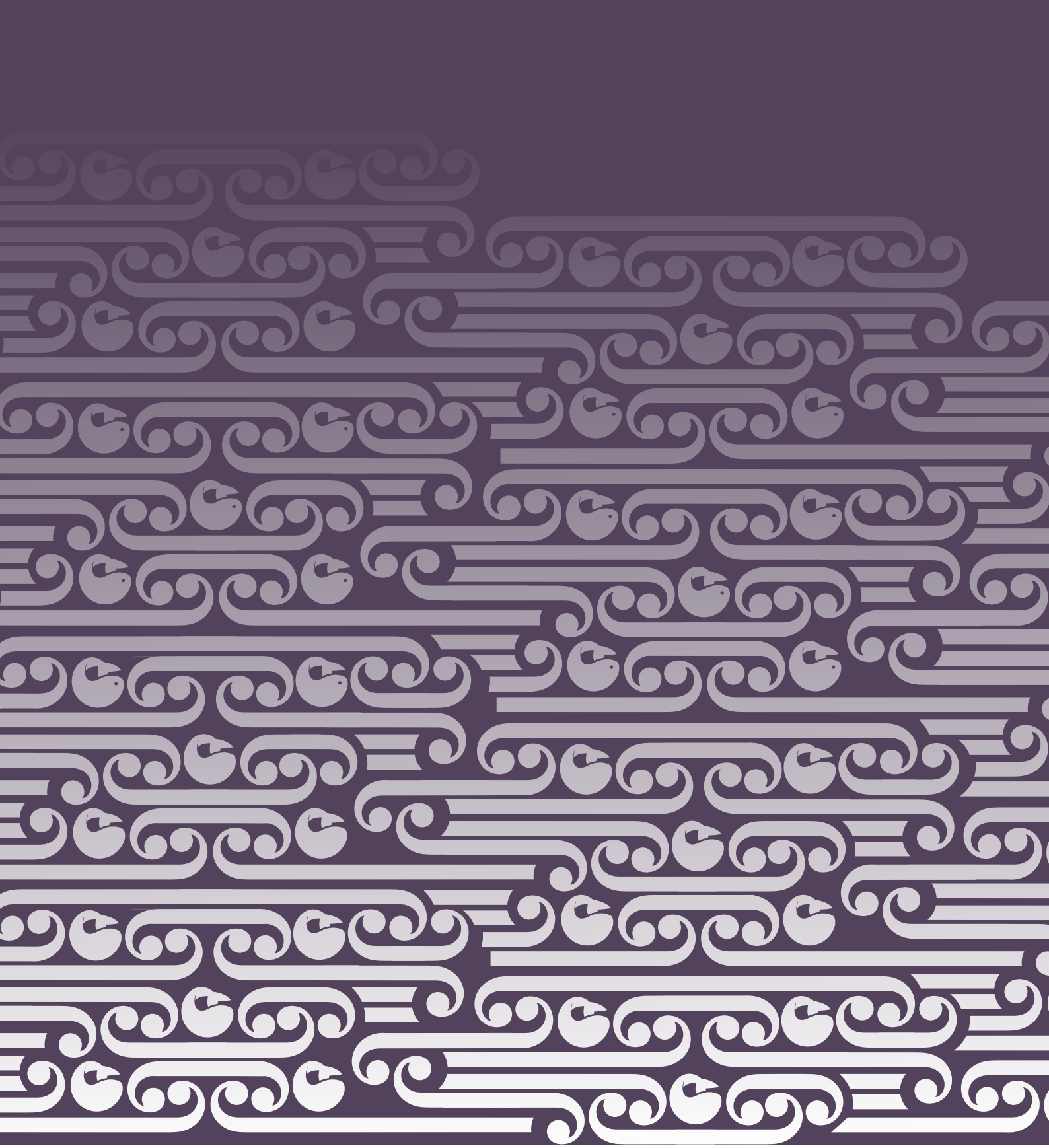

Our response to the review of the Crown Minerals Act – follow-up questionnaire

Te Ohu Kaimoana

This is our response to the review of the Crown Minerals Act – follow-up questionnaire

1. We welcome your follow-up questionnaire on how engagement with Māori under the Crown Minerals Act 1991 (CMA) might be improved, through operational and legislative change.

2. During 2020, Te Ohu Kaimoana provided a response to your initial consultation on the review of the Crown Minerals Act 1991 (CMA). In our response, we expressed our key concern that CMA contains a fragile level of protection and lacks certainty to Māori as kaitiaki and tangata whenua, particularly in permit allocation decisions and ongoing engagement by permit holders. We welcomed the opportunity to strengthen Māori involvement in these decisions as well as protect future Māori developmental Treaty rights.

3. We support the aim of this questionnaire which is to explore the best means of improving engagement with Māori. One of the most important matters that needs to be made clear is the purpose of engagement at the various stages of decision-making – whether engagement is carried out by the Crown, applicants, and permit-holders. We consider there are three key elements:

    a. Engagement by the Crown given the Treaty relationship between the Crown and Māori engagement is crucial to understand the potential impacts and opportunities presented by minerals programmes. Engagement at this level should aim to identify the broad impacts on iwi and hapū of mining proposals and make sure programmes contain sufficient protection of their rights and interests. At this level, the Crown can also work with iwi and hapū to identify the matters they may wish to explore with applicants or permit holders and what level of support they might need to engage.

    b. Engagement by applicants: in principle applicants should engage with potentially affected iwi/ hapū to explore in more detail any matters of concern.

    c. Permit holders: permit holders may or may not (for example in the case of prospecting in the EEZ) must apply for consents to carry out their operations. In all cases the Crown should make clear its expectations that permit holders should engage with affected iwi and hapū to establish a working relationship well in advance of their operations and any consent processes they need to follow. It can be argued that requirements of the Resource Management Act and the EEZ Act contain such an obligation. However, the CMA should set out clearly the standards to be met, essentially these are the Crown's expectations of permit holders as to how they engage with its Treaty partner.

4. We provide more detailed responses to your questionnaire, which are included under "Our whakaaro" below

We are Te Ohu Kaimoana

5. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over their own affairs. It is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations. This view endures today and is embodied within our framework Te Hā o Tangaroa kia ora ai tāua (the breath of Tangaroa sustains us).

6. The obligations under Te Tiriti and the Māori Fisheries Deed of Settlement (the Fisheries Deed of Settlement) apply to the Crown whether there is an explicit reference to Te Tiriti in governing statute, in this case, the Fisheries Act 1996 (the Fisheries Act). These obligations are also confirmed in the Public Service Act 2020, section 14 (1) "the role of the public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi".

7. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance Te Tiriti and the Fisheries Deed of Settlement. The Fisheries Deed of Settlement and the Māori Fisheries Act 2004 (the Māori Fisheries Act) that followed it are expressions of the Crown's obligation to uphold Te Tiriti, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.

8. Our purpose, set out in section 32 of the Māori Fisheries Act, is to "advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:
    a. ultimately benefit the members of iwi and Māori generally
    b. further the agreements made in the Deed of Settlement
    c. assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
    d. contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

9. We work on behalf of 58 Mandated Iwi Organisations (MIOs)[1] who represent iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.

[1] MIO as referred to in The Māori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

10. Our role in this review process arises from our responsibility to protect the rights and interests of iwi/Māori under Te Tiriti in accordance with the Fisheries Deed of Settlement. Māori rights in fisheries are not just a right to harvest but also to use the resource in a way that provides for social, cultural, and economic wellbeing now, and for future generations. Te Hā o Tangaroa kia ora ai tāua, the basis for our advice, does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility.

We base our advice on Te hā o Tangaroa kia ora ai tāua

11. The reciprocal relationship that Māori have with Tangaroa is underpinned by whakapapa. Protection of this relationship with Tangaroa is an inherent part of our identity as Māori. There are multiple facets to the relationship with Tangaroa, all of which are inherent parts of Māori identity. In a contemporary context, the management and protection of fisheries resources, as a facet of the relationship with Tangaroa, is expressed through the Fisheries Deed of Settlement.

12. Te Hā o Tangaroa kia ora ai tāua is an expression of the unique and lasting connection Māori have with the environment. It contains the principles we use to analyse and develop modern fisheries policy, and other policies that may affect the rights of iwi under the Deed of Settlement. In essence, Te Hā o Tangaroa kia ora ai tāua highlights the importance of humanity's interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.

13. In accordance with this view, "conservation" is part of "sustainable use", it is carried out to sustainably use resources for the benefit of current and future generations. The Fisheries Act's purpose is "to provide for the utilisation of fisheries resources while ensuring sustainability." The purpose and principles of the Act echo Te Hā o Tangaroa kia ora ai tāua.

The four pou

14. The concept of Te Hā o Tangaroa is underpinned by four pou; whakapapa, tiaki, hauhake, and kai. The four pou are interconnected and form the approach we take to deliver outcomes for iwi.

    a) **Whakapapa –** Māori descend from Tangaroa and have a reciprocal relationship with our tipuna. Whakapapa recognises that when considering policy affecting Tangaroa, we are considering matters that affect our tipuna.

    b) **Tiaki –** Māori care for Tangaroa, his breath, his rhythm and bounty, for the betterment of Tangaroa and the benefit of humanity. We recognise that as descendants of Tangaroa, we have the responsibility to tiaki our tipuna so that Tangaroa may continue to care and provide for us.

c) **Hauhake –** Māori have a right and obligation to cultivate Tangaroa, including his bounty, to better Tangaroa and support Tangaroa's circle of life. This right and obligation of hauhake is underpinned by our tiaki responsibilities to Tangaroa.

d) **Kai –** Māori have a right to enjoy our whakapapa relationship with Tangaroa through the wise and sustainable use of the benefits Tangaroa provides to us. Ultimately our right to kai, to enjoy the benefits of our living relationship with Tangaroa, and its contribution to Māori identity depends on our ability to tiaki Tangaroa.

Nāku noa, nā

Kim Drummond

Kūrae Moana | Fisheries and Aquaculture Policy Manager

Our whakaaro

Operational changes

The following are possible operational changes we have identified to help address some of the issues you have told us you are experiencing with the Crown minerals regime. We have included some specific pātai we have for you on these changes and invite you to provide any feedback you would like to share.

Implementing these will take some time and resources, and we will likely need to stagger any changes we decide progress. It would be great if you could help us to prioritise these, by using the last column to **rate the proposed changes from 1-5 (1 being a proposal you think will make the least difference, and 5 being a proposal that you think will make the most difference).**

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING: 1 (low) – 5 (high)
Produce internal best practice guidelines for effective engagement with hapū and iwi	We have received a lot of feedback from hapū and iwi on how we could improve our capability to engage positively with our Treaty partners, in a way that is efficient and effective for you. Some of the things we have heard include: - Engage early - Use tikanga experts - Engage kanohi-ki-te-kanohi more often (and better) - Understand what has been said previously - Provide quality information (useful and easy to understand) - Ensure effective feedback loops We propose creating some internal best-practice guidelines for MBIE staff in the Energy and Resource Markets branch, as a tool for anyone embarking on iwi engagement to improve capability. This will help us ensure better consistency across our mahi and will be something that can be consistently updated as we continue to improve our practices, in response to any feedback we receive.	Is there anything else you would like to see included in these guidelines? Would you like to be involved in the development of these guidelines, if so, how?	The matters you have listed are all important. There are some more specific matters Te Ohu Kaimoana considers are also important to clarify when engaging with Treaty partners, particularly where minerals mined in marine areas are concerned. Te Ohu Kaimoana's interest concerns protecting and enhancing the rights of iwi that were confirmed through the 1992 Fisheries Settlement. Minerals programmes and the issue of permits in the marine environment have the potential to affect these rights, which include rights to commercial and non-commercial customary fishing. We note that the Crown Minerals Act contains a requirement that all decision-makers "have regard to" the Treaty of Waitangi. That must, in our view, encompass protecting the integrity and durability of Treaty settlements, including the Fisheries Settlement and the iwi on behalf of whom it was obtained. The process of engagement will need to involve all affected iwi.	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING: 1 (low) – 5 (high)
			You may be aware that under the Māori Fisheries Act, mandated iwi organisations have been allocated commercial fisheries assets. The Fisheries Act also contains a regime for tangata whenua to establish rohe moana for the purpose of managing non-commercial customary fishing. Contacting relevant iwi and hapū through their mandated iwi organisations should be an initial step to ensure the right people are involved. It will usually be the case that mandated iwi organisations will contact the relevant, affected hapū if the matter is local or internal. We note that iwi also have interests in their marine and coastal areas generally and are progressing their claims under the Marine and Coastal Area (Takutai Moana) Act 2011. Those rights ought not to be impacted upon by the Crown Minerals regime. Mana moana is an important issue – and customary non-commercial fisheries are managed by kaitiaki within rohe moana. However, access to commercial fisheries anywhere within a quota management area (QMA) means that the customary commercial fishing interests of Iwi can span the rohe of multiple iwi – all of whom can access their quota anywhere within the broader QMA. The role of Te Ohu Kaimoana is to support iwi in these matters where appropriate. Please also refer to our comments on the purpose of engagement at the end of your list of questions. This is the first most important question to address and make clear. As we have noted, just as the Crown wishes to satisfy itself that a permit holder is a good environmental operator (even though in most cases these questions will be tested in other processes), the Crown should ensure permit holders accept the need to make all reasonable steps to engage early with affected, or potentially affected iwi. The Crown also must have a clearly defined	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING: 1 (low) – 5 (high)
			process for dealing with issues raised by iwi that resolve and preserve their current and future interests.	
Create a set of guidelines for hapū and iwi that maps out the entire regulatory process as it applies to them	The Crown minerals regime can be difficult to navigate, and it's not always clear how it intersects with other regimes, such as the Resource Management regime (existing under the Resource Management Act 1991). We heard from you that it would be useful to have one document/web page, which sets out the entire regulatory process as it relates to you. By being clearer about the different parts of the regime, the purposes they serve, and what happens when, we hope this will help make things simpler, and alleviate some of the resourcing pressures you face.	Are there particular processes that you find hard to navigate? Are there particular questions you have about how processes under the Crown Minerals Act 1991 align with other government processes? Would you like to be involved in the development of these guidelines, if so, how?	Te Ohu Kai Moana would like to be involved in the process of developing hapū and iwi guidelines. We think a clear explanation of the process for iwi and hapū is important, particularly key Crown decision points (for example minerals programmes and permit applications) and the purposes of the various engagement processes – whether they be between the Crown and iwi/hapū as Treaty partners or permit holders and iwi/hapū. Links with other legislation that will affect the proposed mining activity will also be important, including any potential impact on fishing under the Fisheries Act or the interests of iwi under the Māori Fisheries Act. Certainly, in the development and/or amendment of minerals programmes it is important that the Crown identifies the key issues with iwi/hapū that would be considerations for the Minister, and potentially matters permit holders should discuss with iwi and hapū. This would make the Crown's expectations of permit holders clear.	
Improve information provision to permit holders on effective engagement with hapū and iwi	We heard that engagement between hapū and iwi and permit holders can be variable, and, in particular, that permit holders don't always supply you with the information you would like. We currently provide some guidance for permit holder engagement with hapū and iwi on the NZP&M website. This includes a link to best practice guidelines for permit holder engagement with Māori produced by Ngāti Ruanui in 2014.	Do you think that improving information provision to permit holders on effective engagement with hapū and iwi will help improve the quality of engagement? If not, what do you think would help?	The guidelines developed by Ngāti Ruanui are very good. It would be useful to hear from permit holders how they view this information and their understanding on what ongoing mechanisms there are to monitor and ensure that the permit holders have acted on it. If they haven't acted on it, they may need to have a greater obligation on them to engage?	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING: 1 (low) – 5 (high)
	An option could be to seek feedback from permit holders on the information we currently provide, including on whether the guidelines are being utilised (and if not, why?) and whether the information we provide requires updating.	Would you like to be involved in improvements to the information provided to permit holders on effective engagement with hapū and iwi? If so, how?	At the end of this survey, you have asked about whether the purpose of engagement is clear enough. Making the purpose clear should give permit holders a clearer sense of the need to make efforts to engage. Additionally, ongoing compliance and ensuring there remain pathways that enable Māori to raise ongoing issues is important. Te Ohu Kaimoana would like to be involved with how to provide information and developing a clear set of ongoing compliance and monitoring best practice guidelines.	
Make improvements to our online maps and other webpages to better meet the needs of hapū and iwi	NZP&M currently provides some information on their website to help support understanding and navigation of the Crown minerals permitting regime. This includes a variety of maps and geoscience data showing things such as existing permits and permit applications. We have heard from you that this information, including the maps, could be made more user-friendly, and improved so that it more directly serves the interests of hapū and iwi, and your role under the regime.	What improvements would you like to see to the online maps? What additional information would you like to be able to access online? Do you have any issues navigating the NZP&M website? If so, what improvements would you like to see? Would you like to be involved in improvements to online content provided by NZP&M and if so, how?	We have not made use of this system but consider it should be easily accessible. Perhaps it would be helpful to explain what information is provided in the maps and data that iwi would find useful. Te Ohu would like to be involved in looking at improvements where fisheries and marine environment are concerned. Note most of the petroleum data relates to the marine environment.	

Changes to the Crown Minerals Act 1991, and the Minerals and Petroleum Programmes and Regulations

The following are possible changes to the Crown Minerals Act 1991 and the Minerals and Petroleum Programmes and Regulations we have identified to help address some of the issues you have told us you are experiencing. As above, we have included some specific pātai we have for you on these changes but invite you to provide any feedback you would like to share.

It would be great to understand your view on what changes you think are most important to make, by using the last column to **rate the proposed changes from 1-5 (1 being a proposal you think will make the least difference, and 5 being a proposal that you think will make the most difference).**

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
Introduce a requirement for Tier 1 permit holders to make reasonable attempts to engage with mana whenua	Currently, there is no explicit requirement for permit holders to engage with hapū and iwi, only to report annually on the engagement that did occur, if any. Introducing a requirement in the Crown Minerals Act 1991 for permit holders to engage with hapū and iwi (similar to what has been included in the Block Offer Invitation for Bids since 2018) was included in the 2019 Discussion Document and received positive feedback from a number of iwi in their submissions, some of whom reported that engagement with permit holders can be variable. As engaging with permit holders is not always a priority for all hapū and iwi, and you have told us you do not always have the capacity to engage, we propose that we could look into requiring a "reasonable attempt" at engagement. Proof of this could be required as part of annual iwi engagement reports (discussed more below). What is considered "reasonable" would depend on the circumstances of the particular situation. As stated in the Discussion Document, we do not think this requirement would be suitable for all permit types, such as those involving minor activities that do not include accessing the land, and for smaller permit holders with limited resources.	What do you think of requiring a "reasonable attempt" to engage with mana whenua? Do you think this would make a difference to how permit holders engage with you? Do you think this would make a difference to how you would engage with permit holders?	Yes, requiring permits holders to take reasonable steps to engage with iwi and hapū with an interest in, or affected by, their proposed activities would be appropriate. In the case of mining in marine environments, this would include iwi within whose rohe moana activities are proposed to take place, as well as iwi with commercial fishing rights granted under the Fisheries Settlement. It may be necessary to continuously review what in fact is reasonable based on the level of engagement received and also iwi experiences of the engagement. The Ngāti Ruanui guidelines provide good advice on what can be considered reasonable, including designing an engagement process and resourcing iwi participation where necessary. As far as Tier 2 activities are concerned, we consider engagement should not be ruled out. At the very least, Iwi and hapū should be notified of Tier 2 permits and the activities expected to be carried out. At the very least, MBIE/the Minister should be required to assess any potential effects of the activity	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
	We think it would be appropriate for such a change to only apply to Tier 1 permit holders.		on iwi and hapū before granting such a permit and making that assessment available.	
Prescribe minimum content for iwi engagement reports	Section 33C of the Crown Minerals Act 1991 currently requires Tier 1 permit holders to submit an annual report of their engagement with hapū or iwi whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit. There is currently no requirement regarding the contents of these reports, and the quality of reports can be variable. On rare occasions, near-blank reports have been submitted. The option for prescribing minimum content for these reports was included in the Discussion Document, and we received positive responses from iwi in their submissions. The Discussion Document suggested that content could include: - When and how iwi/hapū were contacted - The outcome of that contact - An explanation of any meetings that took place Our view is that, if we make this change, it should be made clear that the prescribed content is a minimum requirement only, to ensure it is not restrictive in any way. We heard in submissions that some hapū and iwi would also like the opportunity to review these reports, to validate their content. We could look into this being part of the required content of the report (although our view is that it would need to be optional for hapū and iwi, to avoid placing strict obligations on you).	What requirements (if any) would you like to see for iwi engagement reports? What do you think about hapū and iwi having the opportunity to review these reports?	The proposed minimum requirements seem appropriate but in order for permit holders to take seriously the requirement to engage Māori, there should be consequences for failure or repeated failure to demonstrate his standard was met, adequately (as discussed below). Yes, we support providing iwi with the opportunity to validate the reports providing it does not become a requirement on them. If trust is developed between iwi and the operator this should be no problem. In our view it is also appropriate for iwi to submit their own reports and to provide their perspective on engagement that has happened and how it could be improved.	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
Introduce consequences for when no reasonable attempts at engagement are made/reporting requirements not met	In some iwi submissions on the Discussion Document it was suggested that there should be consequences for permit holders for non-engagement with hapū and iwi. Past compliance with reporting requirements is currently one of the considerations that the Minister takes into account when making permit allocation decisions. This includes iwi engagement reporting requirements. This does not necessarily mean that non-compliance will result in no subsequent permits being granted for that permit holder. However, it does mean that past compliance could be a key consideration for some decisions, such as when the Minister is deciding between similar applications, and only one can be awarded. We consider that having strict consequences does not always result in positive engagement. Measures such as increased information provision and support, coupled with the stronger iwi engagement requirements described above, could therefore achieve better outcomes.	If you would like there to be consequences for non-engagement, what do you think would be a fair consequence? Do you think that the Minister taking past compliance with reporting requirements into account for permit allocation decisions is enough?	There is a question of the nature of any consequences that would be appropriate given permit holders have been given a permit – ultimately the only consequence for a specific permit is withdrawal. On the other hand, when the Minister is considering granting a future permit – past performance by an operator should be a key criterion. That must include compliance with minimum standards of engagement. A refusal to grant a permit for failure to comply with minimum engagement standards may be a last resort. But it needs to be clear the Minister has that jurisdiction and should exercise that jurisdiction in those instances. There should be a continuous record kept of compliance to assess subsequent future applications. In addition, operators who engage with iwi as part of developing their permit application might be viewed more positively. Furthermore, it will take iwi time and resources to engage with operators about their permit applications. Iwi need to be provided support, both financial and in terms of capacity, in order to be able to do that well. Finally, operators should be reminded that the earlier they engage with iwi, the earlier they can identify the issues that may need to be addressed in subsequent consent applications under the RMA and/or EEZ Act.	
Require permit holders/applicants to provide certain information to hapū and iwi	We have heard from hapū and iwi that information provision from permit holders/applicants can be poor. In their submissions on the Discussion Document, some hapū and iwi requested that permit holders be required to provide: - An introduction to their company	Do you think we should: a) legislate for permit holders/applicants to supply certain	The matters you have listed from Iwi submissions are reasonable, and there is no reason why the Crown cannot do both as this will ensure iwi are provided with as much information as possible and understand the permit applicants. The first two matters are very	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
	- Information on activities they have planned - The impact of those activities. For this proposal, we would need to consider the costs/benefits of introducing a strict requirement in legislation, versus encouraging better information provision at the operational level. Sometimes permit holders/applicants have good reasons why they can't provide certain information, and it often depends on the circumstances. Having a set list could also mean that permit holders will only provide what is on the list, and not be encouraged to provide any additional information.	information to mana whenua; or b) better encourage information sharing at the operational level? What information (if any) would you like to be provided with that you aren't currently receiving?	straight forward, and the second is something permit holders/applicants are going to have to assess at some stage in the process. So, the earlier the better. Some activities might provide benefits to iwi and hapū through development and employment opportunities. Both positive and adverse impacts should be identified. Te Ohu Kaimoana would expect information on the first two matters to be identified, along with potential effects on significant fishing areas. The legislation should contain a minimum standard of information provision, but the clause should be framed such that: a. it is a minimum standard b. that the purpose of information provision is to encourage direct engagement with iwi and durable relationships between permit applicants and hapū and iwi c. therefore, permit applicants must provide information that facilitates long-lasting relationships, and such information must include but is not limited to (a), (b), (c) etc. Ultimately, the consequences of poor information provision may affect decision-making further down the track.	
Clarifying the process and criteria for excluding land from the Crown minerals permitting regime permanently	Currently hapū and iwi can either seek to protect areas of land from minerals development on a permit-by-permit basis, or permanently through **section 14(2)(c)** of the Crown Minerals Act 1991.	What changes would you like to see to help you protect waahi tapu?	This is a Crown obligation. The Crown can meet this obligation in the development or amendment of minerals programmes, and before releasing a block offer.	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
	Section 14(2)(c) states that, on the request of an iwi or hapū, a minerals programme may provide that defined areas of land of particular importance to the iwi or hapū's mana are excluded from the operation of the minerals programme or are not to be included in any permit. Clause 3.1 of both the Minerals and the Petroleum Programmes gives effect to this section of the Crown Minerals Act 1991. In the Minerals Programme, this clause refers to Schedule 3, which describes land of particular importance to the mana of iwi that must not be included in a permit. Clause 3.1 of the Petroleum Programme describes some areas of land as unavailable for permitting for the same reason. The Discussion Document stated that it is not currently clear how hapū and iwi should make these requests and proposed making available a clearer process. The benefit, aside from increased protection, was seen to be that this would relieve hapū and iwi of the task of requesting land be excluded from every permit or tender, which would help reduce resourcing pressures. This suggestion was met positively by some iwi in their submissions. The process for amending the Programmes is resource intensive and can take some time. We are currently considering whether there is an easier way to achieve the same outcome, or whether these types of requests could be assessed periodically, so that any amendments to the Programmes could be made concurrently. The Discussion Document also proposed that it be made clearer what factors will be taken into account for these types	If we can introduce decision-making criteria for decisions to exclude areas of land from the permitting regime permanently, what do you think those criteria should be?	If an applicant wishes to apply for a permit that is not part of a block-offer – then the onus should be on them to engage with iwi in the relevant area to identify areas that should be excluded. The Crown should expect a report on this engagement as part of the application and provide an opportunity for iwi to confirm it is correct. Note the identification of potential areas to exclude may be equally relevant to land under the sea as it is on dry land. We note that marine reserves and conservation land can be excluded from the permitting regime. Other areas that should be excluded are fisheries habitats of significance to hapū and iwi and food gathering areas of significance to iwi and hapū. These can be considered to be of particular importance to their mana and can support both commercial and non-commercial fishing. It makes sense for hapū and iwi to have a clear process to seek protection from blocks of land to avoid having to consider protection on a permit-by-permit basis. However, that can lead to an approach whereby permit applicants consider that any land **not** protected is therefore not significant or does not require engagement with iwi. It may be that there are different layers or protection and engagement required. We also note that iwi have areas of cultural significance in the marine space based on other statutory processes that may be impacted by the granting of permits, such as MACA.	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
	of decisions. Iwi submitters wanted to ensure that Māori interests were given fair weight, even in areas of high prospectivity, and that the Crown should ensure it is properly informed of Māori interests. Currently there is no set decision-making criteria for these decisions, as changes to the Programmes are up to the discretion of the Minister, although they are informed through a standard public consultation process. We could make legislative changes to introduce criteria for these decisions but would need to think about how to get the balance right, so that mining activity is not overly restricted, while highly important areas are offered additional protection.			
Introduce a new factor for the Minister to take into account for permit allocation decisions for Tier 1 permit holders: • *that the permit applicant has demonstrated a commitment to improving their cultural capability*	The Discussion Document stated that assessing the cultural capability of a permit applicant would be difficult to implement as it is a highly subjective criterion. This means that making these assessments would be evidentially complex, resource intensive, and likely result in a high degree of uncertainty for permit applicants, and a lack of consistency in decision-making on permit applications. However, the idea was met positively by some iwi in their submissions. We have considered this further, and we consider that a better option could be to assess whether the permit applicant has demonstrated a commitment to improving their cultural capability. Evidence of this could be past iwi engagement reports, or the applicant having a cultural competency policy in place.	Do you think that this would help improve your interactions with permit holders?	This concerns the quality of engagement between operators and iwi/hapū, and how far operators are prepared to listen and understand their perspectives, and act on them as appropriate. This may be a more practical approach as much will depend on what is meant by “cultural competency”. Past performance and a commitment to listen genuinely should be a minimum. Iwi and hapū could also be asked for their experiences with operators concerned.	

PROPOSAL	DISCUSSION	OUR PĀTAI	YOUR WHAKAARO/PĀTAI	RATING 1 (low) – 5 (high)
	We consider that it would be most appropriate for such a requirement to apply to Tier 1 permits only. We would also need to take into account that some permit applicants are hapū and iwi. An alternative option could be to seek to achieve the same outcome by amending the definition in the Programmes of what is considered "good industry practice" (see Key Terms section of this document), which is already something that is taken into account for permit allocation decisions.			
Introduce a new factor for the Minister to take into account for permit allocation decisions for Tier 1 permit holders: • *that the permit applicant has demonstrated a commitment to improving their ability to mitigate any negative environmental impacts of their activities*	In their submissions on the Discussion Document, some iwi suggested that the Minister should assess the environmental capability of permit applicants when making permit allocation decisions. Similar to the above, what is meant by "environmental capability" is highly subjective, meaning this could be difficult to implement consistently and fairly. Currently, under section 29A(2)(d) the Minister must be satisfied that the proposed permit operator is at least likely to have the capability and systems required to meet environmental requirements of all specified Acts for the types of activities proposed under the permit. We would need to consider what such a change would achieve beyond what is already achieved by this requirement. The types of activities that can be carried out under a permit are currently restricted under the Resource Management Act 1991, which takes into account environmental impacts of those activities. We would also need to think about what such a change would achieve, beyond the protections that are already in place under the RMA.	Do you see this proposal as achieving something additional to the protection that is already provided under the under the Resource Management Act? What do you think the benefit would be of this change (if any)?	This issue raises questions about how the Minister considers matters under section 29A(2)(d) as currently worded. Perhaps any amendment could include a list of specific matters to be considered related not only to the RMA but also to the EEZ Act. This should not be restrictive but could include "any other matter the minister considers relevant". It may be worth considering the court's final decision on the Trans-Tasman Resources case to identify if there are any matters that should have been considered earlier in the permit granting process.	

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	Similar to the above, to help reduce regulatory uncertainty, we could look into introducing a requirement for the Minister to take into account whether the permit applicant has demonstrated a commitment to improving their capability to operate in a manner that mitigates any negative impacts on the environment. Evidence could include having a policy in place for this purpose. This would go beyond section 29A(2)(d), as the legislation provides for baseline requirements, and this would instead incentivise a commitment to improvement. As above, an alternative option could be to seek to achieve the same outcome by amending the definition in the Programmes of what is considered "good industry practice".			
Introduce a new factor for the Minister to take into account for permit allocation decisions for Tier 1 permit holders: • *Mātauranga Māori*	Introducing mātauranga Māori as a factor for the Minister to take into account for permit allocation decisions was another suggestion made by some iwi in their submissions on the Discussion Document. Mātauranga Māori is already a permissible consideration for decision makers under other legislation. For example, under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and the Hazardous Substances and New Organisms Act 1996, the Environmental Protection Agency (EPA) has a broad mandate to take into account Māori perspectives (which may include, but are not limited to, those based on mātauranga Māori). The mandate states that the EPA should consider and use Māori perspectives in decision-making to the extent that they are relevant to any mandatory or permissive consideration. A companion framework provides guidance for the EPA on how to apply this, including on how to assess mātauranga evidence.	Do you think mātauranga Māori should be taken into account for permit allocation decisions? If so, why? If not, why not? What do you see as the benefit (if any) of the Minister taking this into account? What types of things do you think this could enable the Minister to take into account? Can you think of any alternative that would result in a similar outcome?	Definitely – as long as iwi and hapū are willing to share it. It could have a bearing on the management of activities, including matters relating to possible exclusion of areas. The benefit will be that the Minister will have access to information he may not otherwise have and be informed of relevant cultural matters. It would also be efficient if information that has a bearing on the overall activity is known up-front. It might avoid unnecessary expense and effort later.	

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	We are mindful that the nature of the EPA's legislation and the applications that it considers are different to the nature of NZP&M's legislation and applications that we consider, and we need to further understand how the concept of mātauranga Māori could fit in with the purpose of the Crown Minerals Act 1991, which is concerned with the efficient allocation of Crown-owned resources. Other things to consider, in terms of differences between the legislative regimes, are that NZP&M process a much higher quantity of applications than the EPA, and the EPA has its own Māori Advisory Group. This means that resourcing would need to be thought about if we were to introduce this in our legislation.			
Views of hapū and iwi to be taken into account for decision-making on changes to permits and permit work programmes.	This was a recommendation from submissions on the Discussion Document. Under the section 4 Treaty clause all persons exercising powers and functions under the Crown Minerals Act 1991 must have regard to the principles of the Treaty of Waitangi. This means that decision-makers are already required to turn their mind to the Treaty principles when making decisions on changes to permits or permit work programmes. Often changes to permits or work programmes are minor and have very little to no impact on hapū and iwi interests. We therefore currently considering that this requirement would create additional resourcing burdens for both NZP&M and hapū and iwi, with little additional benefit, and that the interests of hapū and iwi in these cases can be better met through Section 4.	What do you consider to be the benefit of introducing this requirement (if any)? Do you think this benefit could be achieved some other way? What types of changes to work permits/work programmes would you like to be consulted on that you aren't currently?	These are matters that could be ironed out up-front through engagement between the Crown and iwi – and also between permit holders and iwi. Create incentives for these matters to be dealt with early. Enable iwi to clarify what is of interest to them. S4 is often not enough as in the end, if the Crown's or permit holders behaviour is not sufficient, iwi need to hold them to account through the courts if the Minister does not intervene. This puts an onerous burden on iwi and should be avoided. However, it may be the case that on certain changes to permits or work programmes, iwi and hapū interests **are** relevant. There should be an internal guideline developed with iwi and hapū input that allows that assessment to be made. For instance, if iwi and hapū have supported a permit application on the basis of prior	

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			engagement with the applicant, then it is fair that they have a say about any potential changes to what they previously supported.	
Hapū and iwi to be notified of changes to work programmes	This change was recommended in a submission on the Discussion Document. A list of matters NZP&M must notify hapū and iwi of is provided at 2.8/2.9 of the Programmes. Because of the Section 4 Treaty clause, this list should not be seen as exhaustive. As changes to work programmes can often be minor, we consider that this would result in little additional benefit to hapū and iwi, and that NZP&M should already by notifying hapū and iwi of any changes of particular interest to them by virtue of Section 4.	What do you consider to be the benefit of introducing this requirement (if any)? Do you think this benefit could be achieved some other way? What types of changes to work programmes would you like to be notified of (if any)?	As above. Obtain a reading from iwi and hapū early as to the things they would be concerned about and develop an internal guideline to assess whether iwi and hapū views should be sought, rather than be silent on whether they will be relevant.	
Introduce a requirement in the programmes for NZP&M to support quality engagement between iwi and permit holders	In their submissions on the Discussion Document, some iwi requested for NZP&M to be playing a greater role in supporting quality engagement between hapū and iwi and permit holders. NZP&M already seeks to support this engagement in so far as it possible with their current resourcing. Introducing a requirement in the Programmes could help clarify that NZP&M has this role and has the potential to ensure that it's occurring more consistently. However, supporting this engagement for every permit would be resource intensive for NZP&M. It would also increase the demand on hapū and iwi for their time and expertise. Only if iwi wish?	Would you like greater support from NZP&M when it comes to supporting your engagement with permit holders? If yes, what type of support would you like to receive? Do you think this requirement should be included in the Programmes, or do you think NZP&M should just seek to dedicate more resourcing to supporting this engagement?	Te Ohu considers it is best to have a statutory recognition that provides NZP&M having such a role. This could be framed in a flexible way. Operationally, perhaps NZP&M could be involved if requested? There are examples of good practice by companies – where involvement by NZ&M probably wouldn't add much. However, in other cases NZP&M may be useful to help clarify key issues permit applicants/holders and iwi wish to engage about. Perhaps it would be appropriate for the costs of this involvement to be recovered from permit	

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	It would be good to have more information about what type of additional support hapū and iwi would like to receive, and in what situations.		holders – which could act as an incentive for them to do a good job on their own.	
Enable hapū and iwi to provide the location of waahi tapu within a buffer zone	We have heard that hapū and iwi do not always wish to share the exact location of waahi tapu with the Crown, but sometimes feel they have no choice if they want to protect those areas from permitting activity under the Crown Minerals Act 1991. Having information about the location of waahi tapu and why they should be excluded from permitting activity helps NZP&M to make well-reasoned decisions under the CMA. 2.6/2.7 of the Programmes currently provides that NZP&M will provide for appropriate procedures to manage information provided on a confidential basis by iwi and hapū concerning waahi tapu. We could consider allowing for hapū and iwi to provide a rough area of land where waahi tapu are located, within a buffer zone, so that the exact location is not required. We would need to consider the impact of this on the rights and interests of permit holders.	What are the reasons (if any) why you do not wish to disclose the location of waahi tapu? If you agree with the proposal to provide locations of waahi tapu within a buffer zone, what would you consider to be a reasonable buffer zone? Is there an alternative you can think of to meet the desired objective? Do you feel confident that the information you share with NZP&M is held confidentially, and, if not, what could we do to make improvements?	Our concerns relate to the marine environment, within which waahi tapu may also exist – and which iwi may wish to protect. Also, any disclosure of waahi tapu should be up to iwi to decide. Perhaps learn from the experience of councils who have managed this issue in regional and district plans, for example possible use of silent files? Some Iwi also have experience of dealing with these matters with Councils. We believe there will be experience to draw from that should help.	
Clarify in the programmes why engagement between hapū and iwi and permit holders is important	From the submissions we received on the Discussion Document it was clear that one issue impacting quality engagement between permit holders and hapū and iwi is that permit holders do not always understand what the purpose of this engagement is, and some see it as a requirement for the	Why do you think engagement between hapū and iwi and permit holders under the Crown Minerals Act 1991 is important?	The purpose of engagement is the most important issue! Otherwise, it is hard to develop a meaningful process linked to a desired outcome. We consider the Crown needs to make this purpose clear. The Crown has a Treaty relationship with iwi/hapū	5

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	Crown, or something that is already covered by the Resource Management Act 1991. To help clarify why this type of engagement is important, we could include a statement to that effect in the Programmes.	Do you think having a statement in the Programmes would help improve engagement, or can you think of any alternative that would work better?	and must ensure that its expectations are made clear to permit holders. Just as the Crown should satisfy itself that a permit holder is a good environmental operator (even though it must seek environmental consents under other legislation) it should also be satisfied that the permit holder is committed to making every effort to establish a relationship with iwi/hapū who are or have the potential to be affected by their activities – and provides sufficient guidance and advice on how they might do so. This is a relationship that will subsequently flow into consent decision-making under the RMA or EEZ Act. We also note that in some cases, activities such as prospecting and exploration are permitted activities under the EEZ Act. Early engagement with iwi and hapū is vitally important to ensure their concerns are identified and addressed. Issues raised at this stage will be equally relevant for activities that progress to full mining proposals. It is at this early stage that permit holders can begin to agree on objectives with iwi, and mutually agreed processes to be followed. The Crown should ensure permit holders take plenty of time to explore issues with iwi and hapū rather than wait until statutory timeframes are triggered.	

Additional changes/feedback

We also invite any additional whakaaro on changes you would like to see, or any feedback relevant to this review you would like to share.

YOUR ADDITIONAL WHAKAARO	ANY CORRESPONDING ACTION YOU WOULD LIKE US TO TAKE
Please note we have only rated the last question as to the purpose of engagement, which we think is the first most important matter. All the other proposals serve to help this purpose is achieved and so as a package they are all important.	Consider the proposals as a package that supports the Treaty relationship between the Crown and Māori as affected by the Crown Minerals regime.

Te Ohu

Kaimoana