



Republic of Nauru

12TH November 2024

Mr Olav Myklebust
President of the Council
International Seabed Authority
14 – 20 Port Royal Street
Kingston, Jamaica

Re: Addition of Agenda Item to the March 2025 Council Agenda: Process for Consideration of Applications for Plans of Work for Exploitation in the absence of Adopted Exploitation Regulations

Dear Mr. President,

I write to you in my capacity as the Republic of Nauru's (**Nauru**) Permanent Representative to the International Seabed Authority (the **Authority**) in regard to the Authority's approach to considering and approving applications for Plans of Work for exploitation in the absence of adopted Regulations on the Exploitation of Mineral Resources in the Area (the **Exploitation Regulations**).

Procedure for the Consideration of an Application for a Plan of Work for Exploitation

As you will be aware, Nauru is the sponsoring State of Nauru Ocean Resources Inc (**NORI**). NORI holds an exploration contract with the Authority and has been duly fulfilling its obligations under that contract and our sponsorship to undertake exploration activities in the Area for more than a decade. During this time, NORI has invested hundreds of millions of dollars in exploration activities, provided an extensive range of training and development opportunities, and has undertaken extensive marine scientific research to further our understanding of the Area for the benefit of humankind as a whole.

Consistent with Nauru's June 2021 notification to the Authority,¹ NORI has been diligently preparing its application for a Plan of Work for Exploitation (the **Application**) and the Application is now pending and will be ready to be submitted to the Authority on 27 June, 2025 for the Authority's consideration and

¹ Council, Letter dated 30 June 2021 from the President of the Council of the International Seabed Authority addressed to the members of the Council, 1 July 2021, ISBA/26/C/38, Annex I, Enclosure.

approval pursuant to Paragraph 15(c), Section 1 of the Annex to the Agreement Relating to Implementation of Part XI of the United Nations Convention on the Law of the Sea (the **Part XI Implementation Agreement**).

Nauru notes the Council's decision of 21 July 2023 (ISBA/28/C/25) where the Council decided, *inter alia*:

2. ... to further consider actions that the Council may take if an application for a plan of work for exploitation were to be submitted before the Council has completed the RRP's relating to exploitation;

3. ... if an application for a plan of work for exploitation is submitted before the Council has completed the RRP's relating to exploitation, to continue at its next meeting and prior to the Legal and Technical Commission finalizing its review, its consideration of the understanding and application of paragraph 15 with a view to reaching, as a matter of priority, a common understanding and accordingly reaching a decision, including the possible issuance of guidelines or directives, without prejudice to the mandate of the Commission.

Considering the imminent submission of the Application, Nauru believes it appropriate and efficient for the Council to not further delay its obligation to consider these matters and agree on a process consistent with the United Nations Convention on the Law of the Sea (**UNCLOS**) and the Part XI Implementation Agreement according to which the Application will be considered and approved in the absence of the adoption of the Exploitation Regulations at its next meeting.

Pursuant to Rule 10(d) of the Council's Rules of Procedure, Nauru therefore requests that the following agenda item be added to the Council's agenda for its next meeting in March 2025:²

Consideration and adoption of a process for the Authority's consideration and approval of applications for Plans of Work for exploitation in the absence of adopted regulations on the exploitation of mineral resources in the Area.

Continuing to act in good faith, Nauru will delay its sponsorship of the Application until after the March Council meeting so that the Council is able to agree on a process for the consideration and approval of the Application pursuant to Paragraph 15(c), Section 1 of the Annex to the Part XI Implementation Agreement.

This is necessary to provide certainty for the Authority, Nauru, NORI and other stakeholders, particularly if the Exploitation Regulations are not adopted by July 2025 in accordance with the Council's road map.³

The Authority's failure to adopt the Exploitation Regulations

As previously expressed by Nauru, under Paragraph 15 of Section 1 of the Annex to the Part XI Implementation Agreement, the Authority was obliged to "*elaborate and adopt*" the Exploitation Regulations, as well as "*any additional rules, regulations and procedures necessary to facilitate the*

² Council, Rules of Procedure of the Council of the International Seabed Authority, 3 December 1996, ISBA/C/12.

³ Council, Statement by the President on the work of the Council of the International Seabed Authority during the second part of the twenty-ninth session, 29 July 2024, ISBA/C/9/Add.1, Annex III.

approval of plans of work for [...] exploitation” within two years of the effective date of Nauru’s June 2021 notification (i.e., by 9 July 2023). After that date, in the absence of the adoption of the Exploitation Regulations, the Authority is now required to “*consider and provisionally approve*” the Application pursuant to Paragraph 15(c) of Section 1 of the Annex to the Part XI Implementation Agreement.

The Authority’s failure to complete the adoption of the Exploitation Regulations (and all additional and necessary rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation) by 9 July 2023, breaches Paragraph 15(b) of Section 1 of the Annex to the Part XI Implementation Agreement.

The Authority’s direct breach of its treaty obligations potentially prejudices Nauru’s rights as a sponsoring State and prevents Nauru and its sponsored entity, NORI, from benefiting from the certainty that such rules, regulations and procedures would provide.

The Authority’s continued breach of its obligations

The Authority has and continues to take acts and omissions that breach Paragraph 15 of Section 1 of the Annex to the Part XI Implementation Agreement. The Council has adopted decisions that fail to:

- (i) confirm its obligation to consider applications under Paragraph 15(c), and instead purport to consider alternate arrangements for the consideration of the Application that circumvent the usual decision-making process concerning applications for plans of work as contained within UNCLOS and the Part XI Implementation Agreement; and
- (ii) outline a “*procedure*” that is “*necessary*” to “*facilitate*” the approval of the Application pursuant to Paragraph 15(c) of Section 1 of the Annex to the Part XI Implementation Agreement prior to receipt of the Application.⁴

Resolution of the Current Situation

Nauru requests that the Authority comply with its latest road map and adopt the Exploitation Regulations during the thirtieth session. Nauru also considers that should the Authority receive the Application in the absence of adopted Exploitation Regulations, the Application must be considered and approved in accordance with the Authority’s legal obligations and mandate pursuant to UNCLOS and the Part XI Implementation Agreement. As such, Nauru has suggested an approach in this letter to settle and resolve this situation.

Finally, Nauru thanks you, Mr President, for your consideration of this letter and looks forward to your inclusion of our proposed agenda item in the Council’s agenda for its March 2025 meeting. We also look forward to working with you and the Council to adopt appropriate procedures for the Authority’s consideration and approval of the Application and finding a resolution of these matters in good faith and

⁴ ISA Council, Decision of the Council of the International Seabed Authority on a timeline following the expiration of the two-year period pursuant to section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 21 July 2023, ISBA/28/C/24.

in accordance with our shared rights and obligations contained within UNCLOS and the Part XI Implementation Agreement.

Nauru requests that this letter be circulated to all members of the Council and be made publicly available on the Authority's website.

Sincerely,



H.E. Mr David Aingimea

Permanent Representative of the Republic of Nauru to the International Seabed Authority

Copy to:

Mr. Michael Lodge, Secretary-General

ISA Member States