

Developing a Regulatory Framework for Mineral Exploitation in the Area

Comments by Nauru Ocean Resources Inc. (NORI) on the draft framework for the regulation of mineral exploitation in the Area

As an ISA Contractor, NORI thanks the Authority for the opportunity to provide feedback on the draft framework, and is pleased to grant its consent to the Authority to disclose the information in this document.

NORI's comments are detailed in the table below, and correspond to the relevant section and item taken from the Draft Framework for the Exploitation Regulations contained in the Report to Members of the Authority and all Stakeholders distributed by the Authority in March 2015.

NORI looks forward to continuing to work with the Authority on this endeavour.

2.2 Part II Applications for approval of plans of work for exploitation in the form of contracts

Draft regulation description	NORI Comment
Form of applications	<p>It is recommended that the Exploitation Contract includes multiple exploitation areas within the 75,000 km² area covered under an existing contract for exploration. Contractors will need to aggregate multiple deposits within their 75,000 km² area to form an operation of sufficient resource size and mine life. Contractors have already been required to reduce their exploration contract area from 150,000 km² to 75,000 km², which is considered the minimum size needed for a full-scale mining operation.</p> <p>Should the environment differ materially within the 75,000 km², the Exploitation Contract should still cover the 75,000 km² area however a staged approach can be taken. For example, a Contractor's 75,000km² area may be made up of two non-contiguous blocks, an East Block and a West Block. The two blocks may be separated by such a distance that the environment differs materially between the two. This should not impact the Contractor's priority right to obtain an Exploitation Contract over the 75,000 km² area, but rather a staged approach can be adopted. For example, the Contractor may submit an EIA covering the East Block and upon approval of the Exploitation Contract can commence its operations in the East Block. While carrying out commercial production in the East Block, the Contractor would then carry out and submit an EIA for the West Block. The Contractor could then transition smoothly from the East Block to the West Block without interruption to its operations.</p> <p>While an Exploitation Contract may only be granted following review of an EIS/EIA and Mining Plan, the Exploitation Regulations should allow Contractors to amend their Plan of Work during the Exploitation term, subject to reasonable procedures.</p>
Financial and technical capabilities	<p>It is recommended that the capability requirements are consistent with land based mining regimes. As part of its application for an Exploitation Contract, the Contractor should be required to demonstrate its plan to raise and secure the financial and technical capability, which it would then do upon being granted the Exploitation Contract and prior to commencing exploitation operations.</p>
Previous contracts with the Authority	<p>To ensure consistency with land based regimes and to encourage large scale investment, the Exploitation Regulations must make certain and stable that a holder of an Exploration Contract shall have the exclusive right to progress to an Exploitation Contract over the same 75,000 km² area, and that this is not a "preference" but instead a regulatory, contractual and equitable right, subject only to submitting an exploitation application that complies with the</p>

	<p>Regulations. It is important that the Authority can only assign rights to the areas that are subject to an Exploration Contract (i) with consent of the original Contractor, or (ii) upon termination of an investigation and adjudication under due process that revokes the Exploration Contract of the original Contractor. In order to encourage Contractor's to invest in developing the technology necessary to move through a full feasibility, Contractor's must know with certainty that they will have the exclusive priority right to progress to an Exploitation Contract over the same area, and that the priority right can not be taken away except in the circumstances where the Exploration Contract is terminated.</p>
<p>Applications for approval of plans of work with respect to a reserved area</p>	<p>For those Contractors that hold an Exploration Contract in a Reserved Area for which the Enterprise has foregone its right to a joint venture by previously indicating that it does not intend to carry out activities in that area, it is submitted that the plan of work for those Contractors should be no different to those in non-Reserved Areas.</p>
<p>Equity interest in a joint venture arrangement</p>	<p>As above, for those Contractors that hold an Exploration Contract in a Reserved Area for which the Enterprise indicated at the time of the exploration application that the Enterprise does not intend on carrying out activities in that area, it is submitted that the plan of work for those Contractors should be no different to those in non-Reserved Areas, and the Enterprise will not have any rights to request a joint venture arrangement during the exploitation phase over that Reserved Area.</p> <p>If the Enterprise intends to carry out a joint venture arrangement in a Reserved Area then this needs to be made clear by the Enterprise at the time that a party applies for a Contract for Exploration. If at the time of an application for exploration the Enterprise states that it does intend on carrying out activities in that Reserved Area, then a joint venture arrangement can be done but limited to certain clear terms including for example: (i) the option right should be limited to not greater than 20% of the project - such cap to be defined in the regulations, (ii) that the right be limited to the requirement to pay the fair market value of such interest as determined independently, and (iii) that such option be granted subject to the execution of a joint venture agreement on terms customary and reasonable for the industry and providing that the Authority shall be obligated to contribute capital on a pro-rata basis to its percentage ownership. The option should only be granted to the Enterprise where the Enterprise has indicated at the time of the original Exploration Contract that it intends to carry out activities in that area, and the option period for the Authority should be granted in a very limited period, and such option right should then expire and terminate. It is also noted that Annex III Article 11(2) states that "<i>Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in article 13 of this Annex.</i>"</p>
<p>Data and information to be submitted for approval of the plan of work for exploitation</p>	<p>It is recommended that there be defined time frames for the period in which the Authority is allowed to review and request comment or further information with respect to the data and information submitted by a Contractor. Finally, in the event of a material disagreement, provisions should be inserted with respect to any appeal process if (in the view of the Contractor) unreasonable or uneconomic requirements are imposed.</p>
<p>Feasibility study</p>	<p>Feasibility Study requirements should be consistent with general industry practice for land based mineral project development, taking into account that prior to the seafloor polymetallic nodule industry being proven at a commercial scale it may not be possible to obtain a "bankable" feasibility study or categorise the resource as a "reserve".</p>
<p>Environmental impact statement (EIS)</p>	<p>The EIS should include reference to the regional environment in the Clarion Clipperton Zone (CCZ), specifically the role that the current APEI's can play in protecting and preserving biodiversity and ecosystem function in the CCZ.</p> <p>The EIS should also capture the net benefits that seafloor polymetallic nodule mining offers</p>

	<p>to mankind, including increasing the availability of metals essential to economic and social development, as well as reducing society's dependence on nickel laterites for future nickel supply, particularly since nickel laterite deposits typically occur in high rainfall equatorial regions (e.g. tropical rainforest areas).</p> <p>Also, seafloor polymetallic nodules allow for clean metallurgical processing operations, unlike many land based mines that result in significant waste (often toxic) and require tailings dams etc. This environmental benefit should also be captured in the EIS to demonstrate the environmental advantages of seafloor polymetallic nodule production relative to other alternatives for the same metals.</p> <p>It is suggested that initial standards for the EIS shall not be allowed to be subject to immediate change, and any approved EIS should not be subject to resubmission in the event of changing standards over time. Alternatively, if standards do change, then there needs to be a grandfather clause that allows the Contractor a number of years to transition so as it does not cause a material disruption to operations or adverse impact to the economics of the project.</p>
Environmental management plan (EMP)	For seafloor polymetallic nodules in the CCZ, it is recommended that the current APEI's be formally classified as MPA's and that these MPA's should be included in the EMP to demonstrate that the environment is being protected.
Social impact assessment and action plan (SIA)	NORI submits that a broader discussion around social license to operate and social benefits that can be derived from seafloor polymetallic nodule projects should be considered in more depth. The inherent value that seafloor polymetallic nodule mining will bring to society generally should be taken into account, and the SIA can include factors that demonstrate the significant social advantages of seafloor polymetallic nodule mining versus land based mining for the same metals. For example, unlike many land-based mines, seafloor polymetallic nodule mining will not involve social impact at the mine site, and will not require dislocation of communities or land conflict issues. Also, production of nickel, copper, manganese and cobalt from seafloor polymetallic nodules will greatly benefit society worldwide by increasing the supply of metals essential for social and economic growth, and in turn decrease the likelihood of disruption in supply. The metals contained in seafloor polymetallic nodules are essential for global economic growth and the reduction of poverty. It will have significant impacts on society if we continue to rely upon land (only 30% of the planet) for all of our metals, particularly given rising populations and increasing land use conflicts.
Financing plan	A registry needs to be established under the Exploitation Regulations to provide a mechanism for financial institutions and other financiers to be granted security interests with respect to the Exploitation Contract. This is essential given the large capital investment required for these projects.
Closure plan	Mine Closure will require decommissioning (removal of installations and equipment from the Area) as well as restorative obligations. With respect to the latter, it is noted that seafloor polymetallic nodule extraction does not require drilling and blasting, large waste dumps, deforestation or tailings dams. As such, the Mine Closure obligations will likely be less than for land based deposits. As is typical on land, the bond will relate to mine closure, and should reflect the actual costs anticipated for mine closure given the specific operations proposed in the plan of work.
Size and location of exploitation area(s) covered	NORI submits that Contractors should be allowed to draft their mining plan in reference to the whole 75,000 km ² area. While Contractors will not mine the whole 75,000 km ² area (e.g. due to topographic and grade limitations), they should have the right to decide which areas within that 75,000 km ² area are to be mined, taking into account commercial, technical and

<p>by the plan of work</p>	<p>environmental considerations. Regulations that limit a Contractor’s right to mine within its 75,000 km² area may result in a situation where the mining operation is cut short prematurely, leading to the resource not being optimised. Thus, to ensure optimum use of the resource, efforts should focus more on ensuring that the size of the Exploitation Area is large enough for the Contractor to carry out a 30 plus year mining operation, rather than compelling the Contractor to mine areas that are not economic.</p> <p>Commodity markets, in particular the price of metals, will determine what areas are economic to mine and when. Contractor’s should not be required to mine in areas that they consider uneconomic or that would result in safety or technological risks. This principle is consistent with the production policy in Section 6 of the 1994 Implementation Agreement which requires that development of the resources of the Area shall take place in accordance with sound commercial principles. The Contractor has the obligation and right to carry out the operation in accordance with sound commercial principles, including that economic areas will be mined, and uneconomic areas will not be mined. Similarly, the Regulations should not create a situation that forces the Contractor to mine in uneconomic areas.</p> <p>Another objective as detailed in Article 13 (b) of Annex III to the Convention is “<i>to attract investments and technology to the exploration and exploitation of the Area</i>”. It is not just important to attract investment aimed at subsea extraction of nodules, but also to encourage groups to commit significant funds to build onshore processing plants, given seafloor polymetallic nodules cannot be treated in existing processing plants.</p> <p>In order to justify building an onshore processing plant, a long term supply of nodules must be assured, which in turn requires a large contract area and long term tenure.</p> <p>A processing plant will also be predicated on stable provision of reagents for its operation as well as offtake of its production. Such a facility will therefore be indirectly integrated to the investment (including by other third parties) in the manufacture of the reagents and the plants to consume the production (e.g. steel mills and stainless steel plants). For all of this investment to be made onshore by multiple groups in the supply chain, these onshore groups must have confidence that there will be a long term supply of the ore.</p> <p>NORI does not object to Adaptive Management, but submits that it may impact the financiability of the project if the Contractor does not have certainty regarding which areas it can mine within its Exploitation Contract area and when. The Authority should not be able to reserve blocks within the Contractor’s tenement area after Exploitation approvals have been granted.</p> <p>It is noted that the current APEI’s already have a significant buffer zone. Therefore, extraction activities should be allowed to occur at the edge of the current APEI buffer zone area.</p>
<p>Fee for applications</p>	<p>The application fee should be no more than the actual cost by the Authority to process such application.</p>
<p>Public review of EIS, EMP and SIA and Closure Plan</p>	<p>It is respectfully submitted that public review is required for the integrity of the process, but should (i) be limited to a defined period of time (e.g. 3 to 6 months), (ii) public commentators should not have standing to formally appeal or block any approval process, and (iii) an expedited appeal process by participants with standing to review such key documentation should be prescribed in the Exploitation Regulations.</p>
<p>Consideration by the Legal and Technical Commission</p>	<p>NORI agrees that certainty as to process, timings and evaluation criteria is critical. NORI suggests that there should be defined time frames for the period in which the LTC is allowed to review and request comment or further information with respect to the data and information submitted by the Contractor. Finally, in the event of a material disagreement, provisions should be inserted with respect to any appeal process if (in the view of the</p>

	Contractor) unreasonable or uneconomic requirements are imposed.
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2.3 Part III Contracts for exploitation

Draft regulation description	NORI Comment
The Contract	It is recommended that incentives are included in the Contracts for the initial groups that commence seafloor polymetallic nodule exploitation as these groups will incur the highest financial risk, and their work will benefit the Contractor's that follow.
Rights of the Contractor	<p>The Contractor should be granted a significant list of additional rights following grant of the Exploitation Contract, in a manner consistent with land based mining regulatory systems. There should also be a system for those groups that are involved in financing the project (banks, lenders and other financial institutions etc.) to be able to register and secure their interest against the Exploitation Contract.</p> <p>To encourage the first Contractors to engage in Exploitation it is recommended that their Contract include 'grandfather' clauses to assist provide the necessary incentives and certainty required to fund the early exploitation projects.</p>
Obligations of the Authority	The obligations of the Authority to the Contractor should be clear, particularly with respect to protecting and upholding the Contractor's rights under the Contract.
Legal title to minerals	<p>Legal title to minerals should pass as soon as the nodules are recovered to the sea surface. As per Article 1, Annex III "<i>Title to minerals shall pass upon recovery in accordance with this Convention.</i>"</p> <p>It needs to be clear that title passes at that point and that there are no restrictions on the transfer of title. If the Contractor is in breach, the Authority has the right to issue penalties for breach (including charging interest on overdue payments) and also order suspension and termination in extreme cases. However, a breach should not impact title to the ore once it is recovered to the sea surface.</p>
Duration of contracts / renewal	<p>NORI agrees that a balance must be made between the fiscal and regulatory incentives necessary to make a project viable, and the Authority's requirement that it be granted the opportunity to adjust the terms and conditions of the plan of work at the time of renewal.</p> <p>In order to be consistent with major land based mining projects, the duration of the polymetallic nodule exploitation contract should be between 20 to 30 years, with automatic renewals every 10 to 20 years, for a total mine life of 50 to 100 years.</p> <p>If the Contract for Exploitation is less than 20 years, and if there are no automatic renewal rights, this will decrease the incentive to continue to invest in research and development during the exploitation phase to design and construct new technologies and systems, which in the long term will be to the detriment of the overall industry.</p> <p>Finally, NORI is of the view that any subsequent application for renewal does not need to be taken to be a "first-time" application, but rather the track record and experience of the Contractor would be relevant factors in any subsequent approval. Indeed it is of the view that subsequent approvals should be issued within a shorter period of time than initial approvals.</p>
Performance requirements	<p>Section 6 Paragraph 1(a) of the 1994 Agreement states that "<i>development of the resources of the Area shall take place in accordance with sound commercial principles</i>".</p> <p>Upon an Exploitation Contract being obtained, the Contractor should be given a reasonable</p>

Draft regulation description	NORI Comment
	<p>time (including an additional buffer to account for unavoidable delays) to construct and commission full-scale mining and processing systems.</p> <p>The 10 year period provided for in the US Deep Seabed Hard Minerals Act is reasonable, provided the Contractor has the right to extend that period if they can show just cause.</p> <p>The Contractor should be permitted to suspend mining operations during periods of low metals prices, which is consistent with how the industry operates on land.</p> <p>The Contractor should also have the right to suspend operations for safety or environmental reasons.</p> <p>Regarding the Authority requiring the Contractor to maintain commercial production through the period of the plan of work, it is important that a situation is avoided where a regulatory body imposes commercial decisions upon a Contractor, as this may lead to safety issues and also may impact the long term viability of the operation if the regulator forces the Contractor to make decisions that result in the Contractor's required rate of return not being met (e.g. by being forced to mine low grade ores or during a time of very low metal prices). NORI would concur that if the operator was undertaking deliberate and negligent actions to thwart economic activity then such actions could amount to an event of default in which the Contract may be terminated, but barring that type of situation, the Authority should not have the right to force operations to continue if the Contractor is of the view that such operations would not be commercial.</p>
Conservation of the natural resources of the Area	<p>NORI submits that, in principle, general conservation standards and expectations should not be materially different from those required under land-based regimes, provided they are appropriately adapted to the seafloor polymetallic nodule environment and industry.</p> <p>With respect to waste from vessels, it should be made clear whether the International Maritime Organization (IMO) regulates the activity or the ISA. A situation should be avoided where double regulation may arise.</p> <p>NORI submits that the conservation of the natural resources of the Clarion Clipperton Zone can best be achieved by formally designating the APEI's as Marine Protected Areas.</p>
Use of sub-contractors	<p>NORI submits that, in principle, general rights, standards and expectations concerning sub-contracting should not be materially different from those required under land-based regimes, provided they are appropriately adapted to the seafloor environment and industry. Contractors should also have the ability to change sub-contractors during the course of Exploitation operations.</p>
Vessels operating in the Area	<p>NORI agrees that it will be important to establish a clear line of duties and responsibilities and co-operation between the Authority and the IMO, to ensure there is no duplication of regulation.</p> <p>Many of the conventions developed by the IMO will likely be directly applicable, particularly regarding the safety of ships, prevention of pollution from ships, the liability of ship owners and compensation in case of pollution of the marine environment. For issues like these that are covered by the IMO and related conventions, they should not be covered by the ISA as well.</p>
Health and safety	<p>NORI submits that, in principle, general OH&S standards and expectations should not be materially different from those required under land-based regimes, the dredging industry and/or offshore oil and gas, provided they are appropriately adapted the seafloor polymetallic</p>

Draft regulation description	NORI Comment
	<p>nodule industry, in particular recognising that seafloor polymetallic nodule mining can be differentiated from offshore oil and gas.</p>
<p>Periodic review of the implementation of the plan of work for exploitation</p>	<p>NORI submits that, in principle, general review standards and expectations should not be materially different from those required under land-based regimes. In particular NORI believes that, as on land, once a Plan of Work has been approved, it is not expected to be materially changed. If regulations and procedures evolve over time, then initial projects should be "grand-fathered" or otherwise any economic impact should be allowed to be recovered by the impacted Contractor whose plan of work was previously approved but is now being required to change.</p> <p>Whilst the exploration regulations allow for a review and adjustment of the plan of work every 5 years, the Exploitation phase can be differentiated, due to the significant up front investment that is required to be committed on the basis that the Contractor is able to carry out its plan of work for an extended period of time in order to achieve the required rate of return necessary to justify the initial capital investment. If a Contractor is forced to make a material change to the plan of work that results in a material adverse economic impact on the project then the Contractor should be compensated for that change.</p>
<p>Termination of sponsorship</p>	<p>NORI submits that, in principle, general mine closure and rehabilitation standards and expectations should not be materially different from those required under land-based regimes.</p> <p>NORI would suggest that an appropriate period of monitoring would need to be assessed in the EIS/EIA process, and included in the Exploitation Contract as part of the mine closure obligations. The environmental bond would also be sized appropriately to cover this future obligation.</p>
<p>Responsibility and liability</p>	<p>NORI agrees that the liability of the Contractor must be for wrongful acts.</p> <p>It will also be important to establish whether responsibility and liability is to the ISA or another regulatory body governing the activity such as the IMO. The Contractor should not be penalised by two different regulatory bodies for the same action.</p>

2.4 Part IV Protection and preservation of the marine environment

Draft regulation description	NORI Comment
<p>Protection and preservation of the marine environment</p>	<p>NORI submits that, in principle, general environmental protection standards and expectations should not be materially different from those required under land-based regimes, provided they are appropriately adapted to the seafloor environment and polymetallic nodule industry.</p> <p>The term “serious harm to the marine environment” should be considered in the context of the whole of the CCZ and abyssal plains, and it is noted that due to its expansive size the abyssal plains can be differentiated from the unique environments on land where much of society’s nickel and copper are obtained (e.g. unique tropical rainforest environments where nickel laterite deposits are mined).</p> <p>Another important concept that can be captured is the form of life that is impacted. For example, many land based projects impact “higher” forms of life such as mammals, reptiles, amphibians, birds etc., and many EIA’s on land do not study in detail the impact on lower</p>

Draft regulation description	NORI Comment
	<p>forms of life such as microfauna. The activities in the Area should be contextualised with reference to what is generally considered an “acceptable impact” by society on land to avoid creating a situation where seafloor activities are at an artificial disadvantage. If it is acceptable to impact a type of organism on land but not on the seafloor then this will result in a situation where society continues to focus its extractive industries on the 30% of the planet which to date has been subject to virtually all mining activities. The net benefits that seafloor polymetallic nodule mining offers to mankind, including taking pressure of society’s need to obtain nickel from nickel laterites which typically occur in the high rainfall equatorial regions (e.g. tropical rainforest areas), should be taken into account. Unlike many land based mines, polymetallic nodule mining does not involve deforestation, removal of overburden, or drilling and blasting. It simply requires harvesting the polymetallic nodules themselves which are not attached to the seafloor.</p> <p>The impact in any one Exploitation Contract area should also be referenced to the regional environment in the Clarion Clipperton Zone (CCZ). NORI submits that the current APEI’s can play a role in protecting and preserving biodiversity and ecosystem function in the CCZ.</p> <p>As is the case with all extractive activities, there will be an environmental impact, which is the cost incurred by society to obtain the raw materials essential to global social and economic development. These environmental impacts will be permitted under the Exploitation Contract.</p> <p>NORI recommends that the ISA take the approach that the environment in the Exploitation Contract area will be impacted, however by classifying the APEI’s as MPA’s this may be the best approach to protect the overall environment across the CCZ polymetallic nodule deposit.</p> <p>There are currently 9 APEI’s in the CCZ covering a combined area of 360,000 square kilometres. When the buffer zones are included, this rises to a combined area of 1.44 million square kilometres. If the APEI’s are changed to Marine Protected Areas, this could then provide sufficient protection of the ecological function of the CCZ.</p>
Environmental management	<p>NORI agrees that environmental management should not be materially different from that required under regimes regulating similar extractive industries. It should be recognised however that seafloor polymetallic nodule exploitation can be differentiated from oil and gas activities as there is no drilling involved or the risk associated with dealing with massive quantities of toxic substances under high pressure such as oil.</p>
Strategic environmental management plan (SEMP)	<p>For seafloor polymetallic nodules in the CCZ, it is recommended that the current APEI’s be formally classified as MPA’s and that these MPA’s should be included in the EMP with respect to protecting and preserving the environment on a regional scale.</p>
Environmental bonds and performance guarantees	<p>Typically bonds are required to ensure the operator complies with its mine closure obligations.</p> <p>Cash payments are not recommended as they are not the norm.</p> <p>The bond would typically be released after mine closure and confirmation by the Authority that any monitoring regime had been satisfied or otherwise funded.</p>
Restoration and rehabilitation of	<p>NORI submits that with respect to polymetallic nodules, and in the case that the Contractor complies with its plan of work, it is likely that the restoration obligations will be minimal as the nodule the extraction process (harvesting) does not involve drilling and blasting, deforestation or overburden removal. For seafloor polymetallic nodules in the CCZ, it is</p>

Draft regulation description	NORI Comment
the marine environment	recommended that the current APEI's be formally classified as MPA's and that these MPA's should be included in the EMP with respect to protecting and preserving the environment on a regional scale.
Adaptive management approach	<p>It will not be viable to require Contractors to carry out exploitation activities on a smaller scale or for a shorter period of time than is required for that Contractor to justify the significant investment of the offshore mining spread and onshore processing plant. For example, it is not possible to build half a vessel to carry out a half scale operation. As such, the full scale vessel would need to be used however this means a significant fixed cost to carry out a small scale operation where the economic return is likely not going to be satisfactory. It will also likely not be viable to run a polymetallic nodule processing plant at reduced capacity. Tanks, pumps, pipes, boilers etc. are geared to work at an optimal flow rate. It is not commercially viable to run chemical reactions in a processing plant at a level below what is optimal and what the plant was designed for. Likewise for the pumps offshore where there needs to be a certain slurry density.</p> <p>NORI emphasises that there is currently no market for seafloor polymetallic nodule ore. Significant investment needs to be made to build processing plants and related infrastructure. Investment in that infrastructure will likely only happen if the project can be run at the optimal level to achieve the necessary investment returns. Artificial production limits should therefore not be placed on the project. It will likely not be viable to operate such processing plants at half capacity or for only half the time.</p> <p>Any policies which have the effect of causing production to be run below what is optimal and what the equipment is designed for will impact the viability and financiability of the project.</p>
Seabed sustainability fund	<p>It is submitted that any contributions from Contractors should be able to be deducted against royalties payable, otherwise the sustainability fund simply becomes another tax imposed on Contractors. As such, if a sustainability fund is included this should coincide with an equivalent reduction in the royalty payable by the Contractor.</p> <p>It is also not recommended that the Authority impose additional payment obligations on Contractors until such time as seafloor polymetallic nodule exploitation has proven to be commercially viable and the industry is mature.</p>
Environmental liability trust fund	<p>The establishment of such a liability trust fund should only be contemplated after a sufficient number of projects have been approved and operated. The establishment of the trust fund should also coincide with the retirement of any environmental bonds that are in place at that time. For example, those companies that joined the Western Australia Mining Rehabilitation Fund were able to retire their bonds as the trust fund replaced the bond system. Importantly, there should not be both a bond system as well as the liability trust fund.</p> <p>It can also be noted that it is society that creates the demand for metal, and society (through government approval) allows certain activities to take place. As such, society should also bear some of the risks involved in these activities provided there has not been a wrongful act by the Contractor.</p>

2.7 Part VII Enforcement, offences & penalties

Draft regulation description	NORI Comment
Offences & penalties	Offences and penalties should be in accordance with Annex III, Article 18. It is recommended that there is no conflict or duplication of regulatory penalties and offences between the Authority and other regulatory bodies such as the IMO. Penalties should only be imposed on the Contractor where there has been a wrongful act. A Contractor should not be

	penalised for damage caused in circumstances in which the exploitation activities have been authorized by the Authority, and the Contractor has carried out its plan of work in compliance with its Exploitation Contract.
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2.8 Part VIII Settlement of disputes

Draft regulation description	NORI Comment
Settlement of disputes	There should be an efficient mechanism for Contractors to appeal decisions made by the LTC regarding their plan of work application.

2.10 Part X Review

Draft regulation description	NORI Comment
Review	Certainty and stability with respect to exploitation regulations is essential for the financing and development of projects that require such significant up front capital investment. It is important that the initial Exploitation Contracts have "grand-fathering" clauses to provide the certainty needed particularly given the higher cost of capital faced by the initial exploitation projects.

3. Annex II Contract for exploitation

Clause relating to:-	NORI Comment
Insurance	In the requirement to size insurance, a reduction should be reflected in the size of the environmental bond. Certain activities and events would be better dealt with through insurance rather than through a bond.
Revision	Certainty and stability with respect to exploitation regulations is essential for the financing and development of projects that require such significant up front capital investment. It is important that the initial Exploitation Contracts have "grand-fathering" clauses to provide the certainty needed particularly given the higher cost of capital faced by the initial exploitation projects.