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snavoti@isa.org.jm

Re: Comments on the Interim Report of the Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154

Nauru Ocean Resources Inc. (NORI) appreciates the opportunity to submit written comments on the 15 May, 2016 Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154 Interim Report. NORI completed the initial questionnaire distributed to stakeholders and will confine our comments to the interim report and some of the key recommendations.

Firstly, we would like to acknowledge the work to date by the International Seabed Authority (ISA) in promoting and regulating exploration in the Area. For a new industry with large costs and complex technological requirements associated with it, providing regulatory certainty is a requirement for generating interest and investment.

We would also like to acknowledge the integral role the Secretariat and Legal and Technical Committee have played in supporting and furthering the work of the ISA with limited resources.

Notwithstanding the significant progress that has been made in developing the regulatory and legal framework for exploration, the pace with which the exploitation code is being developed is concerning to us and others in the industry. Industry requires certainty and currently, the approval process for the exploitation code does not appear to have certainty. Without certainty, investment will not occur, further delaying when the ISA and mankind will be able to benefit from the minerals within the Area.

NORI believes that the ISA needs to prioritize the approval of the exploitation code and confirm the key milestones and associated timelines so that the exploitation code can be adopted at the earliest possible time.

The next phase of polymetallic nodule exploration (in situ component testing and larger scale processing trials) will likely not occur until the exploitation regulations are finalised, and until it is certain that those regulations are commercially viable. Indeed, it is the lack of certainty around the exploitation code that is currently preventing some of the Contractors from taking the next major step of carrying out component tests, installing oceanic equipment for long-term environmental studies or trial mining. The next phase of conducting such in situ collector tests in the CCZ represents a significant ramp up in expenditure and committing to such a large investment while there is still the regulatory uncertainty is unlikely to happen.

Once a commercially viable exploitation code is adopted, this certainty would support increased investment from current Contractors and attract new interest and investment. This will in turn lead to the first commercial operation in the Area and allow mankind to benefit from the minerals in the Area.

As such, NORI believes that the ISA must adopt a commercially viable exploitation code, and must dedicate the resources necessary to achieve this as quickly as possible.

NORI is supportive of the recommendation that the Secretary General with support from the Presidents of the Assembly and the Council develop a strategic plan as soon as possible. A strategic plan would confirm the ISA's priorities so that a work plan, timeline and budget can be put into place to achieve them. Another benefit of developing a strategic plan is the ability for the ISA to communicate clearly what its priorities are and how it will achieve them; providing certainty for industry which is currently lacking. NORI stresses that the development of a strategic plan must be done expeditiously and quickly deliver a plan that can be actioned.

NORI acknowledges the increasing workload and burden on the Legal and Technical Committee (LTC) as the number of Contractors increases and as the industry advances towards exploitation. NORI wishes to acknowledge the integral role of the LTC in the ISA and would be supportive of the ISA providing the LTC with additional resources to complete its work but would suggest that the LTC be the body which offers up recommendations to the Council as to how it could be more effective and what assistance it requires.

To reiterate our key point, NORI believes that the ISA must dedicate its limited resources to the most pressing priority, which is the development and approval of the exploitation code. The development and approval of the exploitation code has been slow and cautious but it is now time to dedicate the time and resources to complete it.

In addition to NORI's general comments above, NORI provides the following responses to some of the report's key recommendations:

**Recommendation 1:** A study on the adequacy of sponsoring States legislation to control entities with whom they enter into contracts for exploration, drawing on the Seabed Disputes Chamber Advisory Opinion, should be commissioned.

Whilst such a study may be worthwhile, the focus at this point in time must be on finalizing the ISA's exploitation code, rather than reviewing sponsoring State legislation. NORI also notes that the sponsoring State legislation will likely need to make reference to the ISA Exploitation Code, and as such, NORI sees little point in reviewing sponsoring States legislation until after the ISA Exploitation Code has been finalized.

**Recommendation 3:** Future contracts should be prescriptive with standard terms and conditions and detailed plans of work that set clear objectives, which can be monitored and enforced

A Contractors' plan of work must be left to the Contractor to determine, it should not be prescribed by the ISA. The ISA is the regulatory body, and should not be trying to prescribe what should be included in a plan of work, which will vary from Contractor to Contractor depending upon their specific mineral deposit and differing technologies. Contractors' will need to be given scope to develop and change their mining plan, production rates and expenditures. Such commercial decisions must be left to the Contractor to determine, and should not be prescribed by the ISA. Importantly, should the Contractor need to change its plan of work (e.g. in order to respond to market conditions) the Contractor should be able to make such changes immediately without having to obtain approval from the ISA. With the early stage of the seafloor mining industry, the Authority must be careful to not be overly prescriptive for the plans of work. Industry will require flexibility as they progress their projects in this new industry and regulatory prescription when it comes to the plan of work could reduce the commercial viability and attractiveness of projects.

**Recommendation 5:** Carry out the study of relevant issues relating to the operation of the Enterprise requested in 2013 by Council of the Secretary-General, including the failure to reappoint a new Director-General and extend any such study to include an analysis of operation of the reserved area system.

NORI believes that the focus should be on finalizing the exploitation code. With respect to the Enterprise, if a contractor wishes to carry out a joint venture with the Enterprise, then this should be agreed upon at the time of applying for an exploration license. It would not be fair to a Contractor who has invested money during the exploration phase to then be told that they need to partner with the Enterprise. That is a decision that needs to be made by the Enterprise at the time of the exploration contract being granted. If the Enterprise has not elected to carry out a joint venture at the time of the exploration contract being granted, then the Enterprise should not have any rights to such a joint venture at the time of the exploitation application, as this could significantly impact the viability of the project for that Contractor.

**Recommendation 6:** An independent review of enforcement and oversight capabilities of the Authority is needed to inform the setting up of an independent regulatory body (Inspectorate).

NORI does not support establishing another independent regulatory body. The ISA is an independent body and NORI believes that the ISA can provide the regulatory and enforcement functions required. If the LTC is struggling to meet all of its current commitments in this area, additional resources should be added or a new division within the Secretariat should be considered.

**Recommendation 7:** The system of reviewing annual reports and approved plans of work made by Contractors should be reviewed in the context of LTC workload and the feasibility of alternatives considered, such as requiring alternate short and long reports in alternate years, with 50% of contractors producing short reports each year. Consideration should be given to maximum report length or page limits for annual reports. The review of Contractors' reports could be assigned to an independent regulatory body.

NORI would be supportive of easing the burden on the LTC.

**Recommendation 8:** Consideration should be given to establishing the Economic Planning Commission sufficiently ahead of the advent of commercial seabed mining and/or identifying economic issues of common concern that require further study.

NORI would suggest that the focus of the Economic Planning Commission should be broader than identifying economic issues of common concern and should also include the study and identification of global social, environmental and economic benefits resulting from seafloor mining. This will allow society to become educated on the process and the benefits of seafloor mining.

**Recommendation 9:** The levels of expertise in both the LTC and the Secretariat required to incorporate applicable standards for the protection and preservation of the marine environment should be increased as appropriate.

NORI is supportive of increasing the levels of expertise at the LTC and Secretariat regarding the protection and preservation of the marine environment. However, it is important that such expertise is balanced with industry experience, particularly with respect to technical and commercial matters.

**Recommendation 10:** Consider how to seriously engage with the scientific community and relevant deep-sea science projects and initiatives

Establishing a budget for seminars and workshops on environmental issues would be beneficial so long as the workshops are designed to produce outcomes and recommendations that can be used by the ISA. This approach has proven successful in building knowledge and establishing best practices.

NORI does not believe that a scientific committee to encourage and supervise marine scientific research is the best use of resources. There is a risk that the focus could shift to “pure science” instead of maintaining focus on what scientific work is required for EIAs. NORI acknowledges that a balance may be needed between what scientists want vs what industry needs.

With respect to the suggestion for independent research NORI would recommend that the ISA encourage Contractors to work with independent scientific researchers to deliver EIA studies, which is what we intend to do.

**Recommendation 11:** Whilst the onus to develop relevant marine technology should rest with the contractors the Authority should accelerate the specification of agreed performance standards

Prescriptive performance standards may be impractical to meet. Flexibility, rather than prescription is needed, particularly given the early stage of this industry. The ISA is the regulatory body, and should not prescribe what technology should be adopted or used, which will vary from Contractor to Contractor.

**Recommendation 12:** The Authority should be proactive in an emerging discussion about transparency, including a review of the confidentiality clause in contractors’ contracts, and should consider revising the Regulations regarding confidentiality.

The confidentiality clauses should reflect what is standard industry practice for mineral exploration and exploitation. This is necessary in order to protect the significant investments being made by Contractors, and their commercially sensitive information. NORI would be hesitant to move away from the type of confidentiality clause that is typically found in similar commercial endeavors.

**Recommendation 15:** Consider options to improve quorum of the Assembly, including the option of meeting biennially or at a different location.

NORI would support considering initiatives that would increase participation at the Assembly and ensure there is quorum. Ensuring there is quorum is important to avoid the possibility that decisions could be undermined due to a lack of quorum.

**Recommendation 16:** The Council should consider producing a record of decisions taken at each

session with a timetable for them to be carried out.

NORI is supportive of this recommendation. This would lead to increased transparency and accountability.

**Recommendation 17:** Consider making the work of LTC more transparent, limiting closed sessions to commercial in-confidence matters only.

Currently, the LTC makes its decisions public at the Council meeting. NORI is comfortable with the LTC's current approach and its responsiveness to requests to date.

**Recommendation 18:** As the workload increases, the Council should consider meeting twice per year. This should recognise the value of synergy between LTC and the Council (as well as the value of opportunities for non-members of the Council to observe and make interventions concerning the Council's business) and therefore relate any additional meetings of the Council to appropriate meetings of LTC.

NORI is supportive of this recommendation. The increasing workload and number of issues that need to be progressed in a timely manner as we move into the exploitation phase would benefit from more frequent meetings of the Council. A corresponding increase in LTC meetings may also need to be explored to ensure priorities continue to advance.

**Recommendation 19:** Consider the establishment of an independent regulatory body or inspectorate.

NORI believes that the regulatory functions can be established within the ISA, potentially as a division of the Secretariat. The LTC is the appropriate body to research this and make a recommendation to the Council after consulting with key stakeholders.

**Recommendation 20:** Discussions should be held with the member States with a view to increasing financial support for the Secretariat. This could include allowing the Authority to ring fence the additional fees levied on contractors, with the aim of employing more professional staff to administer their increasing workload rather than offsetting member States' contributions.

NORI supports the concept of increasing the financial support for the Secretariat if there is a clearly defined need. Increases in funding must be justified by outlining the priorities, timelines and required resources. This can be used as the justification for new funds and can be used to ensure accountability for any new funds or support for the Secretariat. At this stage it would not be appropriate to increase the fees levied on Contractors, given the recent implementation of an annual payment.

**Recommendation 21:** A review of required skills and available staff expertise should be carried out for current and future predicted activities. Any identified skills gaps should lead to the creation of new posts for which funding should be sought through the normal channels or fees imposed on the contractors. Forward planning should identify additional new skills and further posts that will be required. Secondments should also be investigated. The GESAMP model of consultative scientific advice would also be worth investigating.

NORI is supportive of reviewing the required skills and available staff with the current and future needs of the Authority but would not be supportive in principle of increasing or adding fees to Contractors to pay for increasing staffing costs, given the recent implementation of an annual payment which has already been a significant increase over the previous payment. Rather, member State's contributions should be considered if additional funds are required. Contractors are not generating any revenue and until the exploitation code is in place, they will not be able to generate any revenue so all new fees levied on Contractors, reduces the funding available to be used in advancing projects. If justification could be shown that demonstrated additional fees would reduce the time needed to adopt the exploitation code, then NORI would be willing to discuss additional fees. It is important to note that once Contractors are harvesting minerals from the seafloor, the ISA will begin to receive royalty payments which can be used for staffing. The longer the exploitation regulations take to implement, the longer the ISA will be dependent on member States and Contractor fees.

**Recommendation 23:** Examine ways of reducing the burden on the Secretariat such as by adjusting the reporting requirements on contractors (see Section 4) and making additional appointments such as a dedicated training officer.

NORI is supportive in principle of looking at opportunities to reduce the burden on the Secretariat but would suggest that the ISA's priorities, timelines and resources required should be reviewed to determine what additional resources are required. An emphasis on the approval of the exploitation code should be prioritized by the Authority and resources should be allocated accordingly.

**Recommendation 28:** Consideration should be given to restricting and re-focusing the remit of LTC. Alternative ways of working (e.g. more frequent meetings) should be considered as part of this exercise as well as the practicality of creating sub-committees, working groups or other Commissions and the setting up of an independent inspectorate or enforcement body that could relieve the LTC of part of its work relating to regulation and enforcement (see Recommendation 19).

NORI is supportive of examining options to improve the operation of the LTC. The LTC's current workload coupled with the increasing demands being placed on it as the Authority moves towards exploitation appear to be unsustainable. Without increasing resources or exploring other options to assist the LTC with the workload it will likely become a bottle neck for approvals within the Authority.

**Recommendation 31:** The Secretary-General (with support from 'Friends of the S-G' e.g. Presidents of both the Assembly and the Council) should present an initial draft Strategic Plan to the Council as soon as possible. The Council could then refine a first draft.

NORI is supportive but would caution against a long administrative process that will distract and take limited resources away from existing and approved priorities such as the approval of the exploitation code. A strategic plan will be useful to confirm the ISA's priorities and to develop work plans, timelines and budgets so that they can be achieved. NORI would stress that the development of a strategic plan must be done expeditiously and deliver a plan that can be actioned.

**Recommendation 32:** Rather than adopting a budget which then drives the work programme, the Strategic Plan should determine a Programme of Work and the Authority should then agree how to finance the work.

NORI is supportive of the ISA's priorities determining how its resources and budget is allocated.

**Recommendation 33:** As part of the Plan the Council should seek advisory opinions to address higher-level legal issues that the Authority must come to some conclusion about on going forward (developing States definition, monopolization, common heritage, effective control, dominant position).

The strategic plan should identify the priority issues that need action and the ISA should focus on these issues. The ISA does not have the resources to pursue all the issues therefore, it must prioritize the most important. NORI believes the ISA's focus should be on finalizing the exploitation code with its limited resources. Unless the exploitation code is adopted soon investment will go elsewhere.

**Recommendation 34:** Attention should be given to the formation of a regulatory body or Inspectorate.

NORI believes that the regulatory functions can be established within the ISA, potentially as a division of the Secretariat. The LTC is the appropriate body to research this and make a recommendation to the Council after consulting with key stakeholders.

**Recommendation 36:** Solutions to reduce the workload and possibly the mandate of the LTC need investigation.

NORI is supportive of ensuring the LTC has the resources required to carry out its functions and believes the LTC should remain focused on its key priorities.

**Recommendation 37:** The Secretariat should be re-organised to properly reflect strategic priorities and any new structure determined by the Council. An Environmental Division as well as a Legal Division and a Technical Division could be envisaged.

NORI is supportive of the recommendation if the Secretariat as structured today cannot achieve the ISA's priorities. With limited resources it is important that the Secretariat focus on the agreed to priorities, in particular the finalization of a commercially viable exploitation code.

**Recommendation 38:** Subject to development of a strategic plan and confirmation of future priorities by the Council, and allocation of appropriate resources, restructure and strengthen the Secretariat skill base.

NORI is supportive of ensuring the Secretariat is resourced to deliver on the ISA's priorities.

**Recommendation 40:** Implement a communications strategy and employ a dedicated communications professional to enhance visibility and outreach.

NORI is supportive of this in principle and believes that as the industry moves towards

exploitation continued stakeholder outreach and engagement will be required. NORI would strongly support a communications initiative that educates society on the benefits of seafloor mining and, in particular, the importance of metals to global social and economic development.

**Recommendation 44:** The President of the Assembly, President of the Council and the Secretary-General should work with the Government of Jamaica to resolve hosting issues. Possible options include:

- 1) varying technical meeting locations
- 2) varying timings of meetings
- 3) use of video conferencing

NORI is supportive of examining these issues as part of the process to increase the efficiency of decision making whilst, decreasing costs and increasing participation.

**Recommendation 46:** The Authority should develop a policy on transparency and conflicts of interest and should consider revising the Regulations to set standards for confidentiality.

NORI is supportive in principle but any changes to current regulations must consider the input of Contractors and confidentiality clauses must be discussed with Contractors to ensure that commercial interests are upheld. The confidentiality clauses should reflect what is standard industry practice for mineral exploration and exploitation. This is necessary in order to protect the significant investments being made by Contractors, and their commercially sensitive information. NORI would be hesitant to move away from the type of confidentiality clause that is typically found for similar commercial endeavors.

**Recommendation 47:** Non-confidential information should be shared widely and should be readily accessible.

It will be important to define “Non-confidential information” in such a way that does not impact a Contractor’s legitimate concerns regarding the confidentiality of its commercially sensitive information.

**Recommendation 48:** Transparency in the LTC needs to be addressed with urgency, and consideration should be given to opening up the LTC meetings more often.

Currently, the LTC makes its decisions public at the Council meeting. NORI is comfortable with the LTC’s current approach and its responsiveness to requests to date.

**Recommendation 49:** Investment is needed in better data management and data sharing mechanisms.

NORI is supportive of this recommendation.

**Recommendation 50:** Attention should be given to transparency as the finance provisions in the regulations and the benefits sharing regime are developed, which will have an impact on the ability of the Authority to act on behalf of mankind with special consideration for the needs of developing States.

NORI is supportive of this in principle and trusts that transparency will be discussed during the development of the exploitation code.