ENVIRONMENT AND CONSERVATION ORGANISATIONS OF NZ INC.
Level 2, 126 Vivian St, Wellington, New Zealand
PO Box 11-057, Wellington
Email: eco@eco.org.nz Website: www.eco.org.nz
Phone/Fax 64-4-385-7545

20 April 2012

Crown Minerals Act Review: Submission

To Resources Policy Group
Ministry of Economic Development
PO Box 1473
Wellington 6140
New Zealand

Delivery address: 33 Bowen Street, Wellington 6011

Fax: +64 4 473 7010

Email: CMAReview@med.govt.nz

Contact details

Name (required field): Environment and Conservation Organisations of NZ Inc (ECO) (Submitted by the ECO Executive and drafted by the minerals working group. Contact Cath Wallace)

Organisation (if applicable): Environment and Conservation Organisations of NZ Inc (ECO)

Please provide a contact mail or email address.

Personal and Confidential:
Cath Wallace, 021-891-994 Cath.Wallace@paradise.net.nz

Submissions on: Review of the Crown Minerals Act 1991 Regime discussion paper

1.0 Introduction

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 55 groups with a concern for the environment. We welcome this opportunity to make a

submission on this discussion paper. ECO has been involved in issues of mining, resource management and energy policy since its formation over 40 years ago.

This submission has been prepared by members of ECO Executive and is in line with ECO Policy that was developed in consultation with ECO member bodies and endorsed by our AGM.

ECO is concerned with the environmental protection, resource management and economic implications of these proposals.

2. Key Submission Points:

Some Key Points of ECO's Submissions, and particularly in relation to the material in the Review starting from p9:

1 In ECO's view the scope of the Review is too limited: there are other public policy goals than economic development and this is too restricted. Social and environmental and climate matters should be considered.

2 NZ's economic development requires consideration of the non-extractive benefits and services of the environment but this review pays no attention to those.

3 The Review is a bad case of silo-ed thinking within a single sector only.

4 ECO supports some aspects of this Review and opposes others. In particular, we think that it is a good ideas to have a Tiered approach, distinguishing types of minerals activities, but we do not necessarily agree with the criteria for such tiers and we consider that environmental impacts and alternatives to minerals activity and mining both need to be considered.

5 Since New Zealand's biophysical systems, economic development and fiscal burdens are all related to fossil fuel and greenhouse gas emissions, we consider that there should be a greenhouse gas and climate impact statement required for all minerals activity. This is particularly important since such considerations are ruled out of both the RMA and the EEZ&CS Bill.

SOME NOTES on user-friendly discussion papers for submissions:

a) ECO welcomes the provision of the WORD version of the submission template and notes that the on-line version is too extensive for a no-save, submit only submission format, especially since this cannot be shared during its development with others in the organisation. It was beyond our capacity to do the cut and paste you asked for.

b) We think it would help both MED and submitters if you were to use numbers and letters instead of bullet points. We urge you to adopt this as a standard since then we can all be clear which comment relates to which part of the paper. It is a pain to be counting bullet points when a bit of care in writing the paper could have made everything simpler for all.

c) We are unsure why none of the questions of submitters related to the first parts of the Discussion paper – the Principles and scope and other matters in the Introduction are critical elements of the Review and should have been explicitly open to submission. Further there

were areas where no questions were asked – such as the Schedule 4 section and there were no questions asked of submitters in relation to Chapter 3.

d) In some cases the paper provides insufficient information about the changes proposed. This reduces the ability of submitters to make informed comment. Examples are the changed "pragmatic" and "streamlined" regulation of Tier 2 activities – what will this mean? Lax regulation? A second example is the information to be dropped from the reporting requirements. We are told what is to be included, but not what is to be dropped.

Review Principles:

We are aware of the RMA and the expectation that the EEZ &CS Bill are primarily the place for consideration of environmental impacts, but the Review should consider broader overall policy goals including reducing climate emissions and protection of the environment. This Review seems deliberately to avoid doing so, and we consider that sustainability and protection of natural capital as well as social v private discount rates and concern to protect biophysical systems should be part of the Principles.

The Principles used are unacceptably limited though not in themselves objectionable except for incompleteness. For instance flexibility is needed for response to environmental harms and impacts as well as for "regulatory challenges". Fairness to the future, to communities and the protection of natural systems and other capital should be part of the Principles but are omitted.

Your Proposed Changes (p10 and ff):

1a The criteria for regulatory effort should include potential to harm the environment, or to damage society and culture.

1b We agree that risk and environmental and social values at stake need to be bases for differentiation of treatment, but we are concerned that such risks seem in this paper to be approached in a narrow way, as does the conception of value, which seems to be primarily in the document focussed on market values to the exclusion of the value of life, human and non-human, and of ecosystem functions.

1c We agree with the division into tiers, but the paper provides inadequate information on the level of regulatory controls over Tier 2 activities. As before the criteria for Tiers is too restrictive.

2a We disagree that the government should promote minerals activity. This is picking winners and is a distorted view of the role of government. The government could well be in the role of fostering discussion of discount rates, the intergenerational fairness issue, and the issue of the problem of the Resource Curse, it should not have both a promotion and regulatory role. We recommend that the promotion role be dropped from both MED and NZPAM and from the Act and Minerals Programmes. Promotion is a confusion of roles of government, it also seems to be based on a simple-minded extractivist growth model which is outdated and foolish.

2b We agree with a proactive approach to coordinated regulation of the complex – and we would add also for potentially high impact activities.

3a We find the language of "3" on p12 and elsewhere to be vague and to possibly permit

inadequate monitoring and controls. "Pragmatic management" could mean almost anything, and so could "streamline the assessment criteria" – these seem to provide for very lax regulation and we disagree.

3b The language of the Review paper is of "risk" and "complexity" but of what? For instance, hard rock, oil, gas and coal mining are pretty much bound to need Tier 1 treatment, but if the ecosystem is delicate or communities in close proximity, so may be peat, aggregates, limestone or other minerals you have listed in Tier 2.

4 (p12) We agree that the government should coordinate better with the community, public and with iwi and other Maori, but we do not agree that this should be in the nature of promotion of minerals activities.

4.1 We agree that there should be an assessment of health, safety and environmental capabilities but this should be repeated at each stage of the permitting process (exploration, prospecting phases and mining) AND should be open to the public.

4.2 We agree with annual progress reviews with Tier 1 permit holders, but sometime this should be more often and some Tier 2 activities will also need this.

We also consider that great care will be needed to avoid industry capture of regulators in this process and that moral hazards for officials are not introduced, which the industry will have many incentives to do. MED needs explicit safeguards against such hazards, and one safeguard should be to make these discussions open to the community and to environmental groups, so that there can be no behind the scenes temptations.

The Review Process (p12)
We hope that there will be plenty of time for proper Parliamentary scrutiny of the proposed Bill and that the Select Committee will have plenty of time to hear submissions and to deliberate. ECO has become concerned at some of the roughshod attitudes of the government to Parliamentary processes (and other due process).

ECO wishes to register its interest in the Minerals programme re-drafting and submission process, and welcomes the provision for public input.

Chapter 1 – The Crown Minerals Regulatory Regime

We submit that a somewhat clearer account of what governs the question of private ownership of minerals is needed and a clearer account of the different levels of entitlement by the various land Acts in force over the years. This could reasonably be an extra appendix.

14-15 Certainty is not a free good, and it seems to us that there is a good case to be made for updating at least some aspects of a permit in line with more modern minerals programmes. Investor certainty may mean environmental risk or risk for land owners and communities. We think Minerals Regimes should be able to vary previous permit conditions.

Fees and royalties should be able to be varied, amongst other things.

It is a scandal that Newmont has not paid royalties, and that in many cases permit holders can escape conditions simply by relinquishing their permits. This is intolerable and must be

corrected.

Permits
17 & 20, Petroleum and Minerals Prospecting Permits. We cannot find the elements of the Act that restrict prospecting permits to minimum impact activities – though we do see that land owner and occupier consent is not needed for minimum impact activities. ECO would be grateful to be directed to the basis of the statements in 17 and 20 on p17.
20 Is land owner consent also required for any QEII or other covenanted land?

22 ECO's view is that a 40 year term with the right of further renewal for a mining permit is far too generous and fails to make efficient use of the common resources. Most investment horizons are less than 15 years, and we consider that this is sufficient and that the 40 year term with a right of renewal should be removed in favour of 15 year terms with any right of renewal subject to a review of conditions.

The review questions

Chapter 2: Health, safety and environmental (HSE) matters

1. (a) Do you agree that including assessment of applicants' HSE policies, capability and record in the initial stages of the permit allocation process is desirable? (b) Which of the two options presented do you prefer?

ECO considers that HSE reviews are needed but that these:

a should be open to public submission.

b Should occur at each permit stage and at significant phase changes within permit stages.

C should adopt both Option 1 and 2, i.e, prequalification should be used and assessment at permit application stages also done. Review should be every 3 years, not every 5 years.

Further:

Any such assessment should not replace or diminish the resource consenting processes by the Regional councils or EPA, or any other authority.

The material provided should be open to public scrutiny and audit. A one-day desk top assessment is not enough.

The information supplied in 34 should include reportage of all cases of violations in any jurisdiction and with examples of failures and mistakes and what has been done to guard against these in future.

These reports must be the subject of independent audit and public scrutiny and input, as should any reports by other agencies (cf paras 35-36)

2. (a) Do you think that annual review meetings would provide a better mechanism for permit holders and the Ministry to exchange information and discuss work programmes than the current paper-based approach?

Both are needed – the written or electronic record must be retained and minutes of any meetings taken and be available for review of commitments made against what then happens. Community members and environmental organisations should also be invited to these meetings in order to ensure that all relevant matters are covered, and that the scope of regulator capture by industry and that moral hazard are avoided.

(b) Do you consider that a regular meeting with the Ministry and other appropriate agencies would improve coordination between permit holders and the various parts of government? Yes, but this should not be a mechanism for the subjugation of DoC.

3. Do you agree with the proposal to distinguish in the Act between permit operators and non-operators?

We can see some reasons for this but we have some doubts about this as well.

Permit operators are of course important, but as demonstrated by Pike River, pressure from investors and others can have a big impact. Removal of the non-operators from controls would invite a fragmentation of responsibility and prime movers hiding behind operators.

There may not be a single "operator" but a multitude of contractors and subcontractors. It is unclear how these checks are envisaged.

Schedule 4 of the Act:

57 We AGREE that Schedule 4 areas of New Zealand should not be the subject of any minerals activity, BUT consider that ecological areas and other classifications of land and waters, including private reserves should be given protected status.

We do not support the government subsidisation of the industry by paying for the so-called "technical investigations". These are unwelcome and thinly disguised subsidies to the industry and a means to bully both DoC and communities into accepting unwelcome minerals activity.

57d We do not agree that other Ministers' concurrence should be required for the addition of areas to Schedule 4, only the Minister of Conservation should make such a decision. Thus we OPPOSE the proposal for a requirement that the cabinet decides on the classification of areas in Schedule 4, if it is intended to remove some classifications from Schedule 4 but we AGREE that all Schedule 4 classification areas should automatically have Schedule 4 status.

57e ECO submits that ALL applications to explore or to mine on **public or private conservation land or waters** should be publicly notified. Many private land owners have protected land or land for instance in Kiwicare areas and these should not be available for minerals activity.

We submit the word “significant” should be removed since it is open to creative misinterpretation.

We are disturbed and dismayed that the government has shown bad faith by not publicly notifying the Denniston mine permit application which we oppose.

57f ECO OPPOSES the imposition of the Minister of Energy and Resources into the decision making of the relevant land holding Minister. We also oppose the new criteria proposed, since these are likely to be at odds with the purpose of the holding and management of the land.

57g The conservation fund was never more than a cynical sop and we are glad to see it gone.

We are not impressed that there are no questions in the Submission list on the matters relating to Schedule 4.

Chapter 3 Iwi Engagement on Crown Minerals

ECO is persuaded by those who suggest that not only iwi but hapu be consulted.

Iwi should be given the opportunity to block minerals activity that offends their cultural concerns, but rent seeking for consent should be restrained.

Maori will need rights to participate in management not only in investment in minerals activity.

Wai262 should also be considered in decision making and in particular Maori relationship to the environment.

Many iwi, hapu and others do not want to "balance" the enviornmental risk – they want to avoid it altogether. They do not accept that harm to papatuanuku is "balanced" by monetary pay-off. Te Whanau-te-Apanui, Ngati Hei, northern tribes and many others have made this very clear.

The discussion of the messages (p27 s67) reveals that Maori have many concerns shared by other New Zealanders, viz, that MED and NZPAM are biased in favour of minerals activity and interests against the interests of the public and Maori. This is a fundamental problem for a regulator which is also an avowed promoter of a sector. Legitimacy is tainted and the organisations become the object of well-deserved distrust.

S72-74 p28 Which "interested parties" will have the opportunity to have input?? Landowners? Environmental groups? The public? Scientific and ecological organisations? Residents? We consider that all have every right to have input. We are increasingly annoyed that there seems to be a focus on business but not community and the MED should not lend itself to this undemocratic practice or MED and NZPAM will lose what legitimacy they retain.

S74 Protection of the environment and cultural values must also be included in this effort.

S75 Iwi management plans should be considered in all minerals activities not simply in small scale alluvial mining.Indeed Some alluvial mining is anything but small scale, and hard rock and other minerals activity including bulk sampling and grid cutting can have huge effects on both the environment and on cultural values.

Chapter 4: Petroleum

Para 80 p31 –Where in the Act are petroleum Prospecting permits restricted to minimum impact activities?

We agree there should be no automatic right to receive an exploration permit.

4. Do you consider the proposed changes would better incentivise non-exclusive geophysical survey activity?

Though clearly of help to the minerals interests, in our view non-exclusive permits and activity would place land owners and land occupiers and conservation areas in an unreasonable state of siege, particularly where the activity is land based rather than aerial. We oppose non-exclusive prospecting permits for anything except aerial seismic surveys.

The Ministry might have regard for land owners or occupiers who may be trying to undertake their own economic or other activities (including conservation) in an area. Under this proposal they would be beset by prospecting teams and lose the right to undisturbed enjoyment of their land.

88 We do not oppose the extension of time for permit holders to retain information.

5. Do you consider that additional changes are necessary to encourage non-exclusive geophysical surveys to be conducted more frequently? No we do not support the non-exclusive surveys.

6. Should PPPs be granted over currently-permitted areas? No

If so, should the consent of the existing exploration or mining permit holder be required before a PPP is granted? Yes and so should that of land owners and occupiers.

7. Do you have any comments on the proposal to introduce HSE considerations for petroleum – either through a prequalification process or through a consideration of HSE matters during the evaluation of permit applications?

We support both options but consider that:

a) these should be open to public submission and to public scrutiny;

b) they should be more substantial than indicated in the paper

c) they should be independently audited

d) any and all non-compliance in previous cases should have to be disclosed;

e) cases of failure should be listed, not just the positives.

8. Do you think that such considerations should be made for all petroleum operations or for a subset of them? All. We oppose the suggestion in para 93 p33 that some activities be excluded from the HSE assessments, including those on shore.

9. Do you consider that longer exploration permit durations are necessary for thorough work programmes to be delivered? We consider that there should be benchmarks within permit terms at which application for extension could be made but there is a right on the part of the government to change the conditions of the permit.

10. Do you agree with the proposed shift from a single five-year permit to a structure that distinguishes between different exploration contexts? Yes

11. Do you think that annual review meetings would provide a better mechanism for permit holders and the Ministry to exchange information and discuss work programmes than the current approach? A written or recorded version of any points made and commitments made is needed. Care is needed to avoid regulator capture by industry and moral hazard on the part of those with regulatory roles.

12. Should the annual review process be adopted only for new permits or should it also be adopted for existing permit holders? All

13. Do you agree that judgements about compliance with work programmes should be made at the end of particular phases and at intervals of at least three years? No, this should be done in a phased way. Monitoring and compliance on matters of safety and matters with environmental significance should be done regularly – quarterly for instance or more frequently as needed. Diligence could be monitored much less frequently.

14. Do you agree with the proposals on primary and secondary work programmes and the expectations on the change of conditions? yes

15. Do you agree with the proposals on notification of discoveries and the subsequent definition of the appraisal permit? yes

16. Do you agree with the proposals on relinquishment and surrender of acreage?

Re para 138, ECO does not agree with the right of exchange of one permit for a successive permit, though it might be reasonable to have a right of priority. New processes and public processes are required.

In relation to the relinquishment and surrender we wonder whether excessive pressure for diligence might create environmental and health and safety risks if operators are under pressure to complete work before they are really ready. Such pressures can cause short cuts and major risks to workers, others and the environment. We would like to know that the Ministry has carefully thought these incentives and risks through, rather than only thinking about the issue of availability of acreage for others to explore or mine.

17. Do you agree with the proposals on the regular review of production permits?

ECO considers that the rate of depletion and the methods of depletion and issues of risk are matters that society should have a say on and thus we consider there should be an opportunity for public input in the processes outlined from 148-152, with public disclosure. We suggest annual intervals for review meetings.

18. Do you agree with the proposals to have separate parts within new minerals programmes in order to accommodate distinct mineral types? Yes, so long as this does not mean very lax provisions for minerals of little interest to the Crown but of significance to society and if and only if compounded and synergistic impacts are properly dealt with, see below.

Most particularly ECO considers that there should be no further mining of lignite and no mining or human induced release of methane hydrates on account of the potent impacts on climate. The Minerals programmes should be designed to wean us off fossil fuels and to

protect the climate. Coal mining should be phased out. Oil and gas production in the marine environment should not be allowed beyond 200m depths, and then only on strict environmental assessment and monitoring. Any other policy is grossly irresponsible.

It is unclear from the proposals to allow simultaneous mining of different petroleum minerals in the same land or sea how any conflicts would be managed. There may be synergistic compounded impacts which are not considered be any individual permit processes. Until such is explained and satisfactorily dealt with, we cannot agree to the proposal

Other Comments on Chapt 4, Petroleum

Re 91 p 33, input should be sought from the community and civil society as well as local authorities and iwi as to which areas should and should not be put up for tender.

Chapter 5: Tier 1 minerals

Comments on matters not covered by your questions.

In general we support the Tiered approach, but we consider that the basis for attention should include potential HSE risks, not simply "largeness" "value" etc. Any seabed exploration and mining should be included, and also any hard rock exploration and mining that is not minimum impact.

The section on ownership of minerals (p47) could be clearer and could better explain which land Acts provide effective private ownership of most minerals.

Often we got lost in responding to your questions here as to which pages and paragraphs and sections are covered by each question. You would have made this much easier for submitters if you had cross referenced to the sections and pages and paras in your questions.

19. Do you consider that new mineral prospecting permits should require acreage to be relinquished in order for extensions of duration to be granted?

In principle we support this, but we do worry that it may lead to significant pressures on operators to rush and cut corners and that this will induce risk for the environment and workers.

Size caps on permit sizes will be needed or any relinquishment rule will simply result in applications for greater areas – strategic behaviour can be expected.

20. Do you consider that the current policy about prospecting permit size is too broad to guide the preparation of permit applications? Yes, but we also consider that there will be some other criteria such as environmental to guide the consideration of permit size.

We do not support the automatic right of exchange of Prospecting for exploration permits or exploration for mining permits (see para 177 and 178). In our view, there should be a right

of priority but not an absolute right of exchange. Certainty for investors should not be regarded as an absolute right, or a free good. The public purpose should predominate over the investor or explorer wish for certainty.

21. Do you consider that additional guidance about the Ministry's views on what sizes are generally appropriate in different circumstances would be helpful to permit applicants? Yes.

22. What do you think about the proposal to introduce HSE considerations for Tier 1 minerals, either through a prequalification process for all potential permit holders or through a consideration of HSE matters during the evaluation of permit applications?

We support the implementation of both options together or if not, option 2 but consider that:

a) these should be open to public submission and to public scrutiny;

b) they should be more substantial than indicated in the paper

c) they should be independently audited

d) any and all non-compliance in previous cases should have to be disclosed;

e) cases of failure should be listed, not just the positives.

23. Do you think that such considerations should be made for all Tier 1 minerals and activities or for a subset of them? All. None should be excluded.

24. Do you agree/disagree with the package of proposals to revamp the newly available acreage method of allocation? We agree with some but not with all. We disagree with the exclusion. Caps will be required to avoid inflation of sizes to off-set relinquishment requirements, and we think the maxima proposed and the minima proposed in para 186 are far too big. We would cut those to one-third of the suggested sizes.

25. (a) Do you agree/disagree with the proposal to amend the relinquishment requirement to enable exploration permits of a fixed minimum size to be retained for a second term? (b) If so, are there geological or technical reasons to propose a specific minimum size? The topography, environment and erodibility and hydrology should be considered too.

26. Do you agree/disagree with the proposed changes to the exploration permit management regime for Tier 1 minerals?

Some of the proposals are inadequately explained. Various hazardous activities might be excluded (eg your suggestion in para 190) so we are unclear exactly what is envisaged.

27. Do you agree/disagree with the preferred option of requiring land mineral status reports to be submitted as part of the application process? Yes, but we consider that this information should be publicly available on maps and other media as well.

28. Do you agree/disagree with the preferred option of increasing the threshold for an extension of land application from an "inferred" mineral resource to an "indicated" mineral resource? Agree

29. Do you agree/disagree with the preferred option to clarify that underground coal gasification is coal mining? Yes we agree.

30. Do you agree/disagree with the preferred option to extend the reporting requirements for minerals reserves and resources? Yes agree.

31. Do you agree/disagree 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? MED is unclear about what is to be dropped, so we consider that the Discussion paper is inadequate and leaves us guessing. HSE reporting should be required regularly. We see no point in retaining reporting for the sake of it or needlessly increasing or imposing transactions costs, but we do consider that HSE reporting is vital and should be frequent, regular and public.

32. (a) Do you agree/disagree with the preferred option to align the annual summary reports and royalty returns to a calendar year basis? Agree

(b) Do you agree the disruption would be outweighed by longer-term efficiency gains? Yes

33. Do you agree/disagree with the preferred option to clarify that all technical reports related to mining activities must be submitted to the Secretary and for the annual summary reports for mining to be revised?

Agree but we are unclear exactly what is to be dropped so cannot agree to the coverage changes without that information.

Other points:

The conflicts between provisions of different minerals programmes as noted in your para 204 are such that there may need to be provision for older permits to transition to the new minerals programmes. This would be helped by shorter terms and also by provisions that any renewal of a permit should be subject to coming under the newest minerals programme.

Proactive permit management (ref paras 218 and following) is welcome but HSE considerations should be key criteria for this, not just the value of the minerals as suggested in para 218.

Change of Condition applications seem to be being used for strategic purposes and we agree this should be discouraged.

We are somewhat amazed by the signals that you send by your suggestion that enforcement should not be "fastidious" (para 221 p 56). This seems to imply that you will overlook violations, and so we consider you need to rethink this. Probably you need to make it clear that there are some matters of greater specificity and importance than others.

Re p56-57 We submit that HSE provisions or work programme matters with implications for this should be carefully and frequently enforced. The suggestion that compliance with these only be considered at the end of a permit is completely unacceptable. Compliance with progress on work programmes other than these could be monitored less frequently. Pike River is a good example of the kinds of issues that link HSE considerations to work programmes, eg the extra and better exits, so we cannot agree with the suggestions on p56-57 about less rigorous compliance at least with anything with HSE implications. These proposals need to be re-thought with this in mind.

Chapter 6: Tier 2 minerals

Comments on matters not covered by your questions:

We consider that civil society and environmental agencies should be part of the decision of what not to make available for minerals activity.

Re para 263 we disagree with your criteria for Tier 1 or 2. It should not be the size of the enterprise, that determines the tier treatment. HSE considerations should apply and that should include the sensitivity of the environment to impacts given particular methods and activities.

Depletion rates are a social issue, and we consider that this should be a matter of public discussion and decision, both in relation to the depletion and degradation of the receiving environment and the minerals themselves.

Removal of permit requirements for small scale gold activities in river and lake beds and the coastal marine area as proposed in para 266 is of considerable concern to ECO. These are some of the most ecologically sensitive ecosystems. We oppose the removal of such permit requirements, and we support consideration and reporting on and monitoring of HSE matters, particularly environmental matters at the permit stage. Other administrative burdens could reasonably be reduced.

34. Do you agree/disagree with the proposal to exclude alluvial gold and other Tier 2 minerals from prospecting permits? Agree but we do not agree with your criteria for Tier 2. We think HSE risks should be considered too for the decision between Tier 1 and 2. We also consider that there may be a Tier 3 which deserves less attention but for instance, some prospecting methods could impact some sensitive environments.

35. Do you agree/disagree with the preferred option to provide an initial gateway assessment stage for the assessment of Tier 2 mineral permit applications? We do agree if this is extra. We do not agree if this implies any reduction of consideration at

permitting stages. We would like to see an exact account of the matters NOT to be considered.

36. Do you agree/disagree with the package of measures to reduce the compliance and administrative burden of Tier 2 minerals? We agree with some, but not all. Environmental conditions and cultural sensitivity should be considered. We agree meaningless reporting and compliance be ditched but not where substantive issues are at stake We agree with some of the suggestions for aligning reporting, but not reductions in such except for the really tiny operations in non-sensitive environments.

Para 276 seems sensible on the face of it, but would this invite a system of revolving management teams which temporary changes and then reversion to the previous teams?

Para 279 we support.

Para 280 – We oppose this. We consider that 50 ha for hobby and 200 ha for recreation are far too large as areas if they are to be the subject of the concessionary requirements in para 278. Such rules will simply make others reappear as hobby and recreationists to try of fit the criteria.

Para 282 – We oppose the provision of 10 years for MEP alluvial mechanical operations. We also consider the 40 year period for aggregates is too long and that this should be cut to 20 years.

Para 284 -5 – we consider that such consultation over broader areas is warranted but this should include civil society and conservation agencies as well, but that areas seen as sensitive for ecosystem or landscape or cultural reasons should be either excluded altogether or subject to case by case consideration.

288 Royalty reporting.

Putting in a threshold for not reporting or supplying royalty returns will surely invite strategic behaviour, and in particular, a series of small areas and operations instead of larger ones in order to avoid royalties? This will be the more so if royalties rise. We think this is essentially well meaning but misconceived since it does not take account of behavioural responses.

37. Do you agree/disagree with the preferred option to remove permitting requirements over unformed legal roads and other such areas? No, since these may be significant areas, and again, strategic behaviour may result. We consider that if such a course is adopted, there should be a clear upper limit of no more than one hectare.

38. Do you agree/disagree with the preferred option to allow alluvial operations to occur in areas already permitted with the consent of the underlying permit holder? Only if the consent of the land owner and land occupier is also required, including the Minister or authority responsible for any public land.

39. Do you agree with the proposed measures to reduce reporting requirements for Tier 2 minerals? No. Exploration can cover major activities. Bulk sampling can involve

considerable amounts of extracted minerals and is akin to mining. We oppose this change.

Chapter 7: Royalties

40. Do you agree with the proposed review of royalty rates for Tier 1 minerals?

Only in part.

Re Para 309, We consider that all minerals programmes and permits should contain provisions for the review of royalties every 5 years. It is an outrage that those with Mining and Coal Mines Act licences, and permits from the earlier CMA Minerals programmes pay no royalties. The quest for investors for certainty is not some sacred quest against which all other considerations must give way. This is particularly so when terms of permits and licences are as high as 40 +40 years. No one has a right to extract scarce resources often in sensitive environments for negligible or no return for society, simply because they want certainty.

In our view the expectation must be that there are regular adjustments to the royalties.

We also URGE that the government introduce a greenhouse gas royalty taking account of both the GHGs emitted in the exploration and extraction of minerals and in their use, to reflect the losses of environmental quality from such activities. Exported fossil fuels should carry a GHG levy, so that there is not an incentive to deplete and export to duck such charges. A blanket ban on lignite mining and on methane hydrate mining and emissions should also be adopted on account of the risks to the environment.

Re para 315, we agree that the royalty regime should be transparent and not subject to Ministerial discretion.

Para 316, we consider that the depletion rate of minerals and their host environments, and the legacy of environmental damage should all be considered, not simply those matters listed.

Para 317 – we oppose the refusal to change royalties for existing permits, licences and privileges and see not sound basis for this, albeit that those benefiting would like to preserve the status quo and to remain in an artificial state of certainty which simply means private benefit at public expense.

41. What changes, if any, would make royalty administration, assessment and collection more efficient for the government and make compliance easier for permit holders?

Efficiency is not the only criterion. Fairness and a socially agreed rate of depletion of the mineral and degradation of the environment should also be considered.

ECO would like to see compulsory reporting of all depletions of minerals by all concerned, and we see only a loss of public revenue from exempting some parties from the requirements. Transactions costs can surely be reduced in other ways?

Administrative arrangements (p75)

The lack of clarity and powers referred to in para 327 should be addressed and remedied.

We support the IRD taking over the function of royalty collection since they are less subject to regulator capture than NZPAM is with its conflicting function of encouraging minerals depletion. Ie, we support option 2. We strongly oppose option 3 since this would remove a core government function and the oversight of the OIA and control agencies.

Chapter 8 – Other Matters

Chapter 8: Other matters

42. Do you agree with the proposals for the objectives to be set out in a purpose statement for the Crown Minerals Act?

We support a Purpose statement but not if it excludes the concept of minerals activity being subject to environmental controls and considerations.

The proposals of the minerals industry are not acceptable since they essentially assume that the creation of economic activity and jobs from minerals and mining are somehow more desirable than from other activity, yet actually the creation of jobs from minerals activity is low compared with many other activities such as tourism on the basis of output or capital values. There is also no provision in their formulation for transition to low carbon energies and this should be in the Act.

The avoidance of greenhouse gases and impacts on the environment must be part of the Purpose, and the transition to a low carbon economy should also be part of the Purpose statement.

The relegation of the HSE considerations to an explanatory note is not acceptable to ECO since this removes these critical issues from the interpretation of the provisions of the Act. In 2012, it is an absurdity to not consider the greenhouse gas and environmental implications of the place and rate of depletion of minerals. Greenhouse gas emissions and global warming potentials are explicitly excluded from the RMA and from the EEX and CS Bill, so these considerations must be included in the CMA and its Purpose.

43. Do you agree with the proposals on alignment of permitting provisions across the relevant legislation?

No, mostly we do not agree. The considerations in the Continental Shelf Act are indeed minimal and the procedures inadequate. But the EEZ & CS Act will have a broader (if currently conflicting) set of considerations, so those considerations and policies should inform the decision making on consents within that Act. Royalty provisions could be the same, but not the grounds for decision making and certainly not the limited inclusion of the public.

There is a problem with the EEZ &CS Act in that the EPA is not a policy agency and no oceans body has been established, but locating decisions within the narrow framework of the CMA is not the answer and would be totally unacceptable to ECO.

Para 357 – We agree that such disclosures and reporting should be made and should be public.

44. (a) Should the Act be amended to clarify when information about an operation should be able to be shared with and used by another government agency or regional authority that has functions and powers that apply to the same permitted operation? (b) If so, what information/agencies should the legislative change apply to?

ECO's view is that information relating to publicly owned resources and to activities with public consequences, and the permitting and regulatory processes should be public. The OIA has grounds for considering non-disclosure but the presumption is openness and this should remain. If there is any specifically confidential material, this should be subject to public interest tests.

45. (a) Do you agree that the Act should be amended to clarify what, and when, information received by the Ministry should be confidential? If so, to what information, and in what circumstances, should confidentiality apply? See above

Simplifying notification procedures – para 363-364

We oppose the proposals to remove the public notification at each stage or change of Minerals Programmes. We are alarmed that the Ministry did not make this specific proposed change a matter of a specific question.

Compliance mechanisms – para 365

The sanctions should be graduated and should also be available to other agencies for non-compliance with HSE provisions, and Treaty violations.

There should also be bonds and liability provisions.

It is essential too that there are a means of holding permit holders to the conditions of the permit even when they want to relinquish the permit. Decommissioning rules, environmental clean up and restoration and other rules and conditions should endure beyond the life of the permit or the holder can simple escape responsibility by relinquishing the permit. This needs

careful thought and it is a pity this has not been developed in the CMA Review. We believe that this needs to be addressed in the Amendment to the CMA.

Public input and consideration of the applicant past record by both the public and the authorities are also needed – this is the reputational sanction and the disinfecting effect of public disclosure.

46. Do you agree/disagree with the series of proposals to address the release of data and reports?

47. Are current offences and penalties the most appropriate mechanisms to promote compliance? If so, at what level should fines be set; if not, what alternate or additional mechanisms might be more effective and efficient?

Penalties - Paras 368-369

We agree that penalties need to be upped. Bonds are also needed for both an *ex ante* incentive to care and to provide authorities with the immediate recourse to funds when things go wrong.

Liability provisions can provide *ex ante* incentives to care, but have a poor history for timeliness and can embroil authorities in protracted litigation. Very harsh liability controls can provide and incentive to hide the harm which may make things worst *ex poste,* despite the e*x* ante incentive to care.

The "alternative options" referred to in para 83 need to be articulated so that these can be considered by submitters.

Removal of Statement of Reasons para 370 &ff

We strongly disagree with the removal of the statement of reasons. Transparency of government aids compliance and consent of the governed. We think these should stay.

Removal of Section 25(2) para 372

We disagree. This would be to remove the basis of some current arrangements and to remove this option from future governments.

48. How should potential conflicts between minerals programmes be resolved?

Conflicting rights under different minerals programmes

Clearly there are other options – to affirm the rights of the most recent holder, or to put the matter to mediation or arbitration.

49. Do you agree with the proposals related to processes around transfers and dealings?

We think consideration of the reputation and record of those acquiring permits etc matters and is one of the incentives that can be used to encourage compliance. We do not agree with the removal of the power to decline or the removal of automatic and careful consideration.

Annex 1: Petroleum data and reporting

We agree that other matters such as those listed in para 386 should be included.

Decommissioning and any untoward HSE matters should have to be disclosed and reported and plans drawn up **prior to** aandonment of a well, not after (eg para 407).

50. Do you agree/disagree with the proposal to make permit holders submit any long-term gas sales agreements to the Ministry?

51. Do you think that annual production data should be made available on a well-by-well basis in addition to the current field production totals published in the Energy Data File? Yes we agree.

52. Do you agree with the proposal to make survey and well information publicly available immediately? Yes

If allowed at all, Hydraulic fracturing and other such activities such as the release of methane hydrates should be disclosed and should be closely monitored and the results publicly disclosed in a timely fashion. Eg Para 428 – such activity reports should be required and permits issued in advance.

Annex 2: Mineral data and reporting

53. Do you agree/disagree with the preferred option to extend the reporting requirements for minerals reserves and resources? We agree that the information should be expanded. The expansion should include Greenhouse gas reporting both from the activities and from the intended final uses of the product.

54. Do you agree/disagree 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?

No, we do not. The government and the public should be kept informed with such reports publicly disclosed.

Para 452 is vague as to what will not be required. This puts submitters in an impossible position. Please provide us with details on what would no longer be required.

55. Do you agree/disagree with the preferred option to align the annual summary reports and royalty returns to a calendar year basis? We have no problem with this.

56. Do you consider the disruption would be outweighed by longer-term efficiency gains? No

57. Do you agree/disagree with the preferred option to clarify that all technical reports related to mining activities must be submitted to the Secretary and to revise the annual summary reports for mining? The discussion paper fails to tell us what is to be left out so we cannot comment on this.

Reserves and Resource Reporting:

We agree that better information is needed and should be supplied (eg p 99 & ff). This should be accompanied by reporting on greenhouse gas and other environmental consequence reporting, including on the contribution from the final uses of the product.

We do not agree that Tier 2 operations should be exempt, unless they are tiny operations with negligible consequences.

Reporting should have a spatial and environmental element and the GHG implications of the work and product.

The forms 13 and 14 referred to should have been included in the discussion paper to ease submissions. Again, in para 470 the paper fails to inform us as to what is proposed to be omitted. We think locations should be disclosed.

Other questions

58. Do you have any other feedback or recommendations about the Crown Minerals Act 1991 regime?

Yes.

Greenhouse gas considerations must be included.

Depletion rates should be publicly debated.

It is a flawed development model to think that maximising extractive activity is necessarily good. It may well diminish both current and future well being.

Investment in the minerals industry may displace other more job-rich investment, may deprive other industry of capital and labour, may lead to adverse exchange rates and other symptoms of the Resource Curse, as well as any social and environmental consequences.

We thus find the whole ethos behind the government's approach to be old fashioned and to constitute poor economic and poor public policy.

Annex 3 – Proposals Considered but not pursued.

Arbitration re land – we agree that there should be no compulsory arbitration for minerals and we recommend that this be removed for petroleum.

Diligence incentives and sanctions - we have some worries that diligence incentives may cause short cuts and risks to be taken.

We agree that aggregates should stay in the regime.

We agree with most of your other decisions in this section.

We were disturbed to hear the MED consulted with industry players but not with environmental groups. MED damages its standing and reputation by such behaviour – yet a regulator should keep the public firmly in mind as the principal to which it is agent.

We are awaiting information from MED on the basis for its view that prospecting is all minimum impact activity and we would like to make further submissions when this and the other further information asked for is to hand.

Finally we thank MED for providing the Discussion paper, and for providing a WORD version since the online version would have been unwieldy and too long for being unable to save or to share with others in the organisation.