**29 September 2018**

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

Nauru Ocean Resources Inc. (NORI) congratulates the Authority on its work to date in developing the Draft Regulations and appreciates the admirable work that has gone into developing draft regulations that take into account feedback from a large number of stakeholders.

Establishing a regulatory framework to permit exploitation of seafloor polymetallic nodules is an important step towards bringing these much-needed metals to society. In order to achieve this ultimate goal, NORI believes there is still important work to be done to ensure the Regulatory Framework is commercially viable and fulfills the aim of attracting investment to the Area.

As a general principle and recognizing that the development of seafloor polymetallic nodules will play an important role in global social and economic development (as well as in supplying the metals needed to build clean energy technology and infrastructure) NORI believes that the regulatory framework must provide a stable, transparent and predictable regulatory environment in which Contractors and investors can make long-term decisions with confidence and certainty. This is particularly important given the financing and development of deep sea mineral projects require significant up-front capital investment.

To this end, and in addition to providing feedback on individual regulations below, NORI wishes to highlight the following key issues that we believe warrant further development and change:

1. Protection of Contractor Rights
2. Balanced Fundamental Principles
3. Stability of the Exploitation Contract and the Regulations
4. Practical definition for “Serious Harm”
5. Legal Status of “Guidelines” and “Standards”
6. Application Decision Making Timelines
7. Requirement to seek Council approval for matters during Exploitation
8. Contract change resulting from Transfer of Rights and Change of Control

## 1. Protection of Contractor Rights

As a fundamental principle, to attract investment the regulatory framework must provide Contractors with certainty and stability. Presently the Draft Regulations permit the Authority to change any and all Regulations, which potentially removes this certainty and stability.

To address this issue, NORI seeks the inclusion of an overarching principle in the Regulations and the Exploitation Contract that reflects the following:

(i) Any changes made to the Regulations should only apply to existing exploitation contracts by mutual agreement with the Contractor; or

(ii) If the Contractor is compelled to comply with the Regulatory change, then Contractors with existing exploitation contracts must be compensated to the extent that the

Regulatory change causes the Contractor to suffer any material loss or damage.

Unless (i) and (ii) are introduced as overarching principles in the Regulations and Exploitation Contract then there will not be the certainty or stability required by Contractors, and there will be no protection against the Authority appropriating the rights of Contractors through regulatory change (recognizing that many changes to Regulations will likely result in a material financial impact on the Contractor).

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. Indeed, even in those established and mature jurisdictions new large scale investments are often granted stability agreement mechanisms under State agreements. Until such time as the Authority has a track record as a stable regulator of full scale mining projects it must be absolutely clear that Contractors' rights will not be changed without the mutual consent of both parties, or without just compensation.

At the very least, if the Contractor is compelled to comply with a Regulatory change, then Contractors with existing exploitation contracts should at a minimum be grandfathered for a period of time, for example fifteen years, after which time the Contractor will need to comply with the new Regulations.

## 2. Balanced Fundamental Principles

Currently, the Fundamental Principles detailed in Draft Regulation 2 may not appear balanced enough to provide comfort that the regulations will be conducive to commercial development. NORI acknowledges that the Authority is committed to creating a commercially viable regulatory framework, and as such wishes to proffer the following additional 'fundamental principles' which can be added to Draft Regulation 2 in order to reflect this intention and demonstrate that the Authority is also committed to establishing a commercially viable regulatory framework needed to attract investment. The additional fundamental principles that can be added include:

(i) provide a stable, transparent and predictable regulatory environment in which Contractor's rights can be protected and Contractors can make long-term decisions with confidence and certainty;
(ii) attract investments and technology to the exploitation of the Area (note: this principle is taken from ANNEX III, Article 13 (b) of the Convention);
(iii) increase the global supply of nickel, copper, cobalt, and manganese, which are key inputs to promoting global social and economic growth;
(iv) ensure the development of the resources in the Area (which is one of the policies of the Area as detailed in Article 150(a) of the Convention);
(v) ensure that no Regulation operates to create an artificial **disadvantage** for Contractors relative to land-based miners (this would seem fair to balance out the regulation that stipulates that there shall be no artificial advantage given to Contractors).

Additionally, it is respectfully requested that Draft Regulation 2(2)(d) is removed as this does not appear relevant for the Regulations. Rather, this appears to be a policy matter to do with how the Authority distributes funds received from exploitation in the Area (pursuant to Section 7 of the 1994 Agreement through the economic assistance fund). Having this provision in the Regulations as a fundamental principle is likely to cause investors confusion and concern as it could create a

perceived risk that a production limit may be applied. Such a production limit would be in contravention of the 1994 Agreement which specifically removed the provisions in the Convention dealing with a production limit as they were not commercially sound principles. Indeed, Draft Regulation 2(3) now requires the Resources to be exploited in accordance with commercially sound principles. It is not a commercially sound principle to impose an artificial limit on production. Such protectionist measures would also contravene the stated aim in Draft Regulation 2(2) to ensure the activities foster healthy development of the world economy, and the need to supply these critical metals to society so as all humankind can benefit from an increased supply in these metals.

## 3. Stability of the Exploitation Contract and the Regulations

It is vital that the sanctity of the Exploitation Contract is recognized and that the terms of the Contract cannot be changed without the consent of the Contractor.

Whilst Section 16.3(a) of the Exploitation Contract stipulates that "this Contract may be revised only with the consent of the Contractor and the Authority", a number of provisions and regulations may actually have the effect of defeating this concept.

For example, Section 3.3 of the Contract requires the Contractor to comply with the "Rules of the Authority, **as amended from time to time**", and Section 17.1 stipulates that the Contract is governed by the "Rules of the Authority". Similarly, throughout the Draft Regulations it refers to the Contractor's requirement to comply with the "Rules of the Authority" (for example in Draft Regulation (7)(2)(a)). However, the term "Rules of the Authority" is currently defined as including "other rules, regulations and procedures of the Authority **as may be adopted from time to time**." As such, this essentially removes the certainty of the Contract because it compels the Contractor to comply with unknown rules and regulations that the Authority may bring in to force any time after the Contract is signed.

As detailed above, there should be an explicit overarching commitment in the Regulations that the Authority will provide stability and certainty. Otherwise there is no assurance that the Authority will not completely change the rules and regulations, and without such an assurance it makes it difficult to commit such large-scale investment.

With respect to the Regulations that have a fundamental impact on the Contractor's rights, any changes to these Regulations would be similar to the Authority making a unilateral change to the Contract terms. **As such, NORI recommends that changes to the Regulations that have a material adverse impact on a Contractor should only be applied to new Contractors, and not Contracts that are already in existence. Or, if the Contractor is compelled to comply with a new regulation that has a material impact on the Contractor, then Contractors with existing exploitation contracts must be compensated to the extent that the change causes the Contractor to suffer any material loss or damage.**

It is submitted that while the Authority has discretion to amend and revise the regulatory framework over the passage of time, the commitment by a Contractor should not be undermined, for example, through changes to the regulatory system that have a material adverse impact on the Contractor's operations and/or economic return. Often, land-based mineral resource regulatory frameworks provide "regulatory stabilisation" terms. In the event new regulatory terms are adopted that materially impact the operation of a project, it is suggested that a recovery

mechanism be adopted such that the project is able to be made financially whole. This will assist to bring the certainty needed for the Contractors to make the necessary financial commitment.

## 4. Practical definition for "Serious Harm"

The term Serious Harm is currently triggered by any effect which results in a "significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority".

We note that the term Serious Harm is used in two important situations:

(i) at the time of submitting an exploitation application, the LTC and Council must ensure that the planned exploitation does not pose a risk of Serious Harm; and

(ii) during Exploitation the Contractor must ensure that it does not cause Serious Harm or carry out its activities in such a manner as to pose a risk of Serious Harm.

With respect to (i), it is important that the term "Serious Harm" is not defined in such a way as may be used to prevent the very act of exploitation from being approved. That is, the threshold needs to be set higher and the concept of "scale" needs to be introduced. For example, at the scale of the mining operation it may be arguable that there is a significant adverse change, however at the regional scale it will likely not be a significant adverse change.

With respect to (ii), the concept of "Unlawful Harm" needs to be included in the definition of "Serious Harm".

NORI is committed to the protection of the Marine Environment, however makes this submission simply because of how the term "Serious Harm" is used in the Convention and the Draft Regulations. Effectively, the Convention dictates that if there is a risk of Serious Harm to the Marine Environment then no activity can be permitted. For example, per Article 162(2)(x) the Council shall disapprove areas for exploitation if there is even a risk of Serious Harm to the Marine Environment. Pursuant to Article 162(2) "the Council shall: (x) disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment."

Likewise, under Article 165(2)(k) the LTC shall "make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment".

Furthermore, throughout the Draft Regulations the Contractor is required to suspend activities if there is a risk of Serious Harm to the Marine Environment.

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 for global social and economic development.

NORI acknowledges that the Authority is establishing these regulations in order to permit exploitation in the Area, and as such understands that it is not the intention of the Authority to prevent normal exploitation activities from occurring. However, for the sake of clarity, NORI seeks for the regulations to be explicit that the "Serious Harm" the Authority is trying to prevent is the serious harm that either:

(i) exceeds what was reasonably expected to occur when the Plan of Work was approved; or
(ii) results from a wrongful act; or
(iii) is caused by the Contractor carrying out activities that have not been permitted under an approved Plan of Work.

Essentially, it needs to be made clear that if there is a "significant adverse change" to the Environment caused by the Contractor simply carrying out the permitted Plan of Work, this will not fall within the definition of "Serious Harm".

Also, an "Incident" is triggered even if there is merely a situation where "Serious Harm to the Marine Environment" is a reasonably foreseeable consequence of the situation. In addition, pursuant to Regulation 35, "The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident."

As such, under the current definition of Incident and Serious Harm, this means that pursuant to Regulation 35, a Contractor cannot proceed with Exploitation if it is (i) reasonably foreseeably that it is (ii) a reasonably foreseeable consequence that there will be a significant adverse change in the Marine Environment. By simply carrying out seafloor mineral exploitation, it is (i) reasonably foreseeable that it is (ii) a reasonably foreseeable consequence of the situation that there will be a significant adverse change in the Marine Environment, at the scale of the mining operation. As such, the definition of "Serious Harm" needs to be changed so as it cannot be interpreted to prevent the very activity of exploitation from occurring.

## 5. Legal Status of Guidelines and Standards

Currently, there are numerous references to the "Guidelines" and "Standards" to be issued by the Commission which according to the text of the Regulations are actually mandatory legal requirements, and this has implications for the certainty and stability of the regulatory regime.

As such these "Guidelines" and "Standards", 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 discourage investment.

NORI also disagrees with the concept of new "Standards" and "Guidelines" becoming legally mandatory after a Contractor has been granted an Exploitation Contract, or, if the Standards or Guidelines are mandatory, then the Contractor should be compensated if such changes cause the Contractor to incur a material economic loss or cost.

At the very least, if the Contractor is compelled to comply with a change to Guidelines or Standards, then Contractors with existing exploitation contracts should at a minimum be grandfathered for a period of time, for example fifteen years, after which time the Contractor will need to comply with the new Guidelines or Standards.

NORI also submits that Contractors should have flexibility to carry out their activities in a different manner to what is prescribed in the Standards or Guidelines if the Contractor has reasonable grounds for demonstrating that a different course of action is also responsible and/or appropriate in the circumstance, or if the Standard or Guideline would cause economic harm to the Contractor.

If the Standards and Guidelines were overly prescriptive, they could potentially stifle innovation undermining one of the intentions of the Authority to apply adaptive management and the principle of continuous improvement to develop an efficient and effective industry.

As currently drafted, the new "Standards" and "Guidelines" are effectively the same as new "Regulations". Given this, the process for adopting Standards and Guidelines should go through a rigorous review process in which Contractors are involved to ensure that the Standards and Guidelines are indeed commercially viable and practicably achievable.

Whilst in the Note from the Secretariat on the Draft Regulations it states that the "guidelines" are intended to be "recommendatory in nature", this is actually not the case when you read the text of the Regulations. For example, throughout the Regulations the Contractor has an obligation to comply with "Good Industry Practice". However, the definition of that term now contains the requirement of "Best Environmental Practices", which in turn is set by the "Guidelines". As such any requirement to comply with Good Industry Practice is also a requirement to comply with the Guidelines. There is also wording used throughout the Regulations which states that the subject matter will "be in accordance with the Guidelines". That wording could be interpreted as suggesting that the Guidelines are more than simply recommendations. This also seems at odds with the wording in Section 3.3 of the Draft Contract which provides: "Contractor shall observe, as far as reasonably practicable, any guidelines which may be issued by the Commission or the Secretary General from time to time in accordance with the Regulations".

Ultimately, if a Contractor can demonstrate a reasonable and responsible basis for pursuing a course of action that is different to the Guidelines and Standards, the Contractor should not be discouraged from doing so, as such discouragement will stifle innovation.

## 6. Application Decision Making Timelines

Analysis of the timelines and the flowsheet provided as Annex 1 to the Briefing Note provided by the Secretariat indicates that it is difficult to determine the exact time that would be involved with grant of a contract under the application process. NORI's reading of the Draft Regulations are that assuming there are no delays caused by the need to resubmit additional information or waiting for Commission or Council meeting that, the process would take 322 days according to the time line below;

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| 45 Days | Preliminary review of application by Secretary General (DR 10-2) |
| 7 Days | Place the Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan on the Authority website (DR 11-1(a)) |
| 60 Days | Public review of Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan on the Authority website (DR 11-1(a)) |
| 30 Days | Notification of the Commission that the application has been received and has been subject to 60 day public review (DR 9-2, DR 11-2) |

[Potential delay waiting for next Commission Meeting]

120 Days Submission of Commission report to the Council (DR 12-3)

[Potential delay waiting for next Council Meeting]

60 Days Council review and Approval (DR 17, Paragraph 11 or Section 3 or the Annex to the Agreement)

**Total - 322 Days**

There are two points above where there could be a delay awaiting a meeting, which with the current schedule of the Authority could each cause several months of delay should a key deadline be missed.

Furthermore, it may be unlikely, at least for the initial applications, that a Contractor would be able to provide completely conformable documentation even with the diligent communication with the Authority ahead of submission. Thus, additional delays could be;

60 Days Contractor to revise environmental plans (DR 11 – 1 (c))

30 Days Commission to request additional information from Contractor (DR 15-1 (a))

90 Days Contractor to respond to recommendation for modification to Plan or Work (DR 15 - 2). There is no time frame for the Commission to consider a modification to a Plan of Work (DR 15 – 2)

NORI requests that the Authority consider the duration of a number of these steps and particularly the potential delay involved with likely delay caused by infrequent Authority sessions, and consider whether there can be a mechanism by which the Commission and Council conduct reviews in between regular sessions, and consider whether some of these processing times can be reduced.

Existing technology should also ensure that if there is an application to consider, the Commission can meet virtually if required to review it. At the start of the industry, there is not likely to be more than a few applications, so the extra burden on the Commission should not be huge to commit to reviewing applications within 60 days of their submission. This would go a long way to providing Contractors with a clear timeline for approvals.

**7. Requirement to seek Council approval for matters during Exploitation**

There are requirements in the Regulations to obtain Council approval during Exploitation. For example, Regulations 23, 24 and 25 require Council approval for the registration of a security interest, the transfer of title, and a change of control respectively.

Regulation 55 also requires Council approval for any change to the Plan of Work that is not a minor or administrative change.

NORI recommends that rather than the Council, the Secretary General should have the authority and power to deal with many of these matters given the limited number of times the Council meets, and the significant time delay between Council meetings.

If a Contractor is required to wait such lengthy periods of time to have these types of matters approved, this will likely add significant cost and uncertainty to the Contractor's project.

The delay caused by requiring Commission and or Council approval also puts projects in the Area at a significant disadvantage over land-based operations. In land-based jurisdictions decisions can be made by the mining authority established under the Mining Act. In those jurisdictions it is not a requirement that the operator seek approval by the Legislature (Parliament) for these types of matters.

For example, it may inhibit the Contractor from effectively dealing with its title to obtain additional finance during Exploitation, if each time the Contractor wishes to obtain such additional finance the financier must wait for the Council to approve the registration of their security interest. It may not be acceptable to many financiers to have to wait up to 8 months for the next Council meeting before they can be assured that their security interest will indeed be registered.

Similarly, there may be a pressing economic or technical reason to make a change to the Plan of Work, and it may be extremely costly to the Contractor to have to delay making such change until it is approved by Council.

In order to solve this matter, it is submitted that the Secretary General should have the power to approve many of these matters without having to wait for the next Council meeting.

It may be the case that the Council could still reserve the right to overturn the decision of the Secretary General at its next meeting in the case that the Council has a reasonable basis for doing so.

**8. Contract Change resulting from Transfer of Rights and Change of Control**

Draft Regulation 24(10) and Draft Regulation 25(2)(b) require the contract terms to be changed upon a Transfer and/or upon a Change of Control. This will potentially cause a significant erosion in the value of the Contract and ability of Contractors to deal with their title. Importantly, this may 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 interest they will not be obtaining an Exploitation Contract on the terms that were in existence at the time of the 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, and as such the value of their security. This does not seem reasonable.

Importantly, this would contravene the terms of the Exploitation Contract which states at Section 14.3: "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**."

This concept of inurement must be reflected in the Draft Regulation 24(10). That is, the terms of the contract must stay consistent upon a transfer or change of control and should not be changed by forcing the transferee to be subject to different Contract terms as that to which the transferor operated.

## COMMENTS ON SPECIFIC REGULATIONS AND SECTIONS

**Draft Regulation 1(4)**
There should be a similar confirmation that the Authority will not permit Marine Scientific Research (MSR) to be carried out in such a way as to cause damage or undue interference to a deep-sea mining operation. For example, MSR should not be permitted to operate in or disturb a Contractor's Preservation Reference Zone, nor interfere with the safe and orderly performance of the Contractor's exploitation activities and commitments.

**Draft Regulation 1(5)**
Refer NORI's comments on "Issue 5" above regarding supplementing Standards and Guidelines to the Draft Regulations, which in effect provides the Authority with the power to create new Standards and Guidelines that have the same power as new Regulations. If the Standards or Guidelines are mandatory, then the Contractor should be compensated if such changes cause the Contractor to incur a material economic loss or cost.

**Draft Regulation (2)(2)(a)**
It is unclear how the requirement "in accordance with sound principles of conservation" will operate in this context as a fundamental principle of the Regulations. For example, what does "in accordance with sound principles of conservation" mean? Also, how can it be assured that such a principle will not operate to prevent the very activity that is being regulated here? It is submitted that, in principle, general environmental standards and expectations should not be materially different from those required under land-based regimes, provided they are appropriately adapted to the specific seafloor mineral type and industry. Otherwise this creates an artificial disadvantage for the seafloor minerals industry compared to land-based operations.

**Draft Regulation 2(2)(d)**
This regulation makes it a fundamental principle to ensure the "Protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area;"

It is submitted that the Exploitation Regulations are not the correct place to address this issue.

Pursuant to the 1994 Implementation Agreement, the protectionist production policies in UNCLOS have been removed. Per section 6(7) of the 1994 Agreement "*The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2 (q), article 165, paragraph 2(n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply*."

Also, per Section 6(1)(a) of the 1994 Implementation Agreement "*The production policy of the Authority shall be based on the following principles: (a) development of the resources of the Area shall take place in accordance with sound commercial principles*".

Stating that a fundamental principle of the Exploitation Regulations is to ensure the protection of countries from the economic effects of seafloor mineral production is unlikely to be considered a sound commercial principle. Also, this implies that seafloor mineral production will have an adverse effect, whereas it is likely that seafloor mineral production of key metals will have a positive effect on the social and economic development of developing States because it will potentially make access to key metals easier and, in the long term, potentially less expensive. This will therefore assist to reduce poverty around the world.

Section 7 of the 1994 Implementation Agreement contemplates a form of "economic assistance" under which the Authority may establish and economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. However, that should be dealt with outside of these regulations.

**Draft Regulation 2(5)**
This regulation makes it a fundamental principle to provide for the "*effective protection of the Marine Environment from the harmful effects that may arise from Exploitation*".

There remains a concern that some could use this wording to effectively stop any development activity from occurring. Mining, like all development activities, will have an impact on the environment. The key here is protection from harmful effects which are not permitted through an exploitation contract. NORI suggests the following wording be adopted instead:

"*effective protection of the Marine Environment from the* ***Unlawful Harm*** *that may arise from Exploitation*".

NORI believes it is important that the concept of Unlawful Harm is introduced otherwise under the current wording there is an argument that the Marine Environment must be protected from all harmful effects, which in turn, would not leave any scope for exploitation to occur in the first place, which of course is not the intention given the Authority is attempting to permit that activity. Rather, to ensure the intent is clear, what the Regulations should be aimed at preventing is Unlawful Harm, which NORI suggests should be defined as serious harm that either:

(i) exceeds what was reasonably expected to occur when the Plan of Work was approved; or
(ii) results from a Contractor's wrongful act; or
(iii) is caused by the Contractor carrying out activities that have not been permitted under an approved Plan of Work.

**Draft Regulation 4(3)**
The wording "in the jurisdiction of a Coastal States" should be included in the first sentence after "is likely to occur" in order to make it clear that this regulation is dealing here with a specific matter relevant to the Coastal State.

**Draft Regulation 13(1)(e)**
It is recommended that the wording "Has, or will have, the financial and technical capability" is replaced with "can demonstrate that they have a reasonable expectation of raising, accessing or obtaining the financial and technical capability".

**Draft Regulation 13(4)(d)**
NORI agrees that the activities should be carried out with a reasonable regard for other activities in the Marine Environment, however:

(i) there needs to be a reciprocal protection that other activities in the Marine Environment are carried out with reasonable regard for a Contractors' Exploitation activities (as it would not seem fair for this to just be one sided); and
(ii) the other activities must be legitimate activities permitted under international law.

**Draft Regulation 16(2)(b)**
There needs to be an exception to this rule in the situation where the Contractor (Party 1) obtained their exploration contract prior to the other Contractor for the other resource (Party 2) obtaining its exploration contract. In that situation, Party 1 should not have their ability to obtain an exploitation contract prejudiced simply because Party 2 can state that it would interfere with their operations. If this was the case, then it could encourage entities to apply for other resources in an area of a Contractor to simply interfere with that Contractors ability to apply for an exploitation contract.

**Draft Regulation 17**
Paragraph 11 of section 3 of the annex to the Agreement leaves the timing for a decision by Council open-ended as it stipulates "The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period." However, NORI believes that there should be some sort of defined time restriction on this decision, and if a decision is not made within the defined time period, then the application is considered to have been approved.

**Draft Regulation 20**
It should be made clear that forming a joint venture arrangement must be at the Contractor's election. If the Contractor elects to carry out a joint venture or production sharing, then the Contractor and the Enterprise can negotiate a joint venture on commercial terms.

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 contemplated. 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 did not intend on carrying out activities in that area, the Enterprise will not have any rights to request a joint venture arrangement during the exploitation phase over that Reserved Area, as those Contractors have invested in exploration activities relying upon the representation from the Enterprise that it did not intend on carrying out activities in that Reserved Area.

**Draft Regulation 21(1)**
The maximum exploitation contract initial term is currently stated as 30 years. However, because the date of the Contract is prior to the Feasibility Study, the time between the date of the Contract and the commencement of full scale commercial production could be greater than 5 years given the time likely required to carry out the Feasibility Study, make any changes necessary to the Plan of Work (including potentially resubmitting the EMMP), construct and commission the vessel and equipment, as well as ramp up to full scale production. NORI submits that the Contractor should have the opportunity to carry out exploitation for 30 years, and as such the initial term of the Contract needs to be for a duration longer than 30 years in order to account for all of the time that will pass between the signing of the Contract and commencement of commercial production.
**Draft Regulation 21(2)**
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 extension/renewal term be increased to greater than 10 years. This is because 10 years does not necessarily provide the incentive to design and construct new equipment.

Furthermore, Article 17(2)(b)(iii) of UNCLOS states "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."

As such, if it can be demonstrated that the economic life of the project is greater than the 10 year extension, a longer extension should be permitted.

**Draft Regulation 23**

It is likely that each project will require a number of stakeholders providing capital, technology and equipment. As is common on almost all large land-based projects, multiple groups come together in various financial and technical arrangements to provide the adequate capital necessary for exploitation. The Exploitation Regulations will need to reflect that global financial institutions, and other forms of investment capital will need to have the ability to secure their financing arrangements against some form of direct or indirect equitable or legal right to the underlying mineral exploitation tenure.

NORI applauds the Authority for providing the ability to register security interests under Regulation 23. However, given the importance of this concept NORI wishes to make the following comments in order to further the commercial viability of this section:

- NORI suggests that it should not just be limited to the "purpose of raising financing" as detailed in Regulation 23(1), as there are other times it may be necessary to create an encumbrance or other dealings beyond financing;
- As currently drafted it is necessary to obtain approval from Council in order for a security interest to be registered. Given the limited number of times the Council meets, and the significant time delay between Council meetings, this could pose unnecessary and costly delays and will inhibit the Contractors ability to obtain financing and deal with its project. It does not appear practical or reasonable to have to wait many months in order for the Council to meet before a security interest can be registered. Rather, if the Contractor has agreed to the registration of the Security Interest, then the Secretary General should be empowered to approve such registration. Having a requirement to seek Council approval for such a matter would be the equivalent of having to seek Parliamentary approval (both being the law-making bodies), which is not a requirement in land based jurisdictions for these types of matters;
- **Regulation 23(4)** does not appear feasible as it requires a beneficiary of an encumbrance to undertake the Exploitation activities in the event of foreclosure. Many financiers, for example banks, will not be in a position to carry out the exploitation activities. Rather, the bank needs to be able to exercise its right upon foreclosure to secure the title and then sell the title to an operator, without first having to agree to engage in commercial production itself. As such, the requirement of needing to commit to undertake the Exploitation activities in the event of foreclosure should to be removed.
- **Regulation 23(5)** is too broad and vague and creates too many hurdles for a Contractor to obtain finance, and indeed potentially restricts the avenues of finance, and as such creates an artificial disadvantage for projects in the Area relative to land-based projects.

**Draft Regulation 24(1)**

Again, NORI would suggest that having to go to LTC and Council in order to transfer rights and obligations will add a significant amount of time and uncertainty to the process. NORI would recommend that the Secretary General be given the power to authorize a transfer. As previously

referenced above, in instances where it is not appropriate for the Secretariat to make decisions, NORI would strongly recommend creating a solution whereby the Commission and/or Council can meet as required. Utilizing technology could be a solution that facilitates meetings as needed that saves the cost and time of traveling to Kingston in person.
It may be the case that the Council could still reserve the right to overturn the decision of the Secretary General at its next meeting in the case that the Council has a reasonable basis for doing so.

**Draft Regulation 24(4)c**
The form of application set out under regulation 7 is appropriate for an application for a contract. If this were imposed for a transfer, it is effectively requiring the transferee to reapply for a contract. It is not clear if this is aligned with the intent of facilitating a transfer of rights.

**Draft Regulation 24(10)**
NORI does not agree that upon a transfer the terms of the Contract must change to the new terms in existence at the time of the transfer. This will potentially cause a significant erosion in the value of the Contract and ability of Contractors to deal with their title. Importantly, this will 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 interest 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, and as such the value of their security. This does not provide a financier with any certainty. This will also be counterproductive to the optimal development of the industry as potential new entrants may be dis-incentivized to enter the industry as the purchase of existing operators could be discouraged.

Importantly, this would contravene the terms of the Contract which state at Section 14.3: "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**."

This concept of inurement must be reflected in the Draft Regulation 24(10). 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 different Contract terms as that to which the transferor operated.

**Draft Regulation 25(2)(b)**
NORI does not agree that a Change of Control of a Contractor should be treated as a transfer in all circumstances. In particular, a Change of Control should not require that a new contract shall govern (as contemplated in Section 24(10)). Again, this would contravene the terms of the Contract which state at Section 14.3: "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."

The Contract already contemplates that the same terms will govern any "successor" and as such upon a Change of Control the successor needs to be giving the same rights as the Contractor.

Also, it appears unreasonable that a mere Change of Control would require the approval of the LTC and the Council. Not only would that be an unreasonably lengthy time period to approve a Change of Control, but it adds to unnecessary uncertainty to the process. NORI recommends that the Secretary General have the power to approve a Change of Control. Again, having a requirement to seek Council approval for such a matter would be the equivalent of having to seek

Parliamentary approval (both being the law-making bodies), which is not a requirement in land based jurisdictions for these types of matters.

**Regulation 30(4)**
NORI disagrees with this clause. The Contractor should only be required to reduce or suspend production when such reduction of suspension is required to prevent **unlawful** harm to the Marine Environment. Mining, like all human activity, impacts the environment. A Contractor's obligation should be to protect the Marine Environment from "Unlawful Harm". It will be important that the concept of "Unlawful Harm" is introduced otherwise under the current wording there is an argument that the Marine Environment must be protected from all harmful effects, which in turn, would not leave any scope for mining to occur in the first place. NORI understands that this is not the Authority's intention, however we recommend further clarity is brought to this issue. For example, it could be made clear that the Regulations are aimed at preventing Unlawful Harm, which NORI suggests should be defined as serious harm that either:

(i) exceeds what was reasonably expected to occur when the Plan of Work was originally approved; or
(ii) results from a wrongful act; or
(iii) is caused by the Contractor carrying out activities that have not been permitted under an approved Plan of Work.

**Regulation 31(1)**
Much of the language used in this Regulation is vague and does not provide commercial certainty or appear to be based on sound commercial principles.

Particular care must be taken to ensure that broad obligations such as those detailed in Draft Regulation 31 do not inhibit a Contractor's ability to carry out exploitation in accordance with a commercially focused mine plan that optimizes the economics and allows the contractor to achieve the necessary return on investment, while also operating in an environmentally and socially responsible manner.

For example, how is the broad concept of "sound principles of conservation" going to be translated into a legal requirement in the context of seafloor mineral development while still ensuring it is based on sound commercial principles? Care must be taken when using these types of aspirational terms and statements to ensure the Regulations do not move away from commercial realities and create legal obligations that may not be practically or commercially achievable.

**Regulation 31(3)**
If the Contractor is carrying out activities in accordance with the Mining Plan that was approved when it obtained its exploitation contract, there should be no power for the Secretary General to order the Contractor to change its activities or compel the Contractor to agree to change its activities, unless the ISA agrees to compensate the Contractor for any costs or losses the Contractor incurs in making such forced changes.

If the Secretary General has the power to compel the Contractor to agree to change its activities when the Contract is complying with the Plan of Work that was approved at the time of the Exploitation Contract being signed, then this will remove an important level of certainty required by Contractors.

**Draft Regulation 33(1)**
For clarity, NORI recommends that the word “existing” or “known” be added before “submarine cables or pipelines”.
Importantly, submarine cable owners should be required to provide the Authority with details of the position of their existing submarine cables, and if a submarine cable lies within a Contractor’s area, the submarine cable owner and/or the Authority needs to make the Contractor aware of the position of such submarine cable.

**Draft Regulation 33(2)**
NORI recommends further clarity is brought to this regulation so as it reads: “Other activities in the Marine Environment shall be conducted with reasonable regard for **the Contractor's** activities in the Area."

**Draft Regulation 34**
The term “grossly” should be removed in the two places that it appears in this Regulation. Otherwise this provision runs contrary to the principle that the regulations are commercially sound as it is not commercially sound to have to continue to incur such costs until the point of it being “grossly” disproportionate. “Grossly” by definition means “excessive”. And if a regulation requires it to be “excessive” then this cannot be said to be a commercially sound principle.

**Draft Regulation 35**
This regulation requires activities to be stopped “if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident”. An Incident as defined includes “Serious Harm”. As such, the current definition of “Serious Harm” will simply not work in practice, as it will mean that activities need to be stopped simply because it is reasonably foreseeable that there may be a significant adverse change. This could therefore prohibit exploitation from occurring in the first place.

As such, the definition of Serious Harm needs to be defined as that harm which is “unlawful” and not simply defined as “significant adverse change”.

**Draft Regulation 36**
NORI supports immediate notification of key stakeholders when significant events occur. The list of events in Appendix 1 include a number of events which may be minor or of little operational consequence. It is proposed that the list in Appendix 1 is modified to include only material events with clear threshold criteria defined. For example, “occupational illness” could include mild seasickness, and “occupational injuries” could include minor slips and falls. These need to be effectively managed by Contractors and learnings from incidents used to minimize the chance of reoccurrence, however continual and immediate reporting the Authority would potentially result in unproductive overhead for both the Contractor and the Authority.

**Draft Regulation 38(2)**
This regulation requires the underwriters to waive any rights of recourse. However, this is unlikely to be acceptable to underwriters and appears to contravene Section 7.3 of the Exploitation Contract, wherein the Authority is liable in some circumstances e.g. for wrongful acts or omissions of the Authority. If underwriters are not willing to agree to waive such rights, this will limit the market for insurance and/or make it very difficult to obtain such insurance.

**Draft Regulation 41(3)**

This regulation requires Contractor's to keep "a representative portion of samples and cores of the Resource category together with biological samples…until the termination of the exploitation contract". It should be recognized that many analyses are destructive and not all biological specimens will be able to be saved. NORI envisages that most, if not all, biological samples would be kept in centralized locations such as reputable museums following analysis. It should also be noted that cores may not be relevant for all mineral types.

**Draft Regulation 45**
This regulation appears too rigid, particularly given there is the potential for doubling up on regulation, and potentially a situation where the combined regulation would require the Contractor to comply with two separate standards, which when combined may not be practical or feasible. Is it necessary to include in the Exploitation Regulations the requirement that the Contractor complies with all other international and domestic laws, particularly if such international or domestic laws potentially create conflicting obligations for the Contractor?

**Draft Regulation 46**
Given Draft Regulation 46(b) creates a legal obligation on the Contractor to ensure the application of Best Available Techniques and Best Environmental Practice, it is important that those two terms are defined in such a way as to make the requirement commercially viable and be based on reasonable economic and practical constraints.

**Draft Regulation 48**
If the Contractor is complying with its Plan of Work as approved when it obtained its Exploitation Contract, then the Contractor should not then later be required to materially change its activities simply because a new "Guideline" may be developed by the Authority at a later time, unless the Contractor is adequately compensated for the cost of making such a change by the Authority.

**Draft Regulation 49(b)**
NORI agrees with implementing all measures to protect the environment as contained in the EMMP, however does not agree with a regulation requiring implementing all measures to protect the environment as may be detailed from time to time in the Regulations, if such a regulation change causes a material impact on the Contractor financially, as this provides no certainty and is too broad of an obligation. If the Contractor is required to materially change its operations or measures in order to comply with a new Regulation brought in to effect after the date of the Contract, then the Contractor needs to be compensated for making such a change.

**Draft Regulation 50 (6)**
Should the independent competent person be mutually agreed as suitable by both the ISA and the Contractor? This would seem reasonable.

**Draft Regulation 55 (1) and (2)**
Regulation 55 appears too restrictive. A Contractor needs greater flexibility to make a change to its Plan of Work. The requirement to have to wait to obtain Commission and Council approval prior to making a change is simply too long and could result in unnecessary cost to the Contractor while it waits to implement a necessary change. It is important that a Contractor can change its Plan of Work to respond to 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, the Contractor should be free to make modifications to its Plan of Work as it deems necessary in order to achieve the required commercial and technical outcomes. 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 wait to seek approval from the Commission and Council prior to making such changes if it has genuine reasons to modify its Plan of Work. This is something the Secretary General should have power to authorize on a timely basis. We wholeheartedly agree with keeping the ISA informed of such changes, but we do not agree with the need to seek prior approval from the Commission and Council to make such a change, as the length of time required to obtain approval from those bodies is simply too long and as such costly.

Again, we note that the delay caused by requiring Commission and or Council approval puts projects in the Area at a significant disadvantage over land-based operations. In land-based jurisdictions decisions can be made by the mining authority established under the Mining Act. In those jurisdictions it is not a requirement that the operator seek approval by the Legislature (Parliament) for these types of matters.

Also, the threshold for "Material Change" appears too low, particularly if it requires obtaining Council approval. It does not appear commercially viable to have to seek approval from the Commission and then the Council simply to make any change "not being a minor or administrative change". If a "Material Change" needs to go to Council, then the threshold for what constitutes a "Material Change" needs to be much higher than what is currently included in the definition of "Material Change". As such NORI recommends that the term "Material Change" should be defined as a "significant change".

**Draft Regulation 55(4)**
This regulation gives the Secretary General the power to force the Contractor to make a change. This is understandable if the Contractor is breaching its obligations, however does not appear reasonable in most other circumstances, particularly if the Contractor is in compliance with its Plan of Work as contained in its approved application for Exploitation. Alternatively, if the Secretary-General requires the Contractor to make a change then the ISA should need to compensate the Contractor for any costs or losses that change imposes on the Contractor. Indeed, 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*". NORI does not believe it would be commercially sound for the Secretary General to force the Contractor to make a change when the Contractor is in compliance with its original Plan of Work as approved at the time of the Exploitation application. Provided a Contractor is not causing unlawful harm and remains within the parameters of the contract conditions as originally approved, the Contractor should be free to continue to carry out such Plan of Work.

**Draft Regulation 58(3)(c)**
This Regulation now provides the Commission with the power to compel the Contractor to comply with any suggested amendments proposed by the Commission. This means that the "suggested amendments" detailed in Regulation 58(3)(c) are not actually suggestions but are in fact now compulsory demands given the Commission will now reject the final Closure Plan if its suggestions are not made by the Contractor. This appears to go well beyond the role of a Regulator, unless the Authority compensates the Contractor for any forced changes that cause a material economic or practical impact on the Contractor.

**Draft Regulation 59**
There is currently no mechanism by which a Contract is terminated at the completion of economic exploitation other than through the effluxion of time and expiration of the contract term. NORI

proposes that after completion of economic exploitation, and on completion of the Contractor's Closure Plan there is a mechanism whereby the Contract is terminated, any guarantees returned to the Contractor and all rights to the Contract Area re-established with the Authority.

**Draft Regulation 63 (1)**
The royalty for a Contractor should be set and agreed at the time that contracts are signed and prior to the Contractor's investment in capital costs. This regulation contemplates the Secretary General issuing Guidelines in respect of the calculation of royalties. It should be made clear that such Guidelines will not impact the rate of royalty, or if such Guidelines do impact the rate of royalty, then such Guidelines will not be applied to existing contracts, or if they are applied to existing contracts, then compensation is paid to the Contractor if such Guidelines have a material adverse impact on the Contractor.

**Draft Regulation 69(1)(b)**
The term "wet metric tonnes" does not appear to be the correct terminology when referring to value by mineral in the ore, as grades are measured on dry tonnes.

**Draft Regulation 79(2)**
NORI agrees that it is of fundamental importance that, as detailed in this Regulation, any revision to the system of payments shall only apply to existing exploitation contracts by agreement between the Authority and the Contractor. Indeed, this protection needs to be included in the Exploitation Contract itself so as this becomes a right of the Contractor, otherwise it is possible that the Authority could make a change to this Regulation to take this protection away from the Contractor.

**Draft Regulation 80(2)**
This regulation states that the rates can be changed "from the end of the Second Period of Commercial Production reflected at Appendix IV to these Regulations." It is therefore recommended that the Second Period of Commercial Production should not occur until at least 30 years after the date of the Exploitation Contract, particularly given it could be greater than 5 years from the date of signing the Contract before commercial production begins given the time it will likely take to carry out the Feasibility Study, make any changes necessary to the Plan of Work (including potentially resubmitting the EMMP), construct and commission the vessel and equipment, as well as ramp up to full scale production.

**Draft Regulation 83(2)**
It seems to go against the principle of creating stability and certainty if the annual fee can be changed each year as currently contemplated. It is submitted that if the fee is changed each year this should reflect changes in inflation/CPI only.

**Draft Regulation 83(5)**
NORI supports that the annual fee is credited against the royalty. However, the word "will" should replace the word "may" in this regulation, as the latter term is not definitive and may create uncertainty.

**Draft Regulation 86(1)**
It is assumed that the "service provided" is the review of the report, however this should be made clear so as the cost of other indirect or unrelated 'services' cannot make their way into the fee.

**Draft Regulation 87(2)(d)**
Currently the threshold is too high to classify information as confidential. The term "substantial risk of serious and unfair economic prejudice" should be changed to "risk of harm", particularly given the harm may not just be limited to economic prejudice. It should be noted that the Contractor has expended significant effort and capital in generating this data and should be afforded the rights to privacy afforded to any person.

**Draft Regulation 92 and Draft Regulation 93**
NORI disagrees with the concept of new "Standards" and "Guidelines" becoming legally mandatory obligations after a Contractor has been granted an Exploitation Contract. Alternatively, if new Standards or Guidelines are mandatory, then the Contractor should be compensated if such changes cause the Contractor to incur a material economic loss or cost.

NORI also submits that Contractors should have flexibility to carry out their activities in a different manner to what is prescribed in the Standards or Guidelines if the Contractor has reasonable grounds for demonstrating that a different course of action is also responsible and/or appropriate in the circumstance. As currently drafted the new "Standards" and "Guidelines" are effectively the same as new "Regulations". Given this, the process for adopting Standards and Guidelines should go through a rigorous review process in which Contractors are heavily involved to ensure that the Standards and Guidelines are indeed commercially viable and practicably achievable.

As detailed in other comments, there should be an overarching principle that if the Authority brings in new rules, regulations, Standards, Guidelines etc. that cause an existing Contractor to incur a material cost or loss, then the Contractor either needs to be exempt from such change or compensated by the Authority.

**Draft Regulation 94**
NORI would like to acknowledge the changes made to the regulations regarding inspections. While they better reflect some of our concerns we would like to make the following points:

As a general principle:

(i) any inspections should to the maximum extent possible limit interference with exploitation operations; and
(ii) inspectors should not be permitted to materially interfere with operations (for example by ordering an inspection of subsea equipment) unless the inspector has reasonable grounds for believing the Contractor is in breach of its obligations.

This principle is necessary because the impact of such interference on a Contractor will be measured in tens of millions of dollars due to lost revenue resulting from production downtime etc.

Currently, the regulations still permit Inspectors to interfere with commercial operations without due cause.

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.

It should be noted that the term "Installation" includes subsea equipment, and the inspector has general rights to inspect Installations. It must be remembered then that such inspection of

Installations (when it is a reference to subsea equipment) will be extremely costly to the Contractor. Consequently, there needs to be due cause for such an inspection.

**Draft Regulation 96(1)(e)**
If an Inspector is permitted to test any equipment at any time, this may cause significant disruption to the project and significant cost to the Contractor particularly due to operation downtime and loss of production etc. Is it possible to include wording that ensures that Inspectors are permitted to test equipment in circumstances where the Inspector has reasonable grounds for believing that the activities are being carried out unlawfully?

**Draft Regulation 96(1)(h)** as per the comments for Draft Regulation 96(1)(e), this power to compel Contractors to carry out procedures of any equipment should only be exercisable where the Inspector has reasonable grounds for believing that the activities are being carried out unlawfully.

**Draft Regulation 97(1)**
There should be a mechanism for a Contractor to challenge an instruction from an inspector (after initially complying with it) if they have grounds to argue that the instruction is incorrect or unjustified.

**Draft Regulation 105**
As it currently stands the Authority has the ability to change any and all Regulations which in turn removes the certainty and stability required by Contractors. As such, there needs to be an overarching principle that if the ISA makes any changes to the rules and regulations, and such a change causes the Contractor to incur any material loss or cost, then either:

(i) the Contractor needs to be exempt from the change; or
(ii) the Contract must be compensated by the Authority.

**Annex II**
**Mining Work Plan**
NORI notes under (a) that until the industry is demonstrated to be commercially viable it may not be possible or practical to categorize resources as “reserves”, and NORI suggests removing such classification as mandatory in the case where classifying as a Resource may the highest level practically possible.

NORI notes under (i) that the details of subcontractors may not be available at the PFS stage.

## EXPLOITATION CONTRACT

Section 3.3 requires the Contractor to comply with the “Rules of the Authority”, as amended from time to time. The term “Rules of the Authority” is also defined as including “other rules, regulations and procedures of the Authority as may be adopted from time to time.” As such, this essentially removes the certainty required by Contractors because the Contractor is required to comply with rules and regulations that the Authority can change whenever it wants. NORI questions how the Contract and the Regulations can provide the Contractor with certainty when the Contract binds the Contractor to comply with rules and regulations that can be changed at any time by such other additional rules, regulations and procedures of the Authority?

In order to address this issue, it is proposed that:

(i) There needs to be a stipulation that any additional Rules of the Authority that come in to force after the date of a Contract do not apply to that contract already in existence, or can only apply by mutual consent; or

(ii) The Contractor is reimbursed for any costs it incurs in having to change its operations in order to comply with any new rules or regulations brought in after the date of the signing of its Contract.

**Section 7.1**

This section deals with the responsibility and liability of the Contract for damage arising out of its wrongful acts. As such, further clarity should be made to ensure this provision relates to "wrongful acts".

For clarity the following changes should be made to this Section:

- "including the costs of reasonable measures to prevent and limit damage to the Marine Environment **arising out of its wrongful acts**"; and
- This clause survives the termination of the Contract and applies to all damage **arising out of the Contractors wrongful acts** regardless of whether it is caused or arises before, during, or after the completion of the Exploitation activities or Contract term.

**Section 17.1**

This clause essentially removes certainty from the Contract because it states that it is governed by the "Rules of the Authority", which in turn is defined as including "other rules, regulations and procedures of the Authority **as may be adopted from time to time**."

**Section 17.3**

The reference to additional permits and authorities of the Authority are open ended and could frustrate the development of operations be the Contractor. The requirement for these additional permits and authorities should be clearly defined in the Contract, rather than left open ended.

**Appendix I**

A number of the reporting conditions require materiality thresholds or else the level of reporting would be an administrative burden to the Contractor and the Authority. It is recommended that existing requirements be consulted where applicable to help determine materiality thresholds (e.g. MARPOL could be consulted for "leak of hazardous substance" volume thresholds).

## DEFINITIONS

"**Best Available Scientific Evidence**", "**Best Available Techniques**" and "**Best Environmental Practices**":

Given these terms are used throughout the Regulations as legally required standards, the definition of these terms needs to be made more achievable from a commercial and practicable perspective.

It also needs to be made clear in the Regulations that a Contractor is not required to update its equipment or technology simply because what is "best" may change over time. A Contractor should be allowed to use their equipment and methods for the useful life of such technology, particularly given the significant investment and timelines required to design, build and commission such technology.

"**Best Available Scientific Evidence**"
NORI agrees with the wording "within reasonable technical and economic constraints", however recommends against using the term "best" within this definition, which is trying to define what "best" means.

"**Best Available Techniques**"
This Definition also needs to include the wording "within reasonable technical and economic constraints", given it is a mandatory legal obligation for a Contractor to apply "Best Available Techniques". NORI also comments that sometimes the best technique is the most appropriate technique which may be a low-tech, yet elegant solution which may not be state of the art but may be more effective that the high-tech state of the art solution.

"**Best Environmental Practices**"
This Definition also needs to include the wording "within reasonable technical and economic constraints", given it is a mandatory legal obligation for a Contractor to apply "Best Available Practices".

**"Good Industry Practice"**
Given how this term is used throughout the Regulations it does not seem appropriate to include the term "Best Environmental Practice" within the definition of "Good Industry Practice", as they are dealing with separate matters, and combined, may not be achievable. Additionally, there is a logical problem involved in using the regulations and procedures of the Authority to define Good Industry Practice and then to use Good Industry Practice throughout the regulations as a key requirement.

**"Environmental Effect" –** this definition is extremely broad as it includes "**any** consequences in the Marine Environment". This should be changed to "any material consequences", particularly given how that term is used throughout the Regulations, and it does not appear reasonable to expect a Contractor to deal with and study every single consequence no matter how insignificant or trivial.

**"Exploit" and "Exploitation"**
NORI suggest further clarity is brought to the definition of Exploit and Exploitation in order to bring this definition in line with the Advisory Opinion of the Seabed Dispute Chamber (specifically Paragraph 94 to 96 of the Advisory Opinion), which limits those terms to activities that occur **in the Area.**
For example in the definition of Exploitation the following wording should be added:
"*including the construction and operation of mining, processing and transportation systems **in the Area***"

**"Feasibility Study"**
NORI recommends removing the wording **"**by a financial institution" as it may be the case that financing is not provided by a financial institution. The wording "by a financial institution" may be interpreted to imply a Bankable Feasibility Study, which is an industry defined term and may not be appropriate for seafloor polymetallic nodules at this time as they have not yet been developed and proven at a commercial scale. That is, it may not be possible to do a Bankable Feasibility Study as that term is generally defined.

"**First Period of Commercial Production**"
This needs to be defined as at least 20 years from the date of signing the Exploitation Contractor,

particularly given it could be greater than 5 years from the date of signing before commercial production even begins given the time it is likely to take to carry out the Feasibility Study, make any changes necessary to the Plan of Work (including potentially resubmitting the EMMP), construct and commission the vessel and equipment, as well as ramp up to full scale production.

"**Material Change**" this definition threshold is set too low. It needs to be defined as a "significant" change, and not just "not being a minor or administrative change".

"**Resources**"
This should incorporate the solid liquid or gases minerals or substances that can be extracted or for which there is the reasonable expectation that they can be extracted for a profit.

**"Serious Harm"**
This is defined as any effect which results in a "significant adverse change in the Marine Environment". It will be important that the concept of Unlawful Harm is introduced to this definition and the threshold be far higher before this definition is triggered. This is because of the way the term is used in UNCLOS. Effectively UNCLOS dictates that if it is classified as Serious Harm to the Marine Environment then no activity can be permitted. For example, refer Article 162(2)(x) which states that the Council shall disapprove areas for exploitation if there is just a "risk" of Serious Harm to the Marine Environment. Pursuant to Article 162(2) "the Council shall: (x) disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment."

Likewise under Article 165(2)(k) the LTC shall "make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment"

Also, an "Incident" is triggered even if there is merely a situation where "Serious Harm to the Marine Environment" is a reasonably foreseeable consequence of the situation. And pursuant to Regulation 35, "The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident."
As such, under the current definition of Incident and Serious Harm, this means that pursuant to Regulation 35, a Contractor cannot proceed with Exploitation if it is (i) reasonably foreseeably that it is (ii) a reasonably foreseeable consequence of the situation that there will be a significant adverse change in the Marine Environment. But of course simply by carrying out seafloor polymetallic nodule exploitation it is (i) reasonably foreseeably that it is (ii) a reasonably foreseeable consequence of the situation that there will be a significant adverse change in the Marine Environment.

NORI's recommendation is that the term Serious Harm needs to be defined as harm that results from:

(i) a wrongful act;
(ii) damage to the Marine Environment beyond that which was reasonably anticipated in the EIS; or
(iii) damage to the Marine Environment caused by the Contractor carrying out activities that have not been permitted under an approved Plan of Work.

"**Stakeholders**"
NORI recommends that the stakeholder should have a closer connection to the project, and/or be affected or impacted by the project, rather than simply any person "with an interest of any kind".