

COOK ISLANDS SEABED MINERALS INVITATION TO APPLY



Seabed Minerals Authority
Runanga Takere Moana
COOK ISLANDS



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Glossary

Act means the Seabed Minerals Act 2019

Authority means the Cook Islands Seabed Minerals Authority

Application means an application submitted pursuant to this ITA.

Applicant means a body corporate incorporated in the Cook Islands who submits an Application and, in any joint Application, includes each Applicant.

Application Area means one or more blocks that an Applicant identifies in an Application as the proposed licensed area.

Block means a graticular section of 5 minutes of latitude by 5 minutes of longitude as defined in section 41 the Act.

Closing Time means 4.00 pm on 11 December 2020 Cook Islands time

Competing Application is an Application that covers the circumstances described in Section 7 of this ITA

Days means the days between and including Monday to Friday and do not include public holidays and week-ends.

EEZ means the Cook Islands Exclusive Economic Zone.

Environment Act means the Environment Act 2003 and includes regulations made under that Act

Exploration Licence means an exploration licence granted under the Act.

Fees Regulations means the Seabed Minerals (Exploration Fees) Regulations 2020

Government means the Government of the Cook Islands.

ITA means this Invitation to Apply and includes:

- all schedules and appendices to this Invitation to Apply; and
- any variations made to it in accordance with clauses 2.4, 5.7 and 5.8

Licensing Panel means a group of independent experts commissioned to provide an independent assessment of Applications, as per section 22 of the Act.

Marae Moana Act means the Marae Moana Act 2017

Minister means the responsible Minister for Seabed Minerals

Non-competing Application is an Application that covers an Application Area that is not the subject of another Application

Opening Time means when the Application is opened after the Closing Time.

Preferred Applicant means an Applicant that may be granted a licence under the Act as a result of the Tender.

Regulations means the Seabed Minerals (Exploration) Regulations 2020.

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

Tender means the Cook Islands Seabed Minerals Tender 2020 and associated ITA

Tender document package means the data package compiled by the Authority to assist Applicants in developing their proposals for the Tender

1. Introduction

- 1.1. The Minister Honourable Mark Brown, invites Applications for an Exploration Licence for Polymetallic Nodules within the Cook Islands EEZ. This tender process is referred to as the Cook Islands Seabed Minerals Tender 2020 (**Tender**). The Tender is conducted by the Authority.
- 1.2. The principal object of the Tender, consistent with the objects of the Act, is to initiate exploration activities that will ultimately result in the commercial recovery of seabed minerals in a manner that secures the sustainable economic development of the Cook Islands while meeting the requirements for the protection of its marine environment.
- 1.3. The Cook Islands Government is seeking to attract companies that have a demonstrated ability to responsibly conduct exploration activities for deep seabed minerals in accordance with the Act, the Regulations, the Environment Act and the principles of ecologically sustainable use under the Marae Moana Act.
- 1.4. The most important return to the Cook Islands under exploration is the increase in knowledge of the resources and the marine environment, and the move toward the development of mining opportunities at a later stage. Applications that demonstrate more intensive exploration operations resulting in significant and incremental data collection will be scored accordingly.
- 1.5. This ITA is a notice for the purposes of section 44(2) of the Act. It sets out the blocks on offer, the process for making Applications, the information to be submitted with Applications, how Applications will be evaluated and other information for Applicants. Applications must be lodged by the Closing Time.
- 1.6. A Tender document package is available to potential Applicants on the Authority's website.
- 1.7. Before preparing and submitting an Application, Applicants should familiarise themselves with the Cook Islands regulatory regime for the allocation and management of rights to explore and mine for seabed mineral resources contained primarily in the following:
 - Seabed Minerals Act 2019
 - Seabed Minerals (Exploration) Regulations 2020
 - Marae Moana Act 2017
 - Environment Act 2003
 - this ITA and other information relevant to the Tender that will be accessible from time to time on the Authority's website (www.sbma.gov.ck).
- 1.8. Applicants should also consider the Guidelines for Applications for the Grant of Exploration Licences over blocks provided by the Authority which gives information on the preparation of an Application and supporting information.
- 1.9. Applicants should also be familiar with other legislation that may apply to activities undertaken under an exploration licence, including:
 - Seabed Minerals (Exploration Fees) Regulations 2020
 - Seabed Minerals (Royalties) Regulations 2013
 - Marine Transport Act 2008 and associated regulations¹
 - Prevention of Marine Pollution Act 1998
 - Maritime Rules (Offences) Regulations 2014
 - Income Tax Act 1997
 - Income Tax (Transfer Pricing) Regulations 2014
 - Value Added Tax Act 1997
 - Official Information Act 2008
 - Development Investment Act 1995-1996

- Development Investment Regulations 1996
 - Development Investment Code Order 2003
 - Employment Relations Act 2012
- 1.10. The area offered in the Tender is identified on the map in Schedule 1. The area comprises all blocks located in the EEZ, excluding:
- areas within 50 nautical miles of each of the 15 islands; and
 - Reserved areas.
- 1.11. The current holders of Reserved areas within the EEZ are CIIC Seabed Resources Ltd (**CIICSR**) and Ocean Minerals Ltd (**OML**).
- 1.12. Applications in the Tender can be for a single block or for a combination of blocks, which will together form the proposed Application Area. Subject to paragraph 1.1, there is no limit on the number of blocks that can be applied for, save that the Application Area, if granted, must be actively explored in accordance with the work plan.
- 1.13. Only **one** exploration licence may be granted by the Minister arising from the Tender.
- 1.14. CIICSR and OML may opt to apply for blocks in the Tender area in accordance with this ITA, in addition to any blocks they may apply for in their respective Reserved areas. If CIICSR and OML make an Application for both blocks in the Tender and their respective Reserved areas, and are granted a licence over those blocks, the awarded blocks from both the Tender and Reserved areas will attach to and form part of the total licensed area under a single exploration licence.
- 1.15. Schedule 8 of the Regulations sets out the model Exploration Licence that will form the basis of any Exploration Licence granted pursuant to the Tender.
- 1.16. Details of the evaluation of Applications are set out in this ITA.
- 1.17. An Exploration Licence granted under the Tender is, in accordance with the Act, for a term of 5 years. During this period the Authority expects the Licensed area to be explored and expects that identified mineral resources will be appraised and upgraded to mineable reserves, with the objective of deciding whether to:
- continue exploration and appraisal; or
 - apply for a mining licence to recover a mineable reserve or request a retention; or
 - surrender the Exploration Licence.
- 1.18. Exploration Licence holders will also be required to collect and analyse environmental baseline data to enable comprehensive environmental impact assessment, and to monitor and manage the impacts of exploration in accordance with an approved environmental management programme.² Successful Applicants or licence holders will need to apply to the National Environment Service to obtain consent from the National Environment Council under the Environment Act to carry out specified exploration activities under an Exploration Licence.
- 1.19. An Exploration Licence may be renewed for further periods not exceeding 5 years, in accordance with the requirements of the Act and the Regulations.³
- 1.20. An Exploration Licence holder will be required to consider the interests of the Cook Islands community and engage regularly to share relevant information regarding the potential impact of exploration activities in the licensed area, providing training opportunities, and the purchase of various local services and supplies. These requirements will be set out in a local engagement, training and business

² Schedule 3 of the Regulations.

³ Section 86 of the Act; Part 7 of the Regulations.

development plan to be submitted with an Application.⁴

⁴ Regulation 4(2)(d)(vi) of the Regulations.

2. Tender process and timetable

- 2.1. Applicants must prepare and submit Applications that comply with this ITA, Act and Regulations and be lodged with the Authority by the Closing Time.
- 2.2. All Applications will be evaluated in accordance with this ITA, the Act, and Regulations after the Closing Time.
- 2.3. The key indicative milestones and periods for this Tender process are:

MILESTONE	DATE	PROCESS
Tender opens	22 October 2020	ITA published on website
Last date for questions from potential Applicants	30 November 2020	As set out in clause 5.1 of this ITA
Last date for answers to potential Applicants' questions	7 December 2020	As set out in clause 5.4 of this ITA
Closing Time	11 December 2020	Applications must be received by the Authority by 4:00 pm 11 December 2020 Cook Islands time
Decision to grant/decline Applications for an exploration licence	From March 2021 ⁵	Completion of assessment, and decision to grant Exploration Licence(s) under sections 74, 75 of the Act and Regulations 25-27
Public announcement of grants	From March 2021	Gazettal of issue of Exploration Licence(s)

- 2.4. The dates above are indicative only and may be changed by the Authority. Changes will be notified in accordance with the rules of this ITA⁵.
- 2.5. The above process does not reflect the requirement for any successful Applicant to apply for an environmental approval from the National Environment Council prior to the commencement of exploration activities under an exploration licence.

3. Submission of Applications

- 3.1 An Applicant may submit one Application for an Exploration Licence **in respect of** the proposed Application Area, lodged in the approved manner.
- 3.2 All Applicants must complete the online exploration licence application form, and upload all supporting documentation listed in the form. The form is **available** on the Authority's website (www.sbma.gov.ck).
- 3.3 Additionally, Applicants must **also** submit to the Authority:
- (a) one (1) hard copy original of the **Application** in the approved form, and of each annex, attachment or other enclosure, verified and signed by an authorised officer or authorised representative of the applicant; and
 - (b) two (2) hard copies of the original of the Application and each annex, attachment or other enclosure; and
 - (c) an electronic copy stored on a memory stick.
- 3.4 Hard copies must be hand-delivered, including by courier, and must be sealed in an envelope or other container marked "CONFIDENTIAL: Cook Islands Seabed Minerals Tender 2020" and delivered during Cook Islands Government business hours before the Closing Time to:
- Seabed Minerals Authority
Ara Tapu, Avarua District
Rarotonga
Cook Islands
- 3.5 The identity of an Applicant must not be evident on the sealed container delivered to the Authority, so that the identities of Applicants remain unknown until the Opening Time. In the case of the online application form under paragraph 3.2, the Authority will only be made aware electronically that an Application under the Tender has been made. The Authority will not access any Application, nor the identity of an Applicant until after the Closing Time.
- 3.6 To avoid doubt, the Authority must be in receipt of an online exploration licence application under paragraph 3.2 and the hard copies required under paragraph 3.3 before the Closing Time.
- 3.7 Applications received after the Closing Time will not be accepted, unless the Applicant can demonstrate to the Authority's satisfaction that the Application was late due to an oversight of the Authority.
- 3.8 Application fees payable in accordance with the Act, the Regulations and the Seabed Minerals (Exploration Fees) Regulations 2020 must be paid by direct payment to:
- Ministry to receive the funds - **Cook Islands Government Public Account**
Name and address of the Account - **Bank South Pacific, Avarua, Rarotonga, Cook Islands**
Account number – **0127107401**
Swift Code – **BOSPCKCR**
BSB Number – **039038**
Reference to identify Applicants: 'CISBM 2020 Tender - [Applicant's name]'.
- 3.9 Any Application that does not materially comply with the terms of this ITA or the Regulations may not be accepted. If the Application is not accepted the Applicant will be notified and the Application will not be evaluated under the Tender. Application fees will not be returned.
- 3.10 All Applications should contain sufficient information to enable the Authority and the Licensing Panel to assess an Application against the qualification criteria and evaluation criteria respectively, including in competition with other applicants.

4. Nature of blocks Offered

- 4.1. The blocks offered under this Tender are guided by the principles set out in the Cook Islands Seabed Minerals Tender 2020 Block Release document (available in the Tender document package), namely:
 - (a) to make available all areas known to contain nodules and allow applicants to self-select areas of interest for their exploration investment;
 - (b) to enable large areas to be held for regional exploration to enable cost effective utilisation of exploration assets and accordingly to incentivise early exploration over large areas; and
 - (c) to require a proposed relinquishment schedule of blocks over a licence term.
- 4.2. The graticular allocation system enables an Applicant to self-select a proposed Application area which may comprise one or more blocks. The Authority will make available to Applicants the GIS layer for the blocks which will include the naming convention for each block.
- 4.3. The Authority will make available a file (.mxd format) and shapefiles containing the blocks available for application.
- 4.4. Applicants can only apply for blocks that are within that file. Applicants, after selecting the available blocks they wish to apply for, must export the blocks as shapefiles.
- 4.5. Shapefiles must be submitted as Esri shapefiles and should include .shp, .shx, .dbf, and .prj files. The Authority will not accept any other file formats.
- 4.6. Applicants must also submit a map of the blocks they are applying for (in pdf. or png. format).
- 4.7. An Applicant may make one Application for an Exploration Licence under the Tender.
- 4.8. There are no limits to the number of blocks that an Applicant can apply for aside from the areas excluded under paragraph 1.10.
- 4.9. All Application areas must comprise whole blocks even if an Applicant is only interested in part of the block.
- 4.10. Where part of a block overlaps with an excluded area as set out in paragraph 1.10, it will not be considered as part of the Application.
- 4.11. To avoid doubt, under this Tender:
 - (a) only one exploration licence may be granted under the Act to an Applicant, not being an Applicant who is the holder of a Reserved area; and
 - (b) the holder of a Reserved area may be allocated additional blocks where such holder makes an Application under this Tender and is successful in being granted blocks under the Tender.

5. Communications relating to this Tender

Communications prior to the Closing Time

- 5.1. Any potential Applicant may submit questions relating to the Tender by email to SBM2020tender@cookislands.gov.ck up to 30 November 2020. Except for the act of lodging Applications at the Authority and the Authority undertaking a pre-lodgement assessment for completeness of an Application (see 5.5 below), this is the only permitted medium of communication with any person working for or contracted to the Authority or the Crown during the tender process until the announcement of successful and unsuccessful Applicants.
- 5.2. The Authority is not obliged to (and reserves the right not to) answer any question at its absolute discretion.
- 5.3. The Authority will post any questions it decides to answer and the responses given on the Authority's website so that they can be viewed by all potential Applicants. The identity of the questioner will not be disclosed, and the questioner will not receive any previously undisclosed information before the information is published on the Authority's website. However, in its discretion, the Authority may answer a question without publishing the answer on the website if the answer only reproduces or directs the questioner to information that has already been published to potential Applicants.
- 5.4. The last answers to questions from potential Applicants that the Authority decides to answer will be provided by 7 December 2020.
- 5.5. A potential Applicant may provide its Application to the Authority before the Closing Time, for the Authority to undertake a pre-lodgement assessment of the information to accompany an Application for completeness. The Authority may provide feedback to the Applicant on the completeness of the Application only, and not on the merits of the Application. This is subject to the Authority's availability to undertake a pre-lodgement assessment. The Authority is not bound by its pre-lodgement assessment and any guidance provided to the Applicant by the Authority will neither prejudice the Authority's determination as to the completeness of an Application nor its right to request further information under the Regulations.⁶
- 5.6. The Authority may make public presentations about the Tender prior to the Closing Time and as part of that process may provide information to potential Applicants about investing in the minerals industry in the Cook Islands generally. The time and place of such presentations will be publicised on the Authority's website.
- 5.7. An answer to a question may be deemed to be part of this Tender and where this is the case, the answer must be complied with by the Applicant when making Applications. Where an answer is deemed to be part of this Tender that will be clearly stated in the answer given.
- 5.8. Applicants and potential Applicants should regularly check the Authority's website during the open Term of this Tender to ensure they are up to date with questions and answers, variations to the Tender and any other information that may be posted by the Authority about the Tender process.

6. Regulations 9 and 10 of the Regulations

Communications after the Closing Time

- 5.9. The Authority may communicate with Applicants after the Closing Time where it is considered necessary for the purposes of this Tender. This includes a request by the Authority or the Licensing Panel for further information from an Applicant under the Act and the Regulations.⁷
- 5.10. Other than permitted in this ITA, the Act and Regulations, potential Applicants or Applicants must not contact, solicit (including seeking to influence or offer inducements of any kind) or approach any person at the Authority including Ministers, members of the Licensing Panel, the Advisory Committee, consultants, or contractors to the Authority or within the Government in connection with the Tender. The Authority reserves the right not to consider any Application from an Applicant who breaches this clause.
- 5.11. Applicants must not provide any information related to their Application to the Authority after the Closing Time unless that information has been requested by the Authority or the Licensing Panel. Any information tendered to the Authority in breach of this clause will not be considered and will be returned to the Applicant. The Authority reserves the right not to consider any Application from an Applicant who breaches this clause.

Communications regarding the decision to grant or decline a licence

- 5.12. The Authority will provide a written statement of reasons to an Applicant for a decision to grant or decline a licence under the Act. The Authority will also publish the written statement on the Authority's website.⁸
- 5.13. Where a decision is made to provisionally grant a licence to a successful Applicant under this Tender, the Applicant must give the Authority written acceptance of the provisional grant.⁹

⁷ Sections 63(2)(b) and 68(2) of the Act; regulations 10(1) and 20 of the Regulations.

⁸ Section 74 of the Act; regulation 30 of the Regulations.

⁹ Regulation 24 of the Regulations.

6. Overview of Licensing Process and Evaluation of Applications

- 6.1. Applications will only be evaluated after the Closing Time.
- 6.2. Applications will be evaluated in accordance with this ITA, the Act and the Regulations.

Application to be complete

- 6.3. After the opening of Applications, all Applications will be reviewed by the Authority to determine that an Application complies with the prescribed requirements and contains the prescribed information in the Regulations¹⁰ and this ITA.
- 6.4. The Authority may request further information from an Applicant to complete an Application.¹¹
- 6.5. An Application may be returned if an Applicant does not comply with the Authority's request.¹²

Applicants to meet Qualification Criteria

- 6.6. Where the Authority is satisfied that an Application is complete, the Authority will determine whether the Applicant meets all the qualification criteria (including the Applicant's financial and technical capability, and that the Applicant is a fit and proper person to hold a licence) as set out in section 64 of the Act, and that any grant of a licence would comply with section 69(1)(a) and (b) of the Act.
- 6.7. Where all the qualification criteria are met, the Authority will refer the Application to the Licensing Panel.
- 6.8. If the qualification criteria are not met, an Application will be declined by the Authority or returned to the Applicant.

Public notice of Application(s)

- 6.9. Once the Authority is satisfied that the qualification criteria are met and there are no licensing restrictions to granting a licence the Authority will give public notice of the Application(s) and serve a copy of the notice on specified Crown agencies. Following the closing date for comments, the Authority will forward to the Applicant a list and copy of all the comments that it has received in relation to the public notice, including any written comments received from Crown agencies.
- 6.10. An Applicant must ensure that it has provided the Authority with a non-technical summary of its Application for the purposes of the public notice.
- 6.11. At the same time, the Authority will consult with the National Environment Service and other relevant Crown agencies on each Application.
- 6.12. The Authority will consider the public comments (and an Applicants response (if any) to such comments), together with advice or comments from other relevant Crown agencies.
- 6.13. The Authority will update its report for the Licensing Panel in the light of public comments and advice received.

Evaluation of Application(s) by the Licensing Panel

- 6.14. The licensing panel will consider each Application and information provided.¹³
- 6.15. The Panel may request further information from the Applicant.¹⁴

10. Regulation 9(f) of the Regulations.

11. Section 63(2)(b) of the Act; regulation 10(f) of the Regulations.

12. Section 63(2)(c) of the Act; regulation 10(3) of the Regulations.

13. Regulation 19 of the Regulations.

14. Regulation 20 of the Regulations.

- 6.16. The Panel will evaluate each Applicant and their Application against a prescribed set of evaluation criteria.¹⁵
- 6.17. Where there are Competing Applications, the Panel will rank the Applications according to the matrix set out at Schedule 2 of this ITA, and determine a Preferred Application.
- 6.18. In the case of a Non-competing Application, the Application will be evaluated on its merits against the evaluation criteria at Schedule 7 to the Regulations and against the minimum work plan as set out in Schedule 3 of this ITA.

Recommendation to responsible Minister

- 6.19. The Panel will make its recommendation to the responsible Minister as to whether to grant or decline an Application.

Decision-making

- 6.20. The responsible Minister will consider the recommendations from the licensing panel.¹⁶
- 6.21. If the responsible Minister intends to grant a licence, the Authority will prepare a draft licence for approval by the responsible Minister and issue to the applicant.¹⁷ This may include specific conditions determined by the Authority.¹⁸
- 6.22. The Authority and the successful Applicant will negotiate the licence terms, including the work plan and other plans to be annexed to the licence.
- 6.23. If Cabinet approves the licence terms, the exploration licence may be signed.¹⁹
- 6.24. The Licence holder must pay the applicable fee for the grant of the licence.
- 6.25. The Authority enters details in the register of titles.²⁰
- 6.26. Exploration activities may commence subject to:
- a) any conditions precedent in the licence;²¹ and
 - b) the requirements of the Environment Act 2003 (environment approval).
- 6.27. The diagram on the following page provides an overview of the evaluation and decision-making process. It covers the major steps in the processing of Applications but is not an exhaustive representation of the process.

15. Regulation 21 and Schedule 7 of the Regulations.

16. Regulation 23 of the Regulations.

17. Regulation 25 of the Regulations.

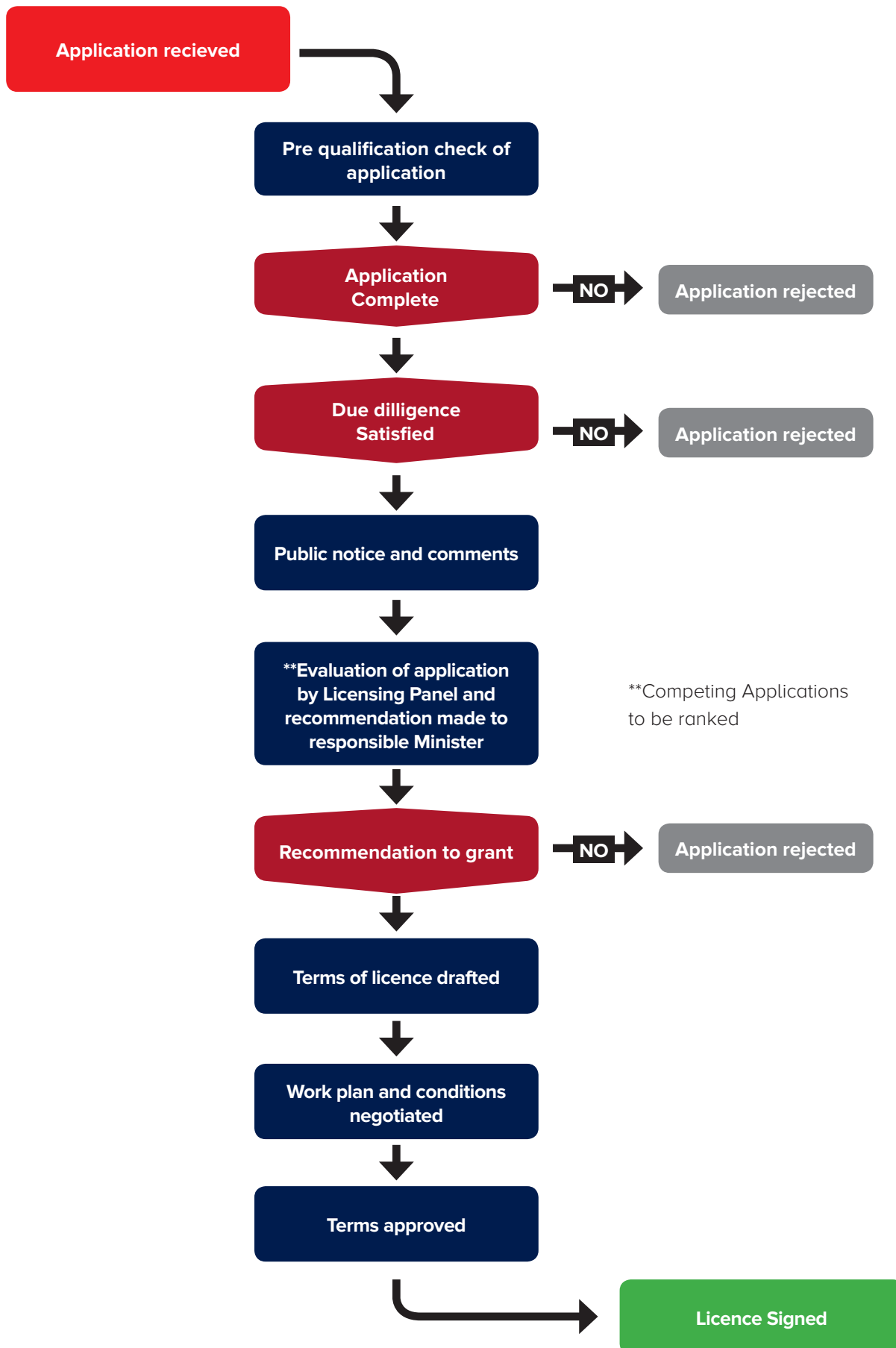
18. Section 72(2)(c) of the Act and regulation 26 of the Regulations.

19. Regulation 33 of the Regulations.

20. Regulation 34 of the Regulations.

21. Section 72(2)(a)(vi) of the Act.

LICENSING PROCESS



7. Competing and Non-competing Applications

7.1. The Tender may result in the following:

- (a) One Application only made by an Applicant who is not the holder of a Reserved area (Non-competing Applications);
- (b) Two or more Applications made by Applicants who are not holders of a Reserved area (Competing Application);
- (c) Applications made by both holders and non-holders of a Reserved area (Competing or Non-competing Applications);
- (d) Applications for blocks that do not overlap (Non-competing Applications);
- (e) Applications for blocks that overlap (Competing Applications);
- (f) Applications for a combination of blocks that overlap and do not overlap (Competing Application).

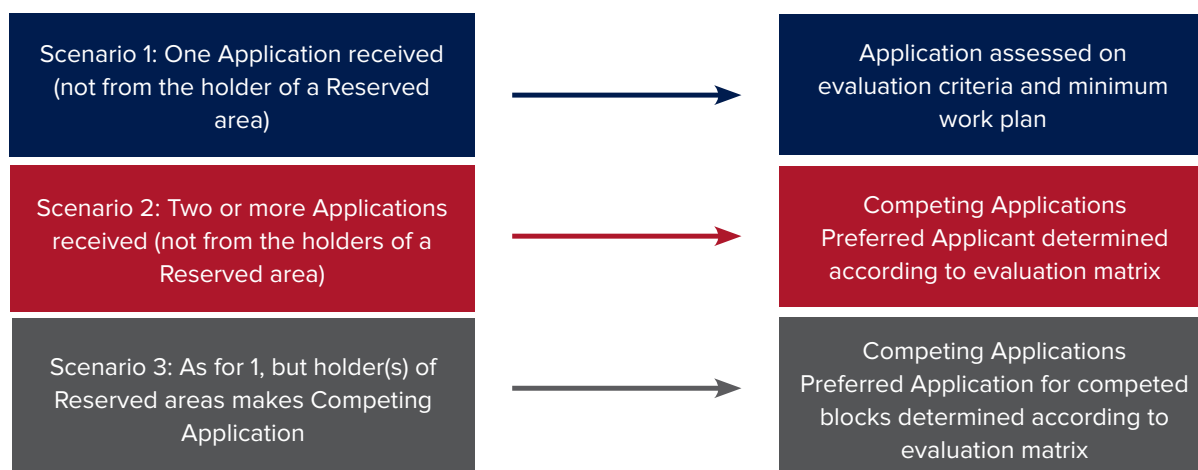
7.2. Competing Applications may arise in the following circumstances:

- Where two or more Applications are received from Applicants who are not holders of a Reserved area in connection with the grant of **one** Exploration Licence arising from this Tender.
- Where an Application is received from the holder of a Reserved area, and the Application is for an Application Area which at least one other Application has been received for the same Application Area.

7.3. Where the circumstances contemplated by paragraph 7.2 arise, the Licensing Panel will conduct an evaluation of the Competing Applications against the evaluation matrix at Schedule 3 of this ITA to determine a Preferred Applicant.

- a) If the Preferred Applicant is not a holder of a Reserved area, that Preferred Applicant will be offered the **one** Exploration Licence arising from this Tender. Applications from holders of Reserved areas will be considered next.
- b) If the Preferred Applicant is a holder of a Reserved area, that Preferred Applicant will be offered an Exploration Licence based on the blocks contained in their Application, and those blocks will no longer be available in the Tender. Applications from holders and non-holders of Reserved areas will be considered next.

7.4. Potential scenarios are represented diagrammatically below:



8. General Conditions of Application

- 8.1. This ITA is a notice for the purpose of section 44 and 45 of the Act.
- 8.2. Applications must be made in accordance with this ITA, **the Act and the Regulations**.
- 8.3. Applications received after the Closing Time will not be considered by the Authority, unless the Applicant can demonstrate to the Authority's reasonable satisfaction that the Application was late due to an oversight of the Authority.
- 8.4. Any Licence granted at the conclusion of the Tender process will be subject to the terms and conditions specified in **the Model exploration licence** at Schedule 8 of the Regulations.
- 8.5. In addition to its statutory rights under the Act and the Regulations, the Authority reserves the right to:
 - a) clarify, vary, amend, or withdraw any aspect of the terms of this ITA including any indicative date (in which case the varied ITA will be posted on the Authority's website). Any variation to the terms of this ITA forms part of this ITA upon the posting of the variation on the Authority's website;
 - b) extend the Closing Time to allow modification of Applications in light of any clarification, variation or amendment under clause 8.5(a) of this ITA;
 - c) cancel this Tender (or any part of it) at any time (including after the Closing Time) in accordance with the circumstances contemplated in section 46(1) of the Act;
 - d) accept an Application despite any minor irregularity or failure on the part of an Applicant to comply with the terms of this Tender on the condition that the irregularities or contraventions do not give rise to a substantive advantage to an Applicant over any other Applicant as determined by the Authority;
 - e) reject an Application which, in the Authority's opinion, includes information that is false or misleading or contains material errors or inaccuracies;
 - f) change any indicative date (the date change will be posted in the Authority's website);
 - g) by authority of the Minister and Cabinet, grant a licence to an Applicant that does not have the highest ranked work programme;
 - h) invite all Applicants for a contested area to resubmit modified Applications within a specified timeframe, but only if no Applications meeting the requirements are received for that area;
 - i) not grant a licence even when there are one or more compliant Applications over the area.
- 8.6. Fees paid in connection with an Application will not be refunded (regardless of whether the Application complies with this Tender or has been rejected or accepted, or whether an Application was submitted or received).
- 8.7. Neither this ITA or the lodgement of an Application creates any contractual, tortious (including in negligence), equitable or other legal obligation on the Authority or the Government, including its employees, contractors, advisers or agents, nor do they give rise to any right enforceable by an Applicant or potential Applicant or any other person against the Authority or the Government.

8.8. By submitting an Application in response to this ITA, the Applicant warrants and represents that:

- a) all information contained in the Application is complete and accurate in all material respects; and
- b) allows the Authority's, or that of any Crown agency, internal use of the information contained in the Application for the purposes of evaluating the Application (or for further evaluating the mineral resources of the Cook Islands), acknowledging that the Authority or applicable Crown agency will not be in breach of any intellectual property rights held by the Applicant or any third party. Furthermore, the Applicant who provided the information will indemnify the Authority for any loss or damage (including legal costs) resulting from any claim against the Authority for breach of any intellectual property rights.

8.9. All Applications submitted in response to this ITA will become the property of the Authority and will not be returned to the Applicant.

8.10. All data and information contained in the Tender document package remains the property of the Authority.

8.11. The Authority recognises that information provided in an Application will often be highly commercially sensitive. The Authority will treat information contained in an Application as confidential in accordance with section 18 of the Act and will not disclose the information unless it is required to disclose the information under the Official Information Act 2008 or is otherwise required or permitted by law, including under section 17 of the Act, to do so.

8.12. The Authority may engage an independent third party (auditor) to assist the Authority in determining whether an Applicant meets the qualification criteria under section 64(c) to (e) of the Act. By submitting an Application, the Applicant authorises the release of such information contained in the Application to the auditor as is necessary for the Authority to make its determination under section 64 of the Act.

8.13. The Authority may also seek further information or verification from third parties and regulatory agencies in connection with its assessment of an Application. By submitting an Application, the Applicant authorises the Authority to contact any regulator in the jurisdictions in which the Applicant, its affiliates or associates currently operates or has previously operated.

8.14. A Licensing Panel will be established under the Act to evaluate the Application against the prescribed evaluation criteria, and make appropriate recommendations to the Minister under section 68 of the Act. By submitting an Application, the Applicant authorises the Authority to release the Application, including any supporting information, to the Licensing Panel. The Authority and the Licensing Panel may request further information from the Applicant to complete the assessment of an Application in accordance with the requirements of the Act and the Regulations.

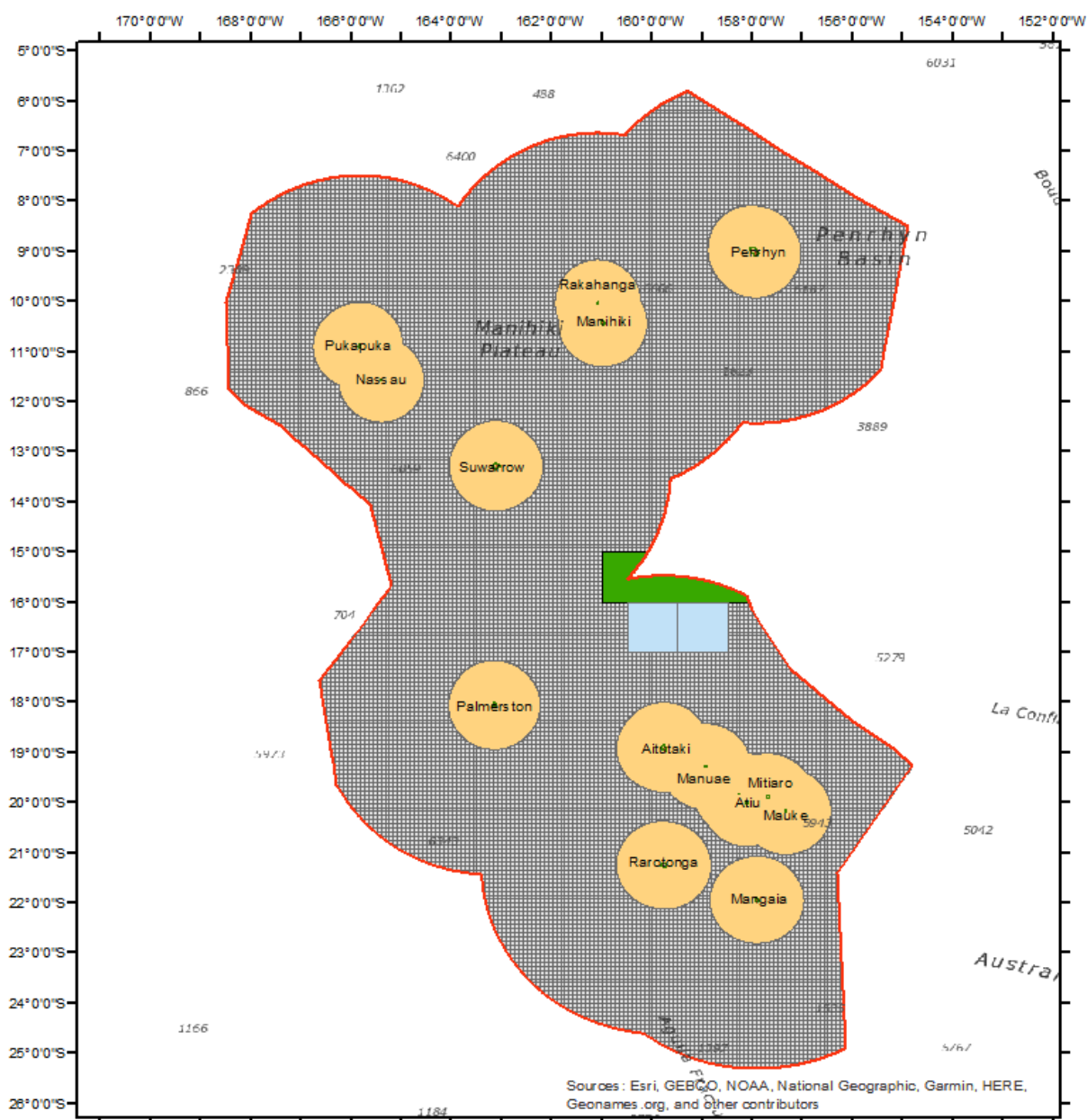
8.15. Where an Application is made by a group of persons or entities, each member of the group (in particular the proposed operator) will be evaluated individually on the nature of their contribution to the Application group and the group will be evaluated as a whole. The Authority understands that some members of a bidding group may not be able to meet all evaluation requirements. In such cases the Applicant should identify who the proposed operator will be, and which members will be contributing technical and/or financial resources.

8.16. The Authority has the right to perform such inquiries of Applicants, including security, probity and financial investigations, as it determines necessary for the evaluation of the Application in relation to any Applicant, their officers, employees, agents, contractors, partners, associates, subcontractors or related or associated entities and their officers, employees, contractors or subcontractors.

- 8.17. Applicants must promptly provide, and, where required, authorise any third party to provide, the Authority with such information as it requires in order for the inquiries and requests for additional information to enable the Authority and the Licensing Panel to complete the necessary deliberations to be undertaken, and must provide all other assistance the Authority may reasonably require. Any failure to do so may be considered in the evaluation of the Application or may result in the Authority declining the Application where it is unable to determine satisfactorily whether the qualification criteria under section 64 of the Act are met.
- 8.18. Nothing contained or implied in, or arising out of, this ITA shall be construed as legal, financial or other advice of any kind and Applicants bear the sole risk (including, without limitation, technical, financial, environmental and legal risk) of submitting an Application or conducting the proposed licensed activities.
- 8.19. Applicants must not engage in any collusive, deceptive or improper conduct (including inducements) in preparing their Applications or use any Government information obtained other than in compliance with Cook Islands law.
- 8.20. If any aspect of this ITA is determined to give rise to any legal right, obligation or liability, then the construction and application of such right, obligation or liability is governed by Cook Islands law and each person seeking judgment in relation to such right, obligation or liability, agrees to submit to the exclusive jurisdiction of the Cook Islands Courts.

Schedule 1: Maps and Coordinates

Tender 2020: Blocks available for Application Areas



Date: 9/3/2020

Legend

- 50nm BufferZone
- OML Nodules Reserve Area
- CIECSR Reserve Area
- CIEEZ 5 min blocks
- CIEEZ Boundary

0 85 170 340 510
Kilometers
1:11,852,915

Coordinate System: GCS WGS 1984
Datum: WGS 1984
Units: Degree



Schedule 2: Evaluation Criteria for Assessing Applications

Schedule 7 of the Regulations prescribes the evaluation criteria that the Licensing Panel must apply in their evaluation of each Application for an exploration licence (whether under the Tender or otherwise).

In connection with Competing Applications, the Licensing Panel will conduct a ranking process on the written information and any supporting evidence provided with each Application, including any further information requested by the panel.

The overall objective is to enable applicants who demonstrate the greatest competency to conduct effective and environmentally responsible exploration programmes to gain access to the Cook Islands seabed mineral resources consistent with the purpose of the Act and principles of ecologically sustainable use.

The following table sets out those components of the evaluation criteria that the Licensing Panel will assess and score in considering the relative merits and appropriateness of each Application.

The total score is out of 200. Applications which are scored below 140 will result in the Licensing Panel making a recommendation to decline the application.

Evaluation Criteria	Score
<p>Proposed work plan and viability of exploration operation:</p> <p>The most important return to the Cook Islands under an exploration work plan is the increase in knowledge of the resources and the marine environment, and the move toward the development of mining opportunities at a later stage. All work plans are expected to have that outcome, and it is considered a minimum requirement under an exploration work plan. A work plan that demonstrates that such minimum requirement can be exceeded through more intensive exploration operations resulting in significant and incremental data collection will be scored accordingly. Marks will be awarded overall for a clearly presented, timely, phased work plan containing a description of the overall logic of the proposed work programme against the work plan objectives and the environmental management programme objectives, proposed scheduling, milestones, and proposed expenditure and its allocation (e.g. committed expenditure), and that the work plan provides for exploration over the full extent of the area in the first instance, followed by more focussed investigations in the areas of interest subsequently to which the Application relates.</p> <p>The quality of the technical material provided and rationale in support of the Application will also be taken into consideration, including that the Application has been prepared in accordance with good industry practice.</p>	0-100
<p>Financial resources:</p> <p>Marks will be awarded overall for clearly presented statements in the Application including those matters in Schedule 7(1)(3) to the Regulations and for expenditure commitment that is realistic to allow for comprehensive exploration under the work plan, to explore the potential resources and biodiversity of the exploration area to determine the commercial viability of the resource and sufficient environmental baselines to inform an environmental impact assessment for mining.</p>	0-20

Evaluation Criteria	Score
<p>Technical competence:</p> <p>Marks will be awarded overall for clearly presented statements in the Application, including those matters in Schedule 7(1)(4) to the Regulations and for evidence of a successful track record in conducting similar or relevant work programmes at an appropriate scale.</p> <p>Consideration will also be given to:</p> <ul style="list-style-type: none"> • Appropriate sampling and analytical expertise for both resource and environmental data, so that data reliability is managed accordingly • appropriate geological and geochemical capability • appropriate technical capability for identifying and delineating resources and evaluating the feasibility of mining 	0-30
<p>Compliance:</p> <p>Marks will be awarded overall for clearly presented statements in the Application, including those matters in Schedule 7(1)(5) to the Regulations and for evidence of a successful compliance history in conducting similar or relevant work programmes at an appropriate scale</p>	0-5
<p>Risk assessment and management</p> <p>Marks will be awarded overall for clearly presented statements in the Application, including those matters in Schedule 7(1)(6) to the Regulations and on the applicants demonstrated ability to manage the occupational health and safety and environment risks.</p>	0-5
<p>National Interest:</p> <p>Marks will be awarded overall for clearly presented statements in the Application, including those matters in Schedule 7(1)(7) to the Regulations and the applicant's demonstrated commitment to:</p> <ul style="list-style-type: none"> • engage proactively, openly and fairly with the Cook Islands community; and • training and development programmes and initiatives for Cook Islanders 	0-30
<p>Environmental research commitment:</p> <p>Has the Applicant prepared the Application, and demonstrated commitment to conducting activities, in accordance with the principles of ecologically sustainable use under the Marae Moana Act 2017?</p>	<p>Yes = 10</p> <p>No = 0</p>

Schedule 3: Minimum Work Plan for non-competing Applications

1. In assessing the merits of a proposed work plan, rather than stating detailed inputs in terms of a “Minimum Work Plan”, the outcome that the **Authority will be looking for** is a logical and well **developed exploration** plan of work that is reasonably likely to enable the Applicant by the end of the Exploration Licence period or earlier to apply for and obtain a mining licence under the Act and collect sufficient baseline data for the compilation of an environmental impact assessment and appropriate reports to apply for and obtain the necessary environmental approvals under the Environment Act.
2. Such a plan will explore and appraise the Licensed area. Key parameters include detailed seabed topography mapping, the extent, abundance and metal content of the polymetallic nodule deposits, physical oceanography especially ocean currents within the Application Area, the development of an environmental baseline and the ecological parameters suitable for analysing and determining the interaction of the biota with future recovery operations, identifying suitable biological recovery areas.
3. Once this information is acquired and analysed and mining feasibility studies completed, it is expected that at least by the end of any second term of the exploration licence or earlier that the Applicant will be in a position to apply for a mining licence along with lodging an environmental impact report and management plan, a precursor to obtaining any development rights from the Government.
4. In assessing the Work Plan, including the supporting information provided per Schedules 1-5 of the Regulations, the following work plan parameters are expected to be fundamental in any work plan:
 - a. the objectives of the proposed work plan;
 - b. the geology and bathymetry of the sea bed to which the Application relates;
 - c. past prospecting, exploration [or mining] activities that may be relevant to the seabed covered by the exploration Licence Application;
 - d. the technical approach proposed to be taken when exploring the seabed to which the Application relates, and the stated objectives of the work plan;
 - e. whether the proposed exploration is in accordance with good industry practice and provides for exploration over the full extent of the seabed to which the Application relates;
 - f. the timing and quantities of committed and contingent work including but not limited to seabed mapping, geotechnical, geochemical, biological sampling processing, environmental baseline, impact and mitigation studies, geostatistical and resource/reserve determinations, economic modelling, mining feasibility studies etc.;
 - g. methodology for establishing environmental baselines including biological recovery areas prior to any recovery operations;
 - h. the time the Applicant estimates is required to undertake both the committed and contingent exploration work proposed and to process and analyse the results;
 - i. the minimum exploration expenditure indicated for each stage, including the expectation of increased expenditure in line with more intensive exploration activities;

- j. whether the proposed exploration work plan will enable a commercial decision to be made on the development of a particular mineral deposit before the licence expires;
 - k. potential environmental impacts and proposed mitigation plans of the proposed work plan, including an outline of environmental contingency plan to be required to mitigate such impacts; and
 - l. an outline of occupational safety and health plans and the systems to implement and monitor these plans.
5. As part of the assessment of a work plan, a summary of the geology, potential mineralisation, and exploration history of the proposed licence area, and also of any technical assessment and geological modelling undertaken in preparing the Application will assist the Authority to assess the merits of a work plan.
6. Further, in developing a work plan for the tender, the Applicant will need to match the work plan stages around the duration of exploration licences as set out in the Act. For a first term Exploration Licence the duration is 5 years. A second term Exploration Licence of 5 years may follow providing the first term exploration is in good standing and compliant with its work plan, conditions of the Licence (including data lodgement and reporting obligations and surrender of acreage) as is normal for operations of this type. At the end of the second term the Licence holder is expected to be in a position to apply for a mining licence or a retention lease in special circumstances, and to be well advanced with lodging the required environmental reports with the National Environmental Service for obtaining the necessary Project Permit under the Environment Act 2003.²³

²³ Section 36 of the Environment Act 2003.



Seabed Minerals Authority
Runanga Takere Moana
COOK ISLANDS

W W W . S B M A . G O V . C K