

## **Statement by the International Union for Conservation of Nature**

### **Agenda Item 14: Report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its twenty-seventh session (Addendum: Review of the EIS submitted by NORI)**

*Council of the International Seabed Authority, 10 November 2022*

Thank you, Mr. President.

The International Union for Conservation of Nature, IUCN, thanks the Chair of the Commission for his report. While we appreciate this late addendum to the Chair's report, it has unfortunately done very little to address our concerns. We support the delegations that spoke before us and would like to raise three points:

1. That the EIS submitted by NORI may not have been fit for purpose and perhaps should not have been accepted;
2. That the approach taken for review of the EIS was defective, and in effect, excluded stakeholder input; and
3. The EIS approval process that allows a contractor to begin test mining is flawed and must be rectified.

On the first point - that the EIS submitted by NORI may not have been fit for purpose - we acknowledge the Deep-Ocean Stewardship Initiative, DOSI, who produced a scientific information sheet on this matter. DOSI stressed that this EIS was not fit for purpose, as required by the document ISBA/25/LTC/6/Rev.2, because of the inadequacy of the quality and quantity of and high uncertainty in biological information. Because of this lack of information, DOSI observed that the assessment of associated risks was incomplete. Furthermore, DOSI also highlighted that the EIS did not adequately show similarity between the preservation and impact reference zones. Following those strong views expressed by a large and credible network of scientists, and who are also observers here at the Authority, the IUCN encourages that the Commission explain its rationale for recommending the incorporation of the EIS in the programme of work, and how the substantive stakeholder concerns were addressed.

This brings us to our second point, namely, that the process for review of the EIS essentially excluded stakeholder input. IUCN cautions that the approach taken for the review of the EIS reveals fundamental flaws in the EIS review process and consideration of expert stakeholder input. In essence, the current approach creates an incentive for contractors to submit incomplete EISs at the stakeholder consultation stage, knowing that any revised versions will not be subject to further stakeholder scrutiny. While we welcome the fact that the Commission requested more information from NORI, the final EIS was not released for public comment and is still not publicly

available, revealing a large gap in transparency for stakeholder engagement. On this note, we request the Authority to make the revised EIS and all supporting data public.

Coming now to our third point, our delegation is very concerned with the processes used by the Commission to approve the EIS and allow a contractor to begin test mining. We are troubled that the Commission did not, as a whole, meet to review the EIS or to approve its content as per the Rules of Procedure, but rather the intersessional decision was taken by a small sub-committee and then adopted via a 3-day silence procedure over email. Our delegation contends that the silence procedure, which we believe is usually reserved by public bodies only for highly urgent and primarily procedural matters, is not an appropriate method of decision-making for a complex and sensitive environmental decision of significant public interest.

The IUCN would like to end with some concrete recommendations to bring about some reform and to ensure such irregularities are not repeated. In so doing, we wish to point out that while our intervention has been critical of the work of the Commission, it is the Council that should to some extent be answerable for these deficiencies. Given the important role of the Commission in matters within the remit of the Council, it is important to ensure that there is no distrust in the EIS process. Thus, we recommend:

1. The ISA's Recommendations in ISBA/25/LTC/6/Rev.2 must be revised to clarify the review procedure. Importantly, any such revisions should not be undertaken by the Commission again, but rather, by the Council and with stakeholder input.
2. There should be explicit provisions that allow for an EIS to be rejected and this should be specified in clear terms.
3. Since test mining is mining, it is worth considering if the ultimate decision-making power in terms of approving or rejecting an EIS to conduct test mining should be in the hands of the Council, with recommendations from the Commission.
4. If an EIS has been revised, it must be made public and undergo stakeholder consultation again.
5. That the Commission hold open meetings when reviewing any EIS.

Mr. President, thank you very much.