



## **Views and comments to the “1<sup>st</sup> Working Draft” of Deep Ocean Resources Development Co., Ltd. (DORD)**

### **I. Commenter’s information**

Deep Ocean Resources Development Co., Ltd. (DORD) is a contractor of exploration for Polymetallic Nodules with the International Seabed Authority.

### **II. Fundamental standpoint for submitting comments**

1. Concerning the deep ocean mining, it has been commonly acknowledged for some time that very significant technical and economic difficulties stand on the way of early-stage work, and such difficulties are likely to remain a major obstacle for now, making it difficult and uncertain to estimate when commercialization might be realized.

Furthermore, even if the routine operation of deep ocean mining was established, it would face risks that have not been encountered in the normal situation of on land mining due to the threats to reliable operation jeopardized by weather and ocean conditions.

Clear knowledges of the mining systems and other related technologies and systems essential to realize the deep ocean mining, and the detailed and desirable measures for the preservation of the ocean environment have yet to be developed. Many elements for implementation of exploiting mineral resources in the Area are unclear and it is, therefore, difficult to decide detail aspects of exploitation regulations on this account.

At present we would, therefore, state, with the assumption of various possibilities, the comments of exploitation regulations that will enable commercial exploitation.

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2. Since the regulatory framework for mineral exploitation in the Area is currently under consideration separately from “Environmental Regulations” and “Seabed Mining Directorate Regulations”, a comprehensive review must be undertaken when these three regulations are integrated. Furthermore, it is expected that details of some provisions of exploitation framework would partly differ depending on three mineral categories of polymetallic nodules, polymetallic sulfides and cobalt-rich ferromanganese crusts.

DORD would make comments of present time based on views of polymetallic nodule.

### **III. Comments and suggestions reference to the relevant parts of the working draft**

3. As to Draft Regulation 21 “Annual contract administration fee” and Draft Regulation 22 “Annual fixed fee”, Part V “Financial terms of an Exploitation Contract”

The initial and early starters of exploiting deep sea resources have very high financial risk until the industry has a successful track record of commercial production. While for later starters, starting after observing successful track record of commercial production, development risk and cost of capital are low. It is recommended that there should be a series of incentives for first and early starters encouraging them for taking most financial risk.

During early stage of implementation of the Exploitation Regulations, rate of annual fixed fee and payment of royalty should be decrease to lower financial risk for about 10 years after starting exploitation until successful commercial operation would be attained.

4. As to Section 11 “Commercial production”, Annex VII

It is mentioned in 11.2, Section 11 of the Annex VII that “During the Commercial Production the contractor must use all commercially reasonable efforts to optimize recovery of the Minerals and to produce and market Minerals removed from the Mining Area **at the recovery rates contemplated by the Mining Plan**”. It is proposed that the bold

letter part should be deleted.

It is given in Paragraph 1(a), Section 6, Annex of the Agreement 1994 that “Development of the resources of the area shall take place in accordance with sound commercial principles”.

It is very important for the contractor to conduct sound commercial mining operation, controlling production and ore grade (abundance in the case of polymetallic nodule) by the contractor, and this enable the contractor to obtain optimal commercial benefit and to recover invested capital. The rights should be given to the contractors to allow them to make decisions from expanded choices and to conduct commercial mining operation flexibly responding to economic situation such as metal prices.

#### **IV. General or Specific comments on the development of the regulatory framework**

5. We believe that Exploitation Regulations need to be discussed based on the accurate evaluation of economic efficiency with the knowledge of experts, taking into consideration of technical and economic difficulties in exploiting mineral resources in the Area.
6. Every Contractor is conferred the exclusive right to explore for or exploit the specified categories of resources in the area covered by the plan of work pursuant to article 3 4(c), ANNEX III of the UNCLOS. At the same time, an Exploration Contractor shall have a preference and a priority among applicants for a plan of work covering exploitation of the same area and resources in accordance with article 10, Annex III of the UNCLOS. In the views of these provisions, regulations on Prospecting and Exploration for Polymetallic Nodules in the Area clearly provides for the exclusive right, preference and priority that Exploration Contractor has in Regulation 24.

As far as the working draft is concerned, a preference and a priority of an Exploration Contractor to exploit the same resources category in the area covered by the plan of work is described indirectly in Draft Regulation 11 3(b). The exclusive right is also not described in

regulations but merely described in C, Annex VI and in section 3.3, Annex VII.

It is suggested that preference and priority of Exploration contractor and exclusive right of Exploitation contractor should be clearly mentioned in Exploitation Regulations or Seabed Mining Directorate Regulations.

7. In accordance with article 147 of UNCLOS, it is required that activities in the Area shall be carried out with reasonable regard for other activities in the marine environment. There is a similar provision in section 5, Annex VII of the working draft.

The rights of Contractors to secure safe and stable operations, however, are not given in not only UNCLOS but also the Working Draft. We suppose consideration of definition about these rights is required.

8. According to Draft Regulation 4, it is required for the applicants for approval of plan of work to submit many documents including ones shown in Annexures. In addition to that, exploitation contractor shall submit annual report and royalty returns in accordance with section 19, Annex VII and Draft Regulation 27 respectively, and other related documents.

Since these documents include a wide range of items with detail description, consideration of necessity of submission of all documents is required for avoiding to load excessive duty on operator.

## **V. Lists of supporting documents accompanying our submissions**

### **(1) Agreement relating to the implementation of Part XI of the UNCLOS (Agreement 1994)**

#### Section 6. Production policy

1. The production policy of the Authority shall be based on the following principles:
  - (a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

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## **(2) Article 3 4(c), Annex III, UNCLOS**

### Article 3. Exploration and exploitation

#### 4. Every approved plan of work shall:

- (c) confer on the operator, in accordance with the rules, regulations and procedures of the Authority, the exclusive right to explore for and exploit the specified categories of resources in the area covered by the plan of work. If, however, the applicant presents for approval a plan of work covering only the stage of exploration or the stage of exploitation, the approved plan of work shall confer such exclusive right with respect to that stage only.

## **(3) Article 10, Annex III, UNCLOS**

### Article 10. Preference and priority among applicants

An operator who has an approved plan of work for exploration only, as provided in article 3, paragraph 4 (c), of this Annex shall have a preference and a priority among applicants for a plan of work covering exploitation of the same area and resources. However, such preference or priority may be withdrawn if the operator's performance has not been satisfactory.

## **(4) Regulation 24, Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area**

### Regulation 24. Rights of the contractor

1. The contractor shall have the exclusive right to explore an area covered by a plan of work for exploration in respect of polymetallic nodules. The Authority shall ensure that no other entity operates in the same area for resources other than polymetallic nodules in a manner that might interfere with the operations of the contractor.
2. A contractor who has an approved plan of work for exploration only shall have a preference and a priority among applicants submitting plans of work for exploitation of the same area and resources. Such preference or priority may be withdrawn by the Council if the contractor has failed

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to comply with the requirements of its approved plan of work for exploration within the time period specified in a written notice or notices from the Council to the contractor indicating which requirements have not been complied with by the contractor. The time period specified in any such notice shall not be unreasonable. The contractor shall be accorded a reasonable opportunity to be heard before the withdrawal of such preference or priority becomes final. The Council shall provide the reasons for its proposed withdrawal of preference or priority and shall consider any contractor's response. The decision of the Council shall take account of that response and shall be based on substantial evidence.

3. A withdrawal of preference or priority shall not become effective until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to Part XI, section 5, of the Convention.

#### **(4) Article 147, UNCLOS**

Article 147. Accommodation of activities in the Area and in the marine environment

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.
2. Installations used for carrying out activities in the Area shall be subject to the following conditions:
  - (a) such installations shall be erected, emplaced and removed solely in accordance with this Part and subject to the rules, regulations and procedures of the Authority. Due notice must be given of the erection, emplacement and removal of such installations, and permanent means for giving warning of their presence must be maintained;
  - (b) such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity;
  - (c) safety zones shall be established around such installations with appropriate markings to ensure the safety of both navigation and the installations. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to

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- particular maritime zones or navigation along international sea lanes;
- (d) such installations shall be used exclusively for peaceful purposes;
  - (e) such installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.
3. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

## **VI. Our express consent to make our personal details and submission publicly available**

Our personal details and submission are publicly available.

## **VII. Our contact details**

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