

14th January 2025

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

Re: Adoption of the Exploitation Regulations

Dear Mr. President,

As contractors of the International Seabed Authority (ISA), we have entered into contracts for the exploration of deep-sea mineral resources in accordance with article 153 and article 6 of Annex III of the United Nations Convention on the Law of the Sea (UNCLOS). With this letter, we wish to express our concerns regarding the delay in the transition to the exploitation phase of activities in the Area and to urge the Council to complete the adoption of Exploitation Regulations by 2025, as it has indicated in its decision *ISBA/28/C/24*, para. 1.

We contractors entered into contracts with the ISA, took on substantial legal obligations, and made significant investments in activities in the Area over an extensive period of time, relying on the clear legal framework set out in UNCLOS, the 1994 Implementation Agreement, the relevant Exploration Regulations and general principles of international law (collectively the “**Legal Framework**”). We made and continue to make our investment based on the legitimate expectations created at the time of our investment in reliance of the Legal Framework and decisions and representations made to us by the ISA (among other things). The protracted delay to the ISA’s adoption of the Exploitation Regulations and the potential willingness of the ISA, including some of its member States, to not comply with this Legal Framework and fulfil those expectations is deeply concerning.

We contractors are required to undertake extensive and costly exploration activities in accordance with our approved plans of work and must proceed towards the exploitation of the mineral resources as specified in the regulations adopted by the Council and the Assembly. Specifically, Regulation 26(1) of the Exploration Regulations for polymetallic nodules (*ISBA/19/C/17*), and Regulation 28(1) of the Exploration Regulations for polymetallic sulphides (*ISBA/16/A/12/Rev.1*) and cobalt-rich ferromanganese crusts (*ISBA/18/A/11*) clearly mandate that “[u]pon expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation”. Furthermore, the regulations governing the extension of an approved plan of work for exploration (*ISBA/21/C/19*, Annex I, 1c) stipulate that contractors must “complete the necessary preparatory work for proceeding to the exploitation stage”. In 2026, nine exploration contracts will expire, followed by another three in 2027, at which point the above regulations will apply.

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These provisions require contractors to develop exploitation technology and make significant financial investments in preparation for the exploitation phase. To date, and in reliance on the regulations and the expectations set under UNCLOS and by the ISA, we contractors have collectively invested approximately US\$2 billion in the exploration of deep-sea mineral resources, the acquisition of environmental and biodiversity baseline data, and the development of mining and processing technology. We have conducted over 100 campaigns since 2019 and significantly added to our collective knowledge of the deep sea.

However, a critical contradiction arises when we consider the Council's own aspiration, as stated in the preamble to *ISBA/28/C/25*, that "commercial exploitation of mineral resources in the Area should not be carried out in the absence of rules, regulations, and procedures (RRPs) relating to exploitation." While the Legal Framework and the RRP for exploration, adopted by the Council, require contractors to prepare for exploitation, the lack of finalized Exploitation Regulations impedes and has delayed our ability to proceed. This new development is contrary to the clear Legal Framework and legitimate expectations that enabled our original investments.

The situation is further exacerbated by the protracted timeline for finalizing these regulations. Thirteen years have passed since the delegation of Fiji requested in 2011 to develop mining regulations, yet the Council has not concluded this critical process. In 2017, the Council agreed on a roadmap for the adoption and approval of the draft regulations by July 2020 (*ISBA/23/C/13*). In July 2023, the Council then envisaged finalizing the regulation by 2025 (*ISBA/28/C/24*, para 1), which will be four years after the invocation of the two-year rule under Section 1(15) of the Annex to the 1994 Implementation Agreement, which was designed to ensure the timely adoption of Exploitation Regulations. While negotiations continue, there are no guarantees that the Exploitation Regulations will be adopted in 2025, placing contractors in an increasingly difficult position. We are compelled to continue costly exploration activities while the preferred legal framework for exploitation remains unresolved.

This inconsistency contradicts the intent of UNCLOS, particularly in light of the 1994 Implementation Agreement, Section 1(15) which mandates that "the Authority shall elaborate and adopt, in accordance with article 162, para 2 (o) (ii), of the Convention, rules, regulations, and procedures based on the principles contained in sections 2, 5, 6, 7, and 8 of this Annex, as well as any additional rules, regulations, and procedures necessary to facilitate the approval of plans of work for exploration or exploitation". These legitimate expectations and legal obligations underscores the need for the Council to ensure that the regulatory framework is in place to facilitate contractors transitioning from exploration to exploitation with certainty.

Without the adoption of exploitation regulations, contractors face escalating legal and financial risks that were not foreseen or expected at the time we made our investments. The current situation imposes an unfair burden on contractors, requiring substantial investments without the security of a clearly defined regulatory framework. This is contrary to the principles of fairness and equity under UNCLOS as particularly reflected in the non-discrimination mandate under Article 152 and the requirement for good faith under Article 300.

It is not acceptable and unfair that we contractors continue to meet our obligations, while the Council continuously misses its own deadlines, fails to meet its obligations, and has not delivered on its responsibilities. We therefore respectfully call on the Council to adhere to its decision in *ISBA/28/C/24* and complete the adoption of the Exploitation Regulations by 2025 in order to (among other things) not breach the legitimate expectations of contractors as part of ensuring we are afforded fair and equitable treatment as required under UNCLOS and our contracts. The successful and timely adoption of these regulations is critical to all stakeholders and will provide comfort that deep-sea mineral resources are developed responsibly and the marine environment is protected, in line with UNCLOS.

We thank you for your attention to this urgent matter and look forward to your prompt action.

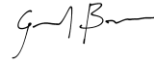


Yours sincerely,



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Kris Van Nijen
Managing Director of Global Sea Mineral Resources



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Gerard Barron
Director Nauru Ocean Resources Inc.



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Tomasz Abramowski
Director General of Interoceanmetal Joint Organization



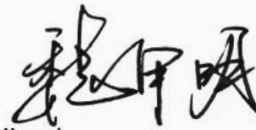
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Gerard Barron
Director Tonga Ocean Mining Ltd.



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Roderik Heerema
Director of Blue Minerals Jamaica

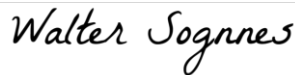


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