Regulatory Impact Statement for Proposed Changes to the Crown Minerals Act 1991

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Economic Development. It provides an analysis of options to address key problems identified within the Crown Minerals Act 1991 regime (CMA regime).

The proposed changes to the CMA regime will improve the coordination of health, safety and environmental matters; streamline processes associated with the Crown Minerals Act 1991; accommodate emerging technologies and resources; and ensure that there is more clarity for participants and greater transparency for the public in the development of new petroleum and minerals opportunities.

Government is not seeking to open any questions in relation to:

- Crown ownership, on behalf of all New Zealanders, of petroleum, gold, silver and uranium.
- The right of the government to be the ultimate decision-maker in allocating permits to develop Crown-owned petroleum and minerals.
- The right for the Crown to collect royalty payments from Crown-owned petroleum and minerals, Crown ownership of any royalty payments, and the right to use such funds in any way the Crown sees fit, on behalf of New Zealanders.

These regulatory proposals are judged unlikely to impose additional costs on the business sector overall. Any costs that result will be negligible when compared to the substantial reduction in compliance costs the proposals seek to achieve. The proposals are also judged unlikely to impair private property rights, market competition, or the incentives for businesses to innovate and invest; or override fundamental common law principles. Consequently, the Ministry views the proposals as consistent with Government commitments on regulatory reform.

Decisions already made and for which a RIS has been undertaken will not be discussed. These include decisions already made by Government on mining and the conservation estate (Schedule 4).

There are difficulties in quantification of costs and benefits of options. Where specific quantification was not possible, the RIS has set out qualitative estimates based on operational experience.

Associated minerals programmes and regulations due to be amended under this Act are not within the scope of this RIS, as it is intended Cabinet approval be sought to consult on these changes.

Simon Lawrence; Acting Manager Resources Team, ECB, MED

Glossary of Terms

Act, The	The Crown Minerals Act
APR	Accounting profits royalty
AVR	Ad valorem royalty
Block offer	A competitive tender method of offering exploration permits over “blocks” of available land
COC	A change of permit conditions process, used to alter the terms, duration or minerals of a permit
CMA regime	The Crown Minerals Act 1991 and the associated regulatory regime
CSA	Continental Shelf Act 1964
EEZ	Exclusive Economic Zone, the area which extends from 12-200 nautical miles offshore
EPA	Environmental Protection Authority
FTE	Full-Time Equivalent
HSE	Health, safety and environment
IRD	Inland Revenue Department
JV	Joint Venture Partnership
Kaitiakitanga	The obligation to nurture and care for the mauri of a taonga; ethic of guardianship, protection.
LINZ	Land Information New Zealand
LMS Report	Land Mineral Status Report
Ministry (MED)	Ministry of Economic Development
MEP	A mineral exploration permit
MMP	A mineral mining permit
MPP	A mineral prospecting permit
NPV	Net Present Value
NZES	The New Zealand Energy Strategy
NZP&M	New Zealand Petroleum & Minerals
NAA	Newly available acreage
PEP	A Petroleum exploration permit
PMP	A Petroleum Mining Permit
PIT	The “priority in time” permit allocation method
PPP	A petroleum prospecting permit

Status Quo and Problem Definition

Relevant features of the Petroleum and Minerals Sectors

1. The development of petroleum and minerals sectors is important for the New Zealand economy. Alongside royalties and taxes for the Crown, the sectors provide employment opportunities, profits for businesses, export earnings, and regional development opportunities.

2. In 2009, the petroleum (oil and gas) and minerals (coal/lignite, precious metal and other minerals) sectors contributed 2.3% of Gross Domestic Product (GDP). The petroleum sector generated $1.9 billion, the equivalent of 1.5% of GDP, and oil is New Zealand's fourth-largest commodity export. In the year to June 2010, the government collected $432 million in royalties from oil and gas alone.

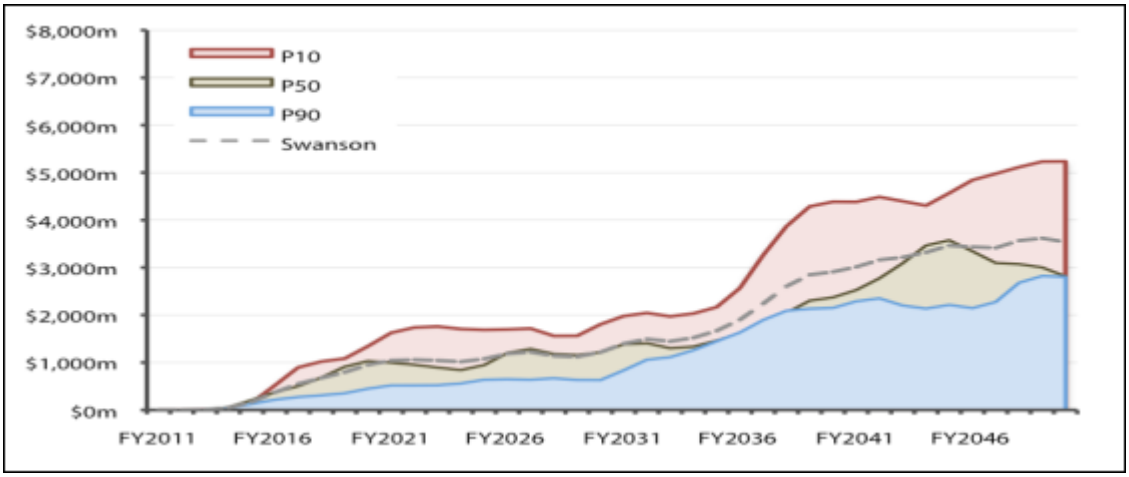
3. In 2009, approximately 6,800 people were directly employed in the minerals sector. In 2009, the petroleum industry directly employed 3,730 full-time equivalents.

4. Currently, there are 1,242 active permits within the petroleum and minerals sectors. Most are held by the minerals sector, but the current and prospective economic value is greater in the oil and gas sector.

5. The New Zealand environment is seen as highly prospective. Possible development scenarios were set out in a report by Woodward Partners in March 2011[1] - these suggest that acceleration of exploration and development could bring significant benefits to the economy. However, much of New Zealand's territory is yet to be explored, with some current processes and policies not entirely supportive of further development.

6. The NPV of future royalty income from yet-to-be-discovered fields has been estimated at $5.3 billion. This is based on anticipated new production coming on stream from eight known petroleum basins over the period 2011-2050. It is equivalent to the sum of the nominal annual royalty cash flows associated with this production profile (which peak at around $3.6 billion in 2044), adjusted for risk and inflation by an appropriate discount rate (8.9%):

Figure 1 Future annual royalty income, mid valuation case



Source: Woodward Partners (2011)

[1] http://www.med.govt.nz/about-us/pdf-library/petroleum-expert-reports/woodwardreport.pdf

Existing legislation and regulations

7. Legislation, minerals programmes and regulations - the Crown Minerals Act 1991 regime - together regulate prospecting, exploration and production of Crown-owned minerals. Minerals programmes set policies and procedures in relation to Crown-owned minerals; and the regulations encompass application processes, reporting, and fees.

8. The regime covers:

    - Crown Minerals Act 1991
    - Minerals Programme for Petroleum 2005
    - Minerals Programme for Minerals (Excluding Petroleum) 2008
    - Crown Minerals (Petroleum) Regulations 2007
    - Crown Minerals (Minerals and Coal) Regulations 2007
    - Crown Minerals (Petroleum Fees) Regulations 2006
    - Crown Minerals (Mineral Fees) Regulations 2006

Relevant government statements and decisions

9. The New Zealand Energy Strategy 2011-21 sets out four specific government priorities related to energy: diverse resource development, environmental responsibility, efficient use of energy, and secure and affordable energy. The development of our petroleum and minerals resources aligns directly with the first government priority.

10. From 2012, the government is allocating all new petroleum exploration permits in an annual competitive tender process, known as “Block offers”. The new approach aims to ensure a more proactive and strategic management of New Zealand’s petroleum resources.

11. In March 2010, the government requested public feedback on a discussion document proposing the removal of 7000ha of land from Schedule 4 of the Crown Minerals Act 1991 for the purpose of mineral exploration and extraction. Schedule 4 provides a list of conservation areas where access for mining cannot be granted by the Minister of Conservation. Following consultation, the Government decided not to remove any land from Schedule 4. Further, specific decisions not proposed in the discussion document were adopted in response to submission feedback. These included the decision that in future, all national park and high value conservation areas should automatically be added to Schedule 4, and the decision that all significant applications for mining on conservation land should be publically notified.

Related reforms and programmes

12. The CMA review is one of a number of related reform processes intended to ensure that the regulatory systems for petroleum and minerals work effectively as a whole. Other related reform processes include:

    - The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill. This Bill, which is currently before the House, sets up an environmental management regime for the Exclusive Economic Zone and the Continental Shelf. The Bill will regulate the environmental management of deep-water exploration for oil, gas and other minerals.

    - The establishment of a High Hazards Unit within the Department of Labour, to improve the Department’s capability and capacity to operate effectively in the mining, petroleum and geothermal industries.

- The Department of Labour is undertaking a targeted review of health and safety regulations that apply to well-drilling operations and the safety case regime that applies to offshore installations.

- The Government's response to the Royal Commission of Inquiry into the Pike River Mine tragedy.

- The Ministry of Transport's proposed review of minimum insurance requirements for offshore oil installations in the territorial sea and the Exclusive Economic Zone and Maritime New Zealand's review of the Oil Pollution Levy Rate.

- The IRD's review of the 'specified minerals' concessionary tax regime.

13. Many of the changes proposed in the CMA Review Cabinet paper carry forward, or are complementary to, important decisions already implemented in relation to the management of the Crown mineral estate. Of note are:

    a. The removal of the PIT system of allocation for petroleum resources,

    b. The more strategic approach to block offers for both petroleum and minerals, allowing information about the future pattern of opening up of areas for exploration to be known, and

    c. The Schedule 4 decisions noted in paragraph 11.

Problem Definition

14. Proposals seek to address some critical issues with the current CMA regime:

Fitness for purpose

- New exploration and production technologies involve regulatory challenges and risks that were not envisaged when the Act was drafted. New technologies and resources are covered by the Act, but the programmes do not set out an adequate regulatory management system for new resources such as UCG, methane hydrate, and new forms of seabed mining.

Regulatory efficiency

- Some regulatory processes are complex, and have imposed unnecessary compliance costs on companies. This, in part, reflects a 'one size fits all' approach to historic management of permits - from very large oil and gas operations to small, alluvial gold hobby miners. Reporting frequencies for a range of data are unnecessarily onerous in some cases.

- Current complexity of regulatory processes causes a misallocation of NZP&M resources. NZP&M spends a large amount of time and resources on some permits and on dealing with requests to change permit conditions that can be disproportionate to any benefit realised.

Competitiveness

- Lack of competitive processes in the allocation of permits means the value of Crown resources may not be fully realised. Complex and unpredictable regulatory processes compromise New Zealand's attractiveness in the global market for investment in

petroleum and minerals exploration. This leads to risks that the best-qualified companies may not acquire permit rights, and that the value of Crown resources is not maximised.

Iwi consultation

- Iwi feel they have insufficient input into decisions made under the CMA regime, and do not adequately share in the economic opportunities the minerals and petroleum sectors can offer.

HSE capability and coordination

- In June 2010, the Ministry commissioned a review of HSE legislation (the HSE Review) governing offshore petroleum operations in New Zealand and in other jurisdictions. This identified some areas where our regulatory framework could be strengthened. In particular, the absence of any consideration of applicants' HSE capabilities before the award of exploration permits was noted.

- There is insufficient coordination between regulators involved in the oversight of the various stages of petroleum and minerals exploration and production in relation to the health, safety and environmental impacts of activities undertaken by permit holders. This, for example, prevents a shared understanding of timeframes for exploration activities and of design choices for production operations.

Expected outcome in the absence of government intervention:

15. Some aspects of the regime are out-dated. Without updating, New Zealand will not have an effective and efficient regime for the allocation and management of all Crown-owned petroleum and mineral resources.

16. Bringing forward the start of the possible development paths (set out in the Woodward report cited above) through increases in levels of exploration activity could have large effects on the present value of returns to the Crown. Lack of co-ordination between relevant regulators and regimes, onerous processes and unnecessary costs, insufficient transparency of allocation processes, avoidable uncertainties around investment conditions and some lack of competition. These current barriers that tend to reduce levels of exploration effort will mean that the value of Crown owned-resources will not be fully realised.

17. The public acceptability of continued exploration activities depends on a demonstrably world-class HSE regulatory regime. Without the reforms proposed for better coordination between regulators, and consideration — at the permit allocation stage — of capabilities to manage HSE risks, it is likely that current concern about the compatibility of resource extraction with HSE outcomes will persist, and grow as exploration moves into deeper offshore areas.

Objectives

18. The overall objective is to ensure the economic value of mineral resources is optimised to contribute more to New Zealand's economic development. Over the long term this outcome is intended to be achieved through attracting more investment and to ensure that world-leading technology is applied in New Zealand to identify and appraise mineral resources, thereby encouraging the development of Crown-owned minerals.

19. To attract this investment, New Zealand needs to be seen as a more prospective area for investment. To facilitate this, a greater focus on strategic functions is needed, through better-directed regulatory efforts. Greater strategic focus will also enable more consistent

consideration of the national interest in minerals exploration and production, with consequential benefits for local, regional and overall economic development.

20. There are two key immediate objectives of the proposals, intended to contribute towards the medium and long term outcomes. These objectives are:

    a. To change the CMA regime to ensure a more efficient regulatory system for petroleum and mineral exploration and production, the achievement of which requires the key problems identified above to be addressed.

    b. To maintain stringent health, safety and environmental standards in exploration and production activities, thereby balancing economic benefits with relevant safety and environmental protections.

21. It is intended to streamline and simplify the regime where appropriate, ensuring it is in line with the Regulatory Reform Agenda, and making it better able to deal with future developments. This will facilitate the achievement of both the primary and secondary objectives, bringing direct benefits, whilst also positively contributing to the longer term outcomes.

Regulatory Impact Analysis of Key Proposals in the Cabinet Paper

22. The Regulatory Impact Analysis focuses on the following key proposals:

    a. A two-tiered system for permit management

    b. Health, safety and environmental matters

    c. Use of information provided by permit holder

    d. Iwi engagement on Crown minerals

    e. Permit durations and relinquishment

    f. Royalties

    g. Compliance mechanisms

    h. Different policies and procedures for minerals occurring in different forms, and for which unconventional production techniques are emerging.

(A) A two-tiered system for permit management

23. The proposal of a two-tiered system for permit management makes a distinction between the smaller number of complex, higher risk activities (about a third of current permits, referred to as “Tier 1”) and the larger number of lower-risk industrial, small business and hobby mineral operations (about two thirds of current permits, referred to as “Tier 2”).

24. This two-tiered distinction enables a proactive management regime for complex, high-value operations (Tier 1) and a pragmatic management regime for low-risk, low-royalty operations (Tier 2). It intends to reduce compliance costs and administrative burdens on government and enable strategic and efficient use of Crown resources on high-risk, high value Tier 1 activities.

25. Table 1 shows the classifications for Tier 1 and Tier 2 petroleum and minerals. It also shows the number of permits that would be streamlined under Tier 2 (681); focusing government resources on Tier 1 and reducing costs for low-risk, low-value small operations and activities.

Table 1: Number of current petroleum and mineral permits

		Prospecting	Exploration	Mining	Total
Tier 1	Oil and gas	0	62	20	82
	Hard rock gold and silver	11	58	8	77
	Coal	5	49	121	175
	Ironsand and phosphate	6	4	1	11
				Total Tier 1	**345**
Tier 2	Alluvial gold	21	85	332	438
	Aggregate and limestone	1	2	232	235
	Other (e.g. diatomite, clay, perlite)	1	3	4	8
				Total Tier 2	**681**

26. In comparison to the proposed two-tier structure, the status-quo – a 'one size fits all' approach to permits from large oil and gas operators to small, alluvial gold hobby miners – will not effectively facilitate the policy objective of a more efficient system for regulating mineral and exploration production. Similarly, alternative options such as the introduction of additional tiers or a case-by-case approach to regulation would increase complexity and therefore regulatory effort, and potentially reduce certainty for industry. If the criteria of regulatory complexity and value to the Crown are applied, there are no other effective dividing lines between the two categories. Consultation on the CMA discussion document showed a general agreement to a two-tiered system with most concerns falling on more detailed matters such as thresholds or classifications.

27. Responses showed industry were generally comfortable with having the Tier1/Tier 2 distinction, although some, especially minerals companies, wanted more details as to how this would work in practice. Accelerated development of New Zealand's resources also brought concern from submitters on the effects on conservation, other economic sectors such as tourism, New Zealand's role in reducing global greenhouse gas emissions and the global contribution the extraction, production and use of these resources would make to climate change.

Costs and benefits

28. The cost and administrative effort that is invested in the assessment, allocation, oversight and reporting of some permits is not consistent with the scale of the regulatory challenge or the Crown's financial interest in them. Some two-thirds of current permits could be subjected to a simpler, more streamlined management regime without a material reduction in royalty income. We estimate that this will reduce total costs to the smaller companies with Tier 2 operations of some $225,000 annually. Other savings in compliance costs to industry and administrative costs to NZP&M are discussed below under other specific proposals which implement this high level proposal.

29. The preferred option is the introduction of a two-tiered system for permit management which will be able to better manage potential risk and externalities associated with petroleum and mineral exploration and development, as well as create greater value from the Crown petroleum and mineral estate. A measure of the possible scale of overall benefit which might be achieved by these proposals taken together is set out in the section on overall costs and benefits below (paragraphs 143-148).

Risks

30. The Ministry does not believe that the introduction of a two-tiered system, with fewer reporting obligations for Tier 2 operations, will lead to greater risks of environmental damage or health and safety problems. Tier 2 operations still have to apply for a permit and are still required to meet their obligations under other regulatory regimes, including RMA processes and those of DOL.

(B) Health, safety and environmental matters

31. New Zealanders place a high priority on ensuring the economic development of our petroleum and mineral potential is carried out in a way that ensures that HSE risks are managed to the highest standards. This is clearly recognised in the New Zealand Energy Strategy 2011-2021. Concerns have been heightened by recent accidents in the Gulf of Mexico and at Pike River Coal Mine.

32. The proposals are intended to contribute to the objective of maintaining stringent health, safety and environmental standards, through better coordination between the HSE regulatory functions and the CMA permitting regime. The proposed measures set out below seek to achieve this throughout CMA processes, in addition to the related reforms noted in paragraph 12.

Early assessment of HSE capabilities

33. It is proposed that an assessment of applicants' HSE policies, capability and record be incorporated into the early stages of the permit allocation process. This would identify demonstrably underperforming applicants, reduce the likelihood of "fallow acreage"[2] and provide an initial point of coordination between regulatory agencies.

[2] "Fallow acreage" refers to a situation where a Crown minerals permit is awarded to a party that is unable to meet the requirements of other consents and permissions needed to commence exploration or production. This slows down the tempo of development of the Crown petroleum and mineral estate.

34. The introduction of early assessment of the HSE capabilities of operators is a key element of international best practice missing from CMA regime. Two operating options were considered (both would be additional to, and not a replacement for, the requirements of current HSE law):

    a. Prequalification - Companies wishing to bid for permits for Tier 1 activities would be required to prequalify **before** they were eligible to lodge a prospecting or exploration permit application. This process would act as an initial assessment of company HSE credentials before they were able to formally participate in a permit application process under the Act.

    b. Assessment during exploration permit application - an assessment of HSE capabilities would occur **during** the evaluation of permit applications. Currently, the Ministry examines applicants' technical and financial capability when evaluating permit applications. This option would see the existing process widened to also include an evaluation of HSE capabilities.

35. The vast majority of those who made submissions on HSE matters were in favour of the proposal in the discussion document to include assessment of applicants' HSE policies, capability and record in the initial stages of the permit allocation process.

Costs and benefits

36. Compared to the status quo, the introduction of an initial assessment of HSE capability will bring additional costs; however, this assessment is necessary to achieve the objective of maintaining and improving stringent health, safety and environmental standards in exploration and production activities.

37. Of the two options, assessment during permit application (Option b) will have lower administration costs to NZP&M in comparison to Option a): NZP&M will only need to undertake the HSE assessment process for applicants successfully meeting all other criteria of the allocation process (it is proposed that applications are assessed on all other criteria before an HSE assessment is undertaken as a final criterion). Typically in a block offer there will be more potential operators applying than are successful. This option will also have greater benefits through the ability to focus the assessment (of relevant capabilities to manage risk) on the specific location and resources of the land applied for. Option b is preferred.

38. Some individual submitters disagreed with both approaches to assessment. They argued that it would lead to a 'one day desk-based assessment' which would be insufficient and might at some point also, lead to the removal of such considerations from the consenting process under the RMA or EEZ legislation. The Ministry noted this concern but maintains that the proposal does not present substantial risk to the functions of the RMA and EEZ. The Ministry reiterates that this is in addition to, not a replacement for, existing HSE regulation and proposals.

39. Industry submitters to the discussion paper showed a general agreement from petroleum companies for a prequalification or early assessment model. Minerals companies were generally against the proposal to include assessment of applicants' HSE policies, capability and record in the initial stages of the permit allocation process.

Risks

40. The proposal is carefully designed so that there is no risk of the assessment being prejudicial to any future consents required under other regulatory regimes.

Annual work programme review meetings

41. Changes proposed to petroleum and minerals work programmes include the introduction of annual work programme review requirements on Tier 1 permits. Currently permit holders are not required to meet with officials in person if they meet all of their work programme obligations, supply all of the required reports and records, and pay all of the required fees to the Ministry within the specified timeframes.

42. The proposed annual review meetings would be additional to any existing meetings, inspections and discussions that are undertaken as part of other regulatory regimes. Annual meetings would be introduced for all permit holders. A degree of flexibility will be available for the timing of the meetings, with variation at the Minister's discretion.

43. Industry submitters were generally in favour of annual meetings, with some concerns about the inclusion of HSE issues; local government submitters were also in favour. Many individual and NGO/Community group submitters were concerned that annual meetings combined with a move away from six-monthly reporting timeframes would be an inadequate management and reporting regime. The Ministry noted these concerns but judged them as misplaced. The 6 monthly reporting obligations are not for HSE monitoring and management. The extended requirements for notification to the Ministry ensure that particularly significant events such as discoveries are known when they occur.

44. The annual review meetings will also enable on-going coordination between permit holders, NZP&M and other regulatory agencies by including those (e.g. the Department of Labour, the EPA and the relevant regional council) with a particular interest in activities in the review meetings as required. This enables discussion on key points in the exploration and production cycle. For example, annual review discussions during the appraisal phase of development (i.e. when a discovery has been made, but a production plan has not been finalised) could consider platform or mine designs and usefully address HSE aspects of potential designs in advance of commissioning, in addition to NZP&M's primary interest in resource recovery.

Costs and benefits

45. Currently there is too much paperwork and too little direct engagement between permit holders and NZP&M officials. Permit holders are not required to meet with officials in person if they meet all of their work programme obligations, supply all of the required reports and records, and pay all of the required fees within the specified timeframes. This is inefficient for both the permit holders and NZP&M. An annual meeting process is less onerous and more efficient in providing information needed by NZP&M, in comparison to the quantity and quality of paperwork received currently every six months.

46. The preferred option is to introduce an annual work programme review requirement for Tier 1 permits (oil and gas, and certain higher-risk mineral activities). Having a better balance of face-to-face engagement and activity reporting would enable both parties to jointly identify and address a wider range of issues in a more timely and constructive manner.

47. The introduction of annual meetings is unlikely to increase costs. There may be savings as the proposal will enable companies with multiple permits to rationalise these meetings with the option of a single meeting with regulators covering a suite of permits. The proposal provides the additional benefit of reducing some compliance costs, with permit holders spending less time on exchanging letters with the Ministry. In addition, the annual review meetings coincide with the reduction in reporting frequencies from six monthly to annual timeframes for some companies.

48. Both parties will have the opportunity to jointly review the past year's performance as well as assess the expectations, risks and key decisions for the forthcoming year. There is significant potential to improve understanding of potential to increase value derived from Crown estate, as well as ensure an integrated approach to management of HSE risks.

Risks

49. The proposals on confidentiality will ensure that the presence of other regulators at meetings with NZP&M will not lead to any compromise of commercial confidentiality. See section (c) below.

Distinguishing between operators and non-operators

50. The CMA regime currently treats all holders of a permit equally, whether they are responsible for day-to-day management of activities under the permit or not. . However, typically, one party – the operator – will undertake or manage activities including seismic surveys and well drilling on behalf of all of the permit holders.

51. The Ministry proposes to define permit operators in the legislation as "the permit holder who, on behalf of all permit holders, is responsible for the day-to-day management of activities under a permit". This distinction would enable the appropriate party for proposed HSE assessment and annual review meetings to be clearly and formally identified - all current obligations that they have jointly and severally will remain. No alternative options were considered as the identification of the operator reflects the only difference between the roles and responsibilities within the permit holding group of companies.

Costs and benefits

52. This proposal has no cost impacts for permit holders or NZP&M, and provides benefits to both. In comparison to the status quo, this proposal reduces costs to parties to a permit other than the operator, and allows NZP&M to focus regulatory effort on those with direct responsibility for controlling HSE risks.

53. This proposal will enable a more focused assessment from a HSE perspective on the proposed operator, rather than a party with purely a financial interest in a permit. This will also enable transfers of permit interests to be dealt with more efficiently for non-operators.

54. Some submitters to the discussion paper thought that this proposal would blur the permit holder's liabilities and not be of practical significance. The base presumption therefore, should be that all obligations lie with the permit holder. One submitter also commented that all permit holders are jointly or severally liable under the Act as it currently stands.

Risks

55. The new programmes will make it clear that the current joint and separate liabilities of permit holders will remain. This presents no risk of blurring liabilities for permit holders, and ensures that the initial HSE assessment is of the party responsible for day to day operation.

Reductions in reporting frequencies

56. The changes to reporting requirements and frequencies aim to reduce compliance costs to companies, at the same time ensuring the Ministry has access to information that is timed to inform the annual meetings for Tier 1 petroleum and minerals. The proposals that relate to this:

a. Change the current six-monthly activity and expenditure reporting timeframes to annual timeframes.

b. Align royalty and activity reporting requirements on a calendar year basis.

57. As noted previously (paragraph 42), many individual and NGO/Community group submitters were concerned that a move away from six-monthly reporting timeframes, combined with annual meetings combined, would be an inadequate management and reporting regime. The Ministry noted these concerns but judged them as misplaced. The 6 monthly reporting obligations are not for HSE monitoring and management.

58. The industry submitters all agreed with the preferred option to reduce the general reporting requirements for annual exploration and prospecting activities, with the exception of the requirement to report minerals reserves and resources. One industry submitter however, was opposed to the reporting of mineral reserves and resources. One science/academic noted their support for extending reporting requirements for minerals reserves and resources for their utility in maximising welfare and promoting transition to sustainability. The Ministry noted both the concerns and support for the proposals. It believes the proposals does not compromise the quality of information necessary for it to perform its functions.

Costs and benefits

59. Currently there are reporting obligations that affect all permit holders. The information that is collected is not used by NZP&M for oversight purposes. This proposal will reduce costs for companies overall while giving the benefit of greater focus through annual discussion processes on key choices and options for Tier 1 operations. Based on the current number of six-monthly reports submitted, we estimate the cost savings to industry to be around $185,000 a year (based on average costs of preparation of some $2,250 for each report submitted).

Risks

60. The reports submitted on a six-monthly basis are not for HSE oversight purposes. There is no risk of compromising other agency HSE functions. The proposed frequency is sufficient for NZP&M to undertake its regulatory oversight functions.

(C) Use of information provided by permit holder

61. The key aims of the proposals related to Crown use of information provided by permit holders are to provide greater certainty about what information will be kept confidential and when information provided to the Ministry can be provided to external advisors. It is particularly important to protect market-sensitive data around investment plans

62. The proposal is to amend the Act to provide greater certainty to applicants, permit holders and the Ministry about:

a. What, when, and for how long information received by the Ministry should be confidential

b. When, and on what conditions, information provided to the Ministry can be provided to external advisors to assist the Ministry in performing its functions under the CMA regime

c. Which information, if any, received by the Ministry should not be made publicly available.

d. All information would continue to be subject to the Official Information Act 1982.

63. Submitters expressed strong support for amending the Act to clarify under what circumstances information may be shared. Industry submitters noted the commercial sensitivity of some information made available to NZP&M, and the need for permit holders to know which information can be shared with other agencies.

64. Neither submitters nor the Ministry believe there is another way to clarify under what circumstances information may be shared, other than to amend the Act.

Costs and benefits

65. These proposals address the industry's concerns for clarity around the sharing of commercially sensitive information. They also must balance the commercial interests of industry with the need for Ministerial access to information in order to perform HSE functions. They impose no additional costs on industry but allow improved coordination between agencies concerned with regulation of HSE risks, contributing to the objective of maintaining stringent health, safety and environmental standards.

Risks

66. The proposal will ensure commercial sensitive information will be kept protected.

(D) Iwi engagement on Crown minerals

67. It is proposed that the Act and regulations be amended to require that permit holders provide written reports to the Secretary of the Ministry, detailing the engagement they have undertaken with iwi over the previous year.

68. This will lift the visibility of interaction between the industry and iwi and allow companies to demonstrate that they have followed the best practice guidelines which are currently being developed between industry and representatives of the Iwi Leaders Group.

Costs and benefits

69. The scope and extent of this requirement are not yet defined, so no cost estimates are included. It is considered essential to introduce this system to allow NZP&M to monitor the way the guidelines are functioning and facilitate improvements where appropriate.

(E) Permit Durations and relinquishment

Changes to the terms of petroleum prospecting permits (PPPs)

70. So far there has been little use of prospecting permits for petroleum to undertake 'speculative' seismic surveys that could be undertaken in frontier areas and in advance of particular block offers, broad notice of which will have been given through information about the block offer strategy. The number of non-exclusive surveys that have been undertaken in recent years is far below the desired level. Only five PPPs have been awarded since 1995, with the last allocated in March 2009; no PPPs are currently active. Proposals to address this problem aim to facilitate the objective to encourage the development of Crown-owned minerals. The

more that is known on the prospectivity of frontier basins, the more it could stimulate investment.

71. Industry views — endorsed in the consultation on the discussion document — suggested that the main constraint is an insufficient period of confidentiality for information obtained under these permits. Following consultation, it is proposed to increase the confidentiality period for data collected under such permits to 15 years. An alternative option of a 10-year confidentiality period was also considered.

72. The main alternative to improving the incentives for private companies to collect and market seismic data is a continuation of government-funded seismic surveys and free provision of the data collected. (Funding for the Data Acquisition Programme was some $41 million over the period 2004/05-2013/14.) The case for the preferred option is stronger at this time of considerable pressure on departmental budget.

Costs and benefits

73. The preferred option for a 15 year confidentiality period would result in later public release of some data due to extension of confidentiality periods. This is a cost in terms of delay in the public availability of information of considerable value to potential investors.

74. The costs are out-weighed by the benefit of increased seismic surveying - marketed information leads to greater interest in block offer rounds, accelerating rates of exploration. Acceleration of exploration activity and earlier discovery and production in line with the scenarios discussed in paragraph 5 above could have value to the Crown (in terms of the present value of royalty receipts) of tens of millions of dollars. This proposal also reduces need for government-funded surveys.

75. The first alternative option, a 10 year confidentiality period, has similar costs to the preferred option, but is unlikely to encourage as much commercial activity as the preferred option, therefore bringing fewer benefits. Industry submitters, including upstream companies, were supportive of longer periods of confidentiality for PPPs. While there was not a clear consensus on whether 10 or 15 years should be offered, the seismic industry argued that 15 years was a sufficient timeframe to base the business proposal of such speculative surveys in New Zealand and preferred this option. Some responses from the science and academic community were concerned that allowing PPP data to be kept confidential for up to 15 years once a PEP license has been issued over the area would stifle access to accumulated knowledge that would otherwise incentivise industry interest. The Ministry believes that the risk to investment arising through restriction in access for the longer period will be more than outweighed by commercial availability of additional seismic data under PPPs.

76. The second alternative option of government-funded seismic surveys would bring similar benefits as the preferred option, but at much greater cost to government. It would involve costs in extending in-house technical capabilities, and increased funding appropriations. The benefits would be of the same kinds: increased seismic activity, information leading to greater interest in block offer rounds and accelerating rates of exploration. Public availability of data would be earlier.

Risks

77. Some companies were concerned about uncontrolled access to areas under PPPs or PEPs. The proposal makes it clear that permit holder consent is required to undertake seismic surveys over these areas.

Changes to the terms of petroleum exploration permits (PEPs)

78. There are several related proposals for exploration work programme management:

    a. More focused use of the change of conditions provisions

    b. Firmer adherence to a small number of commitment deadlines

    c. Each petroleum exploration permit should be granted at commencement for the full duration (broadly, nine, 12 or 15 years for onshore, near shore and deep-water frontier respectively) subject to satisfactory completion of each work programme phase

79. To streamline the regime, a smaller number of deadlines will be introduced and work programme commitments assessed at these stages and at the end of each permit phase. This simplifies the regime for companies who are given clear guidance of their key work programme commitments through this system.

80. The costs of the current approach are considerable, particularly in terms of delay to company plans. Between 2008 and 2010 there were a total of 159 applications for certificates of change for minerals and coal, and 87 for petroleum. Processing times have got steadily longer over time. In 2008, the average processing time for an application for a certificate of change for minerals and coal was 151 days, and for petroleum it was 146 days. In 2010, the equivalent figures were 248 days for minerals and coal applications and 228 days for petroleum.

81. The key proposal intended to make exploration permit terms more certain and appropriate to a variety of perceived levels of prospectivity, is to increase the maximum exploration permit length by five years to 15 years. This increased flexibility may be fully used for frontier areas, where the maximum period may be needed to complete typical exploration programmes.

82. For the Minerals Programme for Petroleum, a phased exploration permit is proposed. An indicative structure is shown in Table 2 below (total permit length and duration of phases may differ in particular cases from those set out).

Table 2: Proposed PEP term structure

Exploration phase		Geological and geophysical assessment	Initial prospect delineation and drilling	Prospect delineation and drilling	Total permit length
Duration	Onshore	3 years	3 years	3 years	9 years
	Shallow water offshore	4 years	4 years	4 years	12 years
	Deep water offshore	5 years	5 years	5 years	15 years

83. Petroleum exploration permits (PEPs) have duration of five years, with the ability to extend for a further five. By international standards New Zealand is relatively unexplored so exploration permit areas are large. More time is therefore required to adequately undertake the activities provided for in these permits, particularly offshore.

84. There was general agreement from submitters on the proposed changes to the permit management regime for minerals. For petroleum, industry submitters were supportive of the proposed changes; however, many individual submitters who were unsympathetic to further exploration commented that the current durations were sufficient.

85. It is intended that the minerals programmes will specify what will occur in practice by setting out the details of permit durations, phasing, and relinquishment obligations in different contexts; amendments to the Act are proposed to set maxima for these. Table 3 sets out the proposed changes, noting that mineral prospecting permits (MPPs) currently have duration of two years, with the ability to extend for a further two. Mineral exploration permits (MEPs) are the same as PEPs, having duration of five years with the ability to extend for a further five.

Table 3: Proposed changes to permit durations and relinquishment obligations

Permit type	Maximum permit duration	Up to two relinquishment obligations, not exceeding:	Permit phases
Mineral prospecting permit (MPP)	Four years	50% of the original permit area	Three
Mineral exploration permit (MEP)	Ten years	75% of the original permit area	Two
Petroleum exploration permit (PEP)	Fifteen years	75% of the original permit area	Three

Costs and benefits

86. These proposals, overall, reduce costs to industry and the administrative costs to NZP&M and meet the objective of a more efficient system for regulating mineral and exploration production.

87. Costs will be reduced by reducing the need for applications for extensions. We estimate that this will reduce the number of change of condition requests from 50 a year to around 25 a year. Cost savings are estimated at $60,000 to permit holders and administrative cost savings to NZP&M would be of the same order.

88. The current regime gives the Ministry limited discretion to distinguish between substantial and insubstantial acts of non-compliance. A total of 120 applications to change the conditions of a permit were made in the period 2008-2011. Of these, 99 were granted, 19 are in progress and only one has been declined.

89. Change of condition requests are currently submitted frequently for relatively minor derivations in work programme commitments. This is time-consuming to administer and is not productive for government and companies. More focused use of the change of conditions provisions and firmer adherence to a small number of commitment deadlines will reduce costs for all parties and also allow more effective regulatory oversight. It is hoped these would fall from around 80 a year to around 30 a year. Total cost savings are estimated at $112,500 to permit holders and administrative cost savings to NZP&M would be of the same order.

Risks

90. The risks of fallow acreage through longer permit durations are mitigated through the relinquishment requirements.

(F) Royalties

91. A review of royalty rates is proposed for Tier 1 non-petroleum minerals. It is intended to release for public consultation a discussion document with recommendations on mineral royalty rates in late June 2012. The discussion document will review the royalty rates applied to ironsands, coal (noting that underground coal gasification is defined as coal), gold, silver, platinum group elements, phosphate and seafloor massive sulphides against the following criteria:

    a. Is the Crown receiving a fair financial return?

    b. Is the royalty rate applied, and the overall level of Crown take, competitive with other comparable jurisdictions, particularly Australia and Canada?

92. Royalty payments are currently monitored audited and collected by the Ministry. The Ministry identified that current provisions however, are not as strong as they could be and that there could be a risk that the Crown is not recovering its full royalty entitlement.

93. For petroleum royalties, the options considered to strengthen the current provisions related to mechanisms for administration, assessment and collection. Alternatives to the current system involve greater sharing of information with IRD or moving all responsibility for royalty audit and collection to IRD, or out-sourcing the functions to third parties. Analysis of these options undertaken with IRD indicated that the preferred option is to continue with NZP&M's current responsibilities, but with some additional powers for assessment and some additional penalties for late payment of royalties due. These additional penalties and powers are addressed below, in section (G) Compliance Mechanisms.

94. Submitters to the discussion paper widely supported a review of the royalty rates for Tier 1 minerals. Most comments were technical in nature, such as suggestions for the scoping of the review itself or the type of royalty regime that would be appropriate for industry. The

review includes extensive consultation with industry to inform the analysis of the royalty regime.

Costs and benefits

95. Costs for the preferred option are one additional FTE staff-member, while the benefits relate to coordination with NZP&M's production oversight to allow effective cross-referencing of data.

96. There were two alternatives that were deemed unattractive. The first was for IRD to take responsibility for royalty auditing and collection. This would incur significant transitional costs due to the differences in the principles and approaches in imposing a royalty and collecting income tax. It was considered, following detailed work with MED and IRD, that these costs would not be outweighed by the limited foreseen efficiencies. The second alternative was to contract out auditing to the private sector, with the key deficiency being the lack of ability to use and access information within NZP&M - additional costs would be incurred without any additional benefits.

Risks

97. Strengthening the Ministry's current role through additional staffing support for monitoring, auditing and assessment functions will reduce the risks of underpayment of royalties due. See section (G) below for analysis impact of compliance mechanisms to further reduce the risks of underpayment of royalties, through additional powers and penalties.

(G) Compliance Mechanisms

98. The Act currently contains limited mechanisms to ensure compliance with its requirements, and the discussion document noted the penalty provisions have not been updated since the Act was introduced in 1991. It raised the options of increasing the maximum fines so they are on par in real, inflation-adjusted terms with the maximum amounts established in 1991 (or at some other level) and/or introducing alternative options to promote compliance such as incentives and sanctions potentially drawing from civil and/or criminal systems.

99. The compliance mechanisms are proposed to be enhanced through:

    a. Updating the enforcement functions and search provisions and aligning these with the provisions in the Search and Surveillance Act 2012

    b. Providing the ability for the Chief Executive to conduct audits for the purpose of ensuring compliance with royalty payment requirements, or any requirements to keep records

    c. Providing the ability to require information from a permit holder for the purposes of ascertaining compliance

    d. Providing that royalty returns may be amended or assessed by the Chief Executive if they are considered to be inaccurate or incomplete, while also providing for objections and appeals in relation to these provisions

    e. Applying interest to unpaid money at the rate set out in the Tax Administration Act 1994

    f. The addition of a new offence if a person knowingly provides altered, false, incomplete, or misleading information

g. Increasing the existing penalties for offences so they are on par in real, inflation-adjusted terms with the maximum amounts established in 1991

100. These proposals represent moves to consistency with current penalties under comparable regimes. Proposals related to royalty audits provide comparable powers to those of other agencies in ensuring that payments due are accurately assessed and collected on time.

101. The industry submitters who believed the status quo was sufficient mainly fell in the minerals sector, while those in the petroleum sector were ambivalent but made several comments to imply that there was room for improvement.

102. Local government submitters to the discussion paper noted that tougher penalty provisions exist under the RMA, which have changed attitudes and behaviour, and thus a similar change to the CMA regime may also ensure responsible compliance. Industry submitters commented that offences provisions should be brought in line with comparable legislation, and that there should be penalties that provide a meaningful deterrent. Two noted that the penalties do need to be adjusted in line with inflation since the Act was first introduced. One industry submitter commented that it was not apparent why other sanctions drawn from civil and/or criminal systems are appropriate or necessary to promote compliance under the Act.

Costs and benefits

103. It is expected that benefits will accrue through greater and better focused incentives for compliance, thereby improving compliance with the regulatory requirements, particularly those relating to the payment of royalties. Even a small proportionate increase on royalties receipts of some $368 million[3] (royalties collected in 2011) would be significant. Submitters to the discussion document did not make specific comment on additional powers and penalties for the royalty system.

104. Any costs of these proposals to government or permit holders will only be incurred when the new compliance mechanisms are used; for instance when enforcement action is taken.

Risks

105. This does not risk impinging or compromising other related legislation, as noted previously, the proposals make the Crown Minerals Act more consistent with comparable legislation.

106. Strengthening compliance incentives will reduce the risks of underpayment of royalties due.

(H) Different policies and procedures for minerals occurring in different circumstances

107. One of the concerns about the current form and structure of the CMA regime is the inability to allow adequately for the facilitation and regulation of new opportunities in the Crown mineral estate which may be of considerable value to New Zealand.

108. Petroleum is broadly defined in the Act and includes several different hydrocarbon minerals including conventional oil and gas, coal seam gas and methane hydrates. The Minerals Programme for Petroleum focuses on conventional oil and gas as coal seam gas, methane hydrates and other types of unconventional petroleum are not yet established activities.

[3] Budget Data – Budget 2012, http://www.treasury.govt.nz/budget/2012/data

109. Change is required. The proposal clarifies that minerals occurring in different circumstances will be subject to an appropriate minerals programme with policies and procedures therein that are in respect to these circumstances. It is also proposed to include underground coal gasification in the definition of coal mining and to remove oil shale from this definition. No other options are relevant.

Costs and benefits

110. This proposal has no cost impacts for government or permit holders. It will meet the objective of a more efficient regulatory system for petroleum and mineral exploration and production and provide associated benefits.

111. There are limited options other than the status quo, applying similar regimes to different minerals in different circumstances. Submitters to the discussion paper generally agreed with this proposal, and made a series of comments on technicalities of the proposal which will be referred to in the formulation of the work programmes. These comments include concern over the technical and HSE issues that may arise when granting overlapping permits for methane hydrates and conventional petroleum activities in the same land area. There was also concern about policy development which would allow areas to be permitted on an exclusive basis; potential objection of permit holders having multiple PEPs and/or PMPs over the same acreage, which could create complications for operations on the initial permit and for community relations.

Risks

112. As noted above, (paragraph 111) the Ministry has noted the input from industry on the technicalities and HSE issues, and believes amending the Act lays the necessary foundation for this work.

113. In the absence of the amendment and following the development of the work programmes, there are risks of regulatory uncertainty over the issues identified by industry.

(J) Transfers and dealings

114. Section 41 of the Act prohibits permit holders, or any other person, from transferring permits or entering into contractual arrangements that affect the ownership of permits or production under permits, without the Minister's consent. Such consent must be sought within three months of the date of the agreement.

115. The status quo imposes unnecessary compliance costs on industry and similarly unnecessary administrative costs on government. In the three years to October 2011, a total of 378 transfer and dealing agreements have been submitted for Ministerial consent. In order to reduce this administrative burden, the Ministry proposes that for certain classes of these agreements, consent will be deemed to be granted unless the Minister advises the permit holder otherwise.

116. Industry submitters felt that the current transfers and dealings processes needed to change. Submitters noted that the Act, as currently drafted, is ambiguous about what types of agreements require Ministerial consent. Some commented that section 41 of the Act should be streamlined to address unnecessary and burdensome complication, by giving for instance, certainty for permit holders when approval is necessary and when it is not; that NZP&M is stretched on the consenting front and is not able to consider non-operator transfer notifications within the 40 working day time frame and; there needs to be clarity on the operator and non-operator requirements and obligations.

117. Industry submissions gave mixed views on how effective the proposals in the discussion paper would be. Several individual submitters and one NGO/community group submitter were also concerned that removing 'special circumstances' from the Act would compromise Ministerial power to oppose transfers.

118. The Ministry intends to analyse the options and ensure the right settings are in place so the Act would provide more certainty for industry and less burdensome compliance, while not compromising the Ministry's oversight. The Ministry needs to be confident that any transfers and dealings will not compromise existing expectations from the work programmes or HSE practice and capability of the operators.

119. In response to the submissions to the discussion paper, officials are giving further consideration to:

    a. For which agreements deemed consent is appropriate

    b. Whether certain types of transfers and dealings may be identified for which consent would not be required

    c. Whether the "approve, unless special circumstances exist" test is appropriate and what any alternative may be.

120. A further proposal from the Ministry is that the Act be amended to clarify the process for transferring permits in the event of death, bankruptcy, or liquidation of a permit holder. This is an amendment that will give more certainty to industry, with fewer risks in the status quo for the Ministry that issues are missed or delayed.

Costs and benefits

121. The scope and extent of these proposals are not yet defined, so no cost estimates are included.

Risks

122. The risks in maintaining the status quo are on-going frustration and opportunity costs to industry and unnecessary compliance costs for the Ministry. The Ministry however, does not want to compromise over-sight of HSE.

(K) Continental Shelf Act 1964

123. Section 4 of the CSA addresses petroleum exploration and mining and specifically imports the relevant provisions of the CMA regime. Section 5 of the CSA addresses mineral exploration and mining. Rather than importing the relevant provisions of the CMA regime (as for petroleum), section 5 provides for the granting of Continental Shelf Licences to prospect and mine minerals on the continental shelf, and to carry out operations to recover minerals. The conditions that can be imposed on permit holders extend beyond the scope of the CMA regime and include health, safety and environmental matters.

124. There is very little guidance in the CSA to process and evaluate licence applications for non-petroleum minerals. Clearer regulations and policies will enable applications to be dealt with more quickly, transparently and efficiently.

125. In order to address the lack of clear guidance on the allocation and management of CS licenses, it is proposed to import the minerals provisions of the CMA into the CSA for all new

Continental Shelf licence applications. This would bring the CSA regime for minerals into alignment with the current practice for petroleum in the EEZ. It would also align licensing decisions in the EEZ and continental shelf with the policies and procedures used to issue permits on land and out to the 12 nautical mile limit of the territorial sea. This amendment will not take effect until after the EEZ Act takes effect.

126. Submissions to the discussion paper generally supported the proposal, with most concern from industry regarding fee structures (which are to be addressed through future consultation). Another submitter noted the very limited guidance in the CSA to process and evaluate licence applications for non-petroleum minerals. One submitter who opposed the proposal believed that considerations in the CSA are minimal and the procedures inadequate. The Ministry noted the responses and believes the preferred option lays the foundation to strengthen the management and evaluation of non-petroleum licence applications.

Costs and benefits

127. The proposal is the only effective solution to ensure there is a process in place to evaluate licence applications for non-petroleum minerals in the EEZ and extended Continental Shelf. In addition, the Ministry believes that penalties in the CSA should be amended and aligned with those in the Crown Minerals Act; such penalties will only apply to existing licences granted under the CSA.

128. The status quo provides a large degree of Ministerial discretion as to licence conditions, including environmental conditions. In practice, licence conditions are predicated on policies and procedures set out in the CMA and associated regulations. Environmental conditions are set in close coordination with the Ministry for the Environment (MfE). As noted, however, the status quo lacks transparency, is somewhat ad-hoc and may create some legal risk to the Crown if challenged. It is therefore not ideal in meeting one of the core objectives of this review which is to encourage the development of crown-owned minerals to contribute to New Zealand's economic development.

129. The second option, and preferred option, is to import the minerals provisions of the CMA into the CSA. This would ensure that licences issued with the EEZ or extended Continental Shelf are consistent with the policies and procedures used to issue permits on land and up to the 12 nautical mile limit. The second option would improve transparency to industry and is therefore more likely to meet the objective of encouraging the development of crown-owned minerals. Under this option, all rights accorded under existing Continental Shelf licenses would be preserved.

130. There would be no increase in compliance costs to applicants and will address the potential duplication of environmental reporting when the EEZ regulations come into effect. NZP&M resources will be freed for re-allocation and focus on core functions, as environmental aspects of operations will be fully dealt with under the EPA and EEZ regime.

Risks

131. The preferred option mitigates the risk of legislative vacuum that may occur if the status quo is maintained.

(L) Transitional arrangements

132. The question of transitional arrangements is focused on the minerals programmes. Six minerals programmes have been published since the Act was established, and every permit is regulated according to the minerals programme that was active when it was first awarded. This raises the following issues:

    a. Introducing proposed changes through new minerals programmes that only apply to new permits would increase the number of existing minerals programmes to eight, increase the administrative complexity of the CMA regime, and not contribute to the 'simplifying and streamlining' objective of the review.

    b. A number of submissions to the March 2012 discussion paper stated that the proposed changes to improve work programme management and better coordinate the regulation of mineral and petroleum activities should apply to *all* operations, not just the new operations.

    c. Some elements of existing minerals programmes (such as, extension of land provisions) conflict regarding the priority of applications for particular areas,

    d. Some of the proposed changes to the Act would, if enacted, be inconsistent with some elements of the existing minerals programmes (for example, maximum permit durations and extensions of duration).

133. Given the issues (a) through (d) above, the Ministry published the discussion paper *Review of the Crown Minerals Act 1991 Regime: Transitional arrangements for existing permit holders,* to engage in a second round of consultation.

134. The Ministry identified three options for the transition of current permit holders. Each option strikes a different balance between the aims of certainty for current investors and a desire for the Crown Minerals Act regime to be simple, streamlined and consistent across all permits. These options were canvased in the discussion paper on transition arrangements, and were the following:

    a. **Option A:** Continue with the existing approach of managing every operation over time according to the minerals programmed that was current when the operation was first permitted. The proposed new minerals programme would apply only to new operations that receive a permit after the new regime is enacted.

    b. **Option B:** Revoke all existing rights and entitlements associated with existing permit holders immediately. Existing permits would be retained but all permit holders, current and future would be subject to the new minerals programmes from day one.

    c. **Option C:** Current operations would remain on their relevant minerals programme until a permit holder applied for a change of permit conditions or a subsequent permit, or chose to 'opt in' to the new regime voluntarily – whichever came first. At that point the permit would transition to the new Minerals Programme for Petroleum or the Minerals Programme for Minerals (excluding Petroleum).

135. Twenty-seven submissions were received on the discussion document pertaining to Transitional Arrangements for Oil, Gas and Minerals Permit Holders. Of the 27, fifteen preferred option A, five preferred option B, four preferred option C, one stated no obvious preference and three offered constructive advice that sat somewhere between multiple options.

136. Proponents of option A can be predominantly classified as Tier 1 operators, all of 12 of whom supported the option A. Three submissions were classified as Tier 2 operators, one of whom advocated for option C, while the other two advocated for option A. Of those submitters who supported option B, one submitter did not specify a reason for supporting option B. Two submissions argued it was the "least bad" option and should be implemented with grace periods. Of the four submissions in favour of option C, one claimed it offered a balance between permit holder rights and administrative necessities and another argued it was "the only sensible proposal" as the others would be too administratively burdensome.

137. The Ministry anticipated strong industry support of option A. After due consideration however, the Ministry ascertained that option C best achieves the Review's objectives to streamline and simplify the regime, and ensure efficient use of NZP&M resources.

Costs and benefits

138. The preferred option C provides for an orderly transition to the streamlined regime under the proposed new programmes over a period of years, rather than as a one-off. This option could be achieved by a relatively simple and clear-cut legislative amendment process, and could accommodate the timing of the Block Offer process. It would, however, also involve some complexity over the transition period, where eight minerals programmes would be in place. The Ministry noted that in consultation a number of submissions argued that option B, but to a lesser extent option C, would create procedural bottlenecks through administrative burden.

139. Options A and B lead to the greatest administrative burden for government, and would compromise the Review's objectives to streamline and simplify the regime. This particularly would affect NZP&M ability to operate efficiently i.e. processing and managing permits in a timely way. Options A, in particular, does not represent regulatory simplicity and would require the amended Act to accommodate eight different minerals programmes from day one – a number that would continue to increase over time. This means NZP&M would have to manage eight different minerals programmes and allocate their resources accordingly.

140. Most submitters favouring option A argued it provides certainty to investors and – interwoven with this – minimises sovereign risk. It is also a more conservative option insofar as it preserves the arrangements that are already in place for all existing permits. Several proponents of option A argued the administrative difficulties that could come with this option had been overstated. The Ministry noted these comments, but does not believe it has overstated the administrative difficulties that option A or B would present.

141. While option B is the most straight-forward from a regime design perspective, it has similar risks as option A, in terms of administrative difficulty and complexity. The need to amend over 1000 current permits to conform to new minerals programmes could create significant disruptions for permit holders, and a large and immediate administrative bottleneck for the Ministry. In addition, the speed of the proposed change could have significant consequences for investor perceptions of New Zealand.

Risks

142. Option C does not present adverse sovereign risk, or investor risk, given that existing permit-holders remain in the existing minerals programmes until they apply for a new permit or a change of conditions. Option A would be optimum to minimising investor risk, but in place of this it would compromise NZP&M's ability to manage business-as-usual activities in a timely manner and to roll out new procedures in accordance with the amended regime.

Total Costs and benefits

143. It is anticipated that the overall effect of the proposed changes will enable the Crown to generate a larger royalty NPV from the anticipated royalty cash flows in two ways. First, NZP&M will be able to focus more regulatory effort on field development planning and field extension. Such technical issues concerning the appropriate production profile involve gaining a better understanding of the nature and performance of discovered petroleum reservoirs, so that officials will be able to ensure that agreed production profiles are in the national interest. Second, NZP&M will be able to devote more resource to assessment and audit of significant royalty payments. With a relatively small pool of royalty-paying permits to focus on, there will be greater scope for NZP&M to examine royalty reports and ensure that payments accord with the relevant royalty rules.

144. It is reasonable to assume that these measures could produce a 2.5% increase in annual petroleum royalty revenue over the estimated baseline payments. In this case, the impact on Crown royalty NPV would be $130M over the projection period 2011-2050.

145. Comparable efficiencies are also possible for Tier 1 minerals. Although comparable modelling of future mineral royalty income has not been undertaken, if mineral royalties continue to contribute around 3-5% of total royalty revenue, the efficiency improvement for mineral royalties could generate a further $4M over the forecast period.

146. The combined effect of such improvements in royalty NPV would be some $135 million. As noted above, acceleration of exploration activity which would bring forward production could additionally increase the NPV of royalty receipts by tens or hundreds of millions of dollars.

147. Savings in time spent by NZP&M, and for which monetary estimates have been offered under the relevant proposals, are assumed to be redeployed in support of such higher-value activities which have the potential to increase the pace of activity in the sector and the value of Crown royalties. They do not give rise to net costs savings, but enable the more strategic and focused activity necessary to realise full value from Crown resources.

148. Savings to industry arising from streamlining proposals estimated above could amount to approximately $520,000 on an annual basis, which is $5.7 million in present value over the period to 2050.

Consultation

149. On 20 February 2012 Cabinet agreed to the release of the discussion document, Review of the Crown Minerals Act 1991 Regime [CAB Min (12) 5/7]. The discussion document, setting out a number of proposals to reform the CMA regime, was released for public submissions in March and April 2012. The discussion document set out 76 proposals for changes to the Act, programmes and regulations, aimed at achieving the stated review objectives.

150. The Ministry of Economic Development received 168 submissions on the discussion document: 67 from individuals making unique submissions, 20 from individuals using a template from the Green Party, 1 from a Member of Parliament, 3 from government organisations, 5 from local government, 37 from industry, 17 from iwi, 14 from NGOs and community groups (4 of which were Green Party template submissions), and 4 from scientists and academics.

151. Key issues that emerged from the submission process include a Tier 1/Tier 2 distinction, information sharing, health, safety and environmental matters, iwi engagement, permit durations and royalties. These have been taken into consideration in formulating the final proposed amendments. The Cabinet paper summarises key issues raised in consultation, including where changes to policy proposals set out in the discussion document have been made. It is these final proposals that are described and assessed in this statement.

152. The following agencies were consulted on the proposals of the Cabinet paper: the Treasury, Ministry for the Environment, Environmental Protection Authority, Ministry of Transport, Maritime New Zealand, Department of Labour, Department of Internal Affairs, Inland Revenue Department, Ministry of Justice, Ministry of Foreign Affairs and Trade Department of Conservation and Te Puni Kokiri. The Department of Prime Minister and Cabinet has been informed of the proposals.

Implementation

153. There are a number of processes and reforms that need to be managed simultaneously to ensure the proposals can be effectively implemented. These include the legislative timetable, future consultation, transitional arrangements and the mitigation of implementation risks.

154. The legislative timetable must be coordinated. A bill amending the Crown Minerals Act 1991 is intended for introduction in July 2012, with new legislation coming into force by December 2012. The majority of proposals in the discussion document will require amendments to the minerals programmes and regulations in addition to the necessary amendments to the Act. It is intended that Cabinet approval will be sought to consult on amended programmes in July-August 2012.

155. Other related reforms include the two initiatives from the Department of Labour. The establishment of a High Hazards Unit was announced in August 2011 and the targeted review of health and safety regulations that apply to well-drilling operations both on and offshore is planned for 2012. The introduction of the EEZ Bill also affects the marine consents needed for activities under offshore permits in this area. The proposals to involve other regulatory agencies in annual review meetings with operators will assist in ensuring an integrated and well-informed approach across government.

156. In August 2011 the Government introduced the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill 2011. The Bill puts in place a system of environmental controls for the EEZ and Continental Shelf. Were the provisions of the CMA for minerals to be incorporated in the CSA prior to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill 2011 coming into law, there would be a legislative vacuum for minerals as there currently is for petroleum.

157. Accordingly, care needs to be taken to ensure that incorporating the minerals provisions of the CMA into the CSA occurs after the passage of the Exclusive Economic Zone and

Continental Shelf (Environmental Effects) Bill 2011. Failing that, transitional measures need to be put in place.

Monitoring, evaluation and review

158. NZP&M will monitor the effects of changes to key processes of interaction with operators as these are introduced, in particular annual meetings, reduced reporting frequencies, and the new focus on Tier 1 activities. It is planned to review these aspects of the proposals two years after their introduction - in early 2015.

159. The introduction of consideration of HSE issues at the permit allocation stage involves other agencies in a new type of assessment. It will be appropriate to consider the way this has functioned after a year of operation - in early 2014. Other proposals relating to changes to petroleum prospecting and exploration permits, and specific sections of minerals programmes relating to new types of resources, can be expected to have an effect only after some time, but benefits would be identified through:

    a. Greater interest and competition where areas are made available in block offers

    b. Increases in seismic surveys undertaken, whether on a speculative basis or to meet permit conditions, and

    c. Increases in number of wells drilled.

160. These types of indicators will be tracked, and it is planned to undertake a full evaluation of the impact of these proposals five years after their introduction - in 2018.