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Commerce Select Committee
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Crown Minerals (Permitting and Crown Land) Bill
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Crown Minerals (Permitting and Crown Land) Bill: Supplementary Submissions

1.0 Introduction

This supplementary submission augments the original submissions by ECO.

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 55 groups with a concern for the environment. ECO has been involved in issues of resource management and land-use policy since its formation 40 years ago. We have actively engaged in minerals and mining law and policy, and conservation policy and law.

2 Provisions of the Bill

As noted in our initial submission, ECO:

- Supports the protections provided by the provisions to enshrine Schedule 4 of the Crown Minerals Act;
- Recommends the addition of World Heritage, ecological and marine mammal sanctuaries to be covered by the fourth schedule.
- Opposes the changes to the Purpose of the Act in so far as these promote minerals activities because this is a major conflict of interest for a regulatory agency and fails to recognise the need to protect the rights and interests of land owners, occupiers and the purpose for which land is held.
- Opposes the changes to the Conservation Act, particularly the provisions that make the Minister in charge of Crown Minerals the co-decision maker and in practice dominant decision maker on matters relating to consents for mining;

- Opposes the provisions that give in effect the Cabinet via Order in Council the decision on whether land should be given conservation and reserve classifications and what these should be. This is an unwarranted provision that will in effect allow economic interests to prevent such protected status or to down grade it, and to rob the Minister of Conservation of powers that that Minister has had for many years, even in some cases, predating the Conservation Act 1987. We strongly oppose this and serve notice that it is unacceptable, will bring New Zealand into further disrepute in terms of its environmental reputation. If the provision is passed, we will work to have this reversed, and investors should take note of this.

- ECO urges that minerals activities should be subject to the test that all other activities are subject to when consents are sought on conservation land and that no activity that is incompatible with that test and the purpose for which the land is held should be permitted. The current provisions place mineral activity in a privileged position over other activity. We note and reject the weak defence of provisions to use a separate test for minerals that is offered in the Regulatory Impact Statement and we explicitly reject this argument put forward under the name of a DoC official.

Part 1 Amendments to Crown Minerals Act 1991.

Here we submit key points and we will add a supplementary submission with more detail.

6 New Section 1A Inserted (Purpose):

We oppose provision in the new Purpose to "promote" minerals activity and instead we submit that the term "manage" which avoids "picking winners" be used.

Further, there is particular concern that this Purpose provides a regulatory agency with a conflict of interest, and it fails to provide any space in the Purpose for consideration of the environment and the rights of land owners and occupiers. Given the work by Hon Ruth Richardson when she was solicitor to Federated Farmer, and by others, to get recognition of the rights of land owners and occupiers, and of the purpose for which land is held, this is disappointing and we strongly urge the Select Committee and Parliament to correct this by substituting the word "manage" for "promote".

Recommendation:
Replace "promote" minerals activity with the word "manage".

Part 1 Preliminary Provisions

8– Amendments to Section 2(Interpretation)

(1) "Good industry practice"
The Bill defines good industry practice as:

> "*good industry practice* means acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar activity and under similar circumstances, but (for the purposes of this Act) does not include matters or activities regulated under health, safety, or environmental legislation"

We consider that this definition is too permissive of poor practice if in fact it just reinforces the prevailing norm – as allowed by *"reasonably and ordinarily exercised"*. The definition should be couched in terms of actual diligence and good outcomes, not simply whether it is the prevailing way of doing things. The results of the findings of the Royal Commission into the Pike River Mine disaster should be considered in this context. "Good industry practice" can and does have implications for health and safety, as well as the environment, and impacts on land owners.

Recommendation
The definition should be amended to replace *"diligence and prudence reasonably and ordinarily"* with "diligence, precaution and prudence reasonably".

8(10) "Petroleum"
This change to section2(1), could allow carbon capture and storage as though it were mining of petroleum. As it now stands, the Act says:

> **"petroleum** means—
> (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
> (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
> (c) any naturally occurring mixture of 1 or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and 1 or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide—
> and, except in sections 10 and 11, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes *in the same or an adjacent area*"
>
> (The words italicised by us.)

We do not believe the implications of this have been properly assessed and need to be considered with greenhouse gas implications of this approach. No functioning carbon capture and storage trial has been applied in New Zealand.

Recommendation
Add to the end "and this does not include any permanent storage for carbon capture to remove greenhouse gases emissions".

8(11) "prospecting"
The activities included in the definition of Prospecting in (b)(i) "geological, geochemical and geophysical surveying", need to be restricted as to scale, intensity and impact which is clear for activity covered by sub-clauses (ii) to (iv). This language is in the original Act but it is far too permissive and could allow high impact large volume sampling and so on or even drilling, which could be argued to be part of surveying. For example, Seismic surveying could be very high impact at decibels of 200, and sample surveys could also be high impact. We believe this needs to be clear that it refers to very low impact only. We urge the Select Committee to address this anomaly.

Recommendation:
Amend the (i) add "by low impact methods".

8(14)
We oppose this proposed change. The Act as it now stands says this:

(2) **Appropriate Minister**, in relation to Crown land or land in the common marine and coastal area, means—
(a) the Minister charged with the administration of the land or of the enactment (if any) that the land is subject to; **and**
(b) the Minister of Conservation, if the land is part of the common marine and coastal area; or
(c) the Minister of Lands if paragraphs (a) and (b) do not apply; or
(d) the Minister determined by the Governor-General in Council, if there is uncertainty as to who is the appropriate Minister.

The proposed changes would define the Appropriate Minister to be one or other but not both the Minister of Conservation and the Minister charged with the administration of the land. We oppose this.

Recommendation:
Delete change (14).

8(15)
In general we support the deletion of S2(3) which allows ministerial discretion to overlook non-compliance.

9 New Sections 2A and 2B inserted

2A Meaning of Tier 1 permit and Tier 2 Permit
ECO supports that all petroleum activities permits should be defined as part of Tier 1 activities.

We do not agree that the definition of Teir 1 and 2 (in Schedule 5) should depend solely on the value of spending or royalties. Hard rock activities and other substances than those listed as Tier 1 all need to be in this classification. Impacts on the host environment, substances such as asbestos, silica, rutile and aggregates should all be included, as should all coal, lignite and peat exploration, and mining permits.

The setting of spending or royalty limits will likely lead to multiple applications to get under the spending or royalty bar as applicants engage in strategic behaviour. The limitation on spending etc will simply mean that applicants carve up the areas that they are interested in to come in below the bar for each application. This will have the perverse effect of providing an incentive to make multiple applications, so increasing transactions costs for applicant, processors, and submitters and the community, and decision makers.

A fix for this problem would be to count any such permits in adjacent or near adjacent areas and amalgamated for the purposes of the Tier 1 and 2 definitions. Similarly, related party applications should be combined, or the device of using a multitude of company or applicant names will be used instead to avoid Tier One classification.

We consider that 2A(1) (d) and (e) should be combined so that any minerals permit in its fifth permit year is included,
AND that in relation to 2A(1)(f) that all underground operation permits should be defined as Tier 1, given the likely risks.

Recommendation:
- Combine 2A(1) (d) and (e) so that any minerals permit in its fifth permit year is included; and
- In 2A(1)(f) that all underground operation permits should be defined as Tier 1, given the likely risks.

10 Section 5 – Functions of the Minister

We do not support the idea of a regulating minister and regime also being in charge of attracting activities because that is a fundamental conflict of interest. **In (a) delete the word "attract" and insert the word "administer".**

Recommendation:
In (a) delete the word "attract" and insert the word "administer".

12 Section **7 Replaced Functions of the Chief Executive**

ECO consider the reference to "monitor" is (a) is rather limited and should include ensuring and reporting on compliance.

ECO notes that *New sections 99A to 99C* provide for the appointment of enforcement officers, their powers, and warrants to enter and search but it is unclear.who will do enforcement under the RMA including sections 332 and 334 of the CMA. This provision is important as not all mines are subject to the full effect of the RMA and are still subject to the provisions of the old Mining Act and Coal Mines Act.

We recommend the addition of a further sub clause (g) to include the relationship with the land-owner or land-owning minister: (g) so as to inform, advise and cooperate with any land owner or occupier or land administering Minister or agency on permits, and issues relating to monitoring, compliance and enforcement with the Act and permits and minerals programmes that affect them or the land affected.

Recommendation:
In (a), replace the word "monitor" with the words "monitor, ensure and report" compliance".
And
A new subclause (g) to read:
(g) To inform, advise and cooperate with any land owner or occupier or land administering Minister or agency on permits, and issues relating to monitoring, compliance and enforcement with the Act and permits and minerals programmes that affect them or the land affected.

13(1), section 8 amended (Restrictions on prospecting or exploring for of mining, Crown owned minerals)

ECO has severe doubts about the proposed subsection 2A. This would seem to allow free rein to prospect, explore or mine any stopped legal road if it is for a Tier 2 minerals and the road is in an area of land that otherwise contains privately owned minerals. There is no apparent requirement to have the consent of the owner of such privately owned minerals or the land owner or occupier. We cannot imagine that this is the intent of this provision, but we do think it is the result of the proposed subsection 2A.

We strongly encourage the Select Committee and officials to take a further look at this to examine whether we are right on this.

Further, we are not sure what the term *"the road is within an area of land that otherwise contains privately owned minerals"*. We are aware of fragments of stopped and of unstopped roads that are surrounded by areas with privately owned minerals but cannot see that any of these areas reasonably should be able to be prospected, explored or mined for minerals, since the effect on the land would be the same.

Recommendation:
Delete sub-clause (2).

14. Part 1A Minerals Programmes

15, sections 12-23 and cross-heading replaced

12 Purpose of minerals Programmes

We consider that policies should be included in minerals programmes, and that there must be public consultation on all aspects of minerals programmes. To say that minerals programmes simply explain how the Minister and CEO will *"interpret and apply"* the Act seems to allow those individuals to interpret the Act anyway they wish and that seems capricious contrary to good law and practice.

Recommendation:
Retain current section 12.

14 Content of Minerals Programmes

Sub-section (2): This should refer not only to the grant of a permit but also to its application and enforcement.

Sub-section (5) ECO generally supports this provision but recommends that this be expanded to include hapu.

Recommendation:
Amend sub-section (2) to refer to the application and enforcement of a permit.

17 Public notice

ECO support the requirements for public notice but we have concerns over two provisions.

(1) With modern technologies and so many places for public notice to be posted, we consider that transactions costs will be markedly reduced if a register is kept with emails so that all who indicate an interest can be notified as soon as a minerals programme is proposed or open to review.

We recommend that this section be added to with the provision:
"(d) To notify those who register themselves with the Minister as wishing to be so notified."

(2)(b) We submit that a web site is not sufficient and that places other than the internet be specified so that those less able to use websites – particularly the elderly and those without internet – are able to read a hard copy. We recommend the insertion after the word "Internet" the words "and other sites" and delete the word "site".

Recommendation:
In (1) add "(d) To notify those who register themselves with the Minister as wishing to be so notified."
In (2)(b) insert after the word "Internet" the words "and other sites" and delete the word "site".

18 Submissions

We support all of the proposed new section 18.

Provisions relating to Maori: We support these provisions to avoid offence and to include Maori, including the provisions of 18(5).

20 Approved minerals programmes may be issued

In (b), consistent with our view that hard copies should be available for public consultation and reference, we consider that hard copies should be made available or sent on request. We know a cohort of people who are not readily able to consult things on-line and these people should not be excluded or disadvantaged. At the very least a hard copy should be provided on request – which provision will not be particularly burdensome to the agency.

Part 1B, Permits, access to land other matters

23 Declaration that permits not to be issued for specified land for specified period

ECO recommends that new section 23(1) have **added to it** after the word "Act" the words "or to protect the environment." This would avoid the conflict of the Minister granting permits for areas, for example, covered by the fourth schedule or to protect threatened species, where resource management permit or and landowner consent would never be granted. This includes areas where mining is a prohibited activity under the RMA.

Consequentially in (2)(d) (ii) ADD the words "unless the closure is for the purposes of the environment, in which case it will endure until the issue is reviewed and the decision reversed after consultation with the public."

Recommendation:
Add to the end of (1) the words *"or to protect the environment"*.
And in 2(d)(ii) add the words: *"unless the closure is for the purposes of the environment, in which case it will endure until the issue is reviewed and the decision reversed after consultation with the public."*

17 Section 27 replaced (Provisions relating to granting of permits)

27 General provisions about granting permits:

ECO urges Parliament to modify S32 of the Act which is referred to in s27(1)(c) to remove the automatic rights of exchange of one form of licence for the next. Section 32 allows those who are granted a prospecting permit to have an automatic right to an exploration permit, and those granted an exploration permit to have an automatic right to a mining permit, with no change to conditions.

ECO regards this as wrong and anachronistic. It derives from the old Mining Act and places applicants in a position that is untenably and unreasonably generous**. It is too much to sacrifice the sovereign right to decide not to allow further progression to a subsequent permit for the sake of investment certainty of the applicant, much as they will want that.**

ECO believes there must be a public interest test applied here. At the most permit holders should have the right to be first considered if any further permit is considered. Further, we consider that the free-pass on both environmental controls (for anything issued under the older Mining Act or the Coal Act, when environmental controls were usually absent, and the

free pass on royalties are completely unreasonable. As we understand it, Waihi Gold (now owned by Newmont) has not paid a cent of royalties for their mining of this scarce resource.

In our view all conditions including royalties or resource rents should be reviewable every 10 years, with rights for public input.

Given the time terms for consents and the sequential rights and renewal rights, some operators are already operating under conditions (if any) that are very out of date, even to seven or more decades old. This is unreasonably risky to society and denies society and the Crown a fair return from minerals activity.

Recommendation:
Amend section 32 to remove the automatic right to move to the next type of mineral permit.

18 New sections 29A and 29B and cross-heading inserted

s29A Process for Considering application

(2)(b)(iii). ECO recommends that the whole of an applicant's record be examined, not solely its record of compliance with minerals permits. We consider that all aspects of the compliance behaviour be considered, under all Acts, including the RMA, EEZ&CS Act, Health and Safety legislation, and the Income Tax Act.

(3), we consider that these provisions are much too weak. This amounts to centralised ministerial control with few requirements to make an informed decision or to even take account of the recommendation of the agencies, let alone a public process. The test is inherently weak anyway since it is only that the applicant is "likely" to have the capability to meet required environmental and health and safety rules. We consider that the provisions of this section be changed to require a researched and informed decision and that this decision be open to public input. The proposed s29A(3) thus requires re-writing to tighten it up.

Recommendation:
Amend (b)(iii) so that all aspects of the compliance behaviour be considered, under all Acts, including the RMA, EEZ&CS Act, Health and Safety legislation, and the Income Tax Act.
AND
Amend (3) to require a researched and informed decision, and that this decision be open to public input.

29B Granting of permit not indicative of any matter relating to health, safety, and environmental legislation

We support this provision since it makes it clear that a minerals consent does not establish an expectation that land use, water use and discharge permits etc will be issued.

20 Section 32 amended (Right of permit holder to subsequent permits).

ECO strongly submits that s32 be dropped, and that instead there be not an automatic right of exchange for the next kind of permit (ie exploration for prospecting, mining for exploration), but that the holders have the first right in priority, IF any such extension of minerals activity is allowed. We note too that the Prime Minister John Key, has said that prospecting would be allowed on World Heritage Areas but not exploration or mining. Such a position would not be permitted by s32, since the applicant has an

automatic right of exchange. We urge that this be fixed by making the existing holder have a first right of application but not an automatic right of exchange.

We appreciate that applicants want a right of exchange and they will use investment security as an argument for this, but we are convinced that the public interest may sometimes outweigh that quest for certainty, and that the automatic right of exchange should be removed and a right in priority established instead.

Recommendation:
Amend section 32 to remove the automatic right to move to the next type of mineral permit.

21 Section 33 replaced

"33 Permit holder responsibilities"

The permit holder should be required to co-operate with land owner and other interested parties ECO recommends that there be a new subsection added, that is:
"(f) cooperate with the land owner and occupier and interested iwi and hapu.

Recommendation:
Add a new (f) to read: **"(f) cooperate with the land owner and occupier and interested iwi and hapu.**

"33B annual review meeting for holders of Tier 1 permits"

In general we support this provision, but we do suggest that there be strict protocols so that these meetings remain professionally directed to compliance and do not become a matey way of capturing regulators.

22Section 35 replaced (Duration of Consent)

(7) The 40 year default term of the minerals permits is far too long. In our view there should be a 20 year term with a 10-yearly review of conditions and royalties, and that there should be a right in priority but no automatic right of renewal for permits at the end of the 20 year term. Forty years is far too long and is way beyond the life of most mines and of the return on most investments. Investment terms are very rarely for 40 years, let alone 80 years, if the right of renewal is exercised.

In relation to s32 and s35, we oppose any right of automatic extension of terms and also any right to progress from exploration to mining. Neither minerals permits nor access agreements should have a right to exchange and progression, least of all with no change of conditions.

In ECO's view it is entirely reasonable to have 10 yearly reviews of conditions and regular reviews of royalty and resource rent payment rates.

Recommendation:

Amend section to:

- Allow a **20 year term with a 10-yearly review of conditions and royalties, and that there should be a right in priority but no automatic right of renewal for permits at the end of the 20 year term**
- Allow 10 yearly reviews of conditions and royalty and rental payments.

- Remove the automatic right to move to the next type of mineral permit.

35B Conditions imposing relinquishment obligations

Here or elsewhere there should be a provision that permits may NOT be relinquished unless conditions have been met or bonds and insurance posted to cover future liabilities. The relinquishment of a permit should not be used as a way of avoiding liabilities.

Recommendation:
Amend these provisions to ensure permits may NOT be relinquished unless conditions have been met or bonds and insurance posted to cover future liabilities

24 Section 36 amended (Changes to permit)

We welcome the insertion of the provision that any change made by a Minister has to be consistent with the Minerals Programme and payments, **but we consider that the changed s36(1)(1)and s36(1)(2) are too sweeping, and amount to modified Henry the VIII clauses.**

Given the investigations into apparent corrupt behaviour of Ministers in Australia, and in general, ECO considers good law and public policy should be designed to limit the temptation to corruption and special favours.

ECO submits that:
These proposed substitute subsections should:
a) specify grounds for any changes;
b) should require reasons to be cited by the Minister;
c) should require that these have to be published;
d) Provisions should also be inserted for objection and review of such Ministerial decisions.

ECO opposes the proposed s36(1)(2) [on page 29] as allowing too many changes, and in particular we object to S36(1)(2)(b) the Minister being able to extend the land to which a permit applies. We suggest that the Minister should be able to reduce, but not to expand the area involved in a permit provided that does not reduce future liabilities.

ECO is concerned that the government seems very focussed on promoting and favouring minerals applicants and operators and investors, but seems to have little regard to other users of land in which Crown owned minerals occur.

We do support the continuation of the right of land owners and occupiers to refuse access to those wanting to explore or mine on land they own or occupy, and we urge that this remain.

Re s36(4c), we find this provision both convoluted and likely to induce applicants to apply for "indulgences" or changed conditions instead of trying to comply with conditions. This provision seems to invite corrupt behaviour.

Recommendation:
Amend this section to ensure that the Minister:
a) specify grounds for any changes;
b) should require reasons to be cited;
c) should require that these have to be published;
d) Provisions should also be inserted for objection and review of such Ministerial decisions.

25 Sections 37 and 38 Replaced

We support these changes, the ability of the Minister to take an initiative on specific grounds and the use of an independent expert, but we wonder what is the test for such independence?

Cl 26 Section 39 amended (Revocation of permit) And section 40 [page 34] and section 41D (3) Revocation & Surrender of permits

There needs to preserve some conditions and obligations when a permit is revoked or surrendered or transfered.

These sections replace s 39(1) to (6) with new text and relates to s40**. ECO is concerned that any (eventual) revocation or transfer or surrender of a permit should in some cases preserve the obligations and conditions that may attach to that permit.** Since conditions attach to permits, the Act should ensure that an operator who chooses cannot simply void their obligations by simply getting the permit revoked (or surrendered).

We consider that residual liabilities and obligations should be able to continue to apply to the permit-holder, even if the permit itself is relinquished (voluntarily or otherwise), and that text to this effect should be drafted and applied if the Minister sees fit on relevant grounds.

In section 39(6B) we recommend and submit that reasons for revocation should be recorded, to provide a basis for the consideration of the track record of operators and to avoid capricious ministerial behaviour.

Recommendation:
Amend these sections so that residual liabilities and obligations should be able to continue to apply to the permit-holder, even if the permit itself is relinquished (voluntarily or otherwise)
Amend section 39(6B) so that reasons for revocation are recorded.

29 Section 53(3) amended (Access to land for petroleum).

ECO considers that the test for access to conservation land and water in general should be the same as that for other activities. The current provisions continue the privileged status for mineral activity on conservation land.

In relation to s53(3)(b)(ii) any access agreement to areas listed in Schedule 4 and agreed under S61(1A), it is our firm view that any access agreement must be between the Minister in charge of the land or water and the applicant. The Minister of the Crown Minerals Act has no role in the access agreement, but must ascertain that the Conservation Minister or other minister has agreed to such an access agreement.

ECO rejecta the provision in the Bill for the Minister of Crown Minerals to "horn in" on the responsibilities of the Conservation or other Minister, since this is just a means of derogating from conservation and asserting extractive economic values instead.

Thus we submit that the proposed

s54(3)(b)(ii) be amended by deleting after the words "permit holder" the text ", the Minister,"

30 Section 54 amended (Access to land for minerals other than petroleum).

This section needs also to have the language at the last phrase of s54(3) so that it references only the activities in relation to activities allowed under s61(1A).

The test for the Minister of Conservation must also be the same as that for all other consents on conservation land, not simply to "have regard to" the matters listed in s61(1A) which are as follows:

> (2) In considering whether to agree to an access arrangement in respect of Crown land, the appropriate Minister shall have regard to—
> (a) the objectives of any Act under which the land is administered; and
> (b) any purpose for which the land is held by the Crown; and
> (c) any policy statement or management plan of the Crown in relation to the land; and
> (d) the safeguards against any potential adverse effects of carrying out the proposed programme of work; and
> (e) such other matters as the appropriate Minister considers relevant.

The Conservation Act test in s17U of that Act should be substituted since, as befits the Schedule 4 land a strong test should apply. This is as follows and is designed to ensure that conservation values are properly protected. Note particularly the text highlighted in s17U(3):

> ***17U Matters to be considered by Minister*** **[Conservation Act 1987]**

(1) In considering any application for a concession, the Minister shall have regard to the following matters:

- (a) the nature of the activity and the type of structure or facility (if any) proposed to be constructed:
- (b) the effects of the activity, structure, or facility:
- (c) any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity:
- (d) any information received by the Minister under section 17S or section 17T:
- (e) any relevant environmental impact assessment, including any audit or review:
- (f) any relevant oral or written submissions received as a result of any relevant public notice issued under section 49:
- (g) any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.

(2) The Minister may decline any application if the Minister considers that—

- (a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or
- (b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.

(3) The Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.

(4) The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—

- (a) could reasonably be undertaken in another location that—
  - (i) is outside the conservation area to which the application relates; or
  - (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or
- (b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.

(5) The Minister may grant a lease or a licence (other than a *profit à prendre*) granting an interest in land only if—

- (a) the lease or licence relates to 1 or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and
- (b) in any case where the application includes an area or areas around the structure or facility,—
  - (i) either—
    - (A) it is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or
    - (B) it is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and
  - (ii) the grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.

(6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for—

- (a) the protection of public safety; or
- (b) the protection of the physical security of the activity concerned; or
- (c) the competent operation of the activity concerned.

(7) For the purposes of subsection (6), the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.

31 Section 61 amended (Access Agreements in respect of Crown land and land in common marine and coastal area)

ECO objects in the strongest terms to this insertion of the Minister of Crown Minerals/energy/BIE into the decision making on access. We urge Parliament to delete the whole of clause 31 and the amendments to s61, but failing this, we urge that the proposed insertion of "Minister and the" in all places in this clause be rejected and deleted and so too should other such amendments in this and other clauses.

Thus, in cl 31, delete subclauses (1), (2), (5), (6) – since that one inserts consideration of economic and other benefits to in effect over-ride conservation and the purpose for which the land is held), and (7).

The Bill's provisions above are contrary to commitment to long term conservation. Conservation will be badly compromised by this and other such provisions in the Act where the Minister of Crown Minerals will be able consistently to in effect override the Conservation Minister because it is almost always the case that the minerals minister outranks the Conservation Minister.

Given the public's outrage and rejection of intentions to have minerals activity in conservation land including Schedule 4 land, we regard these changes as very objectionable, and they would severely damage conservation prospects in New Zealand. We urge Members of Parliament to delete these provisions.

(9) re s61A and Schedule 4

ECO is very concerned that this provision appears to mean that only the lands in s1-8 of Schedule 4 will protected from removal so that those areas listed in s9-14 of Schedule 4 appear to become Vulnerable to removal from Schedule 4. These include:

> 9 The area described in the Parakawai Geological Area Notice1980 (*Gazette* 14 August 1980, p 2408):
>
> 10 All land that is—
> (a) held, managed, or administered under the Conservation Act 1987 or under any enactment set out in Schedule 1 of that Act at the commencement of this Act; and
> (b) situated on any island in the area bounded by latitude 35°50′ and latitude 37°10′, and longitude 177° and longitude 174°35′—
> but does not include—
> (i) Red Mercury Island (Whakau); or
> (ii) Green Island; or
> (iii) Atiu or Middle Island; or
> (iv) Korapuki Island,—
> all situated in the Mercury Islands:
>
> 11 All Crown owned land held under the Conservation Act 1987 or any enactment set out in Schedule 1 of that Act on the Coromandel Peninsula that lies north and north-west of State Highway 25A (Kopu-Hikuai road) and the road from Hikuai to Pauanui Beach known as the Hikuai Settlement Road:
>
> 12 The internal waters (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) of the Coromandel Peninsula—
> where those lands or areas were so held, managed, administered, classified, declared, notified, or gazetted at the date of commencement of this Act.
>
> 13 The following marine reserves established under the Marine Reserves Act 1971:
> (a) Auckland Islands—Motu Maha Marine Reserve (SR 2003/389):

(ab) Horoirangi Marine Reserve (SR 2005/323):
(b) Kapiti Marine Reserve (SR 1992/71):
(c) Long Bay-Okura Marine Reserve (SR 1995/215):
(d) Long Island—Kokomohua Marine Reserve (SR 1993/72):
(e) Motu Manawa-Pollen Island Marine Reserve (SR 1995/216):
(ea) Parininihi Marine Reserve (SR 2006/282):
(f) Piopiotahi (Milford Sound) Marine Reserve (SR 1993/315):
(g) Pohatu Marine Reserve (SR 1999/162):
(ga) Tapuae Marine Reserve (SR 2008/96):
(gb) Taputeranga Marine Reserve (SR 2008/226):
(h) Te Angiangi Marine Reserve (SR 1997/130):
(i) Te Awaatu Channel (The Gut) Marine Reserve (SR 1993/316):
(j) Te Matuku Marine Reserve (SR 2005/205):
(ja) Te Paepae o Aotea (Volkner Rocks) Marine Reserve (SR 2006/281):
(k) Te Tapuwae o Rongokako Marine Reserve (SR 1999/351):
(l) Tonga Island Marine Reserve (SR 1993/338):
(m) Tuhua (Mayor Island) Marine Reserve (SR 1992/386):
(n) Ulva Island—Te Wharawhara Marine Reserve (SR 2004/398):
(o) Westhaven (Te Tai Tapu) Marine Reserve (SR 1994/56):
(p) Whanganui A Hei (Cathedral Cove) Marine Reserve (SR 1992/387):

14 The following marine reserves established by section 7(1) of the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005:
(a) Hawea (Clio Rocks) Marine Reserve:
(b) Kahukura (Gold Arm) Marine Reserve:
(c) Kutu Parera (Gaer Arm) Marine Reserve:
(d) Moana Uta (Wet Jacket Arm) Marine Reserve:
(e) Taipari Roa (Elizabeth Island) Marine Reserve:
(f) Taumoana (Five Finger Peninsula) Marine Reserve:
(g) Te Hapua (Sutherland Sound) Marine Reserve:
(h) Te Tapuwae o Hua (Long Sound) Marine Reserve.

15 The following national parks or parts of national parks constituted under the National Parks Act 1980:
(aa) Abel Tasman National Park additions (*Gazette* 21 February 2008, p 722):
(a) Arthur's Pass National Park additions (*Gazette* 7 July 1994, p 2227):
(ab) Egmont National Park additions (*Gazette* 1 June 2000, p 1297):
(b) Fiordland National Park addition in relation to Waitutu Forest (*Gazette* 23 September 1999, p 3211):
(c) Kahurangi National Park (*Gazette* 4 April 1996, p 977):
(d) Kahurangi National Park addition (*Gazette* 28 March 2002, p 807):
(e) Paparoa National Park eastern additions (*Gazette* 28 March 2002, p 807, excluding Area "B" shown on SO 302281 (formerly part Section 1, SO 15152)):
(ea) Paparoa National Park northwestern addition (*Gazette* 28 March 2002, p 807, Area "B" shown on SO 302281 (formerly part Section 1, SO 15152)):
(f) Paparoa National Park western additions (*Gazette* 25 July 2002, p 2317):
(g) Rakiura National Park (SR 2002/6):
(h) Westland National Park additions (*Gazette* 28 March 2002, p 808).

16 The following areas declared to be wilderness areas under the Conservation Act 1987:
(a) Adams Wilderness Area (*Gazette* 22 May 2003, p 1380):
(b) Paparoa Wilderness Area (*Gazette* 1 July 2004, p 2073).

17 The following reserves under the Reserves Act 1977:
(aa) the scientific reserve at Burwood in the Southland District (*Gazette* 20 March 1997, p 650):
(aab) the nature reserve in Dunedin City (*Gazette* 16 August 2007, p 2401):
(aac) Ianthe Scientific Reserve (*Gazette* 28 March 2002, p 808):

(aad) the scenic reserve at Kaikoura Island in Auckland City (*Gazette* 11 November 2004, p 3688):
(a) a scientific reserve in the Mackenzie District (*Gazette* 29 August 1996, p 2465):
(ab) Rakitu Island Scenic Reserve (*Gazette* 2 November 1995, p 4265):
(b) Tuku Nature Reserve (Chatham Islands) (*Gazette* 15 August 1996, p 2269):
(c) Whatipu Scientific Reserve (*Gazette* 26 September 2002, p 3776).

Recommendation:
Delete subclauses (1), (2), (5), (6) and (7)

Replace (9) with a provision so that land can only be added to and not removed from the fourth schedule.

32 New Section 61C [pp40-41] (Access Arrangements in respect of Mining where Minister of Conservation is the Relevant Minister).

ECO supports public consultation but considers that the decision as to whether the mining is significant or not should be made in the light of public submissions not prior to them. There should be a lower test, of "negligible" or "very low impact" that determines whether there is significance and hence consultation.

We know from the RMA and other situations that the term "significance" is subject to inflation, with many damaging activities declared to be less than significance (eg the EEZ&CS Regulations as proposed by officials).

In regards to proposed s61C(2) and (5), we oppose the Minister of Crown minerals being part of the decision making on matters to do with conservation land.

We consider the same test as in s 17U of the Conservation Act should be applied.

The test of the "activities net impact" s61(2)(c) is totally inappropriate given that this is conservation land. Moreover, that and other matters should be in the end determined in the light of public submissions and should not be allowed if inconsistent with the conservation purpose of the land.

We submit that the s61(2)(c) test be deleted.

The public notification should also apply to exploration applications since these can cause widespread clearances and other impacts with grid surveys and sampling, bulk sampling (a "sample" can be the size of large motorway cuttings), and have other damaging impacts.

To remedy this problem, wherever in s61C the term "mining" appears, substitute the phrase "exploration or mining".

ECO supports public notification but in our view this should apply to all minerals permit applications that may have non-negligible effect, and also to all access applications for minerals activities on Conservation Land. This would

allow the public to have a say, but of course there needs to be a proper process for this – something notably missing from the minerals regimes.

We are very concerned that the public notification in s61C of the access agreement may be avoided under pressure from the Minister of Crown Minerals and the applicant on the Minister of Conservation, especially if the permit must be granted by virtue of Section 32 of the Crown Minerals Act if the applicant already holds a prospecting or exploration permit.

It is entirely unreasonable for the Minister of Crown Minerals to elbow into the Minister of Conservation's powers. The Minister of Conservation has the job by virtue of being the land administering Minister, and the Minister of Crown Minerals is simply bullying their way into these decisions. Conservation is bound to suffer, and those values once lost are largely irreversible. In contrast, the minerals will remain in situ and will not be lost, so this is a very lop-sided set of consequences.

Recommendations:
In 61C (2) and (5) Delete the words "the Minister and"
In 61C(2) and (5) apply the same test as in s 17U of the Conservation Act.
Delete the test in 61(2)(c)
In 61C replace the term "mining" wherever it occurs with the phrase "exploration or mining".
Require public notification.

34 – Section 90 amended

8(c) Drafting error? We wonder whether this drafting *"Until information supplied under this section is required to be made available…"* may lead to problems. It implies that the information cannot be so used by the Minister, Secretary or enforcement agency after the information is available to others. Is this intended?

35, p 43, New Section 90AA (Disclosure of Information).

We are concerned that this provision may impede the operation of the Official Information Act (OIA) in that it does not seem to contain any consideration of the public interest or other criteria for releasing what might otherwise be considered to be confidential information. We appreciate that in general information gathered by parties undertaking minerals activity may need to be kept confidential, but we see no reason for not providing the OIA considerations for release. One solution would be to make this section subject to the OIA as an avoidance of doubt provision.

In clause 38, New Section 90D should also be amended in the same manner.

Recommendation
In section 90C and 90D include a provision that these sections do not over-ride the Official Information Act.

(2) Who or what are external advisors, and on what basis is there a check to ensure no conflict of interest? Government agencies are prone to using industry advisors, and it is unclear in the case of this proposed section who the advisors are external to.

Cl 38 New Section 90D
(1) and (2) – "the land administering Minister" should also be included in the list to whom information may be provided – indeed probably it "must" be provided to them.

We see no reason for secrecy about the royalties paid, particularly if this provision is used to obscure the volume and value of the production. Once someone has an operating exploration or mining permit, no one can deny them the right to pursue it, so what is the problem? Society is entitled to know what returns are provided by those who use a publicly owned resource.

Recommendation
In (1) and (2) add "the land administering Minister" and amend "may" to "must".
In section 90D include a provision that this section does not over-ride the Official Information Act.

38 s90E – Conditions that may be imposed on providing information or documents under section 90D
We disagree with this provision. There may be circumstances where limitations are reasonable, but it should not be a blanket right to impose such conditions particularly for destruction of documents. The minerals are a public resource and the presumption should be for openness and for public access except in limited well justified circumstances.

Recommendation:
Delete proposed new section 90E

39 Section 91 Secretary to Keep Registers – include applications and make that public.

ECO considers it that the public should also be able to see applications for minerals permits and the supporting documents that go with them, including any Environmental assessment, description of the target minerals, the proposed methods and a map of the location of the area as well as any information about the applicant.

This is information that communities and land owners and occupiers strongly value and it is unreasonable that this is not made available. Such information was routinely made available in a publicly accessible place after the OIA was passed in 1982, and it seems to be a relatively recent practice on the part of what is now NZPAM that applications are no longer viewable. An open society should make such information public. Why should it not be? If there are some kinds of information about applications that should not be made public, let's hear some specific rationale, rather than not requiring that such a register be open for public inspection. That presumption of secrecy was the case prior to 1982, and was reversed after the OIA

was passed. There is no reason for such secrecy to be the case in 2012, and we know of no consultation with interested civil society around the discontinuation of the public availability of such information.

Such a public register would not require much extra effort on the part of NZPAM given that they must already maintain a register of applications.

Recommendation:
ECO thus submits that a further subclause be added to s91(2) "(aa) a copy of every application for a minerals permit and details of the location, minerals sought, methods proposed and anticipated environmental impacts, as well as of the applicant(s)."

41 s99 B Powers of Enforcement Officers

We oppose the proposed subsection (6) on the grounds that this provision will allow an appointed enforcement officer to take any person with them – or even unaccompanied to go and do search, surveillance or any other activity permitted to an appointed officer, and that lay person will have huge powers. We do not think that is acceptable in a free society. Please delete this proposed sub-section.

In these new provisions it is unclear who will do enforcement under the RMA including sections 332 and 334 of the RMA. These provisions are important as not all mines are subject to the full effect of the RMA and are still subject to the provisions of the old Mining Act and Coal Mines Act.

Recommendation:
Delete subsection (6)
Retain current wider enforcement powers.

Cl 41 S99F – Protection of persons acting under the authority of this Act

The concerns we express in relation to S99B are intensified in relation to this provision. We can see there should be some protections, but this and the Search and Surveillance Act seems to put the Crown and its helpers above the law. We do not support that.

Cl41 s99G, Royalties

ECO considers that all exploration and mining extractions should be subject to paying royalties and that there should be regular reviews of and disclosures of royalties paid. It is outrageous that huge mines like Waihi Gold pay no royalties. It is entirely reasonable for any government and society to ask for a fair return on the minerals, (and to internalise negative externalities and harms from exploration and mining). ECO recommends that requiring payment of royalties by all operators who are extracting minerals be compulsory whichever the minerals programme or other regime in force when the licence or permit was issued. This is part of the rights of

sovereign governments. The argument advanced in the RIS that a permit is a contract between government and the applicant is unsound. It is a permit and there is absolutely nothing that guarantees that royalty regimes will not change, any more than if a person takes a job they are guaranteed that the tax regime will forever stay the same.

The economic theory of resource management is very clear that for economic efficiency there should be royalties or some other form of resource rents paid by those who use or use up a scarce resource. True efficiency also requires that externalities be internalised. That too should be done. Such a dual regime should be introduced to achieve the purpose of the Act, with payments for negative externalities and for resource rentals (see for instance the textbook by Perman, Ma, McGilvray and Common).

Recommendation:
Require payment of royalties by all operators who are extracting minerals be compulsory whichever the minerals programme or other regime in force when the licence or permit was issued.

46 S 101 Amended (Penalties) p 56

The penalties listed are far too low. These will not deter non-compliance where the activity provides significant benefits to the non-complier. Non-compliance with the substantive conditions and provisions of a permit or failure to have a permit for activities, etc, should be penalised with fines in the millions, not in the tens or hundreds of thousands of dollars. The mess left by the Tui mine has continued for decades and has cost at least $20m to fix, more when the work done by the then Catchment board and others is counted in. The provisions of proposed S101 are just absurdly weak.

Recommendation:
That the penalties in s101(1) should be in
(a) up to $40 million,
(b) up to $500,000 per day
and equivalently ramp up the penalties in s101(2) and s101(3) and 3A.

50 – Repeal of definition of existing permits etc.
We are not clear why these are no longer needed, and the explanatory notes provide no insight into this.

51 Insertion of new sections 115A-115I
Re new sections 115 A & B
We consider that the preservation of the old minerals programmes complicates the regulatory regime and will lead to on-going confusion by both regulators and regulated alike. We do not accept that old minerals programmes have to be preserved as long as permits issued under them endure. This is taking investment certainty too

far and omits to notice that governments have every right to alter conditions of access and permitting by virtue of sovereign right.

This preserving of massively outdated conditions is elevating the rights of investors to certainty beyond the right of the public good to modern governance. Conditions and regulations, minerals programmes should not be altered capriciously, but the public good does constitute a valid reason for changing the terms on which permits are issued and held, and that includes minerals programmes. Thus we reject the provisions that preserve old minerals regimes for many, many decades, just as we reject the excessively long terms of permits and rights of automatic renewal.

C51 s115C Provisions about royalties

Subsection 2 – ECO opposes the preservation of old royalty regimes. This is unfair to the Crown and to the public and it is inefficient economically. We submit that s115(c)(2) should be deleted.

Permit holders have no right to have old royalties regimes preserved, particularly when those royalties are zero. In principle anyone applying for a permit knows that the Crown has the sovereign right to change the regime, and that royalty (and tax) regimes can and should from time to time change. It is nonsense of officials to argue that the royalties are part of a contract. There is no such commitment to change nothing, and the illusion of the right to absolute certainty should not be fostered in this way, least of all at the expense of the public purse, economic efficiency and a fair return to the Crown.

S115 continued. The Transitional provisions seem to favour applicants over the public interest. As well as the provision that preserves low royalties, as discussed above, the provision for treatment of access agreements over Crown Land (new S 115G) are advanced to the new regime, whereas all other aspects preserve the old rules.

Recommendation:
ECO recommends that new proposed s115G be amended so that existing applications for access agreements stay on the existing access agreement rules and are NOT put on to the new process where the Minister of Crown minerals has a say.

53 Schedule 2 – New Schedule 5 – Thresholds for Tier I and Tier 2 activities. ECO considers that the criteria for Tier 1 and 2 are faulty. We consider that the thresholds for these activities should be quantatively and qualitatively different.
ECO suggests that size, volume, area and possible impacts should be included. The threshold for annual production should be 25,000t, 80,000t and 25,000t of alluvial metallic minerals. All hard rock mineral mining and all underground mining should be Tier 1.

Part 2 Amendments to the Conservation Act 1987

56 Section 2 Amended

ECO supports the inclusion of Ramsar in this.

57 New Sections 18AA and 18AB

Section 18AA
ECO considers that the role of the Minister of Conservation is being undermined in this provision that the designation of conservation areas should become the role of the Governor General by Order in Council. This effectively subjects conservation classifications to the will of the Cabinet, rather than the will of the Minister of Conservation. We see this as a deliberate attempt to restrict and undermine conservation in New Zealand. We object particularly to subsection (1) and to subsection (5) which is especially obnoxious and should be deleted. We consider that subsection (5) is designed to allow areas of the conservation estate to be re-classified to allow them to escape the classifications in Schedule 4 of the Crown Minerals Act and for other non-conservation purposes.

Recommendation
Delete new section 18AA

58 Section 18 amended (Minister may confer additional specific protection or preservation requirements) p 65

This provision to make the designation of wilderness areas and sanctuaries a matter for the Cabinet (Governor General by OIC) amounts to yet another attack on the powers of the Minster of Conservation. We strongly condemn it and ask that this clause and its provisions be deleted.

Delete Clause 58.

Part 3 Amendments to the Continental Shelf Act 1964

We had understood that the EEZ& Continental Shelf (environmental effects) Act had displaced the Continental Shelf Act for the purposes of minerals activities. This suggests we were wrong.

61 new s5AA Mining for minerals on continental shelf on or after commencement of this section

We are unclear why S10 of the Crown Minerals Act, which reserves gold, silver, petroleum and uranium to the Crown, is not to apply. Does this mean that the Crown does not claim to own these minerals at sea?

Does new Section 5AA of the Continental Shelf Act mean that up to now the Continental Shelf Act permits issued have incorrectly allowed exploration and mining on the Continental Shelf?

Part 3 Amendments to the Reserves Act 1977

Cl 64 Section 5 Amended (Restricting application of this Act)

ECO strongly opposes cl 64(1) which removes the capability to make forests lands into reserves. The change that this does removes the following:

> ***5 Restricting application of this Act***
>
> (1) This Act shall not apply with respect to any land that is subject to the Forests Act 1949:
>
> provided that, notwithstanding anything to the contrary in that Act, the Minister may from time to time, by notice in the *Gazette*, declare that any State forest land shall be a recreation reserve, an historic reserve, a scenic reserve, a nature reserve, or a scientific reserve subject to this Act, and the land shall thereupon be held as a reserve for recreation, historic, scenic, nature, or scientific purposes, as the case may be, accordingly; but no such declaration shall be made except with the consent of the Minister of Forestry.

As far as we can understand the effect of this provision in Cl 64, it will no longer be possible to create a recreation reserve, an historic reserve, a scenic reserve, a nature reserve, or a scientific reserve from lands under the Forests Act 1949.

Recommendation:
Delete Clause 64(1).

Cl 65 Section 6 Amended (Powers of Minister in cases of doubt).
ECO is concerned that this provision is designed to allow nature and or scientific reserves to be declassified at the wish of the Cabinet, with no apparent due process of public consultation.

Recommendation:
Delete the proposed clause 65 and its proposed section 6(5) of the Reserves Act ,
Or substitute "the Minister" for the "Governor General, by Order in Council made…the Minister " and do this throughout the Part relating to the Reserves Act.

66 and 67. New section 16A inserted (Classification of reserves on and from commencement of Crown Minerals (Permitting and Crown Land) Act 2012

These clauses seem to set up provisions so that after the passage and commencement of the Crown Minerals (Permitting and Crown Lands) Act, the Minister of the Reserves will no longer be able to make decisions on the classification of reserves or

reclassification or reserves (other than recreation, historic and scenic reserves) but rather, such classifications and reclassifications will be made by the Governor General by Order in Council, in effect the Cabinet. Once again, this seems to allow the domination of conservation decision making by economic ministers. There is also provision to allow reserves to be given classifications for different purposes in different parts – so this seems to open the way to allow lessening of reserve status for those areas of interest to minerals and mining interests.

Clause 67's changes to s 16A(6) of the Reserves Act suspends subsections 1, 2, 2(c)-2(G) also substitute the Cabinet by OIC rather than the Conservation Minister.

Recommendation:
Delete the proposed s16A(3)- (6).

68 Section 24 Amended (Change of classification or purpose or revocation of reserves)

(2) ECO opposes the removal of the proviso in s 24(1), since this will remove the protection for railway reserves, and so will allow the fragmentation and dislocation of the routes for railways.

Recommenation:
Delete proviso in 24(1)

69 Section 47 amended (Wilderness Areas)

ECO opposes the substitution of the Governor-General by OIC, for the Minister, and hence asks that the proposed s47(1)(1) be deleted from the Bill.

Recommendation
Delete change to section 47(1)

Part 5 Amendments to the Wildlife Act 1953 (p69).

ECO opposes the substitution of the OIC for the Minister and hence also the substitution of "Order in Council" for "proclamation" . Hence we submit that the whole of Part 5 be deleted from the Bill.
Recommendation
Delete Part 5 of the Bill

Schedule 1 – Schedule 4 of the Crown Minerals Act Replaced - Schedule 4 – Land to which s61(AA) applies.

ECO agrees the Schedule 4 lands should continue to be off-limit to minerals activities and permits. But see also our comments on s 61A.

ECO considers that World Heritage Areas and Ecological areas should be added to Schedule 4 of the Crown Minerals Act. These are very high conservation value areas by virtue of their classification and it is irresponsible to allow any kind of minerals activity in them.

A 2012 report by Turner to IUCN and the mining industry organisation ICMM recommends that governments terminate all minerals permits in World Heritage Areas and issue no further ones on the grounds that such activity is incompatible with World Heritage values.

IUCN criteria and resolutions of the IUCN General Assembly is that mineral activity should not be allowed on land or at sea in clause I to IV protected areas. The latest criteria released in September for marine areas reinforces that view. Most conservation land would meet the test of Part I to IV category land. Marine Mammal Sanctuaries should also be included as they protect threatened marine mammals including the critically endangered Maui's dolphin.

Recommendation:
Include World Heritage, Ecological Areas and other land and marine areas that meet IUCN category I to IV protected areas, and marine mammal sanctuaries in Schedule 4.

Schedule 2 – New Schedule inserted in Crown Minerals Act 1991 Schedule 5 Thresholds for Tier 1 and 2 Activities

As discussed above, ECO supports that all petroleum activities permits should be defined as Tier 1 activities.

We do not agree that the definition of Teir 1 and 2 (in Schedule 5) should depend solely on the value of spending or royalties. Hard rock activities, and other substances than those listed as Tier 1 all need to be in this classification. Impacts on the host environment, substances such as asbestos, silica, rutile and aggregates should all be included, as should all coal, lignite and peat exploration and mining permits.

The setting of spending or royalty limits will likely lead to multiple applications to get under the spending or royalty bar, as applicants engage in strategic behaviour. The limitation on spending etc will simply mean that applicants carve up the areas that they are interested in to come in below the bar for each application. This will have the perverse effect of providing an incentive to make multiple applications, so increasing transactions costs for applicant, processors and submitters and the community.

A fix for this problem would be to count any such permits in adjacent or near adjacent areas and amalgamated for the purposes of the Tier 1 and 2 definitions. Similarly, related party applications should be combined, or the device of using a multitude of company or applicant names will be used instead to avoid Tier One classification.

We consider that 2A(1) (d) and (e) could be combined so that any minerals permit in its fifth permit year is included,
AND that in relation to 2A(1)(f) that all underground operation permits should be defined as Tier 1, given the likely risks.

ECO considers that the criteria for Tier 1 and 2 are faulty. We consider that the thresholds for these activities should be quantitatively and qualitatively different.

ECO suggests that size, volume, area and possible impacts should be included. The threshold for annual production should be 25,000t, 80,000t and 25,000t of alluvial metallic minerals. All hard rock mineral mining and all underground mining should be Tier 1.

Recommendation:
The threshold for annual production should be 25,000t, 80,000t and 25,000t of alluvial metallic minerals. All hard rock mineral mining and all underground mining should be Tier 1.
2A(1) (d) and (e) should be combined so that any minerals permit in its fifth permit year is included,
AND that in relation to 2A(1)(f) that all underground operation permits should be defined as Tier 1, given the likely risks.

Conclusion

ECO is grateful for the opportunity to make these submissions and to be heard.

Cath Wallace
ECO Co-Chairperson