



Council

Distr.: General
11 July 2011

Original: English

Seventeenth session

Kingston, Jamaica

11-22 July 2011

Report and recommendations to the Council of the International Seabed Authority relating to an application for the approval of a plan of work for exploration by Nauru Ocean Resources Inc.

Submitted by the Legal and Technical Commission

I. Introduction

1. On 10 April 2008, the Secretary-General of the International Seabed Authority (the Authority) received an application for the approval of a plan of work for exploration for polymetallic nodules in the Area. On 31 March 2008, the application was submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (the Regulations) by Nauru Ocean Resources Inc. (NORI). The application covers a total surface area of 74,830 km² located within the areas reserved for the Authority pursuant to annex III, article 8, of the 1982 United Nations Convention on the Law of the Sea (the Convention). The reserved areas within the application were contributed by the Federal Institute for Geosciences and Natural Resources (BGR) of Germany, Yuzhmorgeologiya and Interoceanmetal Joint Organization (IOM).

2. In accordance with regulation 20, paragraph 1 (c) of the Regulations, on 28 April 2008, the Secretary-General notified the members of the Authority of the receipt of the application and circulated information of a general nature concerning the application. The Secretary-General also placed consideration of the application as an item on the agenda of the Legal and Technical Commission at its meeting held from 19 to 28 May 2008.

3. The Commission was informed that the applicant had formally notified the Secretary-General of its intention to make an application for approval of a plan of work for exploration in a reserved area on 31 March 2008. Thereafter, in accordance with regulation 17(1) of the Regulations, the Secretary-General on 11 April 2008 forwarded such notification to the Enterprise (represented by its Interim Director-General), whereupon the Interim Director-General informed the Secretary-General



in writing that the Enterprise had no current intention of carrying out activities in the areas under application.

4. The Commission recalled in this regard that the Enterprise had not yet begun to function independently of the secretariat of the Authority and that, by reason of article 170 of the Convention and section 2, paragraph 2, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea adopted in 1994 (the Agreement), the Council would only take up the issue of the functioning of the Enterprise independently of the secretariat of the Authority either: (a) upon the approval of a plan of work for exploitation by an entity other than the Enterprise; or (b) upon receipt by the Council of an application for a joint venture operation with the Enterprise. Until such time as either of these eventualities takes place the secretariat of the Authority shall perform the functions of the Enterprise, which shall be as set out in section 2, paragraph 1 of the annex to the Agreement.

5. The Commission met to consider the application on 21, 22, 26 and 27 May 2008. Since the Commission had not reached consensus with respect to a recommendation to the Council in relation to the application, it decided to continue its consideration of the application at the next possible opportunity. The matter was placed on the agenda of the Commission for the fifteenth session. At that session, the Commission was informed that, by a letter dated 5 May 2009 addressed to the Legal Counsel of the Authority, the applicant had requested that consideration of its application be postponed in the light of global economic circumstances and other concerns. The Commission took due note of the request and decided to defer further consideration of the item until further notice.

6. In a letter dated 4 May 2010 addressed to the Secretary-General of the Authority, the applicant requested that its application be reconsidered by the Commission at the earliest opportunity. On 29 April 2011, NORI submitted to the Secretary-General updated information in relation to the pending application before the Commission that reflected changes in relation to ownership, corporate governance and raised capital. The applicant indicated that this update superseded the material contained in the application submitted in 2008.

II. Methodology for consideration of the application by the Legal and Technical Commission

A. General methodology applied by the Commission in consideration of the application

7. In its consideration of the application, the Commission noted that, in keeping with the scheme established in article 6 of annex III to the Convention, it was first required to make an objective determination as to whether the applicant had fulfilled the requirements contained in the Regulations, particularly with respect to the form of applications; whether the applicant had provided the necessary undertakings and assurances specified in regulation 14 of the Regulations; and whether it had the necessary financial and technical capability to carry out the proposed plan of work for exploration and, as appropriate, had satisfactorily discharged its obligations under any previous contract with the Authority. The Commission is then required to determine, in accordance with regulation 21(4) of the Regulations and its

procedures, whether the proposed plan of work will provide for effective protection of human health and safety, effective protection and preservation of the marine environment, and will ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity. Regulation 21(5) of the Regulations goes on to provide that:

“If the Commission makes the determinations specified in paragraph 3 and determines that the proposed plan of work for exploration meets the requirements of paragraph 4, the Commission shall recommend approval of the plan of work for exploration to the Council.”

8. In considering the proposed plan of work for exploration for polymetallic nodules, the Commission took into account the principles, policies and objectives relating to activities in the Area as provided for in part XI and annex III of the Convention and in the Agreement.

B. Consideration of the application at the seventeenth session

9. The Commission considered the application in closed meetings on 4, 5 and 6 July 2011. It noted that the updated information submitted by the applicant superseded the initial information contained in the application that had been submitted in 2008.

10. Prior to commencing a detailed examination of the application, the Commission invited the designated representative of the applicant, Peter Jacob, accompanied by Charles Morgan and David Heydon, to make a presentation of the application. Members of the Commission then asked questions to clarify certain aspects of the application before convening in closed session to examine the application in detail.

11. The detailed examination by the Commission of the legal and financial, technical and environmental aspects of the application was conducted in smaller groups.

III. Summary of basic information regarding the application

A. Identification of the applicant

12. Name of applicant: Nauru Ocean Resources Inc.

13. Address of applicant:

- (a) Street address: 1st Level, Civic Centre, Aiwo District, Republic of Nauru
- (b) Postal address: P.O. Box 300, Aiwo District, Republic of Nauru
- (c) Telephone number: +674 557 3133
- (d) Facsimile number: +674 444 3730
- (e) Electronic mail address: nauruoffice@nauruoceanresources.com

14. Designated representative of the applicant:

- (a) Name: Peter Jacob, First Secretary, Nauru High Commission
- (b) Street address: Nauru High Commission, Ratu Sakuna House, 7th Floor, McArthur Street, Suva, Fiji Islands
- (c) Telephone number: +679 331 3566
- (d) Facsimile number: +679 331 8311
- (e) Electronic mail address: firstsec@nauru.com.fj
- (d) Applicant's place of registration and principal place of business: the Republic of Nauru

15. The applicant indicated that NORI is a registered national of the Republic of Nauru that is incorporated within the jurisdiction and under the effective control of the Republic of Nauru. Two foundations, the Nauru Education and Training Foundation and the Nauru Health and Environment Foundation, now owned NORI in equal shares. In the event of non-compliance with Nauruan laws, the sponsoring State in the exercise of its control is empowered to deregister NORI. NORI is corporately under the control of Nauruan nationals with the majority of the Board of Directors being Nauruan. The Board of Directors comprises: Dominic Tabuna, Minister of Commerce, Industry and Environment, Republic of Nauru; Kieren Keke, Minister of Foreign Affairs, Republic of Nauru; and David Heydon.

16. Further, all the stakeholders of NORI are Nauruan and domiciled in Nauru. The Nauru Education and Training Foundation and the Nauru Health and Environment Foundation are controlled by Nauru and will distribute within the State the income NORI receives from mineral production in the Licence Area. The Nauru Education and Training Foundation will distribute its share of the income to promote education and capacity-building in Nauru, while the Nauru Health and Environment Foundation will utilize the income for health services and environmental rehabilitation in Nauru.

17. In 2008, NORI was a subsidiary of Nautilus Minerals Inc. Since then, Nautilus Minerals Inc. has relinquished its ownership and interest in NORI. NORI is therefore no longer affiliated with Nautilus Minerals Inc., or with any other entity or person outside the jurisdiction of the sponsoring State.

B. Sponsorship

18. Sponsoring State: the Republic of Nauru.

19. The date of deposit of Nauru's instrument of ratification of, or accession or succession to, the Convention and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea are 10 December 1982 and 23 January 1996, respectively.

20. The date of certificate of sponsorship is 11 April 2011, signed by Dominic J. Tabuna, M.P., Minister for Commerce, Industry and Environment, Republic of Nauru.

21. A copy of the certificate of incorporation of Nauru Ocean Resources Inc. has been submitted, as well as the applicant's certificate of sponsorship issued by the Republic of Nauru. The certificate of sponsorship states that the applicant is sponsored by and under the effective control of the Republic of Nauru and declares that the Republic of Nauru assumes responsibility in accordance with article 139, article 153, paragraph 4, and annex III, article 4, paragraph 4, of the Convention. Further, in a letter to the Secretary-General of the Authority dated 11 April 2011, the sponsoring State also reaffirmed its commitment to fulfilling its responsibilities under the Convention and taking all necessary and appropriate measures to secure the effective compliance of NORI with the Convention and related instruments.

22. In the application the Government of Nauru refers to the advisory opinion delivered on 1 February 2011 by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (the Tribunal) and states that it has commenced the process of implementing a comprehensive legal framework to regulate the activities of NORI in the Area. A collaborative work has commenced with the Applied Geoscience and Technology Division of the secretariat of the Pacific Community on its deep-sea minerals project funded by the European Union. This project is aimed at strengthening the system of governance and capacity of countries in the management of deep-sea minerals through the development and implementation of sound and regionally integrated legal frameworks, including legislative and regulatory frameworks for offshore minerals exploration and mining, as well as improved human and technical capacity and effective management and monitoring of offshore exploration and mining operations.

23. Nauru has made a clear commitment to the Authority that it intends to implement this legislation. It will legislate to create a programme for the licensing of activities in the Area and detail the conditions Nauruan contractors must satisfy prior to the State granting approval to any at-sea mineral exploration or exploitation, including financial and technical capacity requirements. Licences will be issued subject to the terms, conditions and restrictions necessary to ensure that the State fulfils its sponsorship responsibilities and that the Nauruan contractor has fulfilled its obligations, as set out in the Convention. The applicant states that the regulatory framework will be implemented when NORI obtains an exploration contract from the Authority and recalls that this approach is in line with the advisory opinion issued by the Tribunal, which determines that legislation is not a prerequisite for obtaining an exploration contract.

24. The applicant has stated that regulations will be adopted to address specific issues relating to seabed mining and exploration, including the protection of the marine environment, conservation of natural resources, and preservation of human health and safety, and property at sea. The State will monitor seabed mining activities to enforce the legislation, the regulations issued pursuant thereto and the terms, conditions and restrictions imposed on any licensee. Enforcement powers for non-compliance by licensees, in addition to civil and criminal penalties, will include suspension and revocation of a licence or a permit, or suspension or modification of particular activities authorized by a licence or permit.

C. Area of application

25. The application area of NORI covers a total area of 74,830 km² in the Clarion-Clipperton Zone of the Pacific Ocean. The area lies within the reserved areas and is divided into four regions: Area A is located within Block 13 and covers an area of 8,924 km²; Area B is located within Block 15 and covers an area of 3,519 km²; Area C is located within Block 22 and covers an area of 37,227 km²; and Area D is located within Block 25 and covers an area of 25,160 km². The coordinates and general location of the areas under application are shown in the annex to the present document.

D. Other information

26. Date of receipt of application: 10 April 2008.

27. Previous contracts with the Authority: the applicant has not been previously awarded any contract with the Authority.

28. Undertakings: the applicant submitted a written undertaking dated 21 April 2011 and signed by the Director of NORI, Dominic J. Tabuna, stating that it will comply with regulation 14 of the Regulations.

IV. Examination of information and technical data submitted by the applicant

29. The following technical documents were submitted in the application:

(a) Information relating to the application area:

(i) Boundaries of the area under application according to the World Geodetic System 1984 (WGS 84);

(ii) A summary of the station data pertaining to the area under application and a full list of station data (application, appendix 2);

(iii) A chart and a list of the coordinates of the area under application;

(b) Certificate of sponsorship issued by the sponsoring State;

(c) Information to enable the Council to determine whether the applicant is financially capable of carrying out the proposed plan of work for exploration;

(d) Information to enable the Council to determine whether the applicant is technically capable of carrying out the proposed plan of work for exploration;

(e) Plan of work for exploration;

(f) Training programmes.

30. During his presentation, the representative of the applicant provided clarification, as required by the Commission, on the information and technical data supplied.

V. Consideration of financial and technical qualifications of the applicant

A. Financial capacity

31. In evaluating the financial capacity of the applicant, the Commission noted that NORI was incorporated in the Republic of Nauru on 12 March 2008, and that its current certificate of registration expires on 12 March 2012 and is renewable on an annual basis in accordance with relevant Nauru company law. The Commission was provided with a certified pro forma balance sheet (application, supplementary material 3), in accordance with regulation 12(5) of the Regulations since the applicant is a newly organized entity and since activities cannot start before a contract is issued. The applicant declares that it has the necessary financial resources to meet the estimated costs of the proposed plan of work for exploration. The Commission also noted that the activities will be financed by a guaranteed minimum budget of \$10 million, which the applicant has proposed to finance through borrowing. The Commission was provided with the amount of borrowings, the repayment period and the interest rate, in conformity with regulation 12(6) of the Regulations. The applicant indicated that the minimum expenditure commitment will likely be substantially increased as the implementation of the programme of activities is accelerated, subject to exploration results and to developments in the preparation of regulations on exploitation for nodules by the Authority.

B. Technical capacity

32. The Commission was provided with technical information in relation to previous experience and skills in the field of dredging, excavation techniques and deep-sea mining technology that the applicant has submitted to demonstrate its technical capability to carry out the programme of work. The Commission noted that the applicant benefits in its technical team from the experience of leaders of four international consortiums (Ocean Management Incorporation, Kennecott Exploration Consortium, Ocean Minerals Company and Ocean Mining Associates) which developed and successfully carried out trial deep-sea mining systems to collect nodules in the Clarion-Clipperton Zone in the 1970s.

33. The Commission was provided with information relating to the prevention, reduction and control of hazards to and possible impacts on the marine environment. This included the completion of risk assessments and mitigation of any environmental harm. A detailed plan of action in relation to the preservation of the marine environment was presented for the first five years, including a long-term environmental monitoring programme of the area. The applicant stated that, in accordance with the Regulations, the best available technology and practices will be used to carry out exploration and to avoid harm to and impacts on the marine environment; likewise, every effort will be made to apply best environmental protection practices and a precautionary approach. Appropriate licences and insurances are in place to respond to incidents.

VI. Consideration of data and information submitted for approval of the plan of work for exploration for polymetallic nodules

34. In accordance with regulation 18 of the Regulations, the application included the following information for approval of the plan of work for exploration:

(a) A general description and a schedule of the proposed exploration programme of activities to be undertaken in the first five-year period, such as studies to be undertaken in respect of the environmental, technical, economic and other appropriate factors that must be taken into account in exploration;

(b) A description of the programme for oceanographic and environmental baseline studies that will be carried out in accordance with the Regulations and environmental rules, regulations and procedures established by the Authority. These baseline studies will enable an assessment to be made of the potential environmental impact of the proposed exploration activities, taking into account any recommendations issued by the Legal and Technical Commission;

(c) A preliminary assessment of the possible impact of the proposed exploration activities on the marine environment;

(d) A description of proposed measures for the prevention, reduction and control of pollution and other hazards to, as well as possible impacts on, the marine environment;

(e) Data necessary for the Council to make the determination it is required to make in accordance with regulation 12, paragraph 1 of the Regulations (financial obligations to the Authority);

(f) A schedule of anticipated yearly expenditures in respect of the programme of activities for the first five-year period.

35. The Commission was satisfied that the information presented met the requirements of the Regulations and noted that it looked forward to the submission of reports and data by the applicant, as required by the Regulations, and the recommendations of the Commission for the guidance of contractors.

VII. Training programme

36. In accordance with regulation 27 and section 8 of annex 4 to the Regulations, the applicant provided a detailed description of an at-sea exploration training programme, a fellowship programme, and an engineering training programme. These training programmes would be open to at least eight nationals of developing States who wish to specialize in engineering, marine biology, oceanography, geophysics and geology. The proposed programmes, which will be drawn up by the contractor in cooperation with the Authority and the sponsoring State and submitted for approval to the Authority before their insertion as schedule 3 to the contract, are scheduled for the first five-year period of the contract for exploration.

VIII. Conclusion and recommendations

37. Having examined the particulars submitted by the applicant, which are summarized in parts II to VII above, the Commission is satisfied that the application has been duly submitted in accordance with the Regulations and that the applicant is a qualified applicant, as defined in articles 4 and 9 of annex III to the Convention, and regulation 17 of the Regulations. The Commission is further satisfied that the applicant:

- (a) Has complied with the provisions of the Regulations;
- (b) Has given the undertakings and assurances specified in regulation 14 of the Regulations;
- (c) Possesses the financial and technical capability to carry out the proposed plan of work for exploration.

38. The Commission is satisfied that none of the conditions in regulation 21(6) of the Regulations apply.

39. With respect to the proposed plan of work for exploration, the Commission is satisfied that the proposed plan of work for exploration will:

- (a) Provide for effective protection of human health and safety;
- (b) Provide for effective protection and preservation of the marine environment;
- (c) Ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

40. Accordingly, pursuant to regulation 21(5) of the Regulations, the Commission recommends to the Council approval of the plan of work for exploration submitted by Nauru Ocean Resources Inc.

Annex

List of coordinates and map of general location of the reserved areas under application

The area under application comprises the following four regions 1A to 1D:

Area A (8,924 km²)

All that area of seafloor within reserved Block 13 in the Clarion-Clipperton Zone of the Pacific Ocean bounded by a line commencing at the north-west corner at:

	Latitude	Longitude
	13.0000 N	-134.583 W (the point of commencement)
then to	13.0000 N	-134.250 W
then to	12.5000 N	-134.250 W
then to	12.5000 N	-134.067 W
then to	12.1933 N	-134.067 W
then to	12.1933 N	-133.833 W
then to	11.5000 N	-133.833 W
then to	11.5000 N	-134.377 W
then to	12.0000 N	-134.377 W
then to	12.0000 N	-134.583 W
then to	13.0000 N	-134.583 W (being the point of commencement)

Area B (3,519 km²)

All that area of seafloor within reserved Block 15 in the Clarion-Clipperton Zone of the Pacific Ocean bounded by a line commencing at the north-west corner at:

	Latitude	Longitude
	14.00000 N	-134.00000 W (the point of commencement)
then to	14.00000 N	-133.25000 W
then to	13.86670 N	-133.25000 W
then to	13.86670 N	-133.20000 W
then to	13.58010 N	-133.20000 W
then to	13.58010 N	-133.83300 W
then to	14.00000 N	-134.00000 W (being the point of commencement)

Area C (37,227 km²)

All that area of seafloor within reserved Block 22 in the Clarion-Clipperton Zone of the Pacific Ocean bounded by a line commencing at the north-west corner at:

	Latitude	Longitude
	14.9350 N	-122.1667 W (the point of commencement)
then to	14.9350 N	-120.5000 W
then to	14.5000 N	-120.5000 W
then to	14.5000 N	-120.7500 W
then to	14.3333 N	-120.7500 W
then to	14.3333 N	-121.8330 W
then to	14.0000 N	-121.8330 W
then to	14.0000 N	-121.3330 W
then to	13.6667 N	-121.3330 W
then to	13.6667 N	-121.1670 W
then to	12.0000 N	-121.1670 W
then to	12.0000 N	-121.6000 W
then to	12.6000 N	-121.6000 W
then to	12.6000 N	-122.1670 W
then to	12.8900 N	-122.1670 W
then to	12.8900 N	-123.0000 W
then to	13.3500 N	-123.0000 W
then to	13.3500 N	-122.5000 W
then to	13.5000 N	-122.5000 W
then to	13.5000 N	-122.1667 W
then to	14.9350 N	-122.1667 W (being the point of commencement)

Area D (25,160 km²)

All that area of seafloor within reserved Block 25 in the Clarion-Clipperton Zone of the Pacific Ocean bounded by a line commencing at the north-west corner at:

	Latitude	Longitude
	11.08333 N	-117.816670 W (the point of commencement)
then to	11.08333 N	-116.066667 W
then to	9.89500 N	-116.066667 W
then to	9.89500 N	-117.816670 W
then to	11.08333 N	-117.816670 W (being the point of commencement)

