NAURU OCEAN RESOURCES INC.

December 19, 2017

Comments by Nauru Ocean Resources Inc. (NORI) on the Draft Regulations on Exploitation of Mineral Resources in the Area

Nauru Ocean Resources Inc. (NORI) holds a contract to explore for polymetallic nodules and is pleased to grant its consent to the International Seabed Authority (ISA) to disclose the information contained in this document.

Together with population growth, the continued advancement of electric vehicles and clean-energy technologies is driving an increase in demand for the particular metals found in seafloor polymetallic nodules. This increasing demand, coupled with the current interest and investment in seafloor minerals, makes this the time to finalize the regulations. The timely development of commercially viable regulations will finally allow the development of a new cleaner metals industry to meet the world's clean technology and clean energy needs.

The Draft Regulations represent an important step forward for the ISA and its stakeholders. NORI wishes to acknowledge the work of the ISA in developing the Draft Regulations and designing a transparent and timely process for the review and finalization of these Regulations. In particular NORI appreciates the ISA's willingness to adapt its regular schedule of meetings to facilitate more than one Council session per year. NORI is pleased to contribute to the Voluntary Fund which will assist developing States in attending and participating in the additional meetings and is committed to assisting in this critical phase of the Regulatory development.

As requested by the ISA, NORI has answered the questions provided. Prior to answering the questions, NORI would like to respectfully highlight five areas of significant concern:

<u>Stability of Contracts and Regulations</u>
NORI recognizes that Regulations will need to updated from time to time to reflect new practices and knowledge. NORI would recommend that the Regulations at the time of the contract become part of the contract and any future changes be incorporated by mutual agreement.

With respect to the Regulations that have a fundamental impact on the Contractor's right, any changes to these Regulations would be similar to the Regulatory Body making a unilateral change to the Contract terms. As such, NORI recommends that changes to material aspects of the Regulations should only be applied to new Contractors, and not Contracts that are already in existence.

It is vital that the ISA recognize and respect the sanctity of the contracts already signed and not change the terms without the consent of the Contractor. NORI would note that there is a precedent of the ISA and Contractors working together to change terms within existing contracts. For example, Exploration Contract Annual Fees were increased, by mutual agreement, for the benefit of the ISA.

<u>Environmental Scoping Report</u>
NORI is concerned that if the Exploitation Code requires an Environmental Scoping Report to be submitted in accordance with the Exploitation Code, this will mean that environmental impact assessment work cannot meaningfully commence until **<u>after</u>** the Exploitation Code is adopted. From a practical and risk perspective, such environmental impact assessment work will likely only be carried out

after the Contractor has received confirmation that its Scoping Report is acceptable. Moreover, per Draft Regulation 18(1), the Scoping Report needs to be submitted before undertaking an Environmental Impact Assessment. However, if the Scoping Report forms part of the Exploitation Code, then it would presumably not be possible to submit the Scoping Report until after the Exploitation Code is adopted. NORI is concerned that this would delay the ability to commence environmental impact assessment work and as such NORI recommends that an Environmental Scoping Report should not form part of the Exploitation Code.

Production and commercial requirements

Of particular concern for NORI are **Draft Regulations 7(4)(a), 30, 32 and 33** that appear to prescribe commercial production criteria or obligations upon the contractor to change operations or alternatively to limit the ability of contractors to vary operations to accommodate changes for example in the external economic environment or as a response to technological changes.

Provided such a change does not cause unlawful harm and remains within the parameters of the contract conditions and complies with the ISA's regulations, the Contractor should be free to make modifications to its plan as it deems necessary in order to achieve the required commercial, technical or environmental outcome. Contractors must have this flexibility to respond to operating, technical and market forces which will come into play and impact operations from time to time. The mining industry, and in particular metal prices, change quickly, and it would not be appropriate for the Contractor to have to seek approval from the ISA prior to making such changes if it has genuine reasons to modify its production rates. It is also not commercially viable to require a Contractor to apply to the ISA to change or suspend its production or have limits placed on its production. Ultimately, a Contractor's production rate, and changes to its production rate, are commercial decisions that should not be dictated by the Regulatory Body. For example, it would be unacceptable if a Contractor were "forced" to continue producing at a loss. We wholeheartedly agree with keeping the ISA informed of such changes, but we do not agree with the need to seek prior approval for commercial decisions.

Additionally, contractors should be encouraged to develop organizations that strive to continually improve operational performance to build margins and improve environmental performance and safe operations that will drive the industry forward. This innovation will be hampered if Contractors do not have the ability to make changes within the parameters of their contract without ISA approval.

For these reasons NORI would also recommend that **Draft Regulation 46** provide greater flexibility for Contractors to modify their plans of work and Contractors should not be prevented from modifying their Plan of Work to meet market conditions.

Given the significant up-front capital expenditure that will be incurred prior to commercial production, Contractors will be incentivized to maximize production and we struggle to contemplate a situation where a Contractor would attempt to reduce or suspend its production unless there was a very serious reason to do so. It is understandable for the Regulatory Body to take measures to ensure that an operator brings the project in to commercial production within a reasonable time frame of being granted an exploitation permit. However, once that Contractor has expended significant capital and commenced commercially production, we do not believe it is a genuine risk that the Contractor would then suspend or minimize production unless it was compelled to due to market forces etc.

NORI notes that the 1994 Implementation Agreement specifically removed the production policies contained in UNCLOS because it was recognized that it was not possible for commercial entities to invest in this industry while such policies were in place. As currently worded, the above-mentioned Regulations could artificially regulate production, which NORI does not believe is the ISA's intent.

Specifically, the above-mentioned Draft Regulations, do not appear to be consistent with Section 6(1)(a) of the Implementation Agreement, which states "*development of the resources of the Area shall take place in accordance with sound commercial principles*". NORI does not believe it would be commercially sound for the ISA to "order a decrease or the cessation or suspension of production" because the ISA does not believe the production is efficient. Provided a Contractor is not causing unlawful harm and remains within the parameters of the contract conditions and complies with the ISA's regulations, the Contractor should be free to make modifications to its plan as it deems necessary in order to achieve the required commercial, technical or environmental outcome.

To ensure transparency and ensure that the Authority is aware of and understands why a Contractor is modifying production, an option to consider, may be to provide the Secretary General with the ability to request the Contractor provide the rationale within 90 days for as to why production is deviating from the approved mine plan if the variance is ±25%.

Transfer of rights

NORI believes that **Draft Regulation 16** which pertains to transfer of rights and obligations is uncommercial and will prohibit investment. For example, **Draft Regulation 16(3)** which states *"The terms and conditions of the transferee's exploitation contact shall be those set out in the standard exploitation contract annexed to the Regulations that is in effect on the date that the Secretary-General executes the assignment and novation agreement"* has the potential to significantly diminish the value of the Exploitation Contract as it has the potential effect of changing the contractual terms of the Exploitation Contract upon a transfer. This could also significantly impair a Contractor's ability to finance the project, as a financier/security holder will have to accept that if they exercise their security they will not be obtaining an Exploitation Contract on the terms that were in existence at the time of financing, but rather, they must accept the Exploitation Contract terms that are set out in the Regulations at the time of transfer, which could significantly reduce the value of the project. This uncertainty would inhibit project financings. Contractors and the industry require certainty. To provide this certainty, NORI recommends that the terms applying to the transferor at the time of the transfer would also apply to the transferee.

Additionally, Clause 16 is structured as if the transferee is reapplying for the exploitation contract, rather than being the recipient of the transfer of an existing contract. As worded this would be an impediment to project financing as it would not be possible for the contract to act as security to a financing.

NORI also believes that **Draft Regulation 16 (6 e)** is prohibitive. The transfer of rights should not be dependent on the transferee's ability to operate. For examples, investors such as a bank may wish to take over the rights with the intent to sell them. In that situation it is unlikely that a bank would operate the commercial production. Rather, the bank would likely look to sell the title to an operator. However, it would be important for that bank to obtain the title first. To accommodate these types of financiers, NORI would recommend revising **Draft Regulation 16 (6 e)** to read: "*prior to carrying out seafloor mineral activities, the transferee must be able to demonstrate they can meet the requirements set out in regulation 7*;".

We note that **Annex X (Standard Clauses for Exploitation Contract), Section 15.3** stipulates, "The terms, undertakings and conditions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns." NORI fully supports this stipulation and this concept of inurement must be reflected in the **Draft Regulation 16**. That is, the terms of the contract must stay consistent upon a transfer, and should not be changed by forcing the transferee to be subject to a different regulatory regime as that to which the transferor operated.

Recommendations becoming regulations and the implications for contractual certainty

Currently, there are numerous references to the "Recommendations" issued by the LTC and these appear to imply that they are mandatory. If this were the case, the "Recommendations" would in actuality serve as regulations, which, if frequently changed and/or updated, would result in an unstable regulatory regime. The resulting uncertainty would not allow Contractors to operate with confidence, and this would hinder investment, likely making their contract "unbankable"; i.e. impossible to secure financing.

Mining jurisdictions with a track record of a stable and consistent regulatory regime are able to attract investment because they provide the confidence and certainty required by investors. Until such time as the ISA has a track record as a regulator it must be absolutely clear that contracts will not be changed without the mutual consent of both parties.

In addition to providing confidence and certainty, Recommendations that are in effect becoming regulations would appear in contravention to **Annex III, Article 19 of the Convention,** which requires both parties consent before a contract is revised.

Other points

In addition to answering the questions posed by the ISA, NORI has noted a number of areas that could benefit from some minor wording changes. A table outlining these observations is attached to this document.

Thank you again for the comprehensive and transparent consultation process and for the opportunity to provide comment on the draft regulations. If additional clarity is required, please contact NORI at: office@nauruoceanresources.com

General questions

1. Do the draft regulations follow a logical structure and flow?

Generally, the draft regulations are laid out in a logical manner and provide a comprehensive regulatory framework for exploitation. However, we make a few recommendations here:

NORI would recommend the development of a flow diagram that outlines the application and review process for the various stages and the timelines associated with each step. This would assist all stakeholders in understanding the steps and timelines required (on both the part of the regulator and the proponent) to advance through the regulatory requirements to exploitation.

NORI was the first Contractor to submit an Environmental Inception Report (aka Scoping Report) to the ISA. As currently envisaged in **Draft Regulation 18**, the Scoping Report and the timing of its submission perhaps do not make entire sense. In other jurisdictions, the Scoping Report is used to align expectations around EIA/EIS requirements and provides a chance for the regulator to comment on what needs to be done before detailed EIA work commences. An Inception Report or Scoping Report usually highlights the planned studies and the proposed approaches to complete those studies (for example, a desktop study or fieldwork approach), and it will summarize any studies undertaken to date and the gaps that remain. Given the studies expected by the ISA are already outlined in the Recommendations for Contractors, all the Scoping Report may need to do, if this step is to exist, is outline the approach the contractor intends to take to meet those recommendations to ensure ISA and Contractor expectations are aligned, prior to years of work and a great deal of expenditure occurring. In our view, where an Inception Report or Scoping Report holds most value is in aligning the regulator and proponent with respect to the expected make-up on the EIA and EIS. In effect, it is a form of consultation and the main aim is to ensure there are no surprises when the EIS is submitted for review. Since this would not be case with the current suggested timing and content, NORI recommends that **Draft Regulation 18** be deleted and a Scoping Report not be required. Or, if it is to be required, that the requirement is included in the Exploration Regulations or Recommendations for Contractors, with its purpose, content and the timing of submission in line with the explanation provided here.

2. Are the intended purpose and requirements of the regulatory provisions presented in a clear, concise and unambiguous manner?

Generally, the draft regulations are clear and concise. However, as detailed above, there are numerous references to the "Recommendations" issued by the LTC. It appears that these are to be mandatory, which in effect makes them regulations. As outlined above, this would lead to a changing and unstable regulatory environment and reducing the value of the contract between a Contractor and the ISA. The regulations in existence at the time of a contract must continue for the life of the contract. Any changes to a contract must be by mutual agreement. To ensure the commercial viability of the industry, contracts and the regulations by which Contractors operate must be secure.

If the intention is that "recommendations" will, in effect, be regulations they should be termed as such from the outset, as the expectations of the parties creating them and the wording used would likely be modified to take into account the different implications of the document.

3. Is the content and terminology used and adopted in the draft regulations consistent and compatible with the provisions of the United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI of the Convention?

In most cases, the ISA has done an admirable job in maintaining consistent terminology with UNCLOS and the 1994 Agreement relating to the implementation of Part XI of the Convention. NORI would offer the following observations:

<u>Contract term</u>

Draft Regulation 13 is a good example of consistency between the regulations and UNCLOS and the 1994 Agreement. NORI notes that UNCLOS Article 17(2)(b)(iii) provides that "The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability".

Most Contractors are envisaging operations in excess of 30 years, so an initial term of 30 years is reasonable and strongly supported by NORI because it would be typical for an analogous scale resource project on land. It is also important to note that to be economic the duration of the exploitation contract also needs to be long enough to not only pay back the cost of the production vessel and the processing plant, but it must also provide enough time to generate sufficient returns to attract the investment necessary to build the processing plant and production vessel in the first place. This certainty of duration of exploitation rights is critical to supporting the ability to finance these types of projects, particularly seafloor polymetallic nodules, which have a very high capex and require a long construction phase, long commissioning and ramp up phases, and a long repayment period.

Ultimately, the high capital cost of a seafloor polymetallic nodule mining and processing operation will likely only be justified if there is a long-term license to mine with certainty of tenure and long-term stability. This is particularly true for the first movers in this industry. For these reasons, NORI would seek clarification that the initial 30-year term excludes the closure period.

However, NORI notes that the terms of the Contract must also persist for that 30-year term, and should not be changed without the Contractor's agreement as envisioned in the 1994 Agreement.

Production and commercial requirements

As detailed at the start of the document, an area of particular concern is **Draft Regulations 7(4)(a), 30, 32 and 33** which appear to prescribe commercial production criteria or obligations. Section 6(1)(a) of the Implementation Agreement, states "development of the resources of the Area shall take place in accordance with sound commercial principles". Currently, the Draft Regulations are not consistent with the Agreement.

NORI notes that the 1994 Implementation Agreement specifically removed the production policies contained in UNCLOS, as it was acknowledged that it was not possible for commercial entities to invest in this industry while such policies were in place.

Processing of nodules and activities within the Area

NORI would appreciate clarity on references to the processing of nodules and activities within the Area. The ISA's jurisdiction relates to work carried out within the Area and as such NORI believes that the regulations should only reference the processing of nodules that occurs within the Area and should not reference or include processing onshore as this is outside of the Authority's jurisdiction and potentially creates a situation of conflicting regulations. We note that under UNCLOS the ISA is defined as "*the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area"* (Article 157(1)). Attached as *Appendix A* are the statements from the Seabed Disputes Chamber (SDC) advisory opinion

that define what the term "activities in the Area" includes. As per the SDC advisory opinion, Onshore Processing is excluded. Transportation to points on land is also excluded. NORI strongly agrees that the regulations should only pertain to activities within the Area and not onshore processing locations outside the Area, or transshipment corridors that will be governed by another set of rules and regulations (e.g. through Maritime Law/IMO).

Examples of Regulations that reference the processing of nodules include:

- **Draft Regulation 4, paragraph 3(a)** which references the prefeasibility study prepared in accordance with **Annex II paragraph 2(h)** which requires details of recovery and processing.
- Also, **Draft Regulation 7(4)(a**) should refer to "ore", and not "minerals". Unless metallurgical processing is taking place in the Area, the Authority should not be attempting to regulate extraction of minerals from the ore, as that will likely be carried out by other entities in other jurisdictions. This may simply be a case of using the incorrect word.

It is NORI's perspective that offshore operations will likely be carried out by companies specialised in offshore operations and offshore materials handling, whereas the onshore processing will likely be carried out by companies with expertise in metallurgical processing. The onshore processing and refining/smelting may also take place in a number of onshore jurisdictions. It would not be practical (and may potentially be impossible) for the ISA or the Contractor to obtain information from those onshore operations. If the ISA were to require such processing and refining information (such as costs, revenues, products produced, etc.) this would significantly limit the number of onshore processing plants and refineries that would be willing to engage in this industry, as most processing companies would consider this information to be commercially sensitive and as such would not be willing to share it. This would create an artificial disadvantage for the polymetallic nodule industry because such a requirement is not applicable to land based mining and processing operations. Indeed, this would be at odds with how the industry operates and is regulated on land.

For the above reasons, NORI would also seek clarity for the requirement of **Draft Regulation 39** to submit information regarding the onshore processing of nodules.

4. Do the draft regulations provide for a stable, coherent and time-bound framework to facilitate regulatory certainty for Contractors to make the necessary commercial decisions in relation to exploitation activities?

Clarity and certainty with respect to process, timings and evaluation criteria of applications is critical. As noted in our response to Question 1, a clear flow sheet outlining the steps and timelines associated with each step to advance through the exploitation permitting / contracting process would be very helpful.

Some specific wording for Regulations has been suggested in the table included at the end of this submission. Below are a few key areas that NORI believes could lead to an uncommercial regulatory environment.

<u>Timing Uncertainties</u>

There are a number of instances in the draft regulations where the timing is uncertain and additional clarity would be useful. For example, there are no timelines for the LTC to make recommendations to Council which creates uncertainty and unacceptable risk for investors and operators. We would suggest establishing timelines in line with industry norms such as providing regulators with 60-120 days to review and respond to applications.

Examples of where there are timing uncertainties:

- **Draft Regulation 5 (2)** – the timing of application consideration by the Commission should be linked to the application date, not the date that information was circulated to the Commission.
- **Draft Regulation 8 (3)** – Rather than "expeditiously", we would like to see specific timing requirements here (e.g. 60 days).
- **Draft Regulation 16 (5)** – Rather than requiring a security holder to have to wait for the Commission to consider the application at its next meeting which could be months away, NORI would recommend that a decision be made within 90 days of receiving the application.
- **Draft Regulation 16 (9)** – Rather than requiring a security holder to have to wait for the Council to make a decision to permit a transfer, as it may be months before the next Council meeting and NORI would recommend that a decision be made within 90 days of receiving a request for transfer.
- Currently, there is no time frame for the Commission to issue a report under **Draft Regulation 21 (2**). We suggest that a 90-day time period would be reasonable.
- We appreciate the certainty provided by the timelines associated with **Draft Regulation 22(2.a)** but would welcome some additional clarity as it appears that the Regulations require a second public hearing process for a revised Environmental Management Plan and Closure Plan after a contract has been awarded. It would seem reasonable that only when there is a material change to the EMMP and/or Closure Plan that a second public hearing and 'review' would be warranted.
- Additionally, **Draft Regulation 20 (2)** states that the "Secretary-General shall publish the EIS, EMMP, and CP on the Authority's website for comment by Interested Persons. They shall remain open for comments for a period of no less than 60 days after posting." We suggest that for certainty of process that this 'open for comments period' be fixed, and suggest 60 days would be appropriate.
- For **Draft Regulation 29**, there needs to be a timeline for approval, we suggest 90 days.

EMMP and Closure Plan – Second Reviews

Additionally, **Draft Regulation 29** requires **(c)** A revised Environmental Management and Monitoring Plan and **(d)** A revised Closure Plan to be approved in accordance with **Draft Regulation 22**. In turn, **Draft Regulation 22** requires the revised EMMP and Closure Plan to be considered by the LTC (at their next meeting) after comment by Interested Persons. This potentially adds another level of regulatory risk, given the Contractor has previously submitted its EMMP and Closure Plan for comment and assessment. Again, we would strongly recommend that if, during the LTC's consideration, it is determined that the updated EMMP and Closure Plan do not contain a material change from the original plans, that the "Interested Persons commentary" step should not be required. It is also critical that Interested Persons, experts or

expert panels do not play a decision-making role. It is of course completely acceptable that the LTC consider their input, but decision-making powers must remain with the regulator. In addition, it is important that Contractors retain the right of appeal.

Commercial Production Criteria and Reasonable Modifications to a Plan of Work

In addition to certainty regarding timing, there are some areas within the draft regulations that do not provide regulatory certainty and cause commercial uncertainty. These have been outlined already, so we will only reiterate that Contractors must have the flexibility to respond to operating, technical and market forces which will come into play and impact operations from time to time.

Tenure Uncertainty

As currently written **Draft Regulation 10(2)(b**) states, *"The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in…. A plan of work approved by the Council for Exploration for or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved plan of work for other Resources"* does not provide regulatory certainty, and in fact causes a great deal of uncertainty. NORI believes that this Regulation is inconsistent with Regulation 24(1) of the Exploration Code, which states, "*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*."

Pursuant to Regulation 24(1) of the Exploration Code the Authority should not grant another exploration contract for a different resource in that same area unless it can guarantee that the second Contractor will not interfere with the first Contractor's ability to move to the exploitation phase. For example, the second Contractor would need to acknowledge at the time of being granted their contract, that they will not inhibit the first Contractor's ability to move to exploitation.

NORI also notes that in **Annex X Section 4.3** it is stipulated that the Authority "shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation Activities of the Contractor."

NORI believes that if a Contractor is granted an exploration contract covering an area, and spends money carrying out exploration in that Area in good faith, it should not lose its right to move to exploitation simply because another contractor lodges an exploration application for another resource in the same area.

Transfer of Rights and Obligations

NORI has outlined its concerns regarding the transfer of rights above but would like to note the uncertainty regarding the timing of the process currently envisioned. Additional certainty should be added and rather than have to wait for the Council to make a decision to permit a transfer, as it may be months before the next Council meeting and NORI would recommend that a decision be made within 90 days of receiving a request for transfer.

Relevant Mineral

NORI would recommend that the term "**Relevant Mineral**" in **Draft Regulation 51** for seafloor polymetallic nodules be limited to Ni, Cu, Mn and Co. It would be appropriate to maintain

consistency with land based regimes, where the royalty is limited to the main metals contained in the ore. This is because some of the metals may not be economically recoverable, or may only be recovered in a very low percentage. Importantly, it may often be the case that a metal may only be fully recovered at the expense of not fully recovering another metal, or not recovering certain other metals at all. It is possible that the existence of some metals may also cause the Contractor to incur a penalty when selling to a processing plant or refinery, and this will vary between operators depending upon the process route used in the value chain. It would not make sense to have to pay a royalty for a metal(s) that are of negative value to a processing plant.

Another potential challenge with charging royalties for all metals recovered is that it may inhibit innovation and create waste since there may be some by-product materials that can be extracted from the ore and sold for no profit or a small loss to ensure it reduces the waste from the processing plant. However, if the Contractor was charged a royalty for the sale of that by-product then there would be little incentive to find a market to sell into and rather it may be left as waste.

System of Payment Stability

Changing the system of payment as allowed under **Draft Regulation 72** would defeat the purpose of creating stability and certainty for existing contractors. It is recommended that in order to promote stability and commercial certainty, that the First Period of Commercial Production should be at least years 30 years to reflect the terms of the contracts.

Inspector Power

NORI supports having a strong independent inspection function by the ISA and support strong powers for inspectors there is justified concern regarding undue risk of serious harm to personnel or the environment. NORI is however concerned about the level of power provided to Inspectors in **Draft Regulation 86** as the current wording provides Inspectors with the ability to interfere with commercial operations without due cause. Furthermore, **Draft Regulation 86(e**) allows inspectors to test machinery to destruction and Regulation **86(f)** allows inspectors to seize any machinery. We cannot envisage a situation where it would be necessary to test machinery to destruction, or for machinery to be seized, testing to destruction or seizing mining equipment which could be worth hundreds of millions of dollars is, quite simply put, unacceptable. NORI also recommends a provision to compensate Contractors where Inspectors actions have caused damage to Contractors in circumstances where the Contractor has not actually breached the Regulations.

Lastly, **Draft Regulation 87** allows the Inspector to order a suspension of activities if the inspector has "reason to believe". The inspector should be required to have "evidence" before ordering a suspension of activities. The ISA may also wish to consider including wording that protects the Contractor in the case of damages caused by negligent inspectors.

Renewal Terminology

ISA exploration contracts use the word 'extension' but the **Draft Regulation 13 and Annex X (Section 10)** use 'renewal'. For greater certainty, NORI would recommend keeping the terminology consistent with previous ISA documentation and use the term 'extension'.

NORI would also recommend that the renewal term be increased to 30 years.

Insurance

Draft Regulation 27 is not a standard for a regulator. NORI would appreciate discussing the intent of this regulation.

Close out of license

NORI notes that there is no reference to a close out process for a contract. Typically, upon the Contractor's completion of the closure plan, the Regulator will review that the closure plan has been completed as designed and then the license is closed ending the Contractor's responsibility and liability.

NORI would request that this this process is added to the Draft Regulations so there is no uncertainty about the process.

5. Is an appropriate balance achieved between the content of the regulations and that of the contract?

NORI believes that the ISA has done well to balance the content of the regulations and the contract. NORI suggests that it would be beneficial to move the financial and commercial terms into the contract. This would provide increased certainty for Contractors and the ISA.

Annex X – Standard Clauses for exploitation contract compliments the Regulations nicely. There are a few aspects of **Annex X** that NORI believes should be reconsidered. These are discussed below:

- **Section 3.3(a)** requires the Contractor to comply with the "Rules of the Authority". It is important then that the definition of "Rules of the Authority" should not include the "Recommendations". Otherwise, the Recommendations are not recommendations, but regulations. On the same note, **Section 3.3(d)** should be removed, as it would not be appropriate to create a legal obligation on a Contractor to comply with "Recommendations". Alternatively, it could specify that it relates to those Recommendations at the time of the contract signing and any subsequent mutually agreed upon changes.

  NORI would recommend that a process be developed to consider appeals, a Contractor may not agree with an Inspectors Compliance Order under **Section 3.3 (g)** and a rapid process to review and rule on a Contractor's appeal should be developed.

- In **Section 3.3(k)** NORI does not believe it is appropriate to include in a legal contract such statements as "Manage the Resources in a way that promotes further investment and contributes to the long-term development of the common heritage of mankind". Such statements are subjective and may not be commercial, and as such would be inconsistent with the Section 6(1)(a) of the Implementation Agreement that stipulates, "*development of the resources of the Area shall take place in accordance with sound commercial principles*". NORI recommends Section 3.3(k) be deleted.

- Security of tenure is vital to the commercial certainty required by investors. As such,

NORI appreciates and strongly agrees with this **Section 4.1**.

- NORI believes that the two-year time period outlined in **Section 13.2** is too short. NORI suggests that the time period should be increased to five years with the option of renewing it for a further five years. The Council should be required to determine if in their opinion the Contractor could have removed the force majeure conditions.

NORI would suggest that under **Appendix I – Notifiable events, items 3,4,8,9 and 10** must be material otherwise the ISA would be inundated with minor reports. For example most safety incidents on vessels are minor slips trips and falls. Would the ISA be interested in receiving every notification of a near miss or observation of a potentially unsafe act? Additionally, an overly bureaucratic process can be counterproductive to creating an open reporting culture necessary to drive continual improvements in safety and environmental performance.

NORI requests clarity with regards to **Appendix II Schedule of administrative fees (regulation 83)**. For example:

- Why are additional fees for the Renewal of an exploitation contract (regulation 13) not covered under the annual fee?

NORI recognizes that the content and wording is indicative and offers the following suggestions when considering the definitions under **Schedule 1:**

“Best Environmental Practice” needs to include wording such as “and taking into account reasonable technical and economic constraints”

“Interested Person(s)” – this definition is too broad. The wording “or who has relevant information or expertise” should be deleted, as arguably countless individuals could claim to have “relevant information” or “expertise”. Rather, it should be limited to those natural or juridical persons that are directly affected by the Exploitation Activities.

“Rules of the Authority” definition should not include “Recommendations”. The Recommendations need to be guidelines, not legal obligations.

"Serious Harm to the Marine Environment" is too broad and needs to be tightened. It should require a much higher threshold before this definition is triggered, given such triggering results in the Council not being able to approve a plan of work.

6. *Exploration regulations and regime*: are there any specific observations or comments that the Council or other stakeholders wish to make in connection with their experiences, or best practices under the exploration regulations and process that would be helpful for the Authority to consider in advancing the exploitation framework?

NORI would like to reiterate its appreciation for the ISA’s willingness to adapt its regular schedule of meetings to facilitate the approval of the Draft Regulations. NORI hopes that this will ensure the regulations are in place by 2019, facilitating access to clean metals for clean technology.

NORI recognizes that additional work will be done on the financial section and looks forward to contributing to this vital section of the Draft Regulations.

Specific questions

1. *Role of sponsoring States*: draft regulation 91 provides for a number of instances in which such States are required to secure the compliance of a contractor. What additional obligations, if any, should be placed on sponsoring States to secure compliance by contractors that they have sponsored?

NORI believes that **Draft Regulation 91** is comprehensive and no additional obligations are required to be added.

2. *Contract area*: for areas within a contract area not identified as mining areas, what due diligence obligations should be placed on a contractor as regards continued exploration activities? Such obligations could include a programme of activities covering environmental, technical, economic studies or reporting obligations (that is, activities and undertakings similar to those under an exploration contract). Are the concepts and definitions of "contract area" and "mining area(s)" clearly presented in the draft regulations?

NORI would recommend that those areas not identified as mining areas continue to be regulated under the exploration regulations, but with the inclusion of "retention provisions" to the exploration regulations, which are common in mining legislation elsewhere, that allow contractors to hold these areas where all exploration work has been completed, where development of the area at the time is not economic, but there is a reasonable expectation that that such development would be economic in the future.

3. *Plan of work*: there appears to be confusion over the nature of a "plan of work" and its relevant content. To some degree, this is the result of the use of terminology from the 1970s and 1980s in the Convention. Some guidance is needed as to what information should be contained in the plan of work, what should be considered supplementary plans and what should be annexed to an exploitation contract, as opposed to what documentation should be treated as informational only for the purposes of an application for a plan of work.

Similarly, the application for the approval of a plan of work anticipates the delivery of a pre-feasibility study: have contractors planned for this? Is there a clear understanding of the transition from pre-feasibility to feasibility?

NORI would be pleased to share its pre-feasibility study with the ISA but notes that some aspects of this study are commercially confidential and NORI would request its permission be sought before any aspects are made public. NORI would also note that the pre-feasibility study would be shared for information only and while NORI would accept ISA comments, it needs to be clear that the ISA's approval is not required for a Contractor to move from pre-feasibility to feasibility, as this is a commercial decision.

4. *Confidential information*: this has been defined under draft regulation 75. There continue to be diverging views among stakeholders as to the nature of "confidential information", with some stakeholders considering the provisions too broad, and others too narrow. It is proposed that a list that is as exhaustive as possible be drawn up identifying non-confidential information. Do the Council and other stakeholders have any other observations or comments in connection with confidential information or confidentiality under the regulations?

NORI believes that a comprehensive list could work so long as there is a process to deal with issues that arise that were not captured on the list. Alternatively, the Contractor could highlight what is confidential on its submission and if the ISA wishes to publish any of the redacted parts, they can seek permission from the Contractor.

Regulation 75(2) requires Confidential Information to be retained by the Contractor in the strictest confidence. This does not appear to make sense. If the Contractor wishes to disclose its confidential information, it should be allowed to do so. There should be no obligation on the Contractor to keep its own information confidential.

Where the Authority provides a contractor with confidential information, NORI agrees that there should be a requirement for the Contractor to maintain the confidentiality of this information.

5. *Administrative review mechanism*: as highlighted in Authority discussion paper No. 1,2 there may be circumstances in which, in the interests of cost and speed, an administrative review mechanism could be preferable before proceeding to dispute settlement under Part XI, section 5, of the Convention. This could be of particular relevance for technical disputes and determination by an expert or panel of experts. What categories of disputes (in terms of subject matter) should be subject to such a mechanism? How should experts be appointed? Should any expert determination be final and binding? Should any expert determination be subject to review by, for example, the Seabed Disputes Chamber?

NORI is supportive of the ISA reaching out to an expert or panel of experts as and when it deems it necessary to compliment its own expertise, however, we do not feel that the expert or panel of experts role should be a decision-making one. Experts could be used for fact-finding and for providing opinions for the Authority to take into consideration. However the decision-making power must remain with the regulator, in this case the ISA, and a Contractor must still have the right of appeal.

6. *Use of exploitation contract as security*: draft regulation 15 provides that an interest under an exploitation contract may be pledged or mortgaged for the purpose of obtaining financing for exploitation activities with the prior written consent of the Secretary-General. While this regulation has generally been welcomed by investors, what additional safeguards or issues, if any, should the Commission consider?

NORI strongly agrees with the concept of being able to use the exploitation contract as a security. However, NORI would recommend that the Authority adopt regulations that deal with Caveats and Interests similar to that included in **Appendix B** at the end of this submission.

NORI believes **Draft Regulation 15(3)** is too restrictive, and does not provide the holder of the security with enough flexibility to deal with the security. NORI also notes that it may not be a mortgagee.

NORI also would appreciate additional clarity on how **Regulation 15(1)** would be administered;

- would the ISA maintain a register; and
- in which jurisdiction would a claim be enforced?

7. *Interested persons and public comment*: for the purposes of any public comment process under the draft regulations, the definition of "interested persons" has been questioned as being too narrow. How should the Authority interpret the term "interested persons"? What is the role and responsibility of sponsoring States in relation to public involvement? To what degree and extent should the Authority be engaged in a public consultation process?

NORI would disagree with the statement that the definition of "interested person" is too narrow and would suggest that the definition is too broad. The wording "or who has relevant information or expertise" should be deleted.

Sponsoring States should be able to determine their role and level of involvement in public participation. NORI would expect that Sponsoring States would be active supporters throughout the public process.

NORI has and will continue to seek the Authority's perspective on its public consultation process and has assumed that all Contractors will provide a summary of the public consultation process they engaged in with the Authority. As such, the Authority does not need to participate in the public consultation process.

Table 1: Recommendations for specific wording changes for critical items in the Draft Regulations

Regulation #	Wording	Concern	Recommendation
Regulation 6(4)	The Commission may, prior to issuing any recommendations to the Council under these Regulations to approve or not approve a Plan of Work, request additional information on any aspect of the Plan of Work.	A time frame should be added to provide certainty for the Contractor	The Commission may, prior to issuing any recommendations to the Council under these Regulations to approve or not approve a Plan of Work, request additional information *"within 60 days of receiving the application"* on any aspect of the Plan of Work.
Regulation 23(2)	*A Contractor shall not undertake any activities in the Area which pollute or might pollute the Marine Environment unless the Contractor takes all reasonable and practicable measures to prevent or minimize any resulting harm to the Marine Environment.*	This clause is quite broad and could potentially be used by an environmental interest group to prevent a Contractor from carrying out any activities that "might" pollute the Marine Environment. It is arguable that all human activities carried out in the oceans "might" pollute the Marine Environment. As such, the word "might" may not be the most appropriate given this clause has the potential to prohibit any development activities from taking place.	The term "might" could be replaced with wording such as "are likely to". Consequently, the first sentence of this clause could read: "A Contractor shall not undertake any activities in the Area which pollute or ***are likely to*** pollute the Marine Environment." This change would be consistent with the wording used for Serious Harm to the Marine Environment. For example, Regulation 82 states "Any coastal State which has grounds for believing that any activity in the Area by a Contractor is likely to cause serious harm or a threat of Serious Harm to the Marine Environment…"
Annex II 2 (e) and (h)	(e) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work including the results of tests conducted and other relevant information about the characteristics of	Should clarify that "processing" refers to processing offshore.	(e) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work including the results of tests conducted and other relevant information about the characteristics of such technology, including ***offshore***

	such technology, including processing and environmental safeguard and monitoring systems; (h) Details of the methods to be used for the disposal of SWOE from recovery and processing;		processing, if applicable, and environmental safeguard and monitoring systems; (h) Details of the methods to be used for the disposal of SWOE from recovery and ***offshore*** processing, as applicable;
Annex II(2)(g)	A detailed production plan, showing an anticipated production schedule to include the estimated maximum amounts of Minerals that would be produced per year under the Plan of Work, by Mining Area, where applicable;	Annex II(2)(g) should also refer to "amounts of ore that would be produced" rather than "amounts of Minerals that would be produced", as the Contractor will only be producing ore, and not minerals, unless metallurgical processing occurs within the Area which is unlikely.	A detailed production plan, showing an anticipated production schedule to include the estimated maximum amounts of ***ore*** that would be produced per year under the Plan of Work, by Mining Area, where applicable;
Regulation 6 (3)	The Commission shall consider applications expeditiously and shall submit its report and recommendations to the Council at the first possible opportunity, taking into account the schedule of meetings of the Authority and the requirements for review of an Environmental Impact Statement in accordance with regulation 20.	A quantifiable time limit should be placed on the LTC to examine and make a decision on the exploitation application in order to provide some process certainty. Draft Regulation 6 (3) states that the "*The Commission shall consider applications expeditiously and shall submit its report and recommendations to the Council at the first possible opportunity*". However, NORI would recommend that additional wording be included such as "shall submit its report and recommendations to the Council no later than 90-120 days from the receipt of the application".	The Commission shall consider applications expeditiously and ***shall submit its report and recommendations to the Council no later than 90-120 days from the receipt of the application".***
Regulation 9(1)	The Commission may recommend to the Council that, as part of the terms and conditions for the approval of a Plan of Work, that the applicant deposit a Performance Guarantee in respect of the performance of its obligations, undertakings or conditions in a Plan of Work or proposed exploitation contract	Notes the reference to guidelines regarding performance guarantees. NORI looks forward to contributing to the development of these guidelines.	

	and at a time to be agreed with the applicant but no later than the commencement date of Exploitation Activities. Any recommendations to the Council shall be based on the Authority's guidelines, including the form and the amount or value of the Performance Guarantee following consultation with the applicant.		
Regulation 13(4)	Each renewal period may be a maximum of 10 years.	NORI would recommend a term of 30 years. A renewal term of 10 years would put an existing contractor at a disadvantage to a new contractor who can get a terms 30 years. NORI believes that an existing Contractor with an existing track record should have an equal term to that of a new entrant.	Each renewal period may be a maximum of *"30"* years.
Regulation 17 (a)	A fundamental consideration for the development of environmental objectives shall be the protection and conservation of the Marine Environment, including biological diversity and ecological integrity;	NORI would ask that ecological integrity be defined.	
Regulation 20		NORI would recommend changing the order so that 20.2 precedes 20.1	
Regulation 22		Formatting: numbers are out of sequence	
Regulation 26	Contractors shall carry out Exploitation Activities under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with Article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any generally accepted international rules and standards	NORI requests adding "existing" to precede "submarine cables" in the final sentence.	Each Contractor shall exercise due diligence to ensure that it does not cause damage to *"existing"* submarine cables or pipelines in the Contract Area.

	established by competent international organizations. Each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.		
Regulation 28 (1)	Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject by reason of effective control, incorporation or otherwise including the laws of a sponsoring State and flag State.	NORI would appreciate clarity on which law prevails if there is a conflict between a national law and the Regulations	
Regulation 40 (2.e)	Record the Incident in the Incidents Register, being a register to be maintained by a Contractor onboard a mining vessel to record any Incidents or notifiable events under regulation 41.	Drafting issue “a contractor” should be “the contractor”.	Record the Incident in the Incidents Register, being a register to be maintained by a “the” Contractor onboard a mining vessel to record any Incidents or notifiable events under regulation 41.
Regulation 43 (1)	Where there is a change of control of the Contractor, or there is a change of control in any entity providing a Performance Guarantee on behalf of a Contractor, the Contractor shall notify the Secretary-General in advance of such change of control together with details of the change of control.	NORI notes that change of control is not defined and would appreciate clarity on this term.	
Regulation 49 (2)	The annual fixed fee shall be computed by multiplying the total size of the [Contract Area] in square kilometers identified in an exploitation contract by an annual rate per square kilometer denominated in United States dollars. The Council shall establish such annual rate for each Calendar Year.	The term [Contract Area] in calculating the annual fixed fee	For the avoidance of doubt, the fixed fee should be based on the exploitation contract area and not any (remaining) exploration contract areas held by the Contractor.
Regulation 51 - 54		Much of the content of regulation 51 to 54 needs additional	It is recommended that the point of measurement be defined as the

		clarification and the actual nature and basis of the measurements requirements to be defined, which NORI understands is the subject of considerable consultation.	point at which ore is loaded to depart the ISA area and that at such point actual measurements of tonnage and metal contents are used to calculate the amount of payable metal content of Nodules for the purpose of calculating royalties dispatched from the ISA and that royalties would be payable on these metal contents for Cu, Co, Ni and Mn. We propose that each Contractor should define the procedure that would be used as part of the contract Annex, which would be approved by the ISA.
Regulation 82	(2) Any coastal State which has grounds for believing that any activity in the Area by a Contractor is likely to cause serious harm or a threat of Serious Harm to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General …. (3) If there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, the Secretary-General shall act in accordance with Regulation 89 and, if necessary, shall take immediate measures of a temporary nature as provided for in Regulation 90.	Regulation 82 as currently drafted creates uncertainty. The term "believing" in Regulation 82(2) and 82(3) should be replaced with "demonstrating". That is, the coastal State must have scientific grounds for "demonstrating" that the activity is likely to cause serious harm. This regulation should not be triggered simply because of a State "believing", as the concept of belief is a subjective one.	(2) Any coastal State which has ***scientific*** grounds for ***demonstrating*** that any activity in the Area by a Contractor is likely to cause serious harm or a threat of Serious Harm to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General …. (3) If there are clear ***scientific*** grounds for ***demonstrating*** that Serious Harm to the Marine Environment is likely to occur, the Secretary-General shall act in accordance with Regulation 89 and, if necessary, shall take immediate measures of a temporary nature as provided for in Regulation 90.
Regulation 82(4)	Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such serious harm or pollution arising from Incidents or activities in its Contract Area does not spread beyond such area.	Similarly, Regulation 82(4) should be reconsidered. This regulation deals with coastal States, and as such, it must refer to serious harm or pollution spreading to a coastal State, not simply spreading beyond the Contract Area.	Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such serious harm or pollution arising from Incidents or activities in its Contract Area does not spread ***into the jurisdiction of a coastal State or States.***
Regulation 87	1. If as a result of an inspection	Regulation 87 allows the Inspector	1. If as a result of an inspection an

(1)	an Inspector has reason to believe that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the Rules of the Authority or the terms and conditions of its exploitation contract…	to order a suspension of activities if the inspector has "reason to believe". NORI recommends that the inspector should have "evidence", not simply "a belief", as the latter is subjective.	Inspector has ***evidence*** that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the Rules of the Authority or the terms and conditions of its exploitation contract…
Draft Regulation 94 (1)	Five years following the approval of these Regulations by the Assembly, or at any time thereafter, the Council shall undertake a review of the manner in which the Regulations have operated in practice.	NORI would recommend extending the time limit to ten years. Regulatory certainty is a key component of ensuring commercial viability of the industry.	*Ten* years following the approval of these Regulations by the Assembly, or at any time thereafter, the Council shall undertake a review of the manner in which the Regulations have operated in practice.
Section 3 Undertakings	3.2 The Contractor shall implement the Plan of Work under the best economic and technical conditions and in accordance with Good Industry Practice. For the avoidance of doubt, the Plan of Work includes the:	NORI recommends that the wording in Section 3.2 "the best economic and technical conditions" be removed. The term "best" is subjective and NORI would recommend that "in accordance with Good Industry Practice" is sufficient.	3.2 The Contractor shall implement the Plan of Work in accordance with Good Industry Practice. For the avoidance of doubt, the Plan of Work includes the:
Annex II 2(h)	Details of the methods to be used for the disposal of SWOE from recovery and processing;	The meaning of SWOE is unclear	
Annex VI Emergency Response and Contingency Plan (xiii)	Details of the safety and Environmental Management System;	NORI would recommend that the Safety Management System and an Environmental Management System should be separate and would note many points may be more appropriate in a risk management plan.	Details of the Safety Management System; and Details of the Environmental Management System;
Annex X – Standard Clauses for exploitation contract Section 8.1 Responsibility and liability	8.1 The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of	Section 8.1 should include the wording "wrongful" in the last sentence, so planned and permitted/allowed impacts are not an included liability. NORI would also recommend that there needs to be a sunset clause on contractor liability on completion of the closure plan	8.1 The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment,….This clause survives the termination of the Contract and applies to all ***wrongful*** damage caused by the Contractor….

	its operations under this Contract, including the costs of reasonable measures to prevent, limit, and ameliorate damage to the Marine Environment, account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage caused by the Contractor regardless of whether it is caused or arises before, during, or after the completion of the Exploitation Activities or Contract term.		

Appendix A

Statements from the Seabed Disputes Chamber (SDC) advisory opinion that define what the term "activities in the Area" includes.

Paragraph 94 to 96 of the Advisory Opinion:

> 94. In light of the above, the expression "activities in the Area", in the context of both exploration and exploitation, includes, first of all, the recovery of minerals from the seabed and their lifting to the water surface.
>
> 95. Activities directly connected with those mentioned in the previous paragraph such as the evacuation of water from the minerals and the preliminary separation of materials of no commercial interest, including their disposal at sea, are deemed to be covered by the expression "activities in the Area". "Processing", namely, the process through which metals are extracted from the minerals and which is normally conducted at a plant situated on land, is excluded from the expression "activities in the Area". This is confirmed by the wording of Annex IV, article 1, paragraph 1, of the Convention as well as by information provided by the Authority at the request of the Chamber.
>
> 96. Transportation to points on land from the part of the high seas superjacent to the part of the Area in which the contractor operates cannot be included in the notion of "activities in the Area", as it would be incompatible with the exclusion of transportation from "activities in the Area" in Annex IV, article 1, paragraph 1, of the Convention. However, transportation within that part of the high seas, when directly connected with extraction and lifting, should be included in activities in the Area. In the case of polymetallic nodules, this applies, for instance, to transportation between the ship or installation where the lifting process ends and another ship or installation where the evacuation of water and the preliminary separation and disposal of material to be discarded take place. The inclusion of transportation to points on land could create an unnecessary conflict with provisions of the Convention such as those that concern navigation on the high seas.

Appendix B Interests and Caveats – Example Regulations

1. Lodgement of caveat - (1) Subject to subsection (2), a person or entity who claims a right or interest in or in respect of a Title may by a caveat forbid the approval of any assignment, transfer or mortgage in respect of the Title (save any assignment, transfer or mortgage the approval of which is excepted in the caveat) either absolutely or until after notice of intention to approve such an assignment, transfer or mortgage is served on the caveator.

(2) A caveat duly lodged pursuant to this section does not apply in respect of:

(a) an assignment, transfer or mortgage duly lodged with the ISA before the lodgement of the caveat; or

(b) an assignment, transfer or mortgage the application for approval of which was lodged with the ISA before the lodgement of the caveat.

(3) A caveat referred to in subsection (1) shall specify the name and address for service of 1 person or entity upon whom any notice may be served on behalf of the caveator or caveators; and

(a) identify the Title concerned;

(b) specify the nature of the right or interest claimed by the caveator;

(c) provide sufficient evidence of the dealing giving rise to the caveat;

(d) specify the period during which the caveat is to continue in force;

(e) be signed by the caveator; and

(f) if any person or entity consents to the lodging of the caveat, be endorsed with that person's or entity's consent.

(4) A caveat may be lodged to evidence a dealing that has one or more of the following effects:

(a) the creation or assignment of an interest in an existing Title;

(b) the creation or assignment of a right (conditional or otherwise) to the assignment of an interest in an existing Title;

(c) the determination of the manner in which persons or entities may:

(i) exercise the rights conferred by an existing Title;

(ii) comply with the obligations imposed by an existing Title; or

(iii) comply with the conditions of an existing Title;

(d) the creation or assignment of an interest in relation to an existing Title where the interest is an overriding royalty interest, a payment, a net profits interest, or a carried interest;

(e) the creation or assignment of an interest that is similar to an interest covered by subsection 4(d), where the interest relates to:

(i) minerals produced from operations authorised by an existing Title;

(ii) revenue derived as a result of the carrying out of operations authorised

by an existing Title;

(f) the creation or assignment of an option (conditional or otherwise) to enter into a dealing, where the dealing would have one or more of the effects referred to in subsections 1(a),(b),(c),(d) and (e);

(g) the creation or assignment of a right (conditional or otherwise) to enter into a dealing, where the dealing would have one or more of the effects referred to in subsections 1(a),(b),(c),(d) and (e); or

(h) the alteration or termination of a dealing, where the dealing would have one or more of the effects referred to in subsections 1(a),(b),(c),(d),(e),(f) and (g).

2. ISA's functions upon receipt of caveat - Upon receipt of a duly lodged caveat referred to in Article 1, the ISA shall:

(a) notify the holder or holders of the affected Title; and

(b) notify all other persons or entities who have an interest in the Title recorded in the Register of Titles including any subsisting prior caveator; and

(c) if the ISA does not receive any written objections from the parties referred to in subsections (a) and (b) within 45 days, record the existence of the caveat in the Register of Titles.

3. Effect of caveat - (1) For so long as a caveat remains in force, the ISA shall not approve any assignment, transfer or mortgage in respect of the Title identified in the caveat unless:

(a) the assignment, transfer or mortgage is specifically excepted in the caveat; or

(b) the written consent of the caveator to the approval of the assignment, transfer or mortgage is lodged with the ISA.

(2) For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force:

(a) in the case where the consent of each holder of the Title concerned has been lodged with the caveat, for the term specified in the caveat or, if no term is specified, indefinitely;

(b) in the case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force, until the expiration of that period;

(c) in any other case, until the expiration of 3 months from the date of lodgement of the caveat.

4. Second caveat not available to same person or entity - When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same Title another caveat whereby the caveator claims the same or substantially the same right or interest unless the consent of each holder of the Title has been lodged with the last mentioned caveat.

5. Removal or withdrawal of caveat - (1) A caveat lodged pursuant to Article 1 that has lapsed shall be removed by the ISA and the Register of Titles noted accordingly.

(2) Upon the application of a person or entity who has a right or interest (present or prospective) in a Title affected by a caveat or whose right (present or prospective) to deal with a Title is affected by a caveat lodged in respect of the Title, the caveator may be requested by the ISA to show cause why the caveat should not be removed.

(3) The ISA may order that a caveat be removed.

(4) A caveator may withdraw his or her caveat at any time by notifying the ISA in writing.
(5) The removal or withdrawal of a caveat shall be effected by the ISA recording the removal or withdrawal in the Register of Titles.

6. Compensation for lodging caveat without reasonable cause - A person or entity who lodges a caveat in respect of a Title without reasonable cause is liable to pay such damages as may be recovered at law by any person or entity aggrieved.

7. Application for rectification – (1) If a person or entity is aggrieved by any of the following:

(a) the omission of an entry from a Register of Titles;
(b) an entry made in a Register of Titles without sufficient cause;
(c) an entry wrongly existing in a Register of Titles; or
(d) an error or defect in an entry in a Register of Titles,

the person or entity may apply to the ISA for the rectification of the Register of Titles.
(2) If an application is made under subsection (1) to the ISA for the rectification of a Register of Titles, the ISA may make such order as it thinks fit directing the rectification of the Register of Titles.
(3) In proceedings under this section, the ISA may decide any question that it is necessary or expedient to decide in connection with the rectification of the Register of Titles.