REPUBLIC OF NAURU

Explanatory Non-Paper: Proposed Procedure for Consideration and Provisional Approval of Applications for Plans of Work for Exploitation under Paragraph 15(c) of the 1994 Agreement

1. The Republic of Nauru (**Nauru**) has prepared this Explanatory Non-Paper to assist Member States of the International Seabed Authority (the **Authority**) in their consideration of a proposed procedure for the consideration and provisional approval of an application for a plan of work for exploitation (**Application**) in the absence of adopted rules, regulations and procedures on the exploitation of mineral resources in the Area (**Exploitation Regulations**).

2. Following Nauru's triggering of Paragraph 15(b) of Section 1 of the Annex to the Agreement relating to the Implementation of Part XI of UNCLOS (**the 1994 Agreement**), the Authority was obliged to complete its adoption of Exploitation Regulations by 9 July 2023. The Authority failed to meet this deadline.

3. In a letter to the President of the Council dated 12 November 2024, Nauru advised that NORI intends to submit its Application on 27 June 2025.In the event that the Authority has not adopted Exploitation Regulations in accordance with the road map contained in the Council decision adopted in July 2023,[1] the Authority will be obliged to consider and provisionally approve NORI's Application pursuant to Paragraph 15(c) of Section 1 of the Annex to the 1994 Agreement (**Paragraph 15(c)**). To provide clarity and certainty for the Authority, Member States, stakeholders and NORI, Nauru has proposed a procedure for the Authority to follow when considering an Application pursuant to Paragraph 15(c). A flowchart of the proposed procedure is at Annexure 1 to this Explanatory Non-Paper.

4. The proposed procedure will ensure that the Authority and its Member States fully comply with the requirements applicable under the United Nations Convention on the Law of the Sea (the **Convention** or **UNCLOS**) and the 1994 Agreement for the consideration of an Application under Paragraph 15(c). Those requirements are set out in this Explanatory Non-Paper. The proposed procedure also reflect the areas where there is common understanding and evolving consensus in the negotiation of the draft Exploitation Regulations regarding the processing of Applications.

5. Nauru also takes this opportunity to refer to its previous Opinion Paper on the Regulatory Steps and Decision-making for a Plan of Work Submitted to the Authority pursuant to Section 1, Paragraph 15 of the Annex to the 1994 Agreement which sets out more detail on these same issues.[2]

---

[1] Council, *Decision of the Council of the International Seabed Authority on a timeline following the expiration of the two-year period pursuant to section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea*, 21 July 2023, ISBA/28/C/24.

[2] Republic of Nauru, *Opinion paper on the regulatory steps and decision-making for a Plan of Work submitted to the Authority pursuant to Section 1, Paragraph 15 of the Annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea*, March 2023, https://www.isa.org.jm/wp-content/uploads/2023/03/Nauru_Opinion_Paper.pdf

Requirements contained in UNCLOS and the 1994 Agreement

6. Under UNCLOS and the 1994 Agreement, any procedure for considering applications for Plans of Work in the absence of adopted Exploitation Regulations must meet the following requirements:

Requirement	Source
The Authority must determine that Applications received are complete, have complied with applicable procedures, provide the required undertakings and assurances, and that the applicant has the requisite qualifications.	UNCLOS, Annex III, Article 6(2)
The Application must be reviewed by LTC, which then must submit an appropriate recommendation to the Council.	UNCLOS, Article 165(2)(b)
The LTC must base its recommendation "*solely*" on the grounds stated in Annex III of UNCLOS, as modified by the 1994 Agreement. The LTC shall base its recommendation on the provisions and norms of UNCLOS, any rules, regulations and procedures provisionally adopted by the Council, the terms and principles in the 1994 Agreement, and the principle of non-discrimination among contractors.	UNCLOS, Article 165(2)(b) 1994 Agreement, Annex, Section 1, Paragraph 15(c)
The Council is only to approve or disapprove an Application after it has been reviewed by the LTC.	UNCLOS, Article 153(3)
The Council's consideration of the LTC's recommendation regarding a plan of work must comply with the following decision-making process: (a) It must approve an LTC recommendation for approval unless it decides to disapprove by a two-thirds majority vote of Member States present and voting, including a majority of Member States present and voting in each chamber of the Council. (b) If the Council makes no decision on a recommendation by the LTC for approval of a plan of work within 60 days, the recommendation (and the plan of work) is deemed to be approved. (c) The Council may decide to provide itself with a longer period for its consideration of the LTC's recommendation. (d) If the LTC recommends disapproval of a plan of work, the Council may nonetheless provisionally approve the plan of work.	1994 Agreement, Annex, Section 3, paragraph 11(a)

Proposed procedure

7. The following sets out a proposed procedure for the consideration and provisional approval of Applications in accordance with Paragraph 15(c) of Section 1 of the Annex to the 1994 Agreement in light of the above legal requirements under UNCLOS and the 1994 Agreement and drawing from the current draft Exploitation Regulations and the Council's previous decisions. This procedure is without prejudice to the negotiations on the draft Exploitation Regulations:

Step	Proposed procedure	Explanation
1.	**Within 3 business days of the submission of an Application**, the Secretary-General shall notify the Council of the Application.[3]	Article 6(2) of Annex III of UNCLOS requires the Authority to determine that applications are complete prior to their formal consideration. This proposed procedure establishes clear timeframes and actions in regard to this determination to ensure there is certainty for the Authority, Member States and applicants. While not specified under UNCLOS, this procedure also includes the publication of the Application to enable comments from and engagement with States and stakeholders.
	Within 7 days of the submission of an Application, the Secretary-General shall acknowledge the receipt of the Application to the applicant.	
	Within 45 days of the submission of an Application, the Secretary-General shall determine whether the Application is complete. (a) If the Secretary-General determines the Application is not complete, they shall notify the applicant of the information needed to complete the Application and specify a date by which such information must be provided. (b) **Within 7 days of determining that the Application is complete,** the Secretary-General shall publish the non-confidential parts of the Application online for State and Stakeholder consultation for a 90-day period.	
2.	**Within 90 days of the publication of the non-confidential parts of the Application,** the members of the Authority, coastal states mentioned in Article 142, and other Stakeholders may provide comments on the Application. The Legal and Technical Commission (**LTC**) shall also provide initial comments on the non-confidential parts of the Application within this 90-day consultation period.	While not specified under UNCLOS, these steps ensure that all relevant States and stakeholders are able to comment on and engage with an Application at an early stage. They will also allow the LTC to provide initial comments on an Application, to which the applicant can than respond.
3.	**Within 7 days following the end of the 90-day consultation period,** the Secretary-General shall provide the applicant with any comments received and publish such comments online.	
4.	**Within 60 days of the end of the 90-day consultation period,** the applicant shall provide any responses to comments received or a revised Application to the Secretary-General.	
5.	**Within 7 days of the receipt of the applicant's comments or revised Application,** the Secretary-General shall provide the Application (as revised, if applicable), all comments received during the 90-day consultation period, and any responses	Articles 153(3) and 165(2)(b) of UNCLOS require applications to be considered by the LTC prior to the Council's consideration.

[3] See Council, *Decision of the Council of the International Seabed Authority relating to the understanding and application of section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea*, 21 July 2023, ISBA/28/C/25, para.1 which requests the Secretary-General to inform the Council within three business days of the Secretariat's receipt of an application for a plan of work for exploitation in the absence of Exploitation Regulations.

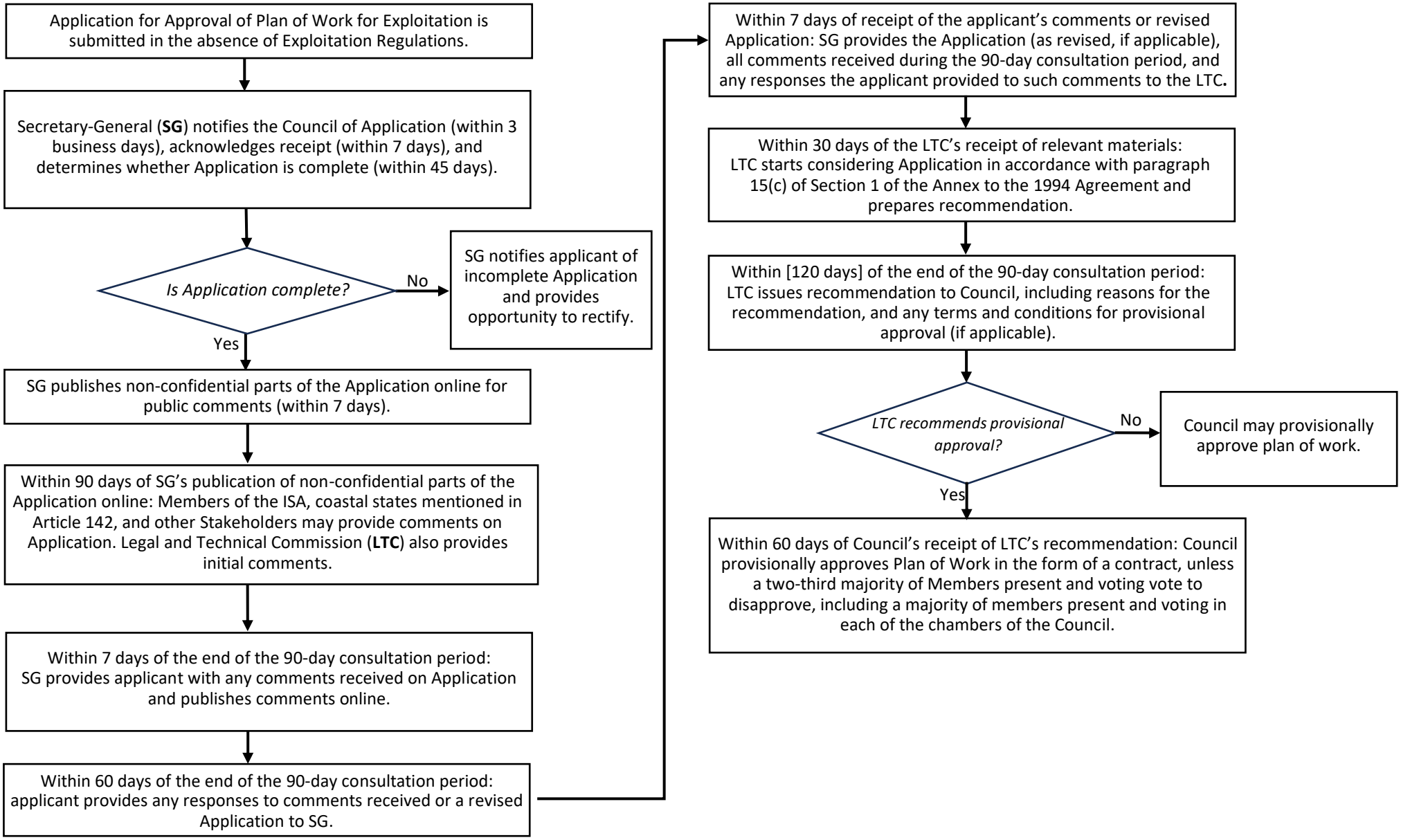
Step	Proposed procedure	Explanation
	the applicant provided to such comments, to the LTC.	This step ensures the LTC receives all relevant materials to inform its consideration of applications.
6.	**Within 30 days of its receipt of the relevant materials,** the LTC shall start considering the Application and prepare its recommendation. Such consideration shall commence intersessionally. In accordance with Paragraph 15(c), the LTC shall consider the Application and issue a recommendation based upon: (a) the provisions and norms of UNCLOS, including Annex III; (b) any Rules, Regulations and Procedures adopted provisionally by the Council; (c) the terms and principles in the Annex to the 1994 Agreement; and (d) the principle of non-discrimination among contractors. Prior to making its recommendation the LTC may request the applicant to provide additional information and request an applicant to amend its plan or work or consider specific amendments proposed by the LTC.	Article 165(2)(b) of UNCLOS requires applications to be considered by the LTC at first instance. It further specifies that this review must be based on the grounds stated in Annex III of UNCLOS. The Council has also previously recognised that the LTC will review Applications submitted in the absence of Exploitation Regulations.[4] Paragraph 15(c) of Section 1 of the Annex to the 1994 Agreement specifies the basis upon which applications are to be considered in the absence of Exploitation Regulations. These steps establish clear timeframes and guidance for the LTC in relation to its consideration of applications.
7.	**Within 120 days of the end of the consultation period,** the LTC shall issue its recommendation to the Council, including reasons for the recommendations, and any terms and conditions for provisional approval (if applicable).	At the March 2025 meetings of the Council relating to the revised consolidated text, several delegations expressed concern over imposing a definitive timeframe for the LTC to make recommendations, and that the recommendations should be made "expeditiously". Other delegations considered a clear timeframe important for regulatory certainty. It is recommended that the LTC be asked to reflect on what it considers a reasonable timeframe, taking into account the likely complexity of applications.

[4] See Council, *Decision of the Council of the International Seabed Authority relating to the understanding and application of section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea*, 21 July 2023, ISBA/28/C/25, para. 3 which states that if an Application is received before the Exploitation Regulations are completed, the Council will continue finalising its consideration of paragraph 15 "*prior to the Legal and Technical Commission finalizing its review*".

Step	Proposed procedure	Explanation
8.	**Within 60 days of its receipt of the LTC's recommendation,** the Council shall consider and make its decision on the Application. (a) If the LTC recommends provisionally approving the plan of work: (i) the Council shall provisionally approve the plan of work, unless a two-thirds majority of Council Members present and voting, vote to disapprove the plan of work, including the majority of Members present and voting in each Council Chamber; and (ii) if the Council does not take a decision on the LTC's recommendation for approval within the 60-day period, the recommendation shall be deemed to have been approved by the Council at the end of that period unless the Council decides to provide for a longer period. (b) If the LTC recommends disapproval of the plan of work or does not make a recommendation, the Council may nevertheless provisionally approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.	Article 153(3) of UNCLOS requires the Council to consider applications after they have been reviewed by the LTC. Paragraph 11(a) of Section 3 of the Annex to the 1994 Agreement sets out the decision-making requirements associated with the Council's consideration of applications and the LTC's recommendation. This step reflects these requirements.

Next steps

8. Nauru welcomes the views of other Member States on the procedure to be adopted for considering Applications in the absence of Exploitation Regulations. Achieving timely agreement on these matters will provide much needed certainty and clarity to the Authority, Member States and applicants.

Annexure 1

Outline of Procedure for the Consideration and Provisional Approval of Applications for Approval of Plans of Work for Exploitation under Paragraph 15(c) of the 1994 Agreement