



Tuvalu

TUVALU SEABED MINERALS ACT

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CAP 48.38



Tuvalu

TUVALU SEABED MINERALS ACT

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Tuvalu

TUVALU SEABED MINERALS ACT¹

**AN ACT TO PROVIDE FOR THE SUSTAINABLE MANAGEMENT OF
TUVALU'S SEABED MINERALS, AND THE REGULATION OF
PROSPECTING, EXPLORATION AND MINING ACTIVITIES WITHIN
NATIONAL JURISDICTION AND BEYOND, IN ACCORDANCE WITH
TUVALU'S RESPONSIBILITIES UNDER INTERNATIONAL LAW**

Commencement [13th January, 2015]

PART 1-PRELIMINARY

1 Short Title

This Act may be cited as the Tuvalu Seabed Minerals Act.

2 Commencement

This Act will commence on the date of publication.

3 Interpretation

(1) For the purpose of this Act the following words shall have the following meanings-

“Affiliate”- in relation to an Applicant or Title Holder, means any person, firm, body corporate or entity that controls, is controlled by, or is under common control with, the Applicant or Title Holder;

“Ancillary Operations”- means any activity carried on by or on behalf of a Title Holder under this Act in support of Seabed Mineral Activities (including travel between port and the Title Area, the establishment and operation of sampling or

collecting systems and equipment, platforms, installations, processing facilities, transportation systems and other plant and machinery);

“**Applicant**” – means a person applying for a Prospecting Permit, Licence or Sponsorship Certificate under this Act;

“**Application**” – means an application made by a person to the Authority for a Prospecting Permit, Licence or Sponsorship Certificate under this Act;

“**The Area**” – means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction as defined under Article 1(1) of the UN Convention on the Law of the Sea;

“**Authority**” – means the Tuvalu Seabed Minerals Authority established under section 9 of this Act;

“**Continental Shelf**” – means Tuvalu’s seabed and subsoil as defined under the Maritime Zones Act, and any Act replacing that Act;

“**Contract Area**” – means any part of the Area in respect of which there is in force a contract between a Sponsored Party and the ISA for the conduct of Seabed Mineral Activities;

“**The Council**” – means the Tuvalu Seabed Minerals Advisory Council established under Part 3 of this Act.

“**EP Act**” – means the Environmental Protection Act or any Act replacing that Act;

“**Environment**” – has the meaning provided in the EP Act; namely: it includes ‘all natural, physical and social resources and ecosystems, people and culture, and the relationship that exists between these elements’.

“**Environmental Impact Assessment**” – has the meaning provided in the EP Act; namely: the study and evaluation of the potential effects that a development project may have on the Environment;

“**Exclusive Economic Zone**” – means Tuvalu’s marine area as defined under the Maritime Zones Act, and any Act replacing that Act;

“**Exploration**” – means

- (a) the search for Seabed Mineral deposits, including by drilling, with exclusive rights,
- (b) the sampling and analysis of such deposits,
- (c) the testing of systems and equipment, and
- (d) the carrying out of studies,

for the purpose of investigating whether those minerals can be commercially exploited;

An “**Incident**” occurs when

- (a) any ship or installation while engaged in Seabed Mineral Activities or Ancillary Operations is lost, abandoned, capsized or incurs significant damage;
- (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in Seabed Mineral Activities or Ancillary Operations, except in the case of a loss of life that is certified by an independent medical practitioner as being the result of natural causes;
- (c) the conduct of Seabed Mineral Activities or Ancillary Operations results in Serious Harm to the Marine Environment;
- (d) the conduct of Seabed Mineral Activities or Ancillary Operations results in the pollution of the Marine Environment in breach of Tuvalu's obligations under international law; or
- (e) where the Seabed Mineral Activities are occurring in the Area, the ISA issues an emergency order in connection with the Seabed Mineral Activities.

“Inspector” – means a person appointed by the Authority as an inspector in relation to Seabed Mineral Activities under section 22 of this Act;

“The International Seabed Authority” or **“ISA”** – means the International Seabed Authority established by Part XI Section 4 of the UN Convention on the Law of the Sea as the organisation through which State Parties to the UN Convention on the Law of the Sea shall organise and control Seabed Mineral Activities in the Area;

“Licence” – means a written document that is granted under Part 7 of this Act for the purpose of conducting Exploration or Mining under this Act;

“Licensed Area” – means a part of Tuvalu's seabed in respect of which there is in force an Exploration or Mining Licence;

“Licensee” – means any person to whom an Exploration or Mining Licence is issued under Part 7 of this Act, that person's representatives, and any person or persons to whom the Title conferred by the Licence may lawfully have been transferred, mortgaged leased or otherwise assigned;

“Marine Environment” – means the environment of the sea, and includes the physical, chemical, geological and biological and genetic components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof;

“Marine Reserve” – means any conservation area declared under section 3 of the Conservation Areas Act, or any marine park or reserve declared under section 9 of the Marine Resources Act or any Act replacing those Acts;

“Marine Scientific Research” – means any study, research or other related scientific activity carried out in Tuvalu's jurisdiction under a valid permit issued by the Minister responsible for natural resources and fisheries under the Marine Resources Act;

“**Mining**” – means the recovery for commercial purposes of Seabed Minerals and the extraction of minerals therefrom, including the construction and operation of mining, processing and transportation systems, for the production and marketing of metals;

“**Minister**” – means the Minister responsible for Tuvalu’s Seabed Minerals;

“**Ministry**” – means the Ministry responsible for Tuvalu’s Seabed Minerals;

“**Person**” – means any natural person or group of natural persons, or legal person or business enterprise and includes, but is not limited to a company, corporation, partnership, cooperative, or association.

“**The Precautionary Approach**” – the precautionary approach, in accordance with Principle 15 of the 1992 Rio Declaration on Environment and Development, means that, in order to protect the environment, where there are threats of serious and irreversible damage to the Marine Environment or a threats to human health in Tuvalu, a lack of full scientific certainty regarding the extent of adverse effects shall not be used as a reason for postponing cost- effective measures to prevent or minimise environmental degradation arising in any way from a matter or person or activity regulated under this Act;

“**Prescribed**” – means Prescribed by Regulations or other subordinate legislation made under this Act or other applicable Act;

“**Prospecting**” – means low impact exploration activities such as seismic surveying and other non-surface disturbing activities in the search for Seabed Mineral deposits, including estimation of the composition, size and distribution of deposits and their economic values, without any exclusive rights;

“**Prospecting Permit**” – means a written document that is granted under Part 6 of this Act for the purpose of allowing the conduct of Prospecting within the Exclusive Economic Zone of Tuvalu pursuant to this Act;

“**Prospectors**” – means a person to whom a Prospecting Permit is granted under Part 6 of this Act, that person’s representatives, and any person or persons to whom the Title conferred by the Prospecting Permit may lawfully have been assigned;

“**Protected Area**” – means any area or areas within Tuvalu of Tuvalu established as a protected area within the meaning of the Convention on Biological Diversity (opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992, entered into force on 29 December 1993, signed by Tuvalu in 1992);

“**Public Official**” – means a person in the permanent or temporary employment of the Government of Tuvalu;

“**Qualification**”, “**Qualify**” and “**Qualified**” refers to a Licence Applicant, in the Authority’s determination, meeting criteria under section 59: a pre- requisite in order for that Applicant’s Licence Application to be evaluated by the Authority;

“**Regulations**” – means all regulations and other subordinate legislation made under this Act;

“Rules of the ISA” – means any rules, regulations, guidance to contractors, or procedures adopted by the ISA pursuant to powers conferred on the ISA by the UN Convention on the Law of the Sea that are from time to time in force, and any contractual terms contained in a contract between the ISA and a Sponsored Party relating to Seabed Mineral Activities;

“Seabed Minerals” – means the hard mineral resources of any part of the deep seabed, including those in crust, nodule or hydrothermal deposit form, which contain (in quantities greater than trace) metalliferous or non- metalliferous elements;

“Seabed Mineral Activities” – means

- (a) operations for Prospecting under Prospecting Permit, Exploration under Exploration Licence, or Mining under Mining Licence, of Seabed Minerals within Tuvalu’s national jurisdiction; or
- (b) Exploration or Mining of Seabed Minerals in the Area under Tuvalu’s sponsorship, under this Act;

“Serious Harm” – means any effect that represents a significant adverse change;

“Sponsored Party” – means a person who holds a current Sponsorship Certificate validly issued by Tuvalu under Part 8 of this Act, that person’s representatives or officers, and any person or persons to whom the Sponsorship Certificate may lawfully have been assigned;

“Sponsorship Certificate” – means a written document issued to another person under Part 8 of this Act by Tuvalu that validates Tuvalu’s sponsorship of that person pursuant to this Act;

“Sponsorship Qualification Criteria” – refers to a Sponsorship Certificate Applicant, in the Authority’s determination, meeting criteria under section 89: a prerequisite in order for that Applicant to be considered for a Sponsorship Certificate;

“Sponsoring State” – means a State Party to the UN Convention on the Law of the Sea, sponsoring a person to carry out Exploration or Exploitation in the Area in accordance with Article 153(2)(b) of the UN Convention on the Law of the Sea;

“Title” – means the rights conferred by a Prospecting Permit, Licence, or Sponsorship Certificate under this Act;

“Title Area” – means the area of seabed to which a Title relates;

“Title Holder” – means a Prospector, Licensee or Sponsored Party; and

“The UN Convention on the Law of the Sea” – means;- The United Nations Convention on the Law of Sea of 10 December 1982 entered into force on 16 November 1994, and the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 – to which Tuvalu is a signatory.

- (2) This Act shall where possible be interpreted, and all persons performing functions and duties or exercising powers under it shall act, subject to any Act of Tuvalu to the contrary, consistently with Tuvalu’s international obligations

under the UN Convention on the Law of the Sea, and other relevant international instruments, and specifically Tuvalu's duties to:

- (a) protect and preserve the Marine Environment and rare or fragile ecosystems and habitats;
 - (b) prevent, reduce and control pollution from seabed activities, or caused by ships or by dumping of waste and other matter at sea;
 - (c) prevent trans-boundary harm;
 - (d) conserve biodiversity;
 - (e) apply the Precautionary Approach;
 - (f) employ best environmental practice;
 - (g) conduct prior Environmental Impact Assessment of activities likely to cause Serious Harm to the Marine Environment; and
 - (h) take measures for ensuring safety at sea.
- (3) In particular, in determining whether to grant a Prospecting Permit, Licence or Sponsorship Certificate, setting the terms of that Title, taking steps to monitor or to enforce those terms, the Authority shall have regard at all times to the duties listed in sub-section (1) as well as the importance of Tuvalu's sustainable economic development; and the Authority shall consider any representations made to it concerning such matters.

4. Ownership of Seabed Minerals within national jurisdiction

All sovereign rights to the mineral resources contained in: the waters superjacent to the seabed, the seabed, and subsoil of Tuvalu's territorial sea, Exclusive Economic Zone and Continental Shelf are hereby vested in the State to be managed on behalf of the people of Tuvalu, in accordance with the provisions of this Act.

5. Objects of this Act

The objects of this Act are –

- (a) to establish a legal framework for the efficient management and development of Tuvalu's Seabed Minerals;
- (b) to establish a legal framework for the sponsorship, and for the effective control, by Tuvalu of contractors to undertake Seabed Mineral Activities in the Area;
- (c) to provide that Seabed Mineral Activities within Tuvalu's national jurisdiction, or under Tuvalu's sponsorship in the Area, must be carried out in accordance with best international practice, and in a manner that is consistent with internationally accepted rules, standards, principles and practices, including Tuvalu's responsibilities under the UN Convention on the Law of the Sea, and specifically Tuvalu's duty to protect and preserve the Marine Environment;

- (d) to promote transparency in decision-making on matters concerning Tuvalu's management of Seabed Mineral Activities;
- (e) to provide a stable, transparent and predictable regulatory environment for investors in Seabed Mineral Activities;
- (f) to secure optimum benefits, long-term economic growth and sustainable development for Tuvalu from the development of its Seabed Mineral sector, and to implement measures to maximise the benefits of Seabed Mineral Activities for present and future generations of Tuvaluans.

6. Operation of this Act

In order to achieve its objects, this Act inter alia –

- (a) creates a regulatory system and designates a responsible Authority to license, monitor and manage Tuvalu's involvement with Seabed Mineral Activities;
- (b) establishes a system for the application for, and grant of Titles under which Title Holders will be authorised to engage in Seabed Mineral Activities under specific and enforceable conditions;
- (c) creates a register of Titles and provides for the registration of dealings and interests in Titles;
- (d) creates offences in respect of activities carried out in breach of the provisions of this Act;
- (e) provides for the protection of the Marine Environment during the conduct of Seabed Mineral Activities, including through the application of the provisions of the EP Act relating to Environmental Impact Assessment and project permitting;
- (f) Provides for the payment of royalty, fees, and taxes in respect of Seabed Mineral Activities in Tuvalu;
- (g) provides for Tuvalu to receive payments for its Sponsorship of Seabed Mineral Activities in the Area;
- (h) establishes a ring-fenced Seabed Minerals Fund for the responsible sustainable management of funds raised through Seabed Mineral Activities for the long-term benefit of the people of Tuvalu.

7. Application of this Act

- (1) This Act applies to –
 - (a) all individuals, whether or not citizens of or resident in Tuvalu; and
 - (b) all bodies corporate, whether or not incorporated or carrying on business in Tuvalu.

- (2) This Act shall regulate the Prospecting, Exploration and Mining of Tuvalu's Seabed Minerals, and the Sponsorship by Tuvalu of Exploration and Mining of Seabed Minerals in the Area.
- (3) This Act does not apply to the exploration for or recovery of petroleum.

8. Jurisdiction

By the enactment of this Act Tuvalu:

- (a) Exercises its exclusive sovereign rights over its Exclusive Economic Zone and Continental Shelf for the purpose of exploring and mining its natural resources;
- (b) Recognises:
 - (i) the seabed resources of the Area to be the common heritage of mankind,
 - (ii) that rights to the Area are governed by the Rules of the ISA,
 - (iii) that Seabed Mineral Activities in the Area shall be carried out in association with the ISA only by State Parties to the UN Convention on the Law of the Sea, State enterprises, or by persons sponsored by Sponsoring States, and
 - (iv) the ISA's responsibility under the UN Convention on the Law of the Sea to organise and control activities in the Area on behalf of mankind as a whole, including to:
 - (a) process applications for approval of plans of work for exploration and mining in the Area,
 - (b) monitor compliance with plans of work, approved in the form of a contract, including through a staff of inspectors,
 - (c) adopt rules, regulations and procedures necessary for the conduct of exploration and mining in the Area, including for the:
 - (i) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment, and
 - (ii) prevention, reduction and control of pollution and other hazards to the Marine Environment.
 - (v) the responsibility of State Parties to the UN Convention on the Law of the Sea including Tuvalu to assist the ISA in exercising its duties outlined in section 80 of this Act, and
 - (vi) where Tuvalu is a Sponsoring State, Tuvalu's duty to effectively control any person engaged in Seabed Mineral Activities in the Area under its sponsorship, in order to ensure conformity of those Seabed Mineral Activities with the UN Convention on the Law of

the Sea and the Rules of the ISA and other international law obligations of Tuvalu; and

- (c) Exercises its jurisdiction over Tuvaluan subjects and vessels, and foreign persons and vessels otherwise subject to Tuvalu's effective control, engaged in activities of Exploration for, and Mining of, the resources of Tuvalu and the Area, in accordance with generally accepted principles of international law recognized by Tuvalu.

PART 2 - THE TUVALU SEABED MINERALS AUTHORITY

9. Establishment of the Tuvalu Seabed Minerals Authority –

- (1) There shall be designated under this Act an authority to be known as the Tuvalu Seabed Minerals Authority (in this Act referred to as 'the Authority').
- (2) The role of the Authority shall be performed by the Ministry, operating through the Secretary, Ministry personnel or staff employed by him or her under this Part of this Act.

10. Authority Constitution

The Authority:

- (a) shall perform its functions on behalf of the State;
- (b) may appoint a Chief Executive Officer and other staff as it may determine expedient for the implementation of this Act, on terms and conditions of service such as the Authority may determine with the approval of Cabinet;
- (c) shall report to Parliament through the Minister;
- (d) shall receive and take into account in its decision-making recommendations received from the Council; and
- (e) shall publish an annual report each year providing summary information on Seabed Mineral Activities in Tuvalu, and the work of the Authority that year.

11. Objectives of the Authority –

The Authority has the following objectives:

- (a) The compliance objective: to maintain effective control of Seabed Mineral Activities, by securing compliance by Title Holders with their obligations under this Act;

- (b) The national interest objective: to maximise economic and development benefits from Seabed Mineral Activities to Tuvalu and the people of Tuvalu;
- (c) The protection objective:
 - (i) to protect and preserve the Marine Environment; and
 - (ii) to protect the well-being of individuals and communities insofar as may be impacted by or employed in Seabed Mineral Activities;
- (d) The accountability objective: to provide a stable, transparent, predictable and accountable regime within Tuvalu for the Permitting, Licensing and Sponsorship, and regulation by Tuvalu of Seabed Mineral Activities.

12. Functions of the Authority

- (1) To ensure the implementation of this Act, the Authority has the following functions, to:
 - (a) develop policies for the purpose of regulating and monitoring the development of the Tuvaluan Seabed Minerals sector;
 - (b) manage the designation and allocation of Titles, and maintain records of Titles granted and the blocks or cells of seabed to which they relate;
 - (c) develop standards and guidelines for Seabed Mineral Activities, and provide advice and guidance in relation to Applications, Titles, Seabed Mineral Activities and associated matters;
 - (d) conduct due diligence enquiry into Applicant Prospectors, Licensees or Sponsored Parties;
 - (e) receive and evaluate Applications to conduct Seabed Mineral Activities under Tuvalu's control or sponsorship;
 - (f) cooperate with the Department of Environment in the conduct and review of Environmental Impact Assessments for Seabed Mineral Activities required under this Act and the EP Act;
 - (g) recommend to the Minister and Cabinet whether or not Seabed Mineral Activities are to be permitted, and on what terms;
 - (h) prepare Prospecting Permits, Licences and Sponsorship Certificates;
 - (i) receive and assess reporting documents from Title Holders;
 - (j) monitor the performance and impact of Seabed Mineral Activities, and compliance by Title Holders with the terms of this Act, any Regulations made under this Act, and the relevant Title;
 - (k) monitor the continuing validity of the terms of a Title, and effect the amendment of the terms of a Title where expedient, and in accordance with this Act;
 - (l) enforce sanctions for non-compliance with this Act, Regulations made under this Act, or a Title;

- (m) require and review relevant reports and information from Title Holders, and maintain appropriate records, pertaining to Seabed Mineral Activities ;
 - (n) share information and consult about Seabed Mineral Activities with the general public as appropriate, including through consultation with the Council.;
 - (o) publish and submit to Parliament an annual report of Seabed Mineral Activities not later than ninety days after the end of each year;
 - (p) provide technical assistance to other Government agencies of Tuvalu in all matters relevant to Seabed Minerals;
 - (q) liaise with the ISA and any other relevant international organisation in accordance with the UN Convention of the Law of the Sea to facilitate the lawful conduct of Seabed Minerals Activities or the protection of the Marine Environment;
 - (r) seek expert advice on factual matters pertaining to the administration of this Act and concerning the management of Tuvalu's Seabed Minerals, including but not limited to advice on economic, legal, scientific, technical matters, and the management and conservation of the Marine Environment, including from experts outside of the country;
 - (s) appoint such persons appearing to the Authority to be qualified based on their expertise for the purpose, to assist in the discharge of its functions and generally in the execution of this Act, as is considered appropriate from time to time.
- (2) The Authority may make to any person appointed under sub-section (1)(r) or (s), who is not already within the employ of the Authority such payments by way of remuneration as the Minister may determine, in consultation with the Public Service Commission and with the approval of Cabinet.
- (3) Nothing in this section shall permit the Authority or Cabinet to delegate to third parties its power to take and approve the decisions listed in section 19 of this Act.

13. Duties of the Authority

In performing its functions the Authority shall so far as is reasonably practicable act in a way which is compatible with:

- (a) the principles contained in section 3(3) of this Act;
- (b) meeting its objectives contained in section 11 of this Act;
- (c) the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed); and

- (d) such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

14. Powers of the Authority

The Authority has statutory authority to undertake reasonable action calculated to facilitate, or that is conducive or incidental to, the performance of any of its functions or duties.

15. Information Gathering

- (1) In performing its functions, and subject to the provisions of this Act, the Authority may gather, retain and publish or disseminate information relating to any Application, Title, Seabed Mineral Activities or Ancillary Operations.
- (2) Upon the expiry, surrender or revocation of a Title, the Title Holder must transfer to the Authority all data and information that the Authority reasonably specifies in writing, including:
 - (a) copies of geological, environmental, geochemical and geophysical data acquired by the Title Holder in the course of carrying out the Seabed Mineral Activities that, in the Authority's reasonable opinion, are necessary for and relevant to the effective exercise of the powers and functions of the Authority;
 - (b) the estimation of the grade and quantity of commercially exploitable deposits, when such deposits have been identified, which must include details of the grade and quantity of the proven, probable and possible Seabed Minerals reserves and the anticipated mining conditions;
 - (c) a statement of how and where any Seabed Mineral samples or ores are stored.
- (3) The Authority may by Order require any person to furnish it within a reasonable time with any information it reasonably believes is in that person's possession which relates to any Title, Seabed Mineral Activities or Ancillary Operations and is relevant to the discharge of the Authority's functions.
- (4) The Authority may by Order summon a Title Holder or its authorised representative, for the purposes of furnishing information under subsection (2).
- (5) Failure to comply with an Order made under this section without reasonable justification shall be an offence. Objections that to furnish the information would be a breach of intellectual property or other legal duties, may constitute reasonable justification for the purpose of this section.
- (6) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

16. Information-handling

- (1) The Authority and the Council shall only use the information that it receives in relation to Seabed Mineral Activities as necessary for the effective exercise of their functions, and will not disclose that information unless –
 - (a) the relevant Title Holder or Applicant consents;
 - (b) it is generally known or publicly available from other sources;
 - (c) it is necessary in connection with the Authority's administration of this Act, including for the purpose of maintaining a public register of Titles, for consultation with the Council and the public of Tuvalu;
 - (d) the information is not information about a Licensee's technical specifications or financial resources, confidential information contained in a Licence Application, a trade secret, or information the disclosure could reasonably be expected to adversely affect the person's business, commercial or financial affairs; or
 - (e) the disclosure is made for the purpose of any arbitration or litigation, or is made by order of the court.
- (2) Nothing in this section shall permit disclosure without prior consent by the Authority of information that is confidential under applicable law, including but not limited to, personnel matters, confidential technical or proprietary information and intellectual property relating to the Seabed Mineral Activities, and privileged legal material.
- (3) Any employee or member of the Authority, any member of the Council, or any other public official who discloses information in breach of this section, commits an offence, punishable upon conviction by a fine not exceeding \$100,000 or 5 years imprisonment.

17. Supply of false or misleading information to the Authority

- (1) Any person who knowingly or recklessly provides the Authority with information which is false or misleading in a material particular shall be guilty of an offence if the information—
 - (a) is provided in purported compliance with a requirement imposed by or under this Act; or
 - (b) is provided otherwise than as mentioned in sub-section (1)(a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging their functions under this Act.
- (2) Any person who wilfully alters, suppresses, conceals or destroys any document which he is or is liable to be required, by or under this Act, to produce to the Authority shall be guilty of an offence.

- (3) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

18. Preparation of guidelines

The Authority may from time to time publish and disseminate procedures, standards, manuals, recommended practices and guidelines of a technical or administrative nature relating to Seabed Mineral Activities or to assist Title Holders, Government agencies, and other interested parties in the implementation of the Act and the Regulations, including by reference to any recommendations of any organ of the International Seabed Authority.

19. Record of decisions

- (1) The Authority will keep written records of decisions (and the grounds for them) taken under the following sections of this Act:
- (a) 15(2) (Information Order);
 - (b) 24 (Enforcement Order);
 - (c) 47 (Grant of a Prospecting Permit);
 - (d) 50 (Denial of Prospecting Permit);
 - (e) 56 (Grant and Issue of Licence);
 - (f) 80 (Renewal of Licence).
 - (g) 82 (Variation, Suspension or Revocation of a Licence);
 - (h) 87 (Entry into Sponsorship of Seabed Mineral Activities in the Area); and
 - (i) 97 (Variation, Suspension or Revocation of a Sponsorship Certificates).
- (2) A record kept under this section, and that is signed by the Minister, or on behalf of the Authority by the Chief Executive Officer, is prima facie evidence that the decision was duly made as recorded.

20. Monitoring

The Authority will monitor and verify Title Holders' performance and adherence to this Act, Regulations made under this Act, and Title, and any conditions arising from an Environmental Impact Assessment where required, with particular regard to progress with Seabed Mineral Activities, and the impacts of Seabed Mineral Activities on the Marine Environment, other sea users, bordering States, or the people of Tuvalu.

21. Incidents and Inquiries

- (1) Where an Incident occurs in respect of Seabed Mineral Activities under the Sponsorship of Tuvalu, the Sponsored Party shall inform the ISA and copy all information provided to the ISA to the Authority.
- (2) A Title Holder involved in an Incident shall report it to the Authority in accordance with section 45(a)(t) of this Act, and shall respond efficiently and responsibly to the Incident, including by seeking and following the Authority's instructions, or the ISA's instructions where relevant.
- (3) Whenever an Incident comes to the knowledge of the Authority before the Title Holder, it shall as soon as practicable notify any affected Title Holder and the Council of the details of the Incident.
- (4) A report to the Authority of any Incident arising from its Seabed Mineral Activities or Ancillary Operations for the purposes of sub-section (2) must contain the details of such incident including, inter alia:
 - (a) the coordinates of the area affected and of the area which can reasonably be anticipated to be affected;
 - (b) the description of the action being taken by the Licensee to monitor, prevent, contain, minimise and rehabilitate the harm or threat of harm to the Marine Environment or to human health and safety;
 - (c) such supplementary information as required by the Authority.
- (5) The Authority shall provide such administrative assistance to a Title Holder as is expedient to facilitate the Title Holder's efficient response to an Incident.
- (6) The Authority may hold, or may commission, inquiries into Incidents or any matter in the interests of the orderly conduct of Seabed Mineral Activities.

22. Inspectorate

The Authority shall maintain an inspectorate and shall appoint such persons appearing to the Authority to be technically qualified for the purpose as Inspectors, to assist with the Authority's monitoring and compliance function.

23. Inspectors' Powers

- (1) Any person appointed by the Authority as an Inspector under section 22 of this Act, shall, if reasonably necessary for the purpose of determining compliance with this Act, be entitled at all reasonable times and with reasonable notice to a Title Holder to—
 - (a) board or obtain access to the Licence Area or Contract Area and all parts of any premises, vessel or equipment used for or in connection with Seabed Mineral Activities;

- (b) inspect or test any machinery or equipment that in the Inspector's opinion is being or is intended to be used for the purposes of Seabed Mineral Activities and, if the Inspector deems fit, to dismantle, test to destruction or take possession of any such machinery or equipment;
 - (c) remove any samples or assays of such samples from any vessel or equipment used for or in connection with Seabed Mineral Activities;
 - (d) examine and take copies of books, accounts, documents or records of any kind required to be kept under this Act, Regulations, and the Title;
 - (e) require the Title Holder to carry out such procedures in respect of any equipment used for or in connection with Seabed Mineral Activities as may be deemed necessary by the Authority;
 - (f) document any site visit or inspection activity using any reasonable means including video, audio, photograph or other form of recording;
 - (g) upon written authorisation from the Authority, perform any other functions of the Authority as its representative, including the issue of Orders under sections 15 (Information Order) and 24 (Enforcement Order) of this Act; and
 - (h) any additional actions as Prescribed.
- (2) An Inspector shall take all reasonable steps to avoid: expending excessive time on a Title Holders' vessel or platform at-sea, disruption of Seabed Mineral Activities, unjustified removal of samples, or interference with the safe and normal operations on board vessels.
- (3) Any Title Holder who considers that an Inspector is not acting in accordance with sub-section (2) may apply to the Minister for an administrative review of the Inspector's decision or action; and the Title Holder shall not be required to comply with the decision or action under review, while the review is pending.
- (4) A Title Holder and its officers and agents shall make best endeavours to cooperate with the reasonable requests and exercise of powers by an Inspector, and to provide an Inspector with reasonable and safe accommodation and subsistence while on board any ship of installation for the purposes of this Act.
- (5) The wilful obstruction or intimidation or abuse by any person of an Inspector, or the failure by a Title Holder or its officer or agent to comply with sub-section (4), shall be an offence.
- (6) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000 or to a prison term not exceeding 15 or both.

24. Enforcement Order

- (1) Where considered necessary or expedient the Authority (including authorised officers) may issue an Enforcement Order requiring corrective action in relation to a suspected, observed or anticipated contravention of this Act, Regulations made under this Act, or a term of a Title, or in respect of any circumstance that

presents or would present a risk to life or a risk of Serious Harm to the Marine Environment.

- (2) An Enforcement Order made under this section may in reasonable terms –
 - (a) require a person to:
 - (i) take corrective action;
 - (ii) stop taking harmful action; or
 - (iii) pay money to another person to cover reasonable costs incurred due to failure to comply; and
 - (b) include a mandatory timeframe for the required action or inaction.
- (3) Where the subject of an Enforcement Order objects to its requirements, the Minister shall conduct an administrative review of the Order and its terms taking into account the nature of those objections. An Order made under this Act shall also be subject to judicial review in accordance with the laws of Tuvalu.
- (4) Failure to comply with an Enforcement Order made under this section shall be an offence.
- (5) It is a defence for a person charged with an offence under sub-section (4) to prove that he took all reasonable steps within his control for securing that the required action or inaction would be complied with in time.
- (6) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

25. Action by the Authority where there is failure to comply with Enforcement Order

The Authority may do all or any of the corrective actions required by an Enforcement Order made under section 24 of this Act if –

- (a) the time for compliance specified has ended; and
- (b) the person to whom the Enforcement Order was given or to whom it extended has not complied with the Order.

26. Costs incurred by the Authority in taking enforcement action

If the Authority takes corrective action under section 25 of this Act in relation to an Enforcement Order, the reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority by the person or persons whose failure to comply with the Order led to that action, which is recoverable in a court of competent jurisdiction.

27. Administrative Action

- (1) The Authority may take any one or more of the administrative actions in sub-section (2) in respect of a Title Holder, upon the Authority reasonably determining that the Title Holder has materially breached:
 - (a) a condition or term of its Title; or
 - (b) a requirement of the Act, Regulations or other law of Tuvalu.
- (2) Administrative actions that the Authority may take in accordance with sub-section (1) are to:
 - (a) issue written warnings, including warnings in relation to possible action the Authority may take in the event of future breaches;
 - (b) enter into a written agreement providing for the Title Holder to undertake a programme of remedial action and to mitigate the risk of re-occurrence;
 - (c) issue Enforcement Orders under section 24 of the Act for the Title Holder to prevent, remedy and mitigate the risk of re-occurrence of breaches;
 - (d) impose an administrative penalty not exceeding \$10,000 for each day during which the breach continues;
 - (e) impose temporary restrictions on the Seabed Mineral Activities of the Title Holder until the Authority is satisfied that action has been taken to remedy the breach and to mitigate the risk of re-occurrence;
 - (f) commence a process under section 82 or section 97 of the Act to vary, suspend or revoke the Title, including a variation to impose additional conditions on the Title.
- (3) Action taken under sub-section (2) of this Act shall be commensurate with the gravity, frequency and other circumstances of the breach, including the Title Holder's previous conduct under the Title.

PART 3 – THE TUVALU SEABED MINERALS ADVISORY COUNCIL

28. Tuvalu Seabed Minerals Advisory Council

- (1) There is established by this Act a Tuvalu Seabed Minerals Advisory Council ('the Council'), to assist the Authority to further its accountability objective, and to operate as the official avenue for consultation between the Government of Tuvalu and the community on matters concerning the regulation and management of Seabed Minerals.
- (2) The Authority and the Minister must take into account any recommendations received from the Council in their decision-making under this Act.

29. Functions of the Council

- (1) The functions of the Council are to –
 - (a) receive and review information received from the Authority about Applications and Seabed Mineral Activities;
 - (b) disseminate information to, and receive and handle representations, queries or complaints from, the general public in relation to the management of Tuvalu’s Seabed Minerals and the conduct of Seabed Mineral Activities;
 - (c) provide recommendations to the Authority in connection with the management of the Tuvalu’s Seabed Minerals and the Authority’s decision-making under this Act, and the terms (and any subsequent review of the terms) of Titles; and
 - (e) perform such other functions as are assigned to it in accordance with the provisions of this Act or Regulations made under this Act.
- (2) In the exercise of its functions under sub-section (1), the Council shall ensure that a copy of every recommendation made to the Authority is also provided to the Minister.
- (3) Upon receiving notice from the Authority of an Application or other determination to be made by the Authority, the Council must provide its recommendations, or a notice that the Council makes no recommendation in that determination, to the Authority promptly and within any reasonable time restriction that is Prescribed or required by the Authority.
- (4) Recommendations made by the Council to the Authority under this section, may include that:
 - (a) further expert advice be sought by the Authority,
 - (b) further information be sought from an Applicant or Title Holder,
 - (c) further public consultation be undertaken,
 - (d) further advice be sought from the Attorney-General’s Office or another Ministry, or
 - (e) a decision or an action be taken, or not be taken by the Authority, in a specified way.

30. Composition of Council

The Council shall be composed of the following members, at least half of which must be members who are not Public Officials –

- (a) a Chair, who shall be a person appointed by the Minister;
- (b) a Secretary, who shall be the Ministry’s Chief Executive Officer or other nominated representative of the Authority;

- (c) at least four other members to be appointed by the Minister, including at least one person representing coastal communities of Tuvalu, and one person representing women's interests; and,
- (d) such number of additional members as may be appointed by the Minister or Prescribed, which may include representatives of non- governmental organisations, or the commercial sector.

31. Public Notification of Council Membership

A contact address for the Council must be made publicly available and all appointments to the Council shall be by name and recorded in an instrument of appointment published by Gazette notice issued by the Minister.

32. Council Procedures

The Council shall be composed and shall function in accordance with the provisions of this Act and any Regulations made under this Act, and shall establish and may review from time to time their own rules and procedures for operation in relation to:

- (a) frequency of meetings, conduct of meetings, record-keeping and reporting requirements, provisions relating to decision-making, quorum and disclosure of interest, methods for information-sharing with the general public; and
- (b) terms and conditions for members of the Council, including remuneration and allowances, maximum duration of appointments, eligibility for re-appointment, and provisions relating to suspension, removal, or resignation of Council members.

33. Minister Approval to Council Rules

The rules to be established by the Council in relation to matters set out in section 32(b) of this Act shall only be valid upon the Minister first agreeing to them.

PART 4 - AREAS AVAILABLE FOR SEABED MINERAL ACTIVITIES WITHIN TUVALU'S NATIONAL JURISDICTION

34. Graticulation of earth's surface

- (1) For the purpose of this Act, the surface of the earth is deemed to be divided into graticular sections:
 - (a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 5 minutes or a multiple of 5 minutes of longitude;

- (b) by the equator and by parallels of latitude that are a distance from the equator of 5 minutes, or a multiple of 5 minutes of latitude; and
- (c) each of which is bounded by:
 - (i) portions of two of those meridians that are at a distance from each other of 5 minutes of longitude; and
 - (ii) portions of two of those parallels of latitude that are at a distance from each other of 5 minutes of latitude.

35. Constitution of blocks

- (1) For the purpose of this Act –
 - (a) The seabed and subsoil of any such graticular section is a block;
 - (b) The position on the surface of the Earth of a block or any other position identified for the purpose of the Act or Regulations, is to be determined by reference to the World Geodetic System (WGS 84); a boundary between points on the surface of the Earth must be a geodesic; and grid coordinates must be described in accordance with the Universal Transverse Mercator Grid System.

36. Constitution of cells

For the purposes of this Act the Authority may further divide blocks into smaller divisions, called cells.

37. Release of blocks for Activities

Subject to section 38 of this Act, the Authority may by reference to geographical coordinates designate an area or areas of Tuvalu's Continental Shelf to be released for the purpose of Seabed Mineral Activities or specified types of Seabed Mineral Activities, by reference to a block or blocks, or cell or cells.

38. Reserved areas

- (1) The Authority shall not under section 37 of this Act designate as an area or areas of Tuvalu's Continental Shelf to be released for the purpose of Seabed Mineral Activities any area or part of an area declared to be a Marine Reserve or Protected Area.
- (2) If there is no Title over a particular area of Tuvalu's Continental Shelf, the Authority may, by Gazette notice declare the area to be a reserved area.
- (3) Areas may be reserved by the Authority for purposes inter alia of marine spatial management, environmental protection, or for tender.

- (4) While a reserved area declaration under sub-section (2) is in force, the Authority shall not tender or grant a Title over any block or blocks contained in that reserved area.

39. Invitation for Licence Applications

The Authority may in any manner it sees fit, invite Applications for Licences by reference to a block or blocks, or cell or cells, including through the public announcement of a tender round to be administered by the Authority, in accordance with Prescribed tender procedures.

40. Cadastral Survey Map and Register of Titles

- (1) The Ministry shall, within 24 months of the date this Act comes into force, complete an inventory of its geological data and seabed mineral title records, and acquire the technical capabilities to implement a cadastral survey map, and to delineate on maps of appropriate scale, the areas reserved under section 38 of this Act, Marine Reserves and Protected Areas, and which blocks or cells at any time:
 - (a) are subject to Licence Applications, or Licences issued under this Act;
 - (b) are open to Licence Applications; and
 - (c) are areas reserved under section 38 of this Act or within a Marine Reserve or a Protected Area, and so under section 38 of this Act are not open to Licence Applications.
- (2) The Authority shall retain a register of Titles, containing up-to-date and accurate records of Applications received and Titles granted.
- (3) For every Title granted, the Authority shall update the cadastral survey map and enter a record in the register of Titles that shall include at least the following information:
 - (a) the name and registered address of the Title 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 in respect of which the Title is granted;
 - (e) the Seabed Minerals in respect of which the Title is granted; and
 - (f) a description of the Seabed Mineral Activities in respect of which the Title is granted.
- (4) The cadastral survey map and register of Titles should be amended accordingly in the event of any transfer, renewal, variation, suspension, termination, revocation, expiry or surrender of Title.

41. Cadastral survey map and register open to public inspection

- (1) The cadastral survey map and register of Titles maintained by the Authority in accordance with section 40 of this Act shall be open to public inspection during business hours of the Authority.
- (2) The Authority shall include on the register full copies of Applications and Titles, details of any Incident, and each Title Holder's annual report, save for information that is a third party's proprietary information, or where the publication of that information would in the Authority's view not be in the public interest, such as personal addresses of Title Holder personnel.
- (3) For the purposes of subsection (2) the Authority shall take into account any representations received from Applicants and Licensees, in determining the information that may be withheld from publication.
- (4) The Authority may upon application and payment of a Prescribed fee issue a certified copy of any Title or other document filed with the Authority for the purpose of maintaining the register of Titles, which will be admissible in evidence in any court.

42. Regulations for prescribing maximum areas to be held under Licence

The Minister may prescribe by Regulations maximum areas that may be held under any one Exploration or Mining Licence, or by any one person or company at any one time.

PART 5 - DUTIES AND RESPONSIBILITIES OF INDIVIDUALS**43. Prohibited Activities**

- (1) No person may engage in any Seabed Mineral Activities unless, and only insofar as, authorised to do so under a Title issued under this Act.
- (2) The prohibitions of subsection (1) shall not apply to Marine Scientific Research.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and any Seabed Minerals or other products, or proceeds obtained as a result of actions prohibited by subsection (1) shall be forfeited to the State.

44. Adherence to laws and rules

- (1) Any Prospector or Licensee in conducting Seabed Mineral Activities and Ancillary Operations is required, inter alia, to adhere to the provisions in each case in force from time to time of:

- (a) the Merchant Shipping Act 1988;
 - (b) the Marine Pollution Act;
 - (c) the EP Act and any regulations made under it;
 - (d) this Act, and Regulations made under this Act;
 - (e) the terms and conditions of the Title permitting the Seabed Mineral Activities;
 - (f) any environmental conditions arising from the Environmental Impact Assessment process; and
 - (g) such rules, regulations and procedures as may be adopted in Tuvalu relating to protection against discrimination in employment, occupational health and safety and health, labour relations, social security, employment security and living conditions.
- (2) Any Sponsored Party engaging in Seabed Mineral Activities is required, inter alia, to adhere to the provisions of the Rules of the ISA, this Act, Regulations made under this Act, and the terms of any Sponsorship Certificate issued under Part 8 of this Act.

45. Title Holders' Duties

In addition to terms and conditions contained in the individual Title, all Title Holders must:

Social and Environmental Management

- (a) apply the Precautionary Approach, and employ best environmental practice in accordance with prevailing international standards in order to avoid, remedy, or mitigate the adverse effects of Seabed Mineral Activities on the Marine Environment;
- (b) take necessary steps to prevent, reduce and control pollution and other hazards to the Marine Environment, including waste material, arising from Seabed Mineral;
- (c) where and as required by the EP Act and this Act, before commencing work, conduct an Environmental Impact Assessment that will identify and analyse the levels of impacts that may be expected from Seabed Mining Activities and Ancillary Operations and provide measures to prevent, mitigate or compensate for those impacts, and not proceed with Licensed activities, unless and until appropriate approval to the Environmental Impact Assessment under the EP Act and this Act has been obtained;
- (d) if marine or coastal users likely to be adversely affected by the Seabed Mineral Activities are identified by the Authority or the Title Holder at any time, including through the Application and Environmental Impact Assessment processes, obtain free, prior and informed consent, including

- by way of compensation, from those persons prior to commencing the Seabed Mineral Activities;
- (e) not proceed or continue with the Seabed Mineral Activities without obtaining prior written consent from the Authority to proceed, if evidence arises that to proceed is likely to cause Serious Harm to:
 - (i) the Marine Environment that was not anticipated in any Environmental Impact Assessment previously conducted,
 - (ii) to the safety, health or welfare of any person, or
 - (iii) to other existing or planned legitimate sea uses including but not limited to Marine Scientific Research;
 - (f) not dump mineral materials or waste from any vessel except in accordance with international law and the directions of the Authority or – for Seabed Mineral Activities in the Area – the Rules of the ISA;
 - (g) at the end of the Title term or upon earlier suspension, revocation or surrender of the Title, remove all installations, equipment and materials in the Title Area, so as to ensure that the Title Area does not constitute a danger to persons, shipping or the Marine Environment; and provide a final report including information on the rehabilitation of the Title Area;

Training

- (h) cooperate in capacity-building of personnel of Tuvalu in connection with Seabed Mineral Activities, and any related transfer of technology as may be agreed in the Title, including providing opportunities in consultation with the Authority for the participation of representatives of Tuvalu in the Seabed Mineral Activities;
- (i) provide sufficient training, supervision and resources to employees, agents or officers, to ensure compliance with this Act.

Financial

- (j) maintain, separately for each Title, a complete and proper set of books, accounts, financial records, and performance data consistent with internationally accepted accounting practices, which are annually audited by an independent auditor, and in the case of a Mining Licensee, which are sufficient to determine the amount of royalties, fees or taxes that may be payable under this or any other Act, and supply such of that data to the Authority in the format and at such times as may be required;
- (k) at all material times maintain appropriate insurance policies that provide adequate cover for identified risks and costs of damages that may be caused by the Seabed Mineral Activities, or otherwise satisfy the Authority of its financial and technical capability to respond to potential Incidents;

Legal

- (l) at all material times, ensure that:

- (i) any vessels, installation and equipment engaged in Seabed Mineral Activities are in good repair and comply with the laws of the flag state relating to vessel standards; and
- (ii) working conditions for personnel engaged in Seabed Mineral Activities and Ancillary Operations meet applicable employment rules and health and safety standards, and comply with the laws of the flag state relating to the safety of life at sea;
- (m) obtain any other permits, approval, certification or other documentation required under the laws of Tuvalu for the lawful performance by the Title Holder of the Seabed Mineral Activities;
- (n) carry out the Seabed Mineral Activities lawfully, with due diligence and efficiency, and within reasonable time limits;
- (o) not amend, alter or vary the work plan contained in the Title without the prior and informed written consent of the Authority, following a review in accordance with section 81 of this Act;
- (p) not engage in, and to take all reasonable steps to ensure that its employees, agents, contractors and subcontractors do not engage in, any activity related to the Title in exchange for any improper benefit to the Licensee, employee, agent, contractor or subcontractor, or to person including a friend or family member, associated with the Licensee, employee, agent, contractor or subcontractor;
- (q) to notify the Authority in writing immediately upon becoming aware that any requirement imposed on it is inconsistent with any other requirement, or that any requirement is incompatible with the performance of the Seabed Mineral Activities.

Reporting

- (r) advise the Authority in writing 30 days in advance of the date of departure from port of the schedule of each cruise planned for the purpose of performing the Seabed Mineral Activities under its Title;
- (s) submit to the Authority immediately in writing notice of any new information arising or data collected that materially affects the work plan or the Title Holder's ability to adhere to the terms of the Title;
- (t) submit to the Authority immediately by telephone and in writing notice of any Incident arising from the Seabed Mineral Activities or Ancillary Operations, and provide regular reports throughout the occurrence of any Incident;
- (u) permit access to the Title Holder's books and records, machinery and equipment, samples, office premises or operation sites (including vessels and installations) used in connection with the Seabed Mineral Activities for any Inspector or other Authority nominated representative, for the purposes of reasonable on-site inspection;

- (v) in the case of a Mining Licence and for any period during which Seabed Minerals are being mined, submit to the Authority a periodic and no less than quarterly report adhering to any Prescribed requirements and providing information about the volume of work performed and quantity and quality of Seabed Minerals mined;
- (w) submit to the Authority within 30 days of the end of each calendar year a written annual report in a format to be Prescribed or described in the Title, which shall include:
 - (i) information on: the results of Seabed Mineral Activities, health and safety record, volume of work, quantity and quality of Seabed identified (and where relevant, extracted), waste and waste disposal, rehabilitation activities,
 - (ii) a statement of expenditures, costs and persons employed; and in the case of a Mining Licence,
 - (iii) estimate of remaining Seabed Mineral deposit within the Title Area, and
 - (iv) a statement showing the amount of royalty determined to be payable for each reporting period together with all related information and calculations, and receipt showing that the royalties have been paid in accordance with the provisions of this Act or any other applicable laws;
- (x) provide the Authority with all reasonable information and assistance to enable the Authority's verification of the Title Holder's adherence to its obligations in performing the Seabed Mineral Activities and Ancillary Operations.

PART 6 - PROSPECTING PERMITS WITHIN TUVALU'S NATIONAL JURISDICTION

46. Prospecting within Tuvalu's national jurisdiction

Prospecting may be carried out within an area of Tuvalu's Exclusive Economic Zone and Continental Shelf by any person holding a valid Prospecting Permit pertaining to that area.

47. Grant of a Prospecting Permit

A Prospecting Permit may be granted by the Authority upon satisfactory receipt of a properly made application for a Prospecting Permit in the required form and accompanied by the Prescribed fees.

48. Prospecting Permit Application

For an application for a Prospecting Permit to have been properly made, for the purposes of section 47 of this Act, the application shall be made to the Authority in writing at least six months before the proposed commencement date of the Prospecting, and shall contain:

- (a) the cruise name and number;
- (b) the name, nationality and address, contact details, and, where relevant evidence of incorporation or registration, of the Applicant, and any other collaborators and participants;
- (c) the name, nationality, address, contact details and certificate of the requisite skills of the officer in charge of the proposed Prospecting activities;
- (d) the co-ordinates and charts of the area or areas within which the proposed Prospecting is to be conducted;
- (e) a general description of the nature and objectives of the proposed Prospecting activities, including the methods and technology to be used, the proposed date of commencement and approximate duration, and the proposed use of the data collected, including any plans to make the research results internationally available;
- (f) the details of the methods, the equipment, and any installations to be used;
- (g) a preliminary assessment of likely impact on the Marine Environment of the proposed Prospecting;
- (h) the details of any intended ports of call;
- (i) modalities of the participation of a representative of Tuvalu in the Prospecting activities;
- (j) the expected dates and method of submission to Tuvalu of a preliminary report, a final report, and assessment of data, samples and research results;
- (k) any such other matters as may be Prescribed.

49. Timely provision of Prospecting Permit decision

- (1) The Authority will inform the Council of the receipt of every Application for a Prospecting Permit and will provide sufficient information for the Council to consider each Application, and to provide any objections or queries to the Authority within 30 days of receipt of the information by the Council.
- (2) The Authority will provide the Applicant Prospector with:
 - (a) a decision to grant a Prospecting Permit;
 - (b) a decision to deny a Prospecting Permit; or
 - (c) a request for further information,

within 60 days of satisfactory receipt of an Application or of additional information sought by the Authority during the Application process.

50. Denial of a Prospecting Permit

- (1) The Authority will not provide a Prospecting Permit where:
 - (a) information required under section 48 has not been supplied to the Authority's satisfaction;
 - (b) the past performance of the Applicant as a Title Holder, or equivalent in other jurisdictions, has been materially unsatisfactory to the Authority's knowledge;
 - (c) the Permit includes within its scope any area of seabed that is included within the scope of a pre-existing and current Exploration or Mining Licence;
 - (d) the terms of the Permit would in the Authority's reasonable opinion be likely to lead to the contravention by any person of conditions or restrictions placed on any Marine Reserve or a Protected Area or cause Serious Harm to the Marine Environment, or human health or safety; or
 - (e) the Authority is aware of other grounds, including matters raised by the Council, that reasonably indicate that the grant of the Prospecting Permit would be contrary to public interest or contrary to the principles contained in section 12 of this Act.

51. Written statement of reasons for and appeal against denial

- (1) A decision by the Authority to deny an Application for a Prospecting Permit shall be accompanied by a written statement of the reasons for that denial.
- (2) An Applicant Prospector who is dissatisfied with the Authority's denial decision may appeal the decision.

52. Conditions of Prospecting Permit

The Authority may grant a Prospecting Permit subject to whatever terms and conditions the Authority thinks appropriate or as may be prescribed.

53. Rights and Obligations of Prospecting Permit

- (1) Prospecting:
 - (a) does not entail any exclusive rights of access to the seabed or water column, and does not permit extraction of minerals for commercial use;
 - (b) may be conducted simultaneously by more than one Prospector in the same area or areas;

- (c) shall cease within a particular area upon written notice being given to the Prospector by the Authority, which may be given where:
 - (i) a Licence or a declaration of a Marine Reserve or Protected Area has been or is about to be issued for that area,
 - (ii) the Prospector breaches any undertaking or requirement pertaining to the Prospecting Permit and fails to remedy the breach within one calendar month of it being required to do so by an Enforcement Order,
 - (iii) the Authority reasonably believes that the Prospector has caused, is causing, or poses a threat of, Serious Harm to the Marine Environment or human life;
- (d) may include the recovery of minerals provided this is restricted to the minimum amount necessary for testing, assaying or valuation purposes, and not for commercial use;
- (e) does not entail any right to drill into the Continental Shelf, use explosives; or introduce harmful substances into the Marine Environment;
- (f) does not give ownership or property rights to the Prospector over any Seabed Minerals acquired in the course of Prospecting, such Seabed Minerals remaining the property of the State.

54. Obligations of Prospectors

- (1) Prospectors shall:
 - (a) adhere to the terms and conditions of the Prospecting Permit, this Act, the EP Act, requirements Prescribed by Regulations made under this Act, and any rules or procedures relating to Prospecting issued by the Authority; and
 - (b) not proceed with Prospecting if there is evidence indicating that to proceed is likely to cause Serious Harm to the Marine Environment or human life.

PART 7 - LICENSING OF SEABED MINERAL ACTIVITIES WITHIN TUVALU'S NATIONAL JURISDICTION

55. Exploration and Mining within Tuvalu's national jurisdiction

Exploration and Mining may be carried out in an area of Tuvalu's territorial seas, Exclusive Economic Zone or upon Tuvalu's Continental Shelf by any eligible person holding a valid Licence pertaining to that area, granted in accordance with this Act.

56. Grant and Issue of Licences

- (1) The Authority may at any time receive unsolicited Licence Applications, or may from time to time invite, including by way of a public tender, Applications for a Licence to conduct Seabed Mineral Activities in an area of Tuvalu's Continental Shelf that is not reserved under section 38 of this Act or presently subject to a Title or a pre-existing pending Application for grant of a Title.
- (2) The persons who may apply for a Mining Licence are limited to:
 - (a) The Title Holder of a valid Exploration Licence, where the Application must relate to the grant of a Mining Licence for one or more Seabed Mineral Blocks of that Exploration Licence Area,
 - (b) A person for whom an area has been retained under section 71 of this Act, where the Application is for a Mining Licence in one or more Seabed Mineral Blocks of that retained area, or
 - (c) Any other person invited to apply in accordance with section 39 of this Act.
- (3) Upon Application to conduct Exploration or Mining in an area of Tuvalu's territorial seas, Exclusive Economic Zone or upon Tuvalu's Continental Shelf, subject to the provisions of this Part of this Act, and following such format, processes, criteria and payments as may further be Prescribed, the Authority may take a decision:
 - (a) to grant to an Applicant:
 - (i) an Exploration Licence, or
 - (ii) a Mining Licence;
 - (b) or not to grant any Licence,with respect to the whole or any part of the blocks or cells that are the subject of the Application.
- (4) A Licence will give the Licensee rights to conduct specified Exploration or Mining activities within the Licence Area, and the Ancillary Operations necessary for the performance of those Seabed Mineral Activities.

57. Licence Area

The proposed Licence Area must be clearly delineated by the Applicant in the Application, and arranged in at least 5 clusters. Each cluster must contain at least 5 contiguous blocks, where two blocks that touch at any point shall be considered to be contiguous. The clusters of blocks need not be contiguous but must be proximate and confined within a rectangular area for which the longest side does not exceed 1,000 kilometres in length and the total area enclosed by that rectangle does not exceed 300,000 square kilometres.

58. Content of an Application for a Licence

Applications for a Licence shall contain:

- (a) evidence as to the matters required under section 59 of this Act;
- (b) the coordinates of the area of Tuvalu's territorial seas, Exclusive Economic Zone or Continental Shelf within which the proposed Seabed Mineral Activities will be conducted under Licence, and a graticulated explanation of the proposed Licence Area with reference to the Authority's cadastral map and system of blocks;
- (c) any feasibility or other studies previously conducted by the Applicant in relation to the potential of the area within which the proposed Seabed Mineral Activities will be conducted under Licence;
- (d) insofar as possible on data held at the time of Application, a preliminary assessment of the possible impact on the Environment of the proposed Activities that are the subject of the Licence Application;
- (e) a proposal for oceanographic and environmental baseline studies and mitigation strategies for the protection of the Marine Environment and prevention of pollution;
- (f) a work plan, covering the life of the proposed Seabed Mineral Activities (including the closure of operations), and including a description of the technology and processes to be used, a time schedule and estimated annual expenditures;
- (g) a financing plan, including insofar as possible: forecast of capital investment, operating costs, sale revenues, and the anticipated type and source of financing;
- (h) a list of employees required to operate the Seabed Mineral Activities, and an employment strategy for local workers;
- (i) a capacity-building programme providing for the training of personnel of Tuvalu and their participation in matters pertaining to the proposed Seabed Mineral Activities to be conducted under Licence;
- (j) a report of the goods and services anticipated to be required for the proposed Seabed Mineral Activities, identifying insofar as possible, which can be obtained within Tuvalu and the Applicant's intention thereto;
- (k) a public engagement and information plan;
- (l) the Applicant's plan for responding to any Incidents;
- (m) the period for which the Licence is sought,
- (n) the Prescribed fees; and
- (o) any further matters that are Prescribed by Regulations.

59. Qualification criteria pertaining to the Applicant

- (1) An Application for a Licence will only be considered where the Authority is first satisfied that the Applicant meets the Qualification criteria.
- (2) If the Applicant Qualifies, the Authority shall then evaluate the Application against the Prescribed evaluation criteria. Only a Qualified Applicant with an Application that is assessed to meet the Prescribed evaluation criteria will be eligible for a Licence.
- (3) To the maximum extent possible, the Authority shall complete Qualification assessment within sixty days of the receipt of an Application; and if this is not achieved, the Authority will within those sixty days inform the Applicant in writing of the reasons, any pending unresolved issues, the Authority's efforts to resolve them and an estimate of the time required to do so.
- (4) Qualification Criteria: to Qualify an Applicant for a Licence, the Authority must determine that the Applicant:
 - (a) is a body corporate registered in Tuvalu;
 - (b) gives supported undertakings that
 - (i) the content of the Application is true and accurate to the best of the Applicant's belief; and
 - (ii) Seabed Mineral Activities to be conducted under the Licence will be implemented:
 - (A) in a responsible and lawful manner,
 - (B) in adherence with the Act and Regulations, and specifically in adherence with sections 44 and 45 of the Act,
 - (iii) has, or will have at the commencement of the proposed Seabed Mineral Activities if the Licence is issued, sufficient financial and technical resources and capability to:
 - (A) properly perform the Seabed Mineral Activities that are the subject of the Licence Application; and
 - (B) respond to any incident or activity that causes Serious Harm to the Marine Environment, including having sufficient funding or insurance to cover the costs of any potential liability arising from accidents or pollution occurring as a result of the Seabed Mineral Activities and Ancillary Operations;
 - (c) is governed by a corporate structure and risk management model consistent with the proper performance by the Applicant of the obligations to arise under the Licence;
 - (d) has apparent experience or ability to conduct Seabed Mineral Activities; or is related to an Affiliate that has experience in the conduct of Seabed Mineral Activities;
 - (e) is a fit and proper person to hold a Licence; and

- (f) has paid the applicable fees.
- (5) For the purpose of determining whether the Applicant is a fit and proper person under sub-section 59(4)(e) the Authority must take into account (but is not limited to only considering) whether the Applicant (including each director, trustee, executive officer, secretary, Affiliate or any other person associated or connected with the ownership, administration or management of the Applicant's business) has previously:
- (a) been found on reasonable evidence to have breached a term or condition of an approval (however labelled) to conduct Seabed Mineral Activities or similar sea or land based activities, which related to the protection or rehabilitation of the environment or the safeguarding of the interests of the local community;
 - (b) been convicted of an offence pertaining to the conduct of Seabed Mineral Activities or similar sea or land based activities; or
 - (c) been convicted of an offence involving fraud or dishonesty.
- (6) The Authority must not consider an Applicant to be a fit and proper person for the purposes of sub-section 59(4)(e) if it is currently insolvent or under administration.
- (7) The Authority may determine whether to Qualify an Applicant on the basis of any or all of:
- (a) the information in the Application;
 - (b) any additional information requested by the Authority in order to assist consideration of the Application;
 - (c) any relevant information in the public domain, received from the Council, or otherwise in the State's records;
 - (d) any advice obtained from other Government Ministries, including advice with regard to financial capacity received from the Ministry of Finance and Economic Planning.
- (8) Upon making a determination whether an Applicant meets the Qualification Criteria, the Authority will promptly notify the Applicant in writing either that the Authority has:
- (a) Qualified the Applicant and that either the Applicant's complete Application will now be evaluated, or that the Applicant should submit a complete Application if it has not done so already, and pay any outstanding Application fee; or
 - (b) declined to Qualify the Applicant, and set out the Authority's reasons.

60. Restrictions on issue of Licences

The Authority shall not issue a Licence where to do so:

- (a) would give Exploration or Mining rights over an area already included within the scope of any existing Licence valid for any of the same time period – save for the situation where an Exploration Licensee applies for a Mining Licence for part of the area included within the scope of that Licensee’s existing Exploration Licence, or that has been retained by the Authority under section 71 of this Act;
- (b) would be likely to lead to any person contravening a declaration of a Marine Area or Protected Area;
- (c) would grant Mining rights over an area or part of an area over which an Exploration Licence has been valid within the preceding three years, unless:
 - (i) the Mining Applicant is the same person who held the Exploration Licence pertaining to that area; or
 - (ii) the Mining Application is accompanied by the consent of the person who held that preceding Exploration Licence;
- (d) would be likely to lead to any person contravening section 27 of the Climate Change Resilience Act.²

61. Cabinet Consent and Minister Signature for Licences

- (1) Any Licence, to be validly issued, shall receive Cabinet consent before issue, and shall be signed by the Minister.
- (2) Cabinet before giving consent to the issue of a Licence may request an opinion from the Attorney-General’s Office that the issue of that Licence in those terms adheres to procedural propriety, the provisions of this Act and the other laws of Tuvalu, and Tuvalu’s obligations under international law.

62. Issue of more than one Licence

Nothing in this Act shall prevent more than one Licence being issued to the same person.

63. Licence Decision-Making: Other States

The Authority, upon satisfactory receipt of an Application for an Exploration or Mining Licence, shall before taking a decision under section 56 of this Act provide:

- (a) timely and appropriately comprehensive information about that Application to any other State who may be affected by the proposed Seabed Mineral Activities contained within that Application; and
- (b) an opportunity for that State to provide information that will be taken into account by the Authority in taking a decision under section 56 of this Act in relation to that Application.

64. Licence Decision-Making: Public Consultation

- (1) The Authority, upon satisfactory receipt of an Application for a Mining Licence, shall before taking a decision under section 56 of this Act provide:
 - (a) timely and appropriately comprehensive information about that Application to the Council, and to the public of Tuvalu in adherence to Prescribed procedures or in any other way the Authority sees fit, particularly any groups who may be affected by the proposed Activities contained within that Licence Application; and
 - (b) an opportunity for the Council and members of the public or interest groups representing the public to provide information that will be taken into account by the Authority in taking a decision under section 56 of this Act in relation to that Application.
- (2) The Authority, upon satisfactory receipt of an Application for an Exploration Licence, may before taking a decision under section 56 of this Act follow the process set out in sub-section (1)(a) and (b).

65. Licence Decision-Making: General

The Authority:

- (a) Shall deal with Licence Applications promptly, in accordance with Prescribed procedures and within Prescribed time limits;
- (b) May request further information from a Licence Applicant, or require the Applicant to perform a test or demonstration, before making a decision under section 56 of this Act and may return a Licence Application without a decision if the Applicant fails properly to comply with a request under this sub-section; and
- (c) In taking any decision under section 56 of this Act shall:
 - (i) adhere to its duties and objectives as provided for in sections 11 and 13 of this Act; and
 - (ii) take into account:
 - (A) the Qualification criteria in relation to the Applicant, and
 - (B) Prescribed evaluation criteria in relation to the Application.

66. Licence Decision-Making: Written statement of reasons

Within thirty days of a decision having been made by the Authority under section 56:

- (a) where the decision is to grant a Licence, a written statement of reasons will be promulgated by the Authority; and
- (b) where the decision is not to grant a Licence, a written statement of reasons will be provided to the Applicant by the Authority.

67. Appeal against Licence decision

- (1) An Applicant who is dissatisfied with a decision by the Authority on a Licence Application may appeal the decision.
- (2) Any other interested party with legal standing who is dissatisfied with a decision by the Authority on a Licence Application may appeal the decision.

68. Duration of Licence Term

- (1) An Exploration Licence may be issued for such period as may be agreed between the Authority and the Applicant provided the duration is no more than 15 years, which term may be renewed upon expiry in accordance with this Act.
- (2) A Mining Licence may be issued for such period as may be agreed between the Authority and the Applicant provided the duration is no more than 20 years, which term may be renewed upon expiry in accordance with this Act.

69. Terms of Licence

- (1) When a decision has been made under section 56 to issue a Licence:
 - (a) the Authority will in pursuance with Prescribed procedures provide the Licensee with a draft Licence based on:
 - (i) the requirements of this Act and the Regulations,
 - (ii) the Prescribed format, and
 - (iii) the content of the Application,

for the Licensee to check and confirm its ability and willingness to be bound by its terms, before it is formally issued by the Authority;

- (b) the Licence shall be granted on the terms and conditions Prescribed and any additional terms as may be agreed between the Authority and the Applicant provided these do not conflict with the Act and the Prescribed terms, and subject to the approval of Cabinet;
- (c) the Licence will specify the Seabed Minerals in respect of which it is granted;
- (d) each Licence will include a detailed approved Exploration or Mining work plan in the Prescribed format, including time schedules, and specified annual expenditure requirements; and
- (e) where not already required by this Act or the EP Act, the Licence may require an Environmental Impact Assessment or other studies to be conducted and reported upon by the Licensee before particular Seabed Mineral Activities can commence.

70. Exclusivity of Licence and Security of Tenure

- (1) A Licence will, in consideration of:
 - (a) payments required by Regulations and in the Licence; and
 - (b) the performance and observance by the Licensee of all the terms and conditions provided by this Act, Regulations, and the terms of the Licence,

grant to the Licensee during the continuance of the Licence, exclusive rights to conduct Seabed Mineral Activities with regards to the specified Seabed Minerals of the Licensed Area and to conduct Ancillary Operations, in accordance with the agreed work plan contained in the Licence.
- (2) The Authority will not vary, suspend, or revoke any Licence except in accordance with this Act.
- (3) A Licence may be renewed for successive periods by the Authority in accordance with this Act.

71. Right of Retention arising from Exploration Licence

- (1) Where the Authority has issued an Exploration Licence –
 - (a) the Authority will not issue an Mining Licence in respect of any part of the Licensed Area within three years of the end of the term of the Exploration Licence, except in accordance with section 60(c) of this Act; and
 - (b) within three years of the end of the term of the Exploration Licence, the Licensee may request that the Authority retain nominated blocks from the Exploration Licence Area for future exclusive Mining by the Licensee.
- (2) The Authority, in consultation with the Council, may determine to retain an area nominated by a Licensee under sub-section (1)(b) for future exclusive Mining by the Licensee for a renewable period of not more than five years, subject to the Licensee continuing to demonstrate to the Authority's satisfaction that:
 - (a) the Licensee is taking diligent steps towards making an Application for a Mining Licence in respect of the retained area; or
 - (b) there are good grounds for the Licensee not presently applying for a Mining Licence in respect of the area, including (without limitation) on the basis of the state of technology for the relevant Mining activities and the market for the Seabed Minerals in the retained area.
- (3) The Authority may at its discretion determine the length of time for which an area may be retained under this section for future exclusive Mining by a Licensee, provided it is for no longer than five years, and there is no limit to the

number of times that the Authority may make such a determination to retain an area, subject to the Authority holding the requisite satisfaction.

- (4) If the Authority makes a determination under sub-section (1)(b) to retain an area for future exclusive Mining by a Licensee, the Authority shall:
 - (a) not consider an Application from any other person to conduct Seabed Mineral Activities in the retained area during the time period determined under sub-section (3);
 - (b) notify the Licensee of such terms and conditions of the determination, not inconsistent with the Act and Regulations, as the Authority considers fit; and
 - (c) within thirty days of the determination publish the retention by notice in the Gazette.
- (5) If the Authority is not satisfied for the purpose of sub-section (2)(a) or (b) in respect of some or all of a retained area, the Authority may determine that the area is no longer retained, any so such area may form the subject of a new Application.

72. Exploration Licence may require relinquishment of Licence Area

The Authority may, under provisions made by Regulations or the terms of the Exploration Licence, require the Exploration Licensee to relinquish a percentage or portions of the Licence Area over a set time period in accordance with a schedule to be Prescribed or set by the Authority in the Licence.

73. Seabed Minerals recovered under Exploration Licence

- (1) Any core or sample or other quantity of Seabed Minerals acquired by the Licensee in the course of undertaking Seabed Mineral Activities and Ancillary Operations under an Exploration Licence shall remain the property of the State and shall not be disposed of or removed from Tuvalu, except:
 - (a) for the purposes of assay, identification, analysis, or storage, or
 - (b) with the consent of the Authority, who may grant consent subject to such conditions as the Authority may deem fit to impose.
- (2) Where cores or other samples of Seabed Minerals are acquired by the Licensee, a record sufficient for the identification of the core or sample and the location of its origin shall be maintained by the Licensee, and the samples shall be made accessible to the Authority, upon request.
- (3) Any person who does not comply with sub-section (1) commits an offence
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

74. Conditions for commencing Mining

- (1) A Mining Licensee may commence the Licensed Seabed Mineral Activities only upon entry in the register of Title, and upon providing the Authority with evidence of:
 - (a) Endorsement by the Department of Environment of its environmental management and impact mitigation plan; and
 - (b) A bank statement indicating that the Title Holder has appropriate financial resources, security deposit or monetary guarantee, in accordance with the provisions of this Act.
- (2) A Mining Licensee may also be required by the Licence, as a condition for commencing Mining, to provide financial security under section 102 of this Act to guarantee its compliance with its environmental management and mitigation plan and other environmental and social obligations under this Act.

75. Mining Licence gives Licensee rights to the Seabed Minerals recovered

- (1) When Seabed Minerals are recovered by a Mining Licensee from the Licence Area in accordance with the terms of the Licence:
 - (a) the Licensee shall acquire title to, and property rights over, those Seabed Minerals at the point of extraction;
 - (b) this includes the right to market, process, sell and export the Seabed Minerals and subject to this Act to freely expend the sale proceeds; and
 - (c) those Seabed Minerals are not subject to the rights of any other person.

76. Diligent Mining

- (1) Once mining of Seabed Minerals has commenced under a Mining Licence, the Licensee shall, within reasonable limits and taking into consideration all relevant factors, continue mining throughout the period of the Licence.
- (2) Notwithstanding sub-section (1), the Authority may at the Licensee's request under section 81 of this Act, and upon demonstration to the Authority's satisfaction that there is good cause to do so, authorise temporary suspension of Mining Activities.

77. Environmental Impact Assessment

- (1) An Environmental Impact Assessment prior to commencing the activity shall:
 - (a) Not be required under the EP Act for the following activities –
 - (i) Gravity and magnetometric observations and measurements;
 - (ii) Bottom and sub-bottom acoustic or electromagnetic profiling of resistivity, multi-beam bathymetric mapping, self potential or

induced polarization, or imaging without the use of explosives or frequencies known to significantly affect marine life;

- (iii) Water, biotic, sediment, and rock sampling for environmental baseline study including:
 - A. Sampling of small quantities of water, sediment and biota (e.g. from remotely-operated vehicles);
 - B. Mineral and rock sampling of a small-scale and limited nature such as that using small grab, dredge or bucket samplers up to [X size];
 - C. Sediment sampling by box corer and small diameter corer;
- (iv) Meteorological observations and measurements;
- (v) Oceanographic and hydrographic, observations and measurements;
- (vi) Video/film and still photographic observations and measurements;
- (vii) Shipboard mineral assaying and analysis; (viii) Positioning systems;
- (ix) Towed plume-sensor measurements;
- (x) In situ faunal metabolic measurements;
- (xi) DNA screening of biological samples;
- (xii) Dye release or tracer studies unless required under national or international laws governing the activities of flagged vessels; and
- (xiii) Any other activity contained in a Licence work plan that does not appear to the Licensee, Authority or the Department of Environment to be likely to result in Serious Harm to the Environment;

unless the Authority advises otherwise in accordance with subsection (1)(c).

- (b) Be required under the EP Act for any Mining activity licensed under this Act; and
 - (c) Be required for any aspect of Seabed Mineral Activities or Ancillary Operations, including bulk-sampling or test-mining and equipment-testing, where it appears to the Licensee, Authority or the Department of Environment that the nature or degree of that activity is such that it is likely to result in Serious Harm to the Environment.
- (2) Where an Environmental Impact Assessment is required under the EP Act for Seabed Mineral Activities, this must at a minimum contain the matters described in Schedule 1 to this Act.

78. Liability of Licensee

- (1) The Licensee is responsible for the Seabed Mineral Activities and Ancillary Operations carried out within its Licence Area, and their compliance with this Act, Regulations made under this Act, and the Licence.
- (2) The Licensee shall at all times keep Tuvalu indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to its Seabed Mineral Activities, and will be liable for the actual amount of any compensation or damage arising out of its failure to comply with this Act, Regulations made under this Act, or the Licence, and any wrongful acts or omissions and those of its employees, officers, subcontractors, and agents in the conduct of the Seabed Mineral Activities or Ancillary Operations under Licence, including but not limited to that arising from injury to coastal or marine users, damage to the Marine Environment, and any related economic loss or compensation.
- (3) Any obligations which are to be observed and performed by the Licensee shall at any time at which the Licensee is more than one person be joint and several obligations.
- (4) The Licensee shall remain liable for damage resulting from its Seabed Minerals Activities notwithstanding that its Title may have been terminated or suspended.

79. Part of Licence Area outside of national jurisdiction

If part of the Licence Area includes or purports to include an area that is outside of the national jurisdiction of Tuvalu or an area that comprises or is within a Protected Area or a Marine Reserve, then the Licence remains valid, but does not authorise Seabed Mineral Activities to be carried out within that part.

80. Renewal of Licence

- (1) A Licensee can apply to the Authority for that Licence to be renewed for successive periods of up to five years each.
- (2) The Authority, in consultation with the Council, and with Cabinet's consent will grant such a renewal provided the application to renew is received at least ninety days before the expiry date of the initial term of the Title, and the Title Holder continues to meet the Qualification criteria and has met its obligations under the subsisting Title.
- (3) If a renewal is granted after the expiry date of the initial term of the Title, the Title is deemed to have continued in force during the period between that expiry date and the date the renewal is granted.
- (4) If a renewal is to be refused, the Authority will follow the processes contained in section 66(2) of this Act.

- (5) If the renewal relates to a Mining Licence, prior written approval from the Department of Environment must be obtained for any renewal to be valid.

81. Review of Licences

- (1) A joint review of each Licence work plan, anticipated annual expenditure, and time schedule by the Authority:
 - (a) will be performed after completion of any Environmental Impact Assessment conducted after the date of issue of the Licence; and
 - (b) may be performed periodically at the request of the Licensee or the Authority upon material new information coming to the attention of the Licensee or the Authority.
- (2) The Licensee may be required to submit additional data for the purposes of such a review.
- (3) The review shall be conducted in accordance with any Prescribed procedures, or procedures provided by the Licence, and will consider whether any changes are required to the Licence terms or work plan.
- (4) The Authority's prior consent to any amendment to the work plan or Licence must be confirmed in writing.
- (5) The Authority shall consult with the Council, and obtain approval from the Department of Environment, and the consent of the Cabinet, before giving consent to the variation of a term of a Mining Licence in a material particular.

82. Variation, suspension, or revocation of a Licence

- (1) The Authority may vary, suspend, or revoke any Exploration Licence or Mining Licence under this section—
 - (a) where any of the Qualification criteria ceases to be met by the Licensee in a material particular;
 - (b) if a security deposit required under section 102 of this Act is not deposited in accordance with this Act;
 - (c) where the variation or revocation is in the reasonable opinion of the Authority necessary to –
 - (i) prevent serious risk to:
 - (a) the safety, health or welfare of any person, or
 - (b) the Marine Environment;
 - (ii) avoid a conflict with any obligation of Tuvalu arising out of any international agreement or instrument in force for Tuvalu; or
 - (iii) avoid any situation which may reasonably be expected to lead to a breach of international or domestic peace and security;

- (d) in any case, with the consent of the Licensee;
- (e) in order to secure compliance by the Licensee with the Licensee's obligations and undertakings under this Act, the Regulations and the Licence;
- (f) if the Licensee has failed to comply with a final binding decision of a dispute settlement body applicable to it;
- (g) upon the bankruptcy, insolvency, or receivership of the Licensee, or upon the Licensee ceasing to exist as a legal entity;
- (h) upon consultation with the Licensee, where the Licensee is prevented for a continuous period exceeding two years from undertaking the Licensed Seabed Mineral Activities under the Licence despite taking all reasonable measures to do so, because of an event outside of the Licensee's control;
- (i) where no material efforts have been made by the Licensee to undertake the Licensed Seabed Mineral Activities for a period exceeding two years;
- (j) where there has been a serious, persistent or wilful breach by the Licensee of:
 - (i) a material undertaking or term or condition of the Licence,
 - (ii) the provisions of this Act or Regulations made under this Act or other laws of Tuvalu;
 - (iii) conditions imposed under the EP Act; or
 - (iv) requirement of an Order made under this Act,and such breach either cannot be remedied or has not been remedied upon the giving of reasonable notice by the Authority;
- (k) where the relevant Seabed Mineral Activities in the view of Cabinet constitute an unacceptable risk to Tuvalu or are clearly no longer in the public interest due to changes in the circumstances pertaining to the Seabed Mineral Activities including (without limitation) changes to:
 - (i) the market for Seabed Minerals;
 - (ii) best environmental practice pertaining to Seabed Mineral Activities; or
 - (iii) the state of technology utilised for Seabed Mineral Activities,as well as the capacity of the Licensee to adapt to the changes in circumstances;
- (l) where any payment owing under section 84 or any part of this Act is in arrears or unpaid for six months following the day on which it ought to have been paid; or
- (m) upon transfer, mortgage, lease of a Title, or significant change in the constitution, ownership or control of the Title Holder, without the Authority's prior approval.

- (2) Before making a decision under this section the Authority, shall unless the decision is made on the exact terms of a request by the Licensee, give to the Licensee at least ninety days written notice of the Authority's intention to make the decision, setting out details of that proposed decision and the reasons for it, and inviting a person to whom the notice or a copy of the notice has been given, and who objects to it, to make a written submission to the Authority about the proposal within a specified timeframe.
- (3) Except in the case of a variation to the work plan of the type envisaged in sub-section (7), where the Licence in question underwent a public consultation procedure in accordance with this Act, give a copy of the section 82(2) notice to the Council and any such other persons as the Authority thinks fit, and publish a summary of the notice in the Gazette.
- (4) If the Authority has suspended a Licence, it may by notice require the Licensee to resume its activities and comply with the terms and conditions of the Licence, not later than 90 days after such notice.
- (5) In lieu of variation, suspension or revocation under sub-sections (1)(a), (b), (c), (e), (f), (i), (j), and (l), the Authority may take any of the administrative actions provided for in section 26 of this Act, or impose upon the Licensee monetary penalties proportionate to the seriousness of the violation and in any case not exceeding \$500,000, which amount excludes any compensation payable for damage or harm.
- (6) The Authority shall not execute a decision involving monetary penalties under sub-section (5) until the Licensee has been accorded a reasonable opportunity to exhaust the judicial remedies available to it under the laws of Tuvalu.
- (7) A variation of a detail of the Licence work plan that in the Authority's view is minor and/or requires expeditious action to meet the objectives of this Act, and which does not require variation of a term of the Licence, can be effected, with the consent of the Minister, by written notice to the Licensee from the Authority.
- (8) Upon effecting a variation of a term of the Licence, the Authority shall:
 - (a) prepare an instrument of variation signed by the Minister and the designated representative of the Licensee;
 - (b) register the variation to that Licence in the register of Titles, maintained by the Authority under section 40 of this Act;
 - (c) issue to the Licensee a copy of that instrument of variation; and
 - (d) publish notice of the variation in the Gazette.

83. Surrender of a Licence

Subject to payment of outstanding sums payable in accordance with section 100 of this Act and without prejudice to any obligation or liability imposed by this Act or Regulations made under this Act, or incurred under any term or condition contained

in the Licence, the Licensee may at any time surrender the Licence without penalty by giving to the Authority not less than six months' prior notice in writing to that effect.

84. Ongoing liability of a Licensee

Upon a revocation of a Licence by the Authority, or surrender of the Licence by the Licensee, all rights granted shall cease and determine, but the Licensee will remain subject to any ongoing obligation or liability incurred by the Licensee as a result of Activities already conducted, or otherwise by reason of having entered into the Licence, including requirements to submit reports and to make payments to the Authority for the period during which Seabed Mineral Activities were conducted.

85. Extension of Exploration Licence while Mining Licence Application under consideration

If an Application for a Mining Licence is made by an Exploration Licensee for the same Licence Area, the Exploration Licence is deemed to have continued in force until the time at which the Applicant receives a final decision on the Mining Licence Application.

86. Mineral development agreements

- (1) The Authority, with the Minister's approval, may enter into written agreements with a Licensee at any time to establish additional terms and conditions as to the licensing arrangement, including:
 - (a) the circumstances or the manner in which the Authority or the Minister shall exercise any discretion conferred by this Act;
 - (b) the settlement of disputes arising out of or relating to the Licence or the administration of this Act, including provisions relating to the settlement of any such dispute by international arbitration; and
 - (c) the acquisition by the State either directly or indirectly of a participating interest in the project subject to the Mining development agreement provided:
 - (i) the Council has been consulted, and its views taken into account, by the Authority before any agreement is entered into;
 - (ii) the terms of such an agreement are not inconsistent with the Act or Regulations, and do not or are not likely to lead to a contravention by Tuvalu of the Licensee of the laws of Tuvalu or the international law obligations of Tuvalu; and
- (2) Nothing in sub-section (1) shall be read or construed as authorising the State to enter in a special agreement relating to the payment of any applicable tax, duty,

fee or other fiscal impost, or to grant in respect thereof any exemption, moratorium, tax holiday, or other indulgence howsoever described.

PART 8 – SPONSORSHIP OF ACTIVITIES IN THE AREA

87. Entry into Sponsorship of Seabed Mineral Activities in the Area

- (1) The Authority may in any manner it sees fit invite Sponsorship Applications, or entertain discussions, with Sponsorship Applicants or potential Sponsorship Applicants.
- (2) To be eligible to perform Seabed Mineral Activities under Tuvalu's Sponsorship a Sponsorship Applicant must first –
 - (a) obtain a valid Sponsorship Certificate from the Authority, and
 - (b) enter into a valid contract with the ISA, pertaining to those Seabed Mineral Activities in the Area.
- (3) Upon Application to conduct Seabed Mineral Activities within the Area under the sponsorship of Tuvalu, and following such format and processes as may be Prescribed, the Authority may take a decision:
 - (a) to issue to an Applicant:
 - (i) a Sponsorship Certificate for Exploration, or
 - (ii) a Sponsorship Certificate for Mining,
committing to sponsor the Applicant to conduct specified Seabed Mineral Activities within the Area under contract with the International Seabed Authority; or
 - (b) not to issue any Sponsorship Certificate.
- (4) The Authority shall provide opportunity for the Council, and may provide opportunity for members of the public or interest groups representing the public, to provide information be taken into account by the Authority in taking a decision under sub-section (3).

88. Conditions to issue of Sponsorship Certificate

- (1) A Sponsorship Certificate shall only be issued to a Sponsorship Applicant who:
 - (a) is a body corporate, registered in Tuvalu,
 - (b) has or will have at the commencement of the proposed Seabed Mineral Activities sufficient financial and technical resources and capability to properly perform the Seabed Mineral Activities in compliance with the Rules of the ISA,
 - (c) has paid any applicable fees under this Act, and
 - (d) has adhered any further processes or criteria as may be Prescribed.

- (2) The Authority shall not issue a Sponsorship Certificate where in the Authority's reasonable opinion, having taken into account the advice of the Council, the proposed Seabed Mineral Activities:
- (a) are likely to result in irreparable harm to any community, cultural practice or industry in Tuvalu, or
 - (b) would not be in the public interest of Tuvalu

89. Sponsorship Application

- (1) A Sponsorship Application must be made in writing to the Authority and must –
- (a) provide evidence that the Sponsorship Applicant meets the Sponsorship Qualification Criteria, and
 - (b) include –
 - (i) the same content that is required by the Rules of the ISA for an application to the ISA for approval of a plan of work to obtain a contract for the proposed Seabed Mineral Activities
 - (ii) written undertakings that the Sponsorship Applicant –
 - A. will fully comply with its obligations under the Rules of the ISA and this Act,
 - B. warrants that the content of the Sponsorship Application is true and accurate to the best of its belief, and
 - C. intends to apply for a contract with the ISA to conduct Seabed Mineral Activities in the Area under the sponsorship of Tuvalu;
 - (iii) Copies or summaries of any studies conducted by the Sponsorship Applicant or other data in relation to: the Seabed Mineral potential of the proposed Contract Area, and the potential impact of the Seabed Mineral Activities on the Marine Environment;
 - (iv) An indication insofar as known of the Sponsorship Applicant's proposed:
 - A. methods for financing the Seabed Mineral Activities,
 - B. ownership, lease or other arrangement to use vessels and equipment required for the operation of the Seabed Mineral Activities, and
 - C. insurance or contingency funding to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an Incident;
 - (v) A list of employees required to operate the Seabed Mineral Activities, and an indication if any of these will be recruited from Tuvalu;

- (vi) A capacity-building programme providing for the training of personnel of Tuvalu;
 - (vii) The Sponsorship Application fee required by the Act;
 - (viii) A statement as to whether the Sponsored Party or any of its Directors has previously been found on reasonable evidence to have:
 - A. breached a material term or condition of the Rules of the ISA,
 - B. been convicted of an offence or incurred a civil penalty pertaining to the conduct of Seabed Mineral Activities or similar sea or land based activities in another jurisdiction; or
 - C. been convicted of an offence involving fraud or dishonesty;
 - (ix) Any other matters as may be Prescribed.
- (2) For the purposes of sub-section (1)(a), the Sponsorship Qualification Criteria are that:
- (a) the Sponsorship Applicant:
 - (i) is an existing body corporate, registered in Tuvalu;
 - (ii) has, or will have at the commencement of the proposed Seabed Mineral Activities, sufficient financial and technical resources and capability:
 - A. properly to perform the Seabed Mineral Activities in compliance with the Rules of the ISA; and
 - B. to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an Incident
 - (iii) has submitted a valid Application in accordance with the Act and these Regulations, including the Sponsorship Application fee;
 - (b) the proposed Seabed Mineral Activities are consistent with the Rules of the ISA in relation to environmental management;
 - (c) the proposed Seabed Mineral Activities are compatible with applicable national and international laws, including those relating to safety at sea and the protection and preservation of the Marine Environment; and
 - (d) the proposed Seabed Mineral Activities will not unduly affect:
 - (i) the rights of other legitimate sea users, or
 - (ii) the protection and preservation of the Marine Environment,
 - (iii) international and domestic peace and security.
- (3) A decision by an official organ of the ISA to grant to Sponsored Party a contract may be considered by the Authority as evidence in relation to its Sponsorship Certificate decision-making.

90. Terms of the Sponsorship Certificate

A Sponsorship Certificate, shall be issued to a Sponsored Party in a form necessary to satisfy the Rules of the ISA, and shall contain –

- (a) the name of the Sponsored Party;
- (b) a statement that the Sponsored Party is –
 - (i) a national of Tuvalu; or
 - (ii) subject to the effective control of Tuvalu or its nationals;
- (c) a statement by Tuvalu that it sponsors the Sponsored Party;
- (d) the date of deposit by Tuvalu of its instrument of ratification of, or accession or succession to, the UN Convention on the Law of the Sea;
- (e) a declaration that Tuvalu assumes responsibility in accordance with article 139, article 153, paragraph 4, and Annex III, article 4, paragraph 4, of the UN Convention on the Law of the Sea;
- (f) the period of time for which the Sponsorship Certificate shall remain in force unless otherwise terminated; and
- (g) any additional content reasonably required by the ISA or that the Authority considers fit to include.

91. Cabinet consent and Minister signature required for Sponsorship Certificate

- (1) Any Sponsorship Certificate, to be validly issued or varied, shall receive Cabinet consent before issue, and be signed by the Minister.
- (2) Cabinet, before granting consent to the issue of a Sponsorship Certificate, may request an opinion from the Attorney-General's Office that the issue of that Sponsorship Certificate in those terms complies with procedural propriety, the provisions of this Act, and Tuvalu's obligations under international law.

92. Sponsorship agreements

The Authority, with the Minister's approval, may enter into written agreements with the Sponsored Party at any time to establish additional terms and conditions as to the sponsorship arrangement including terms as to the calculation and payment of royalties, taxes, sponsorship fees or other fiscal impositions payable by the Sponsored Party, provided:

- (a) The Council has been consulted, and its views taken into account, by the Authority before any agreement is entered into; and
- (b) The terms of such an agreement do not or are not likely to lead to a contravention by Tuvalu or the Sponsoring Party of the Rules of the ISA or this Act, nor be consistent with any international law obligations of Tuvalu.

93. Liability of Sponsored Party

- (1) The Sponsored Party shall be responsible for the performance of all Seabed Mineral Activities carried out within the Contract Area, and their compliance with the Rules of the ISA; and will be liable for the actual amount of any compensation or damage or penalties arising out of its failure so to comply, or out of any wrongful acts or omissions and those of its employees, officers, subcontractors, and agents in the conduct of the Seabed Mineral Activities.
- (2) Any obligations which are to be observed and performed by the Sponsored Party shall at any time at which the Sponsored Party is more than one person be joint and several obligations.
- (3) A Sponsored Party shall at all times keep Tuvalu indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to its Seabed Mineral Activities.

94. State Responsibilities

Where Tuvalu is sponsoring a Sponsored Party which holds a contract with the ISA to conduct Seabed Mineral Activities in the Area, Tuvalu will, via the Authority:

- (a) take all actions necessary to give effect to Tuvalu's Sponsorship of a Sponsored Party, including undertaking any communications with, and providing any assistance, documentation, certificates and undertakings to, the ISA or other relevant party required in respect of the Sponsorship;
- (b) ensure that its conduct in relation to the ISA, the Area and Seabed Mineral Activities adheres to the requirements and standards established by general principles of international law;
- (c) take all appropriate means to exercise its effective control over Sponsored Parties, seeking to ensure that their Seabed Mineral Activities are carried out in conformity with the UN Convention on the Law of the Sea, the Rules of the ISA and other requirements and standards established by general principles of international law;
- (d) not impose unnecessary, disproportionate, or duplicate regulatory burden on Sponsored Parties, nor impose requirements upon a Sponsored Party under this Act or Regulations to be made under this Act except insofar as these are consistent with existing requirements imposed by, the UN Convention on the Law of the Sea, the Rules of the ISA and other applicable standards of international law; and
- (e) promote the application of the Precautionary Approach and employment of best environmental practice.

95. Termination of Sponsorship Certificate

- (1) A Sponsorship Certificate shall remain in force unless and until it is terminated in accordance with this section;

- (2) A Sponsorship Certificate terminates if—
- (a) It is made for a specified term and that term expires without renewal in accordance with section 96 of this Act,
 - (b) It is surrendered by the Sponsored Party in accordance with section 98 of this Act,
 - (c) It is revoked by the Authority in accordance with section 97 of this Act,
- and upon termination all rights granted to the Sponsored Party by Tuvalu shall cease and determine.

96. Renewal of Sponsorship

- (1) A Sponsorship Certificate can be renewed by the Authority with the Minister's consent for successive periods of up to five years each, provided an application for renewal is received from the Sponsored Party by the Authority at least nine months before the expiry date of any initial term.
- (2) The Authority will inform the Sponsored Party of whether the renewal has been granted or refused within three months of the receipt of the application for renewal, and until that decision is communicated the Sponsorship Certificate shall be deemed to continue in force.

97. Variation, suspension and revocation of a Sponsorship Certificate

- (1) The Authority may vary, suspend or revoke any Sponsorship Certificate—
 - (a) where any of the Sponsorship Qualification criteria ceases to be met by the Sponsored Party in a material particular;
 - (b) where a security deposit required under section 102 of this Act is not deposited in accordance with this Act;
 - (c) where the variation or revocation is in the reasonable opinion of the Authority necessary to:
 - (i) prevent serious risk to—
 - (a) the safety, health or welfare of any persons; or
 - (b) the Marine Environment; or
 - (ii) avoid a conflict with any obligation of Tuvalu arising out of any international agreement or instrument in force for Tuvalu;
 - (d) in any case, with the consent of the Sponsored Party;
 - (e) upon the bankruptcy, insolvency, or receivership of the Sponsored Party, or upon the Sponsored Party ceasing to exist as a legal entity;
 - (f) where no material efforts have been made by the Sponsored Party to undertake the sponsored Seabed Mineral Activities for a period exceeding 5 years from the date of signing the contract with the ISA;

- (g) where there has been a serious, persistent or wilful breach by the Sponsored Party of the Rules of the ISA, the requirements of this Act or Regulations made under this Act or an Order made under this Act, or a final binding decision of a dispute settlement body applicable to the Sponsored Party, and such breach cannot be remedied by the Sponsored Party, or has not been remedied upon the giving of reasonable notice to the Sponsored Party by the Authority;
 - (h) where, following at least two written notices given by the Authority to the Sponsored Party in accordance with this Act, any payment or deposit required or owing under this Act is in arrears or unpaid for six months following the day on which it ought to have been paid;
 - (i) where the Sponsored party knowingly or recklessly provides the ISA or the Authority with information that is false or misleading in a material particular, or fails to retain or wilfully alters, suppresses, conceals or destroys any document which is required to be produced to the ISA or the Authority; or
 - (j) upon transfer, mortgage, lease of a Title, or significant change in the constitution, ownership or control of the Title Holder, without the Authority's approval.
- (2) Before making a decision under this section of the Act the Authority shall –
- (a) give to the Sponsored Party at least 30 days' written notice of the Authority's intention to make the decision, setting out details of the proposed decision and the reasons for it, and inviting a person to whom the notice, or a copy of the notice has been given to make a written submission to the Authority about the proposal within a specified timeframe; if there are any objections;
 - (b) give a copy of the notice to any such other persons as the Authority thinks fit;
 - (c) take into account any submissions made in accordance with the notice; and
 - (d) where the decision is to revoke the Sponsorship Certificate, give the Sponsored Party no fewer than six months' notice before that revocation takes place.

98. Surrender of sponsorship

A Sponsored Party may at any time surrender a Sponsorship Certificate without penalty by giving to the Authority not less than six months' prior notice in writing to that effect.

99. Ongoing liability after termination of sponsorship

Following termination of sponsorship, a Sponsoring Party shall remain –

- (i) subject to ongoing obligations, including requirements to submit reports and to make payments to the Authority and the ISA; and
- (ii) responsible for any damage from its wrongful acts or otherwise arising from its Seabed Minerals Activities in accordance with this Act, notwithstanding that its Sponsorship Certificate has terminated.

PART 9 - FISCAL ARRANGEMENTS

100. Payments by Prospectors, Licensees and Sponsored Parties

(1) Application fee

An Applicant for a Title under this Act shall upon Application pay to the Authority the Prescribed fee, which shall be non-recoverable.

(2) Licence fees

The Minister may Prescribe that a Licensee shall be required to pay a Licence fee, the amount or manner of determining the Licence fee, and the times and manner of payment.

(3) Sponsorship payments

The holder of a Sponsorship Certificate shall pay to the Authority

- (a) such sums by way of annual administrative fees for Tuvalu's sponsorship of its Seabed Mineral Activities in the Area, and
- (b) where the Sponsorship Certificate pertains to a contract for Mining in the Area, such sums by way of a commercial recovery payment,

at such times and in such amounts as may be Prescribed, or provided in the Sponsorship Certificate or a Sponsorship agreement made under this Act.

(4) Taxes

Title Holders, and their sub-contractors, advisors, and employees shall pay all applicable customs duties and taxes in accordance with relevant applicable laws of Tuvalu.

(5) Seabed Minerals royalties

The holder of a Mining Licence shall pay into a dedicated Treasury account such sums by way of royalties for the extraction of Tuvalu's Seabed Minerals and at such times as may be specified in Regulations made under this Act or in any other law enacted for such purpose. Each payment shall be accompanied by details of the Seabed Minerals produced, sold or disposed of, and the details of the payment and how it has been calculated.

(6) Transfer fees

A Title Holder shall upon any transfer of Title under section 109 of this Act, or any significant change in the ownership of the Title Holder under section 110 of this Act pay any transfer fees as may be Prescribed.

101. Recovery of payments owed by Title Holders

A sum of money payable pursuant to section 100 of this Act, is a debt due to Tuvalu, and may be recovered in a court of competent jurisdiction, where:

- (a) in any such proceedings a certificate of the Authority certifying that a specified sum of money is so payable, shall be received as evidence of that fact;
- (b) any sum unpaid by the Title Holder may at the court's discretion be recovered from any security deposited by the Title Holder under section 102 of this Act; and
- (c) interest on the amount outstanding may additionally be charged at a Prescribed or otherwise reasonable rate determined by the court.

102. Security Deposit

- (1) The Authority may before granting a Title require an Applicant for a Title to deposit security as a guarantee of performance of the obligations attaching to the Title.
- (2) The Authority shall, with the consent of Cabinet, determine the form and the amount or value of the security.
- (3) The terms and conditions under which the security is held will be set out in the Title.
- (4) The security may be used by the Authority to take steps towards fulfilling any obligations that the Title Holder fails to fulfil, or to rectify any damage of loss caused as a result of such failure, including for clean-up or compensation costs in respect of any damage caused by pollution or other incident occurring as a result of the Seabed Mineral Activities.

103. The Seabed Minerals Fund

- (1) There shall be established under the control and management of the Ministry of Finance and Economic Development a fund to be called the Seabed Minerals Fund into which there shall be paid any sums paid to the Authority under section 100, excepting any funds allocated by the Treasury to be used directly for the purposes of covering the costs of establishing the Authority and performing its functions under this Act.

- (2) The Seabed Minerals Fund is established with the objective to ensure the wise management of the Seabed Minerals resources for the benefit of both current and future generations.
- (3) The rules for the operation and management of the Seabed Minerals Fund shall be laid down by separate Act or by Regulations.

PART 10 – MISCELLANEOUS

104. Vessel Standards

- (1) Title Holders must at all material times ensure the following in respect of vessels engaged in Seabed Mineral Activities and Ancillary Operations:
 - (a) all Tuvalu flagged vessels comply with the laws of the State of Tuvalu regulating the construction, certification, maintenance, operation, crewing of vessels, including in the Merchant Shipping Act 1988, and any enactment or amendment replacing, or regulations made under, that Act, and comply with all applicable international standards incorporated into Tuvalu's laws by reference;
 - (b) all foreign flag vessels whose flag state is party to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) possess current valid SOLAS 74 certificates and comply with the flag State requirements and standards concerning ship certification;
 - (c) all foreign flag vessels whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates and comply with the flag State requirements and standards concerning ship certification;
 - (d) all foreign flag vessels whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS) and comply with other flag State requirements and standards concerning ship certification;
 - (e) submission of the applicable certification in accordance with this Regulation for each vessel to be used in the Seabed Mineral Activities which has not previously been submitted to the Authority, not less than 5 Business Days before the commencement of the cruise on which the vessel will be used; and
 - (f) all vessels, installations and equipment are in good repair.
- (2) A person who does not comply with any of the provisions of sub-section (1) commits an offence, and any person guilty of that offence shall be liable to a fine not exceeding \$100,000 or to a prison term not exceeding 10 years or both.

105. Discovery by Title Holder of Seabed Minerals not covered by Title

- (1) A Title Holder shall notify the Authority during the course of conducting Seabed Mineral Activities of the discovery and location of any Seabed Minerals to which that Title does not relate, within thirty days of the discovery.
- (2) Any application to include any such newly discovered Seabed Minerals in the Title shall be treated as a variation of the Title, in accordance with the relevant provisions of this Act or as may be Prescribed.

106. Environmental conditions arising from Environmental Impact Assessment

The terms of any environmental conditions arising from an Environmental Impact Assessment conducted in compliance with the EP Act, shall be adopted as part of the terms and conditions of any Title held under this Act.

107. Reports required under this Act

The form and content of any date or report required to be supplied to the Authority under this Act shall conform to any requirement Prescribed or specified in the conditions of the relevant title.

108. Transfer of Title

- (1) No Title granted under this Act can be assigned, transferred, leased, sub-let or mortgaged without the Authority's prior written consent.
- (2) In considering whether or not to give such consent, the Authority may require the same information from the proposed transferee as would be required of a new Applicant for the same Title under this Act, and an undertaking that the transferee assumes all of the obligations of the transferor, and the Authority may require the transferee to comply with the same processes as are Prescribed for an Application for that type of Title.
- (3) A transfer of Title will only become effective upon payment of any transfer fee required under section 100 of this Act, and entry into the register of Titles maintained by the Authority under section 40 of this Act.

109. Change of Ownership, Constitution or Control of a Title Holder

- (1) A Title Holder shall notify the Authority of any significant change in the constitution, ownership, control or corporate organisation of the Title Holder.
- (2) A change of the type stipulated in sub-section (1) shall have legal effect upon its approval by the Authority, which is not to be reasonably withheld, and upon payment of any transfer fee required under section 100 of this Act.

- (3) The Authority, after receipt of notice stipulated in sub-section (1), assess the notice and notify the Title Holder of its final decision about its approval or rejection shall within sixty days from the date of its receipt of the notice.
- (4) Payment of a transfer fee may be required under section 100 of this Act, and entry into the register of Titles maintained by the Authority under section 40 of this Act.

110. Suspension of Title

- (1) A Title confers no entitlements during any period it is suspended under this Act.
- (2) The power to suspend a Title under this Act includes a power to lift the suspension.

111. Termination of Title

- (1) A Title granted terminates if, pursuant to this Act:
 - (a) its term expires, without renewal;
 - (b) it is surrendered by the Title Holder;
 - (c) it is revoked by the Authority; or
 - (d) in the case of a Licence, it ceases to be in force in respect of the whole of its area under section 72 of this Act.
- (2) Upon termination of any Title, the Title Holder shall deliver to the Authority:
 - (a) all books, accounts, financial records, and performance data which the holder is required to maintain under this Act, Regulations made under this Act, or the terms of the Title;
 - (b) all reports and plans or maps prepared by or for the Title Holder pertaining to the Seabed Mineral Activities under the Title;
 - (c) all environmental and social consultation and related reports, documents, surveys and data prepared in relation to the Seabed Mineral Activities under the Title; and
 - (d) any other document, information or samples relating to the Title, as the Minister may reasonably direct.
- (3) Any person who fails to comply with sub-section (2) within 30 days of being directed to do by the Minister commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

112. Grant of Title confers reasonable rights of access

A Title granted under this Act also entitles the Title Holder to the right of navigation within the Exclusive Economic Zone of Tuvalu in so far as is reasonably required by the Title Holder to access the area of the seabed that is the subject of the Title.

113. Nothing under this Act to authorise unnecessary interference with other sea users

- (1) A Title Holder must carry out the Seabed Mineral Activities in such a way that will not interfere unreasonably with the exercise of the freedom of the high seas as reflected in article 87 of the UN Convention on the Law of the Sea.
- (2) Any works or installations erected by a Title Holder in or over any part of the seabed must be of such sort and must be made, placed, marked and buoyed, equipped and maintained in such a way as to leave safe and convenient channels for shipping in the area; and to not unreasonably interfere with any other uses of the sea.
- (3) A Title Holder, or person conducting Marine Scientific Research contravenes this section if –
 - (a) their performance of Marine Scientific Research, Seabed Mineral Activities or Ancillary Operations, interferes with lawfully conducted –
 - (i) navigation;
 - (ii) fishing;
 - (iii) submarine cabling;
 - (iv) Marine Scientific Research;
 - (v) conservation of the resources of the sea or the seabed; or
 - (vi) any other activities that are lawfully being carried out; and
 - (b) that interference is greater than is necessary for the reasonable exercise of the rights or performance of the person's duties under the Title.
- (4) Any person who contravenes this section commits an offence punishable upon conviction to a fine not exceeding \$250,000.

114. Rights of other States

- (1) Nothing in this Act affects the rights of coastal States in accordance with Article 142 and other relevant provisions of the UN Convention on the Law of the Sea.
- (2) Any coastal State which has grounds for believing that Seabed Mineral Activities have caused, are causing or are likely to cause Serious Harm to the Marine Environment under its jurisdiction may notify the Authority in writing of the grounds upon which such belief is based. The Authority shall provide any Applicant or Title Holder affected by the notice with a reasonable opportunity to examine the evidence, if any, provided by the coastal State as

the basis for its belief and submit its observations thereon to the Authority within a time that is reasonable in the circumstances.

- (3) If in the Authority's opinion, upon consultation with the Council, there are clear grounds for the coastal State's belief under sub-section (2), the Authority must take immediate measures of a temporary nature to stop, prevent or mitigate harm to the Marine Environment, including by direction or Order to any affected Title Holders.

115. Employees

Any Title Holder or person conducting Marine Scientific Research shall at all times observe and comply with any prevailing laws, rules or procedures relating to employment, including discrimination in employment, occupational health and safety, labour relations, social security, employment security, safety at sea, appropriate training, and living conditions of workers on-site.

116. Objects of an archaeological or historical nature

- (1) Any object of an archaeological or historical nature found by any Title Holder or person conducting Marine Scientific Research within the jurisdiction or control of Tuvalu shall be reported to the Authority and treated in accordance with its instructions, and shall be safeguarded pending receipt of those instructions.
- (2) The instructions given by the Authority shall take into account Articles 149 and/or 303 of the UN Convention on the Law of the Sea.

117. No interest in land

The grant of a Title under this Act does not create an estate or interest in land other than the rights expressly granted by this Act or the Title, and nor does the grant of a Title under this Act give rise to land taxation duties.

118. Safety zones

- (1) For the purpose of protecting an installation, infrastructure facility or vessel being used for Seabed Mining Activities, the Authority may by notice published in the Gazette prohibit all vessels or 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) The owner of a vessel and any person in formal or substantive command of a vessel commits an offence against this section if the vessel enters or remains in a safety zone in contravention of subsection (1).

- (3) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000.
- (4) It is a defence to a prosecution of a person for an offence against subsection (2) if the person satisfies the court that:
 - (i) an unforeseen emergency made it necessary for the vessel to enter or remain in the safety zone to attempt to secure the safety of human life, a vessel, pipeline, structure or equipment;
 - (ii) 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; or
 - (iii) he or she is the owner of the vessel and he did not know that the person in command or in charge of the vessel was in contravention of subsection (1).

119. Interference with Seabed Mineral Activities

- (1) Unless authorised under this Act or Regulations made under this Act, no person may interfere with Seabed Mineral Activities or Ancillary Operations.
- (2) For the purposes of this section, “interfere” means wilful sabotage of Seabed Mineral Activities, or violence against any representative of the Authority or a Title Holder in the performance of their functions and duties under this Act or a Title, or similar physical interference or obstruction without reasonable excuse.
- (3) Any person who does not comply with subsection (1) commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000 or to a prison term not exceeding 5 years or both.

120. Indemnity of Public Officials

The Minister and authorised officers of the Authority shall not be liable for anything done or omitted to be done in good faith in the performance of any function vested in or delegated to them under this Act.

121. Public Officials prohibited from acquiring Title rights

- (1) No Public Official shall, directly or indirectly, acquire any right or interest in any Title, and any document or transaction purporting to confer any right or interest on any such officer shall be null and void.
- (2) No Public Official employed in the Authority or the Ministry shall acquire or retain any share in a private company carrying on Seabed Mineral Activities during that employment or within two years following the cessation of that employment, unless the Minister has first authorised a departure from this

subsection where, in his opinion, the Seabed Mineral Activities of the company concerned form a negligible part of the total operations of that company.

- (3) Any person who does not comply with subsection (2) commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000 or to a prison term not exceeding 10 years or both.

122. Disclosure of interest

- (1) Any member of the Authority or Council who has an interest, direct or indirect, in any matter to be considered by the Authority or Council shall disclose the nature of his or her interest to the Authority or Council and such disclosure shall be recorded in the minutes of the Authority or Council and that member shall not take part in any deliberation or decision of the Authority or deliberation or recommendation from the Council relating to the matter. A member who does not make such disclosure shall be guilty of misconduct and liable to be removed from the Authority or Council.
- (2) For the purposes of these Regulations, “interest” shall be defined as including, but not limited to, that person or members of that person’s family having direct or indirect ownership of shares or involvement in the funding or management of any entity conducting or funding activities in Tuvalu or being conducted under Tuvalu’s sponsorship, and any direct or indirect benefits.

123. Import Duties

- (1) A Title Holder and its nominated contractors and subcontractors engaged in Seabed Mineral Activities are hereby permitted to import into Tuvalu’s jurisdiction free of duty or other taxes on imports of machinery, equipment, vehicles, materials, supplies, consumable items, and moveable property where imports of any of the said categories have been certified by the Title Holder to be for use solely in carrying out Seabed Mineral Activities under the Title.
- (2) Any of the items imported into Tuvalu may, if no longer required for the Seabed Mineral Activities, be freely exported at any time by the importing party without the payment of any export or import duty.
- (3) On the sale or transfer by the importer of any duty free imported items to any person in Tuvalu, import duty shall be payable by the importer on the value thereof at the date of such sale or transfer.

124. Offence committed by a body corporate

Where an offence under this Act that has been committed by a body corporate is committed with the consent or connivance, or is attributable to the neglect, of any Director or officer of the body corporate, that officer as well as the body corporate is

guilty of that offence and, in respect of an offence punishable by a fine only, if the court finds that the offence was committed by that person wilfully, recklessly, corruptly or for the purpose of personal gain, that officer is liable to imprisonment for a period of up to 8 years.

125. Notice

Any application, request, notice, warning, report, or direction made or given under this Act, or service of process or notification in any proceeding of any court or tribunal having jurisdiction, shall be made by the Authority or the representative of the Title Holder designated in the Title in writing, and shall be deemed served the day after delivery, if delivered by hand, facsimile or email to the Authority or to the designated representative.

126. Disputes

- (1) Any dispute arising between Tuvalu and another State in connection with Seabed Mineral Activities shall be resolved pursuant to the provisions of the UN Convention on the Law of the Sea
- (2) Any dispute between Tuvalu and a Title Holder arising in connection with the administration of this Act shall be dealt with by:
 - (a) the parties attempting to reach settlement by mutual agreement or mediation, and in the event this is not successful then,
 - (b) by referral to arbitration to be conducted by arbitration by the International Centre for Settlement of Investment Disputes established under Convention on the Settlement of Investment Disputes between States and Nationals of other States or by Arbitration court proceedings as provided under the Arbitration Act.

127. Transitional provisions

One year from the commencement of this Act –

- (a) any authority or minerals right granted under any Seabed minerals related legislation or otherwise to carry out activities that constitute Seabed Mineral Activities shall expire; and
- (b) any person or persons who were before the commencement of this Act authorised to carry out activities that constitute Seabed Mineral Activities shall, to allow the continuation of such activities, obtain a permit or licence under this Act and comply with the requirements of this Act.

128. Regulations and Ministerial Orders

The Minister may, with the consent of Cabinet, make Regulations —

- (a) prescribing anything required or authorised to be Prescribed under this Act;
- (b) generally for carrying this Act into effect;
- (c) without prejudice to the generality of the foregoing, Regulations may be made with respect to any of the following matters
 - (i) the gridding, mapping and allocation of blocks, cells and Licence Areas;
 - (ii) classifying particular aspects of work relating to Seabed Minerals as a Major Project under the EP Act, or absolutely prohibited due to unacceptable anticipated harm to the Marine Environment;
 - (iii) requisite content, format, consultation processes, independent verification, and timeframe for an Environmental Impact Assessment and the establishment of environmental baseline data for Seabed Mineral Activities;
 - (iv) prescribe further rules or processes pertaining to the handling by the Authority of conflicting Applications for the same Title pertaining to the same area;
 - (v) environment management plans, and provision for areas of the Exclusive Economic Zone and Continental Shelf that have features that require a location-specific approach;
 - (vi) prescribing the format, content, timeframe or processes for any Applications, reports or other data or information required under this Act;
 - (vii) matters relating to the processes to be undertaken and the factors to be taken into account by the Authority in deciding whether or not to grant, review, vary, suspend, or revoke a Title;
 - (viii) the terms of and a model version of a Title;
 - (ix) the fiscal regime to be applied to Seabed Mineral Activities;
 - (x) the operation of the Seabed Minerals Fund;
 - (xi) provisions for post-Mining monitoring or other requirements relating to the closure of Seabed Mining Activities;
 - (xii) information-handling for any data received or held by the Authority in relation to Seabed Mineral Activities;
 - (xiii) community development and consultation arrangements;
 - (xiv) the holding of inquiries into accidents or other incidents causing harm to the Environment or human health and safety occurring in the course of any Seabed Mineral Activities or Ancillary Operations;

- (xv) Enforcement Orders and other sanctions, and powers connected with the investigation and administration of such Orders and other sanctions;
- (xvi) providing that any Prescribed breach of Regulations shall be an offence, and affording any defences available to any such offence created by Regulations made under this Act;
- (xvii) the criminal penalty payable for any contravention of or failure to comply with the Regulations, which shall not exceed \$500,000;
- (xviii) a scheme of administrative penalties in lieu of a criminal penalty for any contravention of or failure to comply with the Regulations and the amount of administrative penalties payable, which penalties shall not exceed half of the applicable maximum criminal penalty;
- (xix) further matters in relation to Prospecting Permits;
- (xx) further matters in relation to Exploration and Mining Licences;
- (xxi) further matters in relation to Sponsorship Certificate or agreements;
- (xxii) that a Licensee shall be required to pay a Licence fee, the amount or manner of determining the Licence fee, and the times and manner of payment.

129. Consequential Amendments

This Act repeals the Minerals Development Licensing Act.

SCHEDULE

SCHEDULE 1: ENVIRONMENTAL IMPACT ASSESSMENT CONTENTS

For the purpose of section 77, the following is the minimum required content of an Environmental Impact Assessment and resulting report, where one is required by the EP Act for any part of any Seabed Mineral Activities carried out under Licence under this Act.

- A. Executive Summary: providing an explanation of the Seabed Mineral Activities for non-technical readers, including:
 - (1) description of the proposed activity and its objectives,
 - (2) anticipated bio-physical and socio-economic of the activity, highlighting which are direct and which indirect, and which are reversible and which are irreversible,
 - (3) details of remedial actions that are proposed,
 - (4) description of all benefits to be derived from the project,
 - (5) details of consultation program undertaken by the applicant, including degree of public interest,
 - (6) description of end-use plans for the development activity
- B. Introduction
 - (1) Background: summary of the project being proposed.
 - (2) Project History: summary of the work undertaken to date, including Seabed Mineral Deposit discovery and any prospecting, exploration or test mining activities conducted to date.
 - (3) Project Proponent: summary of the credentials of the Licensee, including major shareholders, other Titles owned or applied for (or similar within other jurisdictions).
 - (4) Purpose and Justification: information on the viability of the proposed activity, including but not limited to the following –
 - (i) information on the capital cost associated with the development,
 - (ii) details of the proponent’s technological expertise and resources,
 - (iii) results of any feasibility investigations that have been carried out,
 - (iv) information on the extent of landowner and/or resource owner support, including a copy of the formal written approval of their consent,
 - (v) the anticipated life-span and development phases of the project.
 - (5) This Report: statutory context, description of the scope of the EIA, and the report’s structure.
- C. Policy, Legal and Administrative Framework: information on relevant national legislation, agreements or policy, relevant international agreements or

conventions, and other non-legal standards or guidelines, that are applicable to the proposed activity, and how the Licensee will comply with these requirements.

- D. Stakeholder Consultation: description of what consultation has occurred with interested parties and stakeholders, any consents received from local communities, and what continuing consultation is planned.
- E. Description of Proposed Activity: including the following –
- (1) Location (with reference to a map)
 - (2) Details of the type, grade and volume of the Seabed Mineral Deposit, and estimates of inferred and indicated resource
 - (3) The activity or activities that have triggered the Environmental Impact Assessment requirement, a work plan showing how these are proposed to be conducted
 - (4) A proposed timetable, with milestone dates by which tasks are expected to be completed
 - (5) Offshore infrastructure to be used
 - (6) Technology to be employed (with reference to relevant diagrams and drawings), and details of any construction and operating standards used
 - (7) Transport to be used
 - (8) Storage facilities to be used
 - (9) Anticipated waste products, and waste disposal mechanisms to be used
 - (10) Any material-handling or hazardous material management methods or protocols to be used
 - (11) Any Ancillary Operations, support equipment or onshore infrastructure or processes required to carry out the activity.
 - (12) Alternative sites or methods considered
 - (13) Workforce description and details of any health and safety standards used
 - (14) Decommissioning, closure, and site rehabilitation plans
- F. Description of Existing Offshore Environment : detailed account of knowledge of the environmental conditions at the site, and a baseline description of geological, oceanographic and biological conditions against which impacts will be measured and assessed, including:
- (1) Regional oceanographic, geological and biological overview
 - (2) Studies and research activities completed which provide relevant information
 - (3) Special characteristics of the site
 - (4) Meteorology and air quality
 - (5) Geological setting

- (6) Physical oceanographic setting, including water quality and sediment characteristics
 - (7) Biological environment
 - (i) Pelagic (surface to 200m depth)
 - (ii) Midwater (between 200m depth and seafloor)
 - (iii) Benthic (at seafloor level)
 - (8) Natural hazards
 - (9) Noise
 - (10) Air quality
 - (11) Description of existing onshore environment, as relevant
 - (12) Socio-economic environment of the site, including: other Seabed Mineral Activities, fisheries, Marine Scientific research, navigation lanes, submarine cabling, tourism, customary sea use, aquaculture.
 - (13) Cultural/Historic resources
 - (14) Socio-economic and socio-cultural issues generally, including onshore direct or indirect impacts, and anticipated effects on the livelihoods and lifestyles of the population of Tuvalu.
- G. Environmental impacts on the offshore site, the regional site, and the coastal and onshore environment, mitigation and management measures
- (1) the nature and extent of any impact on any and all of the categories listed in section F, and also, insofar as not covered by the section F categories, the effects / issues anticipated from:
 - (i) Greenhouse gas emissions and climate change;
 - (ii) Biosecurity
 - (iii) Pollution
 - (iv) Health and safety of workers
 - (v) Waste management
 - (vi) Economic benefit or impact for Tuvalu
 - (vii) Skills development, industry diversity and community impacts for Tuvalu
 - (viii) Supply chain, utilities, access to water, fuel, and impact to local communities in terms of access to supplies
 - (ix) Any other direct or indirect impacts on the Tuvaluan population
 - (x) Environmentally hazardous discharges resulting from accidental and extreme natural events
 - (2) measures that will be taken to avoid, mitigate, minimize or such impact; and
 - (3) what unavoidable impacts will remain;

- (4) how those impacts will be compensated for.
- H. Environmental Management, Monitoring and Reporting
 - (1) Organisational structure and responsibilities for environmental management
 - (2) Environmental management plan, including –
 - a. Impact mitigation and minimising
 - b. Monitoring plan
 - (3) Closure and rehabilitation plan
 - (4) Monitoring studies
 - (5) Reporting
- I. Environmental Impact Assessment team
 - (1) Licensee personnel
 - (2) Lead Environmental Consultant(s)
 - (3) Other personnel or consultants
- J. References
- K. Glossary and abbreviations
- L. Appendix: all supporting studies.

Please note: details of classified or proprietary information relating to a manufacturing or industrial process or trade secret used in carrying on or operating any particular undertaking or equipment or information of a business or financial nature in relation to the proposed activity should be clearly defined and labelled. Such information, shall be handled by the Authority in accordance with section 16 of this Act, and where the label is verified by the Authority, shall be excluded from documents made available for public review.

ENDNOTES

¹ Act 14 of 2014

Amended by Act 9 of 2019, commencement 1 July 2019

² Inserted by Act 9 of 2019, Cap 30.03