239 in relation to a particular title until -

- (a) the Authority has approved the dealing, in so far as it relates to that title; and,
- (b) the Authority has made an entry in the Register in relation to the dealing.

241. Application for approval of dealing - (1) An application for approval of a dealing must be made in accordance with subsection (2) or (3).

(2) If a dealing relates to only one title, a party to the dealing may apply to the Authority or approval of the dealing in so far as it relates to that title.

(3) If a dealing relates to 2 or more titles, a party to the dealing may make a separate application to the Authority for approval of the dealing in so far as it relates to each title.

- (4) An application must be in writing.

242. Documents to accompany application - (1) An application for approval of a dealing must be accompanied by -

- (a) the instrument evidencing the dealing; or
- (b) if that instrument has already been lodged with the Authority for the purposes of another application - a copy of that instrument.

(2) An application for approval of a dealing may be accompanied by an instrument setting out such details (if any) as are prescribed for the purposes of an application for approval of a dealing of that kind.

(3) An instrument under subsection (2) is called a *supplementary instrument*.

- (4) An application for approval of a dealing must be accompanied by -

- (a) a copy of the application;
- (b) a copy, or an additional copy, of the instrument referred to in subsection (1);
- (c) a copy of any supplementary instrument.

- (5) If -

- (a) a dealing (including a dealing referred to in section 252) creates a charge over some or all of the assets of a body corporate; and

- (b) a person applies for approval of the dealing; and

- (c) the application is accompanied by 2 copies of each document required to be lodged under the International Companies Act;

the person is taken to have complied with -

- (d) subsection (1); and,

- (e) subsection (4) in so far as that subsection requires a copy, or an additional copy, of the instrument referred to in subsection (1) to accompany the application.
- (6) An application for approval of a dealing must be made within -
 - (a) 90 days after the day on which the party who last executed the instrument evidencing the dealing so executed the instrument; or
 - (b) such longer period as the Authority allows.
- (7) The Authority may allow a longer period under paragraph (1)(b) only if there are sufficient grounds to warrant allowing the longer period.

243. Application date to be entered in Register - If an application is made for approval of a dealing, the Authority -

- (a) must enter a memorandum in the Register of the date on which the application was lodged; and
- (b) may make such other notation in the Register as the Authority considers appropriate.

244. Approval of dealing - (1) This section applies if an application is made for approval of a dealing in so far as it relates to a particular title.

- (2) The Authority must -
 - (a) approve the dealing; or,
 - (b) refuse to approve the dealing;

in so far as it relates to that title.

(3) The Authority must, by written notice given to the applicant, notify the applicant of the Authority's decision.

(4) If the Authority refuses to approve the dealing in so far as it relates to that title, the Authority must make a notation of the refusal in the Register.

Division 3 – Recording of Dealings

245. Entry of dealing in Register - (1) This section applies if the Authority approves a dealing in so far as it relates to a particular title.

- (2) The Authority must immediately endorse a memorandum of approval -
 - (a) on the original instrument evidencing the dealing and on the copy of that instrument; or,
 - (b) if the original instrument was not lodged with the application for approval - on both of the copies of that instrument.
- (3) On payment of the prescribed fee, the Authority must make an entry of the approval of the dealing in the Register on -
 - (a) the memorial relating to that title; or
 - (b) the copy of that title.

246. Retention, inspection and return of instruments - (1) This section applies if the Authority makes an entry of the approval of a dealing in the Register.

(2) If the application for approval of the dealing was accompanied by a supplementary instrument -

- (a) a copy of the supplementary instrument, endorsed with a copy of the memorandum of approval, must be -
 - (i) retained by the Authority; and
 - (ii) made available for inspection in accordance with this Act; and,
- (b) the supplementary instrument must be returned to the person who applied for approval; and
- (c) a copy of the instrument evidencing the dealing must not be made available for inspection in accordance with this Act; and
- (d) the original instrument evidencing the dealing, or a copy of the original instrument, as the case requires, endorsed with a memorandum of approval, and must be returned to the person who applied for approval.

(3) If the application for approval of the dealing was not accompanied by a supplementary instrument -

- (a) one copy of the instrument evidencing the dealing, endorsed with a memorandum of approval, must be -
 - (i) retained by the Authority; and
 - (ii) made available for inspection in accordance with this Chapter; and
- (b) the original instrument evidencing the dealing, or a copy of the original instrument, as the case requires, endorsed with a memorandum of approval, and must be returned to the person who applied for approval.

(4) In this section -

"supplementary instrument" has the meaning given by subsection 242(2).

247. Strict compliance with application provisions not required - The approval of a dealing, or the making of an entry in the Register in relation to a dealing, is not made ineffective because of any failure to comply, in relation to the application for approval of the dealing, with the requirements of this Part.

Part 5.5 – Correction and Rectification of Errors in Register

Division 1 – General Power of Correction

248. Power of correction - (1) The Authority may make such entries in the Register as the Authority considers appropriate for the purposes of ensuring that the Register accurately records the interests and rights existing in relation to a title.

(2) The Authority may exercise the power conferred by subsection (1) -

- (a) on written application being made to the Authority by a person; or,
- (b) on the Authority's own initiative.
- (3) Before the Authority makes an entry in the Register under subsection (1), the Authority must cause to be published in the *Gazette* a notice -
 - (a) setting out the terms of the entry that the Authority proposes to make in the Register;
 - (b) inviting interested persons to give the Authority written submissions about the making of the entry; and,
 - (c) specifying a time limit for the making of those submissions.
- (4) The time limit must not be shorter than 45 days after the publication of the notice.
- (5) In deciding whether to make the entry in the Register, the Authority must take into account any submissions made in accordance with the notice.
- (6) If the Authority makes an entry in the Register under subsection (1), the Authority must cause to be published in the *Gazette* a notice setting out the terms of the entry.

Division 2 – Rectification of errors and omissions

249. Application for rectification - (1) If a person is aggrieved by any of the following -

- (a) the omission of an entry from a Register;
- (b) an entry made in a Register without sufficient cause;
- (c) an entry wrongly existing in a Register; or,
- (d) an error or defect in an entry in a Register;

the person may apply to a Court for the rectification of the Register.

(2) If an application is made under subsection (1) to a court for the rectification of a Register, the court may make such order as it thinks fit directing the rectification of the Register.

(3) In proceedings under this section, the court may decide any question that it is necessary or expedient to decide in connection with the rectification of the Register.

(4) Notice of an application under this section must be given to the Authority concerned, who -

- (a) may appear and be heard; and
- (b) must appear if so directed by the court.

(5) An office copy of an order made by the court may be given to the Authority.

CHAPTER 6 – ADMINISTRATION

Part 6.1 – Operations

Division 1 - Introduction

250. Simplified outline - The following is a simplified outline of this Part -

This Part imposes requirements that must be complied with by holders in relation to the following -

- (a) the commencement of works or operations**
- (b) work practices;**
- (c) insurance;**
- (d) the maintenance and removal of property.**

Division 2 – Commencement of operations

251. Requirement to commence works or operations - (1) This section applies to a title, if the permit, lease or licence is granted subject to a condition that works or operations specified in the permit, lease or licence are to be carried out.

(2) The registered holder of the title must begin to carry out those works or operations within -

- (a) 90 days after the day on which the title comes into force; or
- (b) such longer period as the Authority allows.

Division 3 – Work Practices

252. Work practices - (1) If a person who is -

- (a) the holder of a title; or,
- (b) an associate of the holder;

carries out activities in the title area that are authorised by the relevant permit, licence or lease, the person must take all reasonable steps -

- (c) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the mining industry;
- (d) to protect the health, safety and welfare of people engaged in the activities in and about the title area;
- (e) to maintain in good repair all structures and equipment brought into the title area by the person; and,
- (f) to remove from the title 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 activities.

(2) A person who does not comply with the work practice requirements contained in subsection (1) commits an offence -

| | |
|---------------------------------|---------------------|
| Maximum penalty individuals: | 300 penalty units. |
| Maximum penalty body corporate: | 3,000 penalty units |

Note: Section 319 provides the level of a *penalty unit*.

- (3) Strict liability applies to subsection (2).

253. Insurance - (1) A title holder must maintain, as directed by the Authority from time to time, insurance against -

- (a) expenses;
- (b) liabilities; and,
- (c) other specified insurable things or events;

arising in connection with, or as a result of -

- (d) the carrying out of work under the permit, lease or licence; or
- (e) the doing of any other thing under the permit, lease or licence;

including insurance against expenses of complying with directions relating to the clean-up or other remediation of the effects of seabed mining activity.

- (2) A person who does not comply with subsection (1) commits an offence -

| | |
|---------------------------------|---------------------|
| Maximum penalty individuals: | 300 penalty units. |
| Maximum penalty body corporate: | 3,000 penalty units |

Note: Section 319 provides the level of a *penalty unit*.

- (3) Strict liability applies to subsection (2).

254. Maintenance and removal of property etc. - (1) A title holder or an associate of the title holder must maintain in good condition and repair all structures that are, and all equipment and other property that is -

- (a) in the title area; and
- (b) used in connection with the operations authorised by the permit, lease or licence.

- (2) A person who does not comply with subsection (1) commits an offence -

| | |
|---------------------------------|---------------------|
| Maximum penalty individuals: | 300 penalty units. |
| Maximum penalty body corporate: | 3,000 penalty units |

Note: Section 319 provides the level of a *penalty unit*.

- (3) Strict liability applies to subsection (2).

(4) A holder must not fail to remove from the title area all structures that are, and all equipment and other property that is, neither used nor to be used in connection with the operations -

- (a) in which the holder is or will be engaged; and
- (b) that are authorised by the permit, lease, licence or authority.

- (5) A person who does not comply with subsection (4) commits an offence -

Maximum penalty individuals: 300 penalty units.
 Maximum penalty body corporate: 3,000 penalty units

Note: Section 319 provides the level of a *penalty unit*.

- (6) Strict liability applies to subsection (5).
- (7) Subsections (1) and (4) do not apply in relation to any structure, equipment or other property that was not brought into the title area by or with the authority of the registered holder or an associate of the holder.

Part 6.2 – Monitoring and Compliance
Division 1 – Preliminary

255. Simplified outline - The following is a simplified outline of this Part -

The Authority may give a direction to a title holder or to an associate of the title holder concerning a matter concerning the operation of this Act.

A direction may extend to other persons.

If there is a breach of a direction the Authority may do anything required by the direction to be done, and the Authority's costs may be recovered from the person to whom the direction was given.

In a prosecution for an offence relating to a breach of a direction, it is a defence if the defendant proves that the defendant took all reasonable steps to comply with the direction.

The Authority may appoint inspectors to carry out inspections for the purposes of the Act.

Division 2 – Inspections

256. Inspections - For the purposes of this Act, an *inspection* is an inspection carried out to determine whether a title-holder or an associate has complied with or is complying with -

- (a) this Act or the regulations; or
- (b) the title conditions; or
- (c) a direction given under this Act.

257. Powers exercisable in course of inspection - (1) If an inspector carry out an inspection, the inspector may do anything that is reasonable and necessary to carry out the inspection.

- (2) Without limiting subsection (1), the inspector may -
 - (a) examine things that are being used in activities carried out under a permit, licence or lease and things that appear to the inspector to be intended to be used in those activities; and
 - (b) test equipment (for example, by operating it);
 - (c) examine, and copy, documents;
 - (d) remove documents;
 - (e) take photographs;
 - (f) examine, and take samples of, cores or cuttings;
 - (g) enter or go onto any land, building or structure; and,
 - (h) enter or board any vehicle, vessel or aircraft.
- (3) If the inspection is being carried out under a warrant, subsection (2) has effect subject to the restrictions that are specified in the warrant.
- (4) Subject to subsections (5) and (6), if an inspector removes a document under paragraph (2)(d), the inspector may retain the document for as long as is necessary and reasonable to determine whether the title-holder or an associate has complied with or is complying with -
 - (a) this Act and the regulations; or
 - (b) the title conditions; or,
 - (c) a direction given under this Act.
- (5) Subject to subsection (6), the inspector must not retain the document for more than 60 days.
- (6) If -
 - (a) proceedings for an offence against a provision of this Act or the regulations are instituted within that period of 60 days; and,
 - (b) the document may afford evidence of the commission of the offence; the inspector may retain the document until the proceedings are completed.

Division 3 – Inspectors

258. Appointment of inspectors - The Authority may, by writing, appoint a person to be an inspector if the person is -
- (a) a Seabed Minerals Officer; or,
 - (b) a person deemed an Officer of the Authority under section 31 of this Act.
259. Identity cards - (1) The Authority must issue an identity card to an inspector.
- (2) The identity card must -
 - (a) be in the form prescribed by the regulations;
 - (b) specify the name of the inspector; and,
 - (c) contain a recent photograph of the inspector.
 - (3) A person to whom an identity card is issued under this section must carry the identity card at all times when carrying out functions as an inspector.

260. Return of identity card - (1) A person who ceases to perform the functions of an inspector must return the identity card issued to that person to the Authority as soon as practicable.

Maximum penalty: 10 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2).

261. Monitoring powers of inspectors - (1) For the purposes of this Act and the regulations, an inspector may, at all reasonable times and on production of the Officer's identity card, exercise the powers conferred by subsection (2).

(2) The powers an inspector may exercise under this section are as follows –

- (a) to have access to any part of a title area;
- (b) to have access to any structure, vessel, aircraft or building in the offshore area that the inspector has reasonable grounds to believe has been, is being or is to be used in connection with any of the following operations relating to seabed minerals activity –
 - (i) prospecting operations;
 - (ii) exploration operations;
 - (iii) mining and recovery operations;
 - (iv) operations relating to the processing or storage of minerals;
 - (v) operations relating to the preparation of minerals for transport;
- (c) to inspect and test any equipment that the inspector has reasonable grounds to believe has been, is being or is to be used in connection with any of those operations;
- (d) to enter any structure, vessel, installation, platform (whether fixed or floating), aircraft, building or place that is engaged in seabed mineral activity and in which the inspector has reasonable grounds to believe there are any documents relating to any of those activities, and to inspect, take extracts from and make copies of any of those documents.

(3) An inspector may exercise powers under paragraph (2)(d) to enter residential premises in the Cook Islands only –

- (a) in accordance with a warrant issued under section 263; or,
 - (b) after obtaining the consent of the occupier of the premises.
- (4) If -

(a) an inspector enters residential premises in accordance with a warrant issued under section 263; and
 (b) the occupier of the premises is present at the premises;
 the inspector must make available to the occupier a copy of the warrant or a copy of the form of the warrant

(5) Before obtaining the consent of a person as mentioned in paragraph (3)(b), an inspector must inform the person that the person may refuse consent.

(6) Consent of a person is not effective for the purposes of subsection (3) unless the consent is voluntary.

(7) A person who is -

- (a) the occupier or person in charge of any building, structure or place referred to in subsection (2); or
- (b) the person in charge of any structure, installation, platform (whether fixed or floating), vessel, aircraft or equipment referred to in subsection (2);

must provide an inspector with all reasonable facilities and assistance for the effective exercise of the inspector's powers under this section.

(8) A person who does not comply with subsection (7) commits an offence -

Maximum penalty individuals: 30 penalty units.

Maximum penalty body corporate: 300 penalty units

Note: Section 319 provides the level of a *penalty unit*.

(9) Strict liability applies to subsection (8).

262. Occupier to cooperate with inspector - (1) If an inspector carries out an inspection of land or of a building, structure, vehicle, vessel or aircraft under section 261, the person who occupies or is in charge of it must provide the inspector with the facilities and assistance that the inspector reasonably requires for carrying out the inspection.

(2) A person who does not comply with subsection (1) commits an offence -

Maximum penalty individuals: 30 penalty units.

Maximum penalty body corporate: 300 penalty units

Note: Section 319 provides the level of a *penalty unit*.

(3) Strict liability applies to subsection (2).

263. Warrants to enter residential premises - (1) An inspector may apply to a judge for a warrant authorising the inspector, with such assistance as the inspector thinks necessary, to exercise a power in relation to particular residential premises.

(2) The application must be supported by information on oath or affirmation that sets out the grounds on which the inspector is applying for the warrant.

(3) If the judge is satisfied that there are reasonable grounds for issuing the warrant, the court may issue the warrant.

(4) A warrant issued under subsection (3) must state -

(a) the name of the inspector;

(b) whether the inspection may be carried out at any time or only during specified hours of the day;

(c) the day on which the warrant ceases to have effect; and,

(d) the purposes for which the warrant is issued.

(5) The day specified under paragraph (4)(c) is not to be more than 7 days after the day on which the warrant is issued.

(6) The purposes specified under paragraph (4)(d) must include the identification of the premises in relation to which the warrant is issued.

Division 4 – Directions

264. Authority may give directions - (1) The Authority may direct a person to do or not to do the thing specified in a direction.

(2) The direction must be in writing and is given by serving it on the person or body corporate.

265. Directions by Authority must be obeyed - (1) A person who does not comply with a direction given by the Authority under this Act commits an offence -

(2) A person who does not comply with subsection (1) commits an offence -

Maximum penalty individuals: 200 penalty units.

Maximum penalty body corporate: 2,000 penalty units.

Note: Section 319 provides the level of a *penalty unit*.

(3) Strict liability applies to subsection (2).

266. Scope of directions - (1) The Authority may give a direction if it is necessary or convenient to do so to carry out or give effect to this Act or the regulations.

(2) Without limiting subsection (1), a direction may be given in relation to

-

(a) The control of prospecting, exploration or recovery operations; and

(b) The conservation and protection of the seabed mineral

- resources of the Cook Islands; and
- (c) The remedying of -
 - (i) damage caused to the seabed or subsoil by exploration and recovery operations; or,
 - (ii) damage caused by the escape of substances as a result of exploration and recovery operations;
- (d) The protection of the environment;
- (e) The making of returns.
- (3) For the purposes of subsection (2), the control of seabed minerals activity extends to the control of -
 - (a) The construction, maintenance and operation of installations used in or for use in seabed minerals activity;
 - (b) The flow or discharge of fluids arising from seabed minerals activity;
 - (c) The safety, health and welfare of people working in seabed minerals activity; and,
 - (d) The maintenance of infrastructure facilities, structures, equipment and property used in or for use in seabed minerals activity.

267. Direction may incorporate material in another document - (1) A direction under section 264 or section 266 may apply, adopt or incorporate a code of practice or a standard that is contained in another document.

(2) The application, adoption or incorporation of the other document may be made with or without modification.

(3) The other document may be one issued outside the Cook Islands.

(4) The direction may apply, adopt or modify the other document -

(a) As in force at the time when the direction is given; or

(b) As in force from time to time.

(5) If a direction applies, adopts or incorporates material in another document, a copy of the document must be attached to the direction when it is given to the holder.

268. Direction may impose absolute prohibition - Without limiting section 266 -

(a) A direction may prohibit absolutely the doing of a thing; and,

(b) A direction may prohibit the doing of a thing unless a person's consent or approval is obtained.

269. Direction may extend to associates - (1) A direction given to a holder may extend to an associate specified in the direction.

(2) The direction may provide that only particular obligations specified in the direction extend to a particular associate.

270. Holder to give notice of direction to associates - (1) If a direction under

section 264 or 266 extends to an associate of a title holder, the holder must either -

- (a) Give a copy of the direction to the associate; or
 - (b) Display a copy of the direction at a place that the associate goes to in the course of carrying out activities under the title.
- (2) The Authority may give the holder a supplementary direction that specifies -
- (a) The manner in which copies of a direction are to be displayed under paragraph (1) (b); or
 - (b) The places at which copies of a direction are to be displayed under paragraph (1) (b).

271. Authority may specify time for compliance - If the Authority gives a direction to a holder, the Authority may -

- (a) Specify in the direction a time for compliance with the direction; or,
- (b) Give the holder a supplementary direction under this section specifying a time for compliance with the direction.

272. Effect of a direction on other instruments - A later direction overrides an earlier direction if they are inconsistent.

273. Authority may take action if holder fails to comply - The Authority may do all or any of the things required by a direction if -

- (a) The time for compliance specified has ended; and,
- (b) The person to whom the direction was given or to whom it extended has not complied with the direction.

274. Costs incurred by Authority in taking action - (1) If -

- (a) The Authority takes action under section 273 in relation to a direction given to a holder; and,
 - (b) The direction does not extend to an associate of the holder;
- The costs and expenses incurred by the Authority in taking that action are a debt due to the Authority by the holder.

(2) If -

- (a) A direction specified that a particular associate of a holder is subject to a particular obligation; and,
- (b) The Authority takes action under section 273 in relation to that obligation;

The costs and expenses incurred by the Authority taking that action are a debt due to the Authority by the holder and the associate.

(3) The associate and the holder are jointly and severally liable to pay the debt arising under subsection (2).

(4) A debt under this section is recoverable in a court of competent jurisdiction.

Part 6.3 – Safety Zones
Division 1 – Introduction

275. Simplified outline - The following is a simplified outline of this Part -

The Authority may prohibit certain vessels from entering or being present in an area (called a safety zone) surrounding a structure, installation, vessel or other item of equipment in a title area.

A vessel must not enter or be present in the safety zone unless authorised to do so under this Part.

A person who enters a safety zone without the approval of the Authority commits an offence.

An authorised person may exercise powers for the purposes of the enforcement of this Part.

276. Authorised persons - (1) For the purposes of this Part, an authorised person is

-

- (a) An Officer of the Authority;
- (b) A person deemed an Officer of the Authority;
- (c) A member of the Cook Islands Police Force;
- (d) An officer of customs within the meaning of the Customs Act;
- or,
- (e) A person who is an authorised person because of a declaration under subsection (2).

(2) The Commissioner may, by notice published in the *Gazette*, declare that a person, or a person included in a specific class of persons, is an authorised person for the purposes of this Part.

Division 2 – Establishment of Safety Zones
Subdivision A - Preliminary

277. Safety zones - (1) For the purpose of protecting an installation, infrastructure facility or vessel in a title area, the Authority may, by notice published in the *Gazette*, prohibit -

- (a) all vessels; or
- (b) all vessels other than specified vessels; or
- (c) all vessels other than the vessels included in specified classes of vessels;

from entering or being present in a specified area (the *safety zone*) surrounding the installation, infrastructure facility or vessel without the written consent of the Authority.

(2) A safety zone specified in a notice under subsection (1) may extend to a distance of 500 metres around the installation, structure, fixed platform, floating platform, vessel or equipment specified in the notice, where that distance is measured from each point of the outer edge of the installation, structure, fixed platform, floating platform, vessel or equipment.

(3) Subsection (1) does not apply to Government vessels, or vessels on charter for use in Government service.

278. Effect of declaration of safety zone - (1) If a safety zone is declared around a structure or equipment, a vessel to which the declaration applies is not to enter or remain in the safety zone without the written consent of the Authority.

(2) If -

- (a) a safety zone is declared around a structure or equipment;
- (b) the Authority consents to a vessel entering or remaining in the safety zone;
- (c) the consent is given on conditions;

the vessel is to enter or remain in the safety zone only in accordance with the conditions.

(3) The owner of a vessel and the person in command or in charge of a vessel commit an offence against this section if the vessel enters or remains in a safety zone in contravention of subsection (1) or (2).

Maximum penalty: Imprisonment not exceeding 5 years.

(4) It is a defence to a prosecution of a person for an offence against subsection (3) if the person satisfies the court that -

- (a) an unforeseen emergency made it necessary for the vessel to enter or remain in the safety zone to attempt to secure the safety of -
 - (i) a human life;
 - (ii) the vessel;
 - (iii) another vessel;
 - (iv) a well, pipeline, structure or equipment; or,
- (b) The vessel entered or remained in the safety zone in circumstances beyond the control of the person who was in command or in charge of the vessel (for example, adverse weather).

Note: The defendant bears a legal burden in relation to the matter in subsection (4).

(5) An owner is not criminally responsible for an offence against subsection (3) if the owner proves that the owner did not know that the person in command or in charge of the vessel was in contravention of subsection (3).

Note: The defendant bears a legal burden in relation to the matter in subsection (5).

279. Authority may authorise entry into Safety Zone - (1) The owner of a vessel may apply to the Authority for the grant of an authorisation for the vessel to enter, and to be present in, a Safety Zone.

(2) An application under subsection (1) must be in writing.

(3) If an application is made under subsection (1) in relation to a vessel, the Authority may, by written notice given to the applicant, authorise the vessel to enter, and to be present in, the area to be avoided.

(4) An authorisation under subsection (3) is subject to such conditions as are specified in the notice of authorisation.

(5) If an authorisation under subsection (3) is in force in relation to a vessel, the Authority may, by written notice given to the owner of the vessel, revoke the authorisation.

Subdivision B – Powers of Authorised Persons

280. Requirement to move vessel etc.- (1) An authorised person may -

(a) require the master of a vessel that satisfies the following conditions -

- (i) the vessel is a relevant vessel, or the authorised person has reasonable grounds to believe that the vessel is a relevant vessel; and
- (ii) the vessel is in the area to be avoided otherwise than in accordance with an authorisation in force in relation to the vessel under subsection 279(3); and
- (iii) the vessel is not an exempt vessel in relation to a prescribed safety zone;

to take the vessel outside the area to be avoided; or,

(b) require the master of a vessel that satisfies the following conditions -

- (i) the vessel is in a safety zone;
- (ii) the vessel is not an exempt vessel in relation to the safety zone;

to take the vessel outside the safety zone; or,

(c) require the master of a disabled vessel that satisfies any of the following conditions -

- (i) the vessel is in the area to be avoided, and either the vessel is a relevant vessel or the authorised person has reasonable grounds to believe that the vessel is a relevant vessel;
- (ii) the vessel is in a safety zone;

- (iii) the vessel is a relevant vessel (or the authorised person has reasonable grounds to believe that the vessel is a relevant vessel), and the authorised person has reasonable grounds to believe that the vessel is likely to cause damage to any installation, structure, vessel, fixed platform, floating platform or equipment in the area to be avoided or in a safety zone;

to permit the vessel to be towed away from the area to be avoided or the safety zone, as the case requires, or to accept the giving of such other assistance to the vessel as the authorised person considers necessary.

(2) A person who does not comply with a direction given in the exercise of a powers referred to in sub-section (1) commits an offence.

Maximum penalty: Imprisonment not exceeding 5 years.

281. Other powers of authorised persons - (1) An authorised person may -

- (a) board a vessel that the authorised person has reasonable grounds to believe has been used, is being used or is about to be used in contravention of section 278 or 280 or
- (b) if the authorised person has boarded a vessel in the exercise of powers under paragraph (a) -
 - (i) require any person on board the vessel to answer questions relating to the vessel or to the movements of the vessel; or
 - (ii) require the master of the vessel to state whether a consent under subsection (1), or an authorisation under subsection (3), is in force in relation to the vessel and, if so, to produce the consent or authorisation, as the case may be; or
 - (iii) if the vessel is registered under the Shipping Registration Act, require the master of the vessel to produce the certificate of registration of the vessel; or
 - (iv) search the vessel for any documents relating to the vessel or to the movements of the vessel; or
- (c) if the following conditions are satisfied in relation to a vessel -
 - (i) the vessel is in, or is near, the area to be avoided;
 - (ii) no authorisation under subsection 279(3) is in force in relation to the vessel; or,
 - (iii) the vessel is not an exempt vessel in relation to a prescribed safety zone;

require the master of the vessel to permit the authorised person to take measurements of the vessel; or

- (d) detain a vessel that the authorised person has reasonable grounds to believe has been used in contravention of section 282 or 283.
- (2) An authorised person may exercise powers under subsection (1) in relation to a vessel only -
 - (a) in accordance with a warrant issued under section 282;
 - (b) after obtaining the consent of the master of the vessel; or,
 - (c) in circumstances of seriousness and urgency, in accordance with section 282.

282. Warrants - (1) If -

- (a) an information on oath or affirmation is laid before a judge alleging that there are reasonable grounds to believe that a vessel has been used, is being used or is about to be used in contravention of section 272 or 273; and,
- (b) the information sets out those grounds and identifies the vessel;

The judge may issue a warrant authorising an authorised person named in the warrant, with such assistance as the authorised person thinks necessary, to exercise any or all of the powers referred to in subsection 269 (1) in relation to that vessel.

- (2) A judge may issue a warrant under subsection (1) only if -
 - (a) the informant or some other person has given to the judge, either orally or by affidavit, such further information (if any) as the judge requires concerning the grounds on which the issue of the warrant is being sought; and,
 - (b) the judge is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant issued under subsection (1) must -
 - (a) specify the purpose for which the warrant is issued; and
 - (b) set out a description of the vessel in relation to which the warrant is issued; and,
 - (c) specify a day as the day on which the warrant ceases to have effect.
- (4) The day specified under paragraph (3)(c) must not be later than 7 days after the day on which the warrant is issued.

283. Exercise of powers in serious circumstances - (1) An authorised person may exercise, in relation to a vessel, any or all of the powers referred to in subsection (1) if -

- (a) the authorised person has reasonable grounds to believe that -
 - (i) the vessel has been used, is being used or is about do be used in contravention of sections 272 or 273 or ; or

- (ii) the exercise of those powers is necessary to prevent damage being caused to any well, pipeline, structure or equipment in the area to be avoided or in a safety zone; and
- (b) the circumstances are of such a serious nature as to require and justify the immediate exercise of those powers without the authority of a warrant issued under section 282.

Part 6.4 – Occupational Health and Safety
Division 1 – Schedule to have effect

284. Occupational health and safety - Schedule 3 has effect subject to section 337.

Division 2 – OHS inspectors

285. Appointment of OHS inspectors - (1) The Commissioner may, by writing, appoint persons as OHS inspectors.

(2) The Commissioner may appoint as OHS inspectors only persons who are -

- (a) Officers of the Authority; or,
- (b) members of the staff of the Authority.

(3) Despite subsection (2), the Commissioner may appoint as OHS inspectors persons who are not covered by paragraph (2)(a) or (b), so long as the appointment is for a specified period and for the performance of specified functions.

286. Identity cards - (1) The Authority must issue an identity card to each OHS inspector -

- (a) stating that he or she is an OHS inspector for the purposes of the Act; and,
- (b) if the OHS inspector is appointed for a limited period and in respect only of particular functions – specifying that period and those functions.

(2) The identity card must -

- (a) be in the form prescribed by the regulations; and,
- (b) contain a recent photograph of the OHS inspector.

(3) A person to whom an identity card is issued under this section must carry the identity card at all times when carrying out functions as an OHS inspector.

287. Return of identity card - (1) A person who ceases to perform the functions of an OHS inspector must return an identity card to the Authority as soon as practicable.

Maximum penalty: 10 penalty units.

Note: Section 319 provides the level of a *penalty unit*.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2).

CHAPTER 7 – INFORMATION

Part 7.1 – Data Management and Information Gathering

Division 1 – Introduction

288. Simplified outline - The following is a simplified outline of this Part -

The Authority may direct a holder to keep records and data.

The Authority or an inspector may obtain information or documents.

Division 2 – Data Management

289. Direction to keep accounts, records and samples - (1) The Authority may, by written notice given to a title-holder or an associate of the title holder, direct the person to do any or all of the following things -

- (a) to keep such accounts, records and other documents in connection with those operations as are specified in the notice;
- (b) to collect and retain such cores, cuttings and samples in connection with those operations as are specified in the notice;
- (c) to give to -
 - (i) the Authority; or,
 - (ii) a person specified in the notice;

in the manner specified in the notice, such reports, returns, other documents, cores, cuttings and samples in connection with those operations as are specified in the notice.

290. Directions by Authority must be obeyed - (1) A person who does not comply with a direction given under section 289 commits an offence -

Maximum penalty individuals: 200 penalty units.

Maximum penalty body corporate: 2000 penalty units.

Note: Section 319 provides the level of a *penalty unit*.

(2) Strict liability applies to subsection (1).

Division 3 – Information Gathering

291. Authority or inspector may obtain information and documents - (1) This section applies to a person if the Authority or an inspector believes on reasonable grounds

that the person has information or a document, or is capable of giving evidence, that relates to any or all of the following operations in the Seabed of the Cook Islands -

- (a) prospecting operations;
 - (b) exploration operations;
 - (c) recovery operations
 - (d) operations relating to the processing or storage of minerals mined or recovered from the Seabed of the Cook Islands; or,
 - (f) operations relating to the preparation of minerals for transport.
- (2) The Authority or the inspector may, by written notice given to the person, require the person -
- (a) to give to the Authority or the inspector within the period and in the manner specified in the notice, any such information; or,
 - (b) to produce to the Authority or the inspector, within the period and in the manner specified in the notice, any such documents;
 - (c) to make copies of any such documents and to produce to the Authority or the inspector, within the period and in the manner specified in the notice, those copies;
 - (d) if the person is an individual-to appear before the Authority or the inspector at a time and place specified in the notice to -
 - (i) give any such evidence, either orally or in writing; and,
 - (ii) produce any such documents; or,
 - (e) if the person is a body corporate-to cause a competent officer of the body to appear before the Authority or the inspector at a time and place specified in the notice to -
 - (i) give any such evidence, either orally or in writing; and,
 - (ii) produce any such documents.
- (3) A period specified under paragraph (2)(a), (b) or (c) must not be shorter than 14 days after the notice is given.
- (4) A time specified under paragraph (2)(d) or (e) must not be earlier than 14 days after the notice is given.
- (5) A person commits an offence if -
- (a) the person has been given a notice under subsection (2); and
 - (b) the person omits to do an act; and
 - (c) the omission contravenes a requirement in the notice.

Maximum penalty individuals: 100 penalty units.

Maximum penalty body corporate: 1000 penalty units.

- (6) Strict liability applies to subsection (5).
- (7) A person commits an offence if -
 - (a) the Authority or an inspector requires the person to give information under subsection (2); and
 - (b) the person gives information; and

- (c) the person does so knowing that the information is false or misleading in a material particular.

Maximum penalty individuals: 100 penalty units.

Maximum penalty body corporate: 1000 penalty units.

- (8) A person commits an offence if -
 - (a) the person has been given a notice under subsection (2); and
 - (b) the person produces a document to the Authority or an inspector; and
 - (c) the person does so knowing that the document is false or misleading in a material particular; and
 - (d) the document is produced in compliance or purported compliance with the notice.

Maximum penalty individuals: 100 penalty units.

Maximum penalty body corporate: 1000 penalty units.

Note: Section 319 provides the level of a *penalty unit*.

292. Copying documents-reasonable compensation - A person is entitled to be paid reasonable compensation for complying with a requirement covered by paragraph 291(2)(c).

293. Power to examine on oath or affirmation - (1) The Authority or an inspector may -

- (a) administer an oath or affirmation to a person required to appear before the Authority or the inspector; and
- (b) examine that person on oath or affirmation.

(2) A person is not excused from giving information or evidence or producing a document under section 291 on the ground that the information or evidence or the production of the document might tend to incriminate the person or expose the person to a penalty.

- (3) However -
 - (a) the information or evidence given or the document produced; or
 - (b) giving the information or evidence or producing the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document;

is not admissible in evidence against the person -

- (d) in any civil proceedings; or
- (e) in criminal proceedings other than -
 - (i) proceedings for an offence against subsection 291(5).

294. Copies of documents - The Authority or an inspector may inspect a document produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.

295. Authority or inspector may retain documents - (1) The Authority or an inspector may take possession of a document produced under this Division, and retain it for as long as is reasonably necessary.

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Authority or inspector to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Authority or an inspector must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.

Part 7.2 – Release of Information

Division 1 – Notifiable Events

296. Notifiable events – Gazette notice - If an event specified in the table happens, the Authority must cause notice of -

- (a) the event; and,
 - (b) such details of the event as the Authority thinks fit;
- to be published in -
- (c) the Gazette; and,
 - (d) in a national newspaper of the Cook Islands.

| Notifiable events | |
|--------------------------|----------------------------------------------------------|
| Item | Event |
| 1 | The grant (otherwise than by way of renewal) of a title. |
| 2 | The renewal of a title. |
| 3 | The variation of a title. |
| 4 | The surrender or cancellation of a title. |
| 5 | The revocation of a title. |
| 6 | The expiry of a title. |
| 7 | The termination of a title. |

Division 2 – Release of Technical Information

297. Definitions - In this Part, unless the contrary intention appears -

"documentary information" means information contained in an applicable document.

"sample" means -

- (a) a core or cutting from, or a sample of, the seabed or subsoil; or
- (b) a sample of a mineral recovered;

that has been given at any time, to the Authority, and includes a portion of such a core, cutting or sample.

298. Protection of confidentiality of information obtained by Authority - (1) This section restricts what the Authority may do with documentary information made available to the Authority in accordance with this Act or the regulations.

(2) The Authority must not -

- (a) make the information publicly known; or
- (b) make the information available to a person (other than the responsible Minister, the Commissioner, or an Officer of the Authority);

unless the Authority does so -

- (c) in accordance with regulations made for the purposes of this paragraph; or
- (d) for the purposes of the administration of this Act or the regulations.

299. Protection of confidentiality of mining samples obtained by Authority - (1) This section restricts what the Authority may do with a sample made available to the Authority.

(2) The Authority must not -

- (a) make publicly known any details of the sample; or
- (b) permit a person (other than the responsible Minister, the Commissioner or an Officer of the Authority) to inspect the sample;

unless the responsible Authority does so -

- (c) in accordance with regulations made for the purposes of this paragraph; or,
- (d) for the purposes of the administration of this Act or the regulations.

300. Restrictions on release of confidential material - (1) If the Authority holds confidential information -

(a) the Authority;

must not -

- (b) publish the information; or
- (c) make the information available to a person.

Maximum penalty: Imprisonment for 2 years.

- (2) If the Authority holds a confidential sample -
- (a) the Authority;
 - (b) allow a person to inspect the sample; or
 - (c) publish information about the sample
- must not -

Maximum penalty: Imprisonment not exceeding 2 years.

Division 3 – Copyright

301. Publishing or making copies of applicable documents not an infringement of copyright - The copyright in a literary or artistic work contained in an applicable document is not infringed by anything done -

- (a) by, or with the authority of, the Authority; and,
- (b) for the purpose of the exercise of any of the powers of the Authority under this Part.

CHAPTER 8 – ENVIRONMENTAL PROTECTION

Part 8.1 – Application of Environmental laws

302. Environmental laws to prevail - (1) Nothing in this Act shall exempt a person from complying with any law concerning the protection of the environment of the Cook Islands.

(2) A title shall not be granted under this Act unless and until a project permit required under the Environment Act in respect of the seabed minerals activity proposed to be carried out under the title has been issued.

Part 8.2 – Environmental Management

303. Environmental protection - (1) An applicant for a licence shall provide the prescribed form of financial security sufficient to cover the costs associated with the implementation of the environmental obligations of the title-holder under this Act.

(2) The financial security required under subsection (1) shall be for an amount determined by the Authority having regard to the particular characteristics of the seabed mineral activity to be carried out under the licence.

(3) The Authority may authorise the partial release of financial security bond upon the satisfactory completion of measures undertaken within the duration of a licence and shall release the security in full following the successful completion of all environmental obligations mentioned in subsection (1).

304. Remedial directions to current title-holders - (1) This section applies to the holder of a title or the associate of a title holder.

(2) The Authority may, by written notice given to the title-holder or associate, direct the person to do any or all of the following things on or before the applicable date -

- (a) to -
 - (i) remove, or cause to be removed, from the title area all property brought into that area by any person engaged or concerned in the operations authorised by the permit, lease or licence; or
 - (ii) make arrangements that are satisfactory to the Authority in relation to that property;
 - (b) to provide, to the satisfaction of the Authority, for the conservation and protection of the natural resources in the title area;
 - (c) to mitigate to the extent that it is practicable to do so in accordance with best international practice, any damage to the environment in the title area and any buffer zone caused by any person engaged or concerned in those operations.
- (3) Paragraph (2)(c) has effect subject to -
- (a) Chapter 2; and
 - (b) this Chapter; and
 - (c) the regulations.
- (4) For the purposes of this section, the table has effect -

| Applicable date and title area | | | |
|---------------------------------------|--------------------------|----------------------------------------------------------------------|---------------------------------|
| I | In the case of... | the applicable date is... | and the title area is... |
| 1 | a prospecting permit | the expiry date of the permit | the permit area. |
| 2 | an exploration licence | the expiry date of the licence | the licence area. |
| 3 | a retention lease | the expiry date of the lease | the lease area. |
| 4 | a mining licence | the first date on which the licence can be terminated under this Act | the licence area. |

(5) A notice under subsection (2) need not identify the applicable date as a particular calendar date.

305. Directions by Authority must be obeyed - (1) A person who does not comply with a direction given under section 304 commits an offence -

Maximum penalty individual: 200 penalty units.
Maximum penalty body corporate: 2000 penalty units

(2) Strict liability applies to subsection (1).

Note: Section 319 provides the level of a *penalty unit*.

306. Remedial directions to former title holders - (1) This section applies if an event specified in the table has happened -

| Scope | | |
|--------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item | Title | Event |
| 1 | prospecting permit | (a) the permit has been wholly or partly revoked; (b) the permit has been wholly or partly cancelled; (c) the permit has expired. |
| 2 | exploration licence | (a) the licence has been wholly or partly revoked; (b) the licence has been cancelled; (c) the licence has expired. |
| 3 | retention lease | (a) the lease has been wholly or partly revoked; (b) the lease has been cancelled; (c) the lease has expired. |
| 4 | mining licence | (a) the licence has been wholly or partly revoked; (b) the licence has been wholly or partly cancelled; (c) the licence has been terminated; (d) the licence has expired. |

(2) The Authority may, by written notice given to the person who was or is, as the case may be, the registered holder of a title, direct the person to do any or all of the following things within the period specified in the notice -

(a) to –

- (i) remove, or cause to be removed, from the vacated area all property brought into that area by any person engaged or concerned in the operations authorised by the permit, lease, or licence; or
 - (ii) make arrangements that are satisfactory to the Authority in relation to that property;
- (b) to provide, to the satisfaction of the Authority, for the conservation and protection of the natural resources in the vacated area;
- (c) to make good, to the satisfaction of the Authority, any damage to the seabed or subsoil in the vacated area caused by any person engaged or concerned in those operations.
- (3) The period specified in the notice must be reasonable.
- (4) Paragraph (2)(c) has effect subject to -
 - (a) Chapter 2; and
 - (b) this Chapter; and
 - (c) the regulations.
- (5) A person must not fail to comply with a direction given under this

section.

Maximum penalty individual: 200 penalty units.

Maximum penalty body corporate: 2000 penalty units

- (6) Strict liability applies to subsection (5).

Note: Section 319 provides the level of a *penalty unit*.

307. Authority may take action if a direction has been breached - (1) This section applies if a direction is given under section 306.

- (2) If -
 - (a) a direction has been breached in relation to the vacated area; or,
 - (b) an arrangement under section 306 has not been carried out in relation to the vacated area;

the Authority may do any or all of the things required by the direction or arrangement to be done.

(3) If any property brought into the vacated area by any person engaged or concerned in the operations authorised by the permit, lease, licence or authority has not been removed in accordance with -

- (a) a direction in relation to the vacated area; or,
 - (b) an arrangement under section 306 in relation to the vacated area;

the Authority may, by written notice published in the *Gazette*, direct the owner or owners of that property to -

- (c) remove the property from the vacated area; or
- (d) dispose of the property to the satisfaction of the Authority;

within the period specified in the notice.

- (4) The period specified in the notice must be reasonable.

- (5) If a direction is given under subsection (3) in relation to property, the Authority must give a copy of the notice to each person whom the Authority believes to be an owner of the property or of any part of the property.

308. Removal, disposal or sale of property by Authority—breach of direction - (1)
If a direction under subsection 306(2) has been breached in relation to property, the Authority may do any or all of the following things -

- (a) remove, in such manner as the Authority thinks fit, any or all of that property from the vacated area concerned;
- (b) dispose of, in such manner as the Authority thinks fit, any or all of that property;
- (c) if, under subsection 307(3), a person was given a copy of the notice of the direction - sell, by public auction or otherwise, as the Authority thinks fit, any or all of that property that belongs, or that the Authority believes to belong, to that person.

- (2) The Authority may deduct, from the proceeds of a sale under subsection (1) of property that belongs (or that the Authority believes to belong) to a particular person, the whole or a part of -

- (a) any costs and expenses incurred by the Authority under that subsection in relation to that property; and
- (b) any costs and expenses incurred by the Authority in relation to the doing of any thing required by a direction under section 310 to be done by that person; and
- (c) any fees or amounts payable by that person under this Act, so long as the fee or amount concerned is due and payable;

- (3) The proceeds of a sale of property under subsection (1), less any deductions under subsection (2), are to be paid to the owner of the property.

- (4) If the Authority incurs any costs or expenses under subsection (1) in relation to the removal, disposal or sale of property, the costs or expenses -

- (a) are a debt due by the owner of the property to the Authority; and
- (b) to the extent to which they are not recovered under subsection (2)—are recoverable in a court of competent jurisdiction.

- (5) If the Authority incurs costs or expenses in relation to the doing of anything required by a direction under section 305 or section 306 to be done by a person who is or was the registered holder of a prospecting permit, exploration licence, retention lease, or mining licence, the costs or expenses -

- (a) are a debt due by the person to the Authority; and,

- (b) to the extent to which they are not recovered under subsection (2)—are recoverable in a court of competent jurisdiction.

309. Removal, disposal or sale of property—limitation of action etc. - No action, suit or proceeding lies in relation to the removal, disposal or sale, or the purported removal, disposal or sale, of property under section 308.

Part 8.3 – Environmental Emergencies

310. Seabed Environmental Emergency Contingency Plans - (1) The Authority must develop, amend, approve and adopt the Cook Islands "***Seabed Mining Environmental Emergency Contingency Plan***".

(2) The Minister must from time to time, appoint an ***On-Scene Commander*** to carry out the duties and functions specified in the Seabed Mining Environmental Emergency Contingency Plan.

(3) In the event of a pollution incident resulting from seabed minerals activity occurring in the Cook Islands, the On-scene Commander specified in the Seabed Mining Environmental Emergency Contingency Plan shall take charge of all forces and resources necessary to combat, mitigate and remedy the effects of the pollution incident on the environment.

(4) The On-Scene Commander has the authority to commit and expend funds necessary to combat, mitigate and remedy the effects of a pollution incident on the environment to the limit determined by the Minister from time to time.

(5) In determining the limits to apply for the purposes of subsection (4), the Minister shall consult with the National Environment Authority.

(6) The On-Scene Commander has the authority to requisition human resources, vehicles, vessels, material or equipment necessary to combat, mitigate and remedy the effects of a pollution incident on the environment.

(7) The On-scene Commander shall in the event of a pollution incident, maintain a log of events and a record of all committed or expended funds or resources requisitioned necessary to fulfil his duties under the Seabed Mining Environmental Emergency Contingency Plan.

CHAPTER 9 – FINANCIAL PROVISIONS

311. Prohibition on the disposal of minerals while payments outstanding - (1) The registered holder of a title shall not sell or otherwise charge or dispose of minerals obtained under a permit, licence or lease until -

- (a) all fees, royalties, taxes and other charges imposed under this Act or any other enactment have been paid in respect of the minerals; or,
- (b) suitable arrangements approved by the Authority to secure outstanding payments have been made.

(2) A person who does not comply with subsection (1) commits an offence -

Maximum penalty individuals: 500 penalty units

Maximum penalty body corporate: 5,000 penalty units

Note: Section 319 provides the level of a *penalty unit*.

(3) Strict liability applies to subsection (2).

(4) Where minerals are sold or otherwise charged or disposed of contrary to subsection (1) the other party to the impugned transaction shall gain no title to or property in the mineral(s).

312. Fees - The Registered holder of a title shall pay at the prescribed times such fees as may be prescribed in respect of the permit, licence or lease.

313. Royalty - (1) A person who is, or was, the holder of a mining licence shall pay an *ad valorem* royalty for all minerals recovered under the licence.

(2) The holder of a licence shall pay royalty on a mineral on the receipt of the payment or other consideration for the mineral.

(3) Payment of royalty shall be made in the approved manner and within the prescribed payment period.

(4) The holder of a mining licence under this Act shall cause to be published all royalty payments made in respect of minerals recovered from the Seabed of the Cook Islands in the prescribed manner.

(5) The late payment of royalty shall attract a penalty of 0.333333% per day that a royalty payment is in arrears at the end of the prescribed payment period.

(6) The provisions of this section shall not apply to minerals have been or are to be subject to assay, analysis or technical examination in accordance with a licence.

314. Appropriation of Royalty Payments - Where, under an enactment in force in the Cook Islands from time to time, provision is made requiring the collection or deposit into a revenue fund or other financial mechanism, of revenues generated by seabed minerals activity, all royalty obtained under this Act shall be deposited into such a fund or other financial mechanism in accordance with the relevant enactment.

315. Annual Holding Fee - The registered holder of a title shall pay the prescribed rate, an annual holding fee in respect of the area specified in the permit, licence or lease.

316. When fee due for payment - (1) This section applies to a fee payable in relation to a year of the term of a title.

(2) The fee for the first year of the term of the permit, lease or licence is due and payable at the end of 30 days after the day on which the term begins.

(3) The fee for a later year of the term of the permit, lease or licence is due and payable at the end of 30 days after the anniversary of the day on which the first year of the term begins.

317. Recovery of Royalty, Fees and Charges - A fee, royalty or other charge payable under this Act may be sued for and recovered by the Authority as if it were a debt due to the Authority.

CHAPTER 10 – OFFENCES

Part 10.1 - Overview

318. General regime for criminal offences - (1) The following provisions of this Act create offences -

- (a) section 47 (prospecting, exploration or recovery of mineral without appropriate title);
- (b) section 48 (interference with rights);
- (c) section 95 (minerals obtained under exploration licence);
- (d) section 252 (work practices);
- (e) section 253 (insurance);
- (f) section 254 (maintenance of property);
- (g) sections 260 and 287 (failure to return identity card);
- (h) section 261 (failure to cooperate with inspector);
- (i) sections 265 and 290 (failure to comply with a direction given by Authority);
- (j) section 278 (failure to comply with safety zone conditions);
- (k) section 291 (failure to comply with notice);
- (l) section 291 (false or misleading information);
- (m) section 291 (false or misleading documents);
- (n) section 311 (disposal of minerals whilst payments outstanding).

319. Penalties - (1) Except so far as the contrary intention appears, a penalty, whether pecuniary or otherwise, set out at the foot of any provision of an Act indicates -

- (a) if the provision expressly creates an offence--that the offence is punishable on conviction by a penalty not exceeding the penalty so set out; or,
- (b) in any other case - that contravention of the provision is an offence against the provision, punishable on conviction by a penalty not exceeding the penalty so set out.

(3) For the purposes of any offence created by this Act, unless the contrary intention appears -

"penalty unit" means \$250.

(4) A pecuniary penalty for an offence against this Act may, unless the contrary intention appears, be recovered in a court of the Cook Islands.

Part 10.2 - The Elements of an Offence
Division 1 – General

320. Establishing guilt in respect of offences - (1) In order for a person to be found guilty of committing an offence under this Act the following must be proved -

- (a) the existence of such physical elements as are, under this Act, relevant to establishing guilt; and,
- (b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

321. Offences that do not specify fault elements - (1) Where under this Act an offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.

(2) Where under this Act an offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.

Division 2 -- Cases where fault elements are not required

322. Strict liability - (1) Where under this Act an offence provides that the offence is an offence of strict liability -

- (a) there are no fault elements for any of the physical elements of the offence; and,
- (b) the defence of mistake of fact is available.

(2) Where an offence provides that strict liability applies to a particular physical element of the offence -

- (a) there are no fault elements for that physical element; and
- (b) the defence of mistake of fact is available in relation to that physical element.

(3) The existence of strict liability does not make any other defence unavailable.

323. Intervening conduct or event - A person is not criminally responsible for an offence under this Act that has a physical element to which strict liability applies if -

- (a) the physical element is brought about by someone else over whom the person has no control or by a non-human act or event over which the person has no control; and,
- (b) the person could not reasonably have been expected to guard against the bringing about of the physical element.

324. Continuing and multiple offences - (1) Where, under this Act an act or thing is required to be done within a particular period or before a particular time, then, unless the contrary intention appears, the obligation to do that act or thing continues, notwithstanding that the period has expired or the time has passed, until the act or thing is done.

(2) Where a refusal or failure to comply with a requirement referred to in subsection (1) is an offence under this Act, a person is guilty of an offence in respect of each day during which the person refuses or fails to comply with that requirement, including the day of a conviction for any such offence or any later day.

(3) Charges against the same person for any number of offences against the same provision of this Act may be joined in the same summons if those charges are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character.

(4) If a person is convicted of 2 or more offences referred to in subsection (3), the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.

Division 3 – Commencement of Prosecutions

325. Time for commencement of prosecutions - (1) Subject to subsection (2), a prosecution of an individual for an offence against a provision of this Act may be commenced as follows -

- (a) if the maximum penalty which may be imposed for the offence in respect of an individual is, or includes, a term of imprisonment of more than 6 months in the case of a first conviction at any time;
- (b) in any other case at any time within one year after the commission of the offence.

(2) A prosecution of a body corporate for an offence against a provision of this Act may be commenced as follows -

- (a) if the maximum penalty which may be imposed for the offence in respect of a body corporate is, or includes, a fine of more than 200 penalty units in the case of a first conviction at any time;
- (b) in any other case at any time within one year after the commission of the offence.

(3) Notwithstanding any provision in any law of the Cook Islands passed before the commencement of this Act and providing any shorter time for the commencement of the prosecution, any prosecution for an offence against the law may be commenced at any time within one year after the commission of the offence.

(4) Where, under this Act any longer time than the time provided by this section is provided for the commencement of a prosecution in respect of an offence against that law, a prosecution in respect of the offence may be commenced at any time within that longer time.

Part 10.3 - Corporate criminal responsibility

326. Application to Bodies Corporate - (1) An offence created by this Act applies to bodies corporate in the same way as it applies to individuals with such modifications as are set out in this Part and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

(2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

(3) If a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

(4) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.

(5) The means by which such an authorisation or permission may be established include -

- (a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
- (b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
- (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or
- (d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(6) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(7) Factors relevant to the application of paragraph (2)(c) or (d) include -

- (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and
- (b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.

(8) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(9) In this section –

"board of directors" means the body (by whatever name called) exercising the executive authority of the body corporate.

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place.

"high managerial agent" means an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

327. Mistake of fact (strict liability) - (1) A body corporate can only rely on mistake of fact (strict liability) in respect of conduct that would, apart from this section, constitute an offence on its part if -

- (a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
- (b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to -

- (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or,
- (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

328. Intervening conduct or event - A body corporate cannot rely on an intervening conduct or event in respect of a physical element of an offence brought about by another person if the other person is an employee, agent or officer of the body corporate.

CHAPTER 11 – MISCELLANEOUS

Part 11.1 – Service of Documents

329. Service of documents - (1) The table has effect -

| Service of documents | | |
|-----------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item | A document required or permitted by this Act to be given to... | must be given... |
| 1 | a person other than: (a) the Authority; or, (b) a corporation. | (a) by delivering the document to that person personally; or (b) by prepaying and posting the document as a letter addressed to that person at the person's last known place of residence or business or, if that person is carrying on business at 2 or more places, at one of those places; or (c) by leaving the document at the last known place of residence of that person with some person apparently a resident of that place and apparently at least 16 years of age; or (d) by leaving the document at the last known place of business of that person (or, if that person is carrying on business at 2 or more places, at one of those places) with some person apparently in the employment of that person and apparently at least 16 years of age. |
| 2 | The Authority. | (a) by prepaying and posting the document as a letter addressed to the Authority at a place of business of the Authority; or (b) by leaving it at a place of business of the Authority with some person apparently employed in connection with the business of the Authority and apparently at least 16 years of age. |

- 3 a body corporate.
- (a) by prepaying and posting the document as a letter addressed to the body corporate at its last known place of business or, if it is carrying on business at 2 or more places, at one of those places; or
 - (b) by leaving it at that place, or at one of those places, with some person apparently in the employment of the body corporate and apparently at least 16 years of age.
-

(2) If a document is given to a person by prepaying and posting the document as a letter in accordance with an item of the table, the document is taken to have been given to the person at the time at which the letter would have been delivered in the ordinary course of post.

330. Service of documents on 2 or more registered holders of a title - (1) This section applies if there are 2 or more registered holders of a title.

(2) Those registered holders may, by joint written notice given to the Authority, nominate one of them as being the person to whom documents may be given in any case where the documents -

- (a) relate to the title; and
- (b) are required or permitted by this Act to be given.

(3) The joint written notice must be executed in an approved manner by or on behalf of each of the registered holders.

(4) If -

- (a) a document relating to a title is required or permitted by this Act to be given to the registered holder; and
- (b) there are 2 or more registered holders of the title; and
- (c) a nomination of a person under subsection (2) is in force in relation to the title; and
- (d) the document is given to the nominated person;

the document is taken to have been given to each of those registered holders.

(5) If -

- (a) a person has been nominated under subsection (2) in relation to a title; and
- (b) one of the registered holders of the title, by written notice given to the Authority, revokes the nomination;

the nomination ceases to be in force.

- (6) If -
- (a) a person has been nominated under subsection (2) in relation to a title; and
 - (b) the nominated person ceases to be one of the registered holders of the title;

the nomination ceases to be in force.

Part 11.2 – Liability for Acts and Omissions

331. Liability for acts and omissions - (1) This section applies to the following bodies and people -

- (a) the Cook Islands Seabed Minerals Authority;
- (b) the Seabed Minerals Commissioner;
- (c) the Cook Islands Seabed Minerals Advisory Board;
- (d) a Seabed Minerals Officer;
- (e) an inspector;
- (f) an OHS inspector;
- (g) a person acting under the direction or authority of the Authority.

(2) This section does not apply to a person or body merely because the person or body is acting in accordance with a proposal or plan (however described) that has been accepted, agreed or otherwise approved by or on behalf of the Authority.

(3) A body or person is not liable to an action, suit or proceeding for, or in relation to, an act or matter in good faith done or omitted to be done in the exercise, or purported exercise, of any power or authority conferred by -

- (a) this Act; or
- (b) the regulations; or
- (c) a direction under this Act.

(4) This section has effect subject to section 232.

Note: Section 237 deals with rectification of the Register.

Part 11.3 – Regulations

332. Regulations - (1) The Queens' Representative may from time to time by Order in Executive Council make such regulations as are contemplated by any provision of this Act or are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may be made for all or any of the following purposes -

| Specific matters | |
|-------------------------|---------------------------------------------------------------------|
| Item | Matters |
| 1 | (a) the prospecting for minerals on the Seabed of the Cook Islands; |

| | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | and, (b) the carrying on of prospecting operations, and the execution of works, for that purpose. |
| 2 | (a) the exploration of minerals on the Seabed of the Cook Islands; and, (b) the carrying on of exploration operations, and the execution of works, for that purpose. |
| 3 | (a) the mining and recovery of minerals; and, (b) the carrying on of recovery operations, and the execution of works, for that purpose. |
| 4 | the calculation, payment and collection of royalties, fees, rents and other administrative charges under the Act. |
| 5 | The construction, erection, maintenance, operation or use of installations, infrastructure facilities, and equipment associated with seabed mineral activity. |
| 6 | The prescription of a Model Seabed Minerals Agreements for the purposes of the Act. |
| 7 | The prescription of rules, standards and codes of practice concerning the health and safety of persons engaged in seabed mineral activity. |
| 8 | The protection of the environment, including the conservation and prevention of the waste of, the natural resources, whether minerals or otherwise, of the continental shelf. |
| 9 | the clean-up or other remediation of the effects of the escape of minerals, mine waste or other pollutants into the environment. |
| 10 | the prevention of damage to the Seabed of the Cook Islands in an area over which a title is not in force. |
| 11 | the management of data, including the prescription of data management plans for the keeping of records, accounts and other documents and the collection and retention of cores, cuttings and samples by the holder of a title. |
| 12 | the maintaining in good condition and repair of all structures, equipment and other property used or intended to be used for or in connection with seabed mineral activity. |
| 13 | Prescribing an International Agreement for the purposes of the Act. |
| 14 | the removal of structures, equipment and other items of property that: (a) have been brought into the Cook Islands for or in connection with seabed mineral activity; and, (b) are not used, or intended to be used, in connection with such activity. |

333. Regulations – application - (1) Any Regulation made under this Act may -
- (a) apply generally throughout the Cook Islands or within a specified part of the Cook Islands;
 - (b) apply generally or with respect to different classes of title; or,
 - (c) apply generally or at any specified time of the year.
- (2) Regulations may confer power on a Seabed Mineral Officer to give, serve, or make a direction, notice, order, or requirement, for the purposes of this Act.
- (3) Regulations may authorise the Authority to exempt any person, activity, place or thing from any requirement of those regulations, if the Authority is satisfied that, in the circumstances, the imposition of the requirement on that person, activity, place or thing, is not necessary.

334. Regulations may provide for matters by reference to codes of practice or standards - (1) Regulations made under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) a code of practice or standard contained in an instrument -
- (a) as in force or existing at the time when the regulations take effect; or
 - (b) as in force or existing from time to time;
- so long as the code of practice or standard is relevant to that matter.
- (2) To avoid doubt, subsection (1) applies to an instrument, whether issued or made in the Cook Islands or outside the Cook Islands.

335. Exercise of Cook Islands rights under international law continental shelf - Regulations made under this Act may, to the extent to which this Act does not do so, provide for the exercise of the Cook Islands' rights and compliance with the Cook Islands' obligations under international law in relation to seabed minerals activity.

336. Unconditional or conditional prohibition - Regulations made under this Act may prohibit the doing of an act or thing either -
- (a) unconditionally; or,
 - (b) subject to conditions (including conditions requiring the grant, as prescribed by the regulations, of the consent or approval of a person).

337. Responsible Minister may require Authority to prepare reports or give information - (1) The responsible Minister may, by written notice given to the Authority, require the Authority -
- (a) to prepare a report about one or more specified matters relating to the performance of the Authority's functions or the exercise of the Authority's powers; and,
 - (b) give a copy of the report to the responsible Minister within the period specified in the notice.
- (2) The responsible Minister may, by written notice given to the Authority, require the Authority to -

- (a) prepare a document setting out specified information relating to the performance of the Authority's functions or the exercise of the Authority's powers; and,
 - (b) give a copy of the document to the responsible Minister within the period specified in the notice.
- (3) The Authority must comply with a requirement under subsection (1) or (2).

338. Responsible Minister may give directions to the Authority - (1) The responsible Minister may give written directions to the Authority as to the performance of its functions or the exercise of its powers.

(2) Directions given by the responsible Minister must not relate to the approval of an application or the regulation of activities under a particular seabed minerals prospecting, exploration or recovery project.

(3) Subsection (2) does not prevent the responsible Minister from directing the Authority to investigate a particular occurrence in relation to a particular seabed minerals prospecting, exploration or recovery operation.

Part 11.4 – Schedules

339. Schedules to have effect - (1) The Schedules to this Act shall have effect.
- (2) The Schedules to this Act may be amended by regulations made under this Act.

Part 11.5 –Repeals and Savings

340. Savings - (1) Notwithstanding any of the provisions of this Act, nothing in this Act shall affect -

- (a) the application and operation of the Environment Act;
- (b) the application and operation of the Conservation Act;
- (c) the right of any person to fish in any Cook Islands waters or to use such waters for recreational purposes except as may be otherwise provided from time to time by operation of Part 6.3 (safety zones), under any other enactment or under an International Agreement; or,
- (d) The existing use or occupation of any land or Cook Islands waters (being a use or occupation in being at the date of the commencement of this Act).

341. Repeal - (1) Section 5 of the *Continental Shelf Act 1977* is hereby repealed.

This Act is administered by the Seabed Minerals Authority

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