15 October 2019

Comments by Nauru Ocean Resources Inc. (NORI) on the Draft Regulations on Exploitation of Mineral Resources in the Area issued by the LTC in 2019

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

The Regulations issued in 2019 contain a number of significant improvements, including a more balanced set of fundamental policies and principles reflecting Article 150 of the Convention.

NORI wishes to thank the Authority for the opportunity to provide feedback on the latest draft.

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. Stability of the Exploitation Contract and the Regulations
3. Termination of Sponsorship
4. Definition of First Period and Second Period of Commercial Production
5. Practical definition for "Serious Harm"
6. Requirement to seek Council approval for matters during Exploitation

1. Protection of Contractor Rights

As a fundamental principle, to attract investment the regulatory framework must provide Contractors with certainty and stability. Presently, the 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 that have a material commercial impact should only apply to existing exploitation contracts by mutual agreement with the Contractor; or

(ii) If the Contractor is compelled to comply with a Regulatory change that has a material commercial impact, then Contractors with existing exploitation contracts should 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 major regulatory change (recognizing that many changes to Regulations may 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 should be 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 that has a material commercial impact, then Contractors with existing exploitation contracts should at a be able to 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. Stability of the Exploitation Contract and the Regulations

It is important 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 Regulations it refers to the Contractor's requirement to comply with the "Rules of the Authority" (for example in 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 with respect to the Regulations that have the potential to have a material commercial impact.

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 should be compensated to the extent that the change causes the Contractor to suffer material loss or damage.

3. Termination of Sponsorship

NORI does not agree with the changes that have been made to Regulation 21. This Regulation now potentially creates a situation where a Contractor, through no fault of its own, has its exploitation contract terminated simply because a Sponsoring State stipulates an unreasonably short time period in its sponsorship termination notice submitted to the Secretary-General. Previously, the wording used in this section was "Termination of sponsorship takes effect 12 months after the date of receipt of the notification by the Secretary-General". However, the wording now reads "Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General".

This now leaves open the possibility that the termination of sponsorship can happen at any up to 12 months, including immediately.

Pursuant to Regulation 21(3), the exploitation contract terminates automatically if the Contractor fails to obtain a new sponsoring State within the time period set out in the notice given by the former sponsoring State to the Secretary-General. However, what if that State notifies the Secretary-General that it wishes to terminate its sponsorship with immediate effect? Alternatively, what if the time period detailed in its notice is unreasonably short and impractical? This would make it impossible for the Contractor to obtain a new sponsoring State, and would in turn result in the Contractor's exploitation contract being automatically terminated, even if the Contractor has done nothing to breach the exploitation contract.

It is strongly recommended that Contractor's be given at least 12 months to obtain a new Sponsoring State. Obtaining a new Sponsoring State is not something that can happen in a short period of time. Changing a Sponsoring State involves a number of practical and legal steps. For example, it involves having to incorporate and register a new entity, as well as negotiate new sponsorship terms with a new Government. The new Sponsoring State will also likely have minimum time periods needed for departments, authorities and Government officials to assess the sponsorship application (with such minimum time periods likely to be prescribed under legislation). As such, obtaining a new Sponsoring State cannot be done in a short period of time. Given the serious implications of not meeting the strict deadline (i.e. termination of the exploitation contract), and the significant investment that would be lost, it is strongly advised that there must be a reasonable period of time allowed to obtain a new Sponsoring State.

4. Definition of First Period and Second Period of Commercial Production

The First Period of Commercial Production should 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.

During the First Period of Commercial Production, operators will also be taking on the greatest technological risk and highest cost of capital.

It is also recommended that the Second Period of Commercial Production should not occur until at least 20 years after the date of the Exploitation Contract. This is because stability is required,

and Regulation 82(2) states that the rates can be changed "from the end of the Second Period of Commercial Production."

5. 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 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 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 33, "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 33, 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.

6. Requirement to seek Council approval for matters during Exploitation

There are requirements in the Regulations to obtain Council approval during Exploitation. For example, Regulations 22 and 23 require Council approval for the registration of a security interest or the transfer of rights.

Regulation 57 also requires Council approval for any change to the Plan of Work that is a Material 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.

COMMENTS ON SPECIFIC REGULATIONS AND SECTIONS

Regulation 1(4)
NORI believes that there should be a similar confirmation that Marine Scientific Research (MSR) will not be permitted 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, or interfere with the safe and orderly performance of the Contractor's exploitation activities and commitments.

Regulation 1(5)
NORI disagrees with the concept of new "Standards" becoming legally mandatory obligations after a Contractor has been granted an Exploitation Contract. Alternatively, if new Standards 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 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" are effectively the same as new "Regulations". Given this, the process for adopting Standards should go through a rigorous review process in which Contractors are heavily involved to ensure that the Standards are indeed commercially viable and practicably achievable.

Regulation 2
NORI agrees with the new Regulation 2, which now reflects the policies set out in Article 150 of the Convention. We believe this is now much more balanced.

Regulation 15(2)(b)
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.

Regulation 16
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.

Regulation 20(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.

Regulation 20(7)
NORI recommends 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.

Regulation 21
NORI does not agree with the changes that have been made to Regulation 21. This Regulation now potentially creates a situation where a Contractor, through no fault of its own, has its exploitation contract terminated simply because a Sponsoring State stipulates an unreasonably short time period in its sponsorship termination notice submitted to the Secretary-General. Previously, the wording used in this section was "Termination of sponsorship takes effect 12 months after the date of receipt of the notification by the Secretary-General". However, the wording now reads "Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General".

This now leaves open the possibility that the termination of sponsorship can happen at any up to 12 months, including immediately.

Pursuant to Regulation 21(3), the exploitation contract terminates automatically if the Contractor fails to obtain a new sponsoring State within the time period set out in the notice given by the former sponsoring State to the Secretary-General. However, what if that State notifies the Secretary-General that it wishes to terminate its sponsorship with immediate effect? Alternatively, what if the time period detailed in its notice is unreasonably short and impractical? This would make it impossible for the Contractor to obtain a new sponsoring State, and would in turn result in the Contractor's exploitation contract being automatically terminated, even if the Contractor has done nothing to breach the exploitation contract.

It is strongly recommended that Contractor's be given at least 12 months to obtain a new Sponsoring State. Obtaining a new Sponsoring State is not something that can happen in a short period of time. Changing a Sponsoring State involves a number of practical and legal steps. For example, it involves having to incorporate and register a new entity, as well as negotiate new sponsorship terms with a new Government. The new Sponsoring State will also likely have minimum time periods needed for departments, authorities and Government officials to assess the sponsorship application (with such minimum time periods likely to be prescribed under legislation). As such, obtaining a new Sponsoring State cannot be done in a short period of time. Given the serious implications of not meeting the strict deadline (i.e. termination of the exploitation contract), and the significant investment that would be lost, it is strongly advised that there must be a reasonable period of time allowed to obtain a new Sponsoring State.

Regulation 22

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.

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 22(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 22(3)** 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 22(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.

Regulation 23(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.

Regulation 23(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. NORI notes that this is required if there is a "Material Change" to the Plan of Work, and as such, the threshold for what constitutes a "Material Change" needs to be high. NORI recommends that the term "Material Change" should be defined as a "significant change".

Regulation 31
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.

Regulation 32
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.

Regulation 33
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, NORI questions whether the current definition of "Serious Harm" will work in practice? Could this be used to claim that activities need to be stopped simply because it is reasonably foreseeable that there may be a significant adverse change? Could this be interpreted to prohibit exploitation from occurring in the first place?

As such, NORI questions whether the definition of Serious Harm needs to be changed so as it includes the concept of harm that is "unlawful", and not simply defined as "significant adverse change".

Regulation 36
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.

Regulation 44
Given Regulation 44(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.

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.

Regulation 54
NORI questions whether an Environmental Compensation Fund is needed, given that an Environmental Performance Guarantee has already been required under Regulation 26. NORI strongly advises against duplicating such costs for Contractors.

Regulation 57 (1) and (2)
Regulation 57 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.

NORI suggests that the threshold for what constitutes a “Material Change” needs to be high. NORI recommends that the term “Material Change” should be defined as a “significant change”.

Regulation 57(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.

Regulation 81(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.

Regulation 82(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 20 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.

Regulation 89
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.

Regulation 94(4)
NORI disagrees with the concept of new “Standards” becoming legally mandatory obligations after a Contractor has been granted an Exploitation Contract. Alternatively, if new Standards 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 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” are effectively the same as new “Regulations”. Given this, the process for adopting Standards should go through a rigorous review process in which Contractors are heavily involved to ensure that the Standards 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.

Regulation 107
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, NORI believes there should be an overarching principle that if the ISA makes any changes to key regulations, and such a change causes the Contractor to incur material loss or cost, then either:

(i) the Contractor should be exempt from the change; or
(ii) the Contractor should be compensated by the Authority.

Annex VII 2(e) and 2(f)
NORI notes that typically an Environmental Management and Monitoring Plan would not include an 'assessment' of the potential environmental effects or their significance. An assessment involves significant work which has already been completed as part of the EIA and is documented in the EIS. We suggest that it would be more appropriate for the EMMP to include a 'summary' of potential Environmental Effects and their significance. As such, NORI recommends that the following changes are made to Annex VII 2(e) and 2(f):

2(e) ~~An assessment~~ A summary of the potential Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result;

2(f) ~~An assessment~~ A summary of the significance of the potential Environmental Effects, and proposed mitigation measures and management control procedures and responses to minimize the harm from Environmental Effects consistent with the environmental impact assessment and the Environmental Impact Statement;

ANNEX IX 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."

NORI submits that, if there is a change to the "Rules of the Authority" that has a material commercial impact on a Contractor, then, the Contractor should be exempt from the change or the Contractor should be compensated by the Authority.

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 by the Contractor. The requirement for these additional permits and authorities should be clearly defined in the Contract, rather than left open ended.

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".

"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.

"**First Period of Commercial Production**" (used in Appendix IV)
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**" - the threshold for what constitutes a "Material Change" needs to be high. NORI recommends that the term "Material Change" should be defined as a "significant change".

"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 33, "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 33, 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".