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(Submitted via email to [EISconsultation@nauruun.org](mailto:EISconsultation@nauruun.org))

October 6th, 2022

**Re: The LTC recommendation on NORI's EIS**

The Deep-Ocean Stewardship Initiative (DOSI)<sup>1</sup>, an accredited Observer at the International Seabed Authority (ISA) since 2016, would like to express its concern over the recent process for the recommendation by the ISA's Legal and Technical Commission (LTC) to the Secretary-General of the ISA that the completed Environmental Impact Statement (EIS) be incorporated into the programme of plans of Nauru Ocean Resources Inc. (NORI). The plans of NORI, a subsidiary of The Metals Company (TMC), includes testing a polymetallic nodule collector system in the NORI-D lease area in the eastern Clarion Clipperton Zone of the Pacific Ocean, between Hawaii and Mexico.

**DOSI would like to seek clarification on (i) the content of the second revised EIS from NORI - including the new information provided on 1st August 2022, (ii) the process that was undertaken in order to review and approve the EIS content, and (iii) the LTC's reasoning behind the recent recommendation, and how this takes into account comments provided by DOSI and other stakeholders.**

On 29th September 2021, the Government of the Republic of Nauru launched a stakeholder consultation for the EIS developed by NORI to conduct technical trials of a prototype nodule collector in the Clarion Clipperton Zone in 2022. On 18th November 2021, a commentary on the first NORI EIS was submitted on behalf of DOSI to [EISconsultation@nauruun.org](mailto:EISconsultation@nauruun.org) and to [mlodge@isa.org.jm](mailto:mlodge@isa.org.jm), where DOSI expressed concern that the baseline data needed for an adequate EIS had not yet been provided, making the EIS in its current form incomplete and not fit for purpose in accordance with the ISA's Recommendations (see [https://www.dosi-project.org/wp-content/uploads/DOSI\\_Submission\\_NORIEIS-.pdf](https://www.dosi-project.org/wp-content/uploads/DOSI_Submission_NORIEIS-.pdf)). The LTC

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<sup>1</sup> DOSI is a network of over 2600 experts from over 104 different countries who practise deep ocean science, governance and other related activities.

requested changes to the NORI's EIS (ISBA/27/C/16, para 20-22), and subsequently, NORI submitted a revised EIS on 1st March 2022 that included more environmental data amongst other amendments. Following further requests by the LTC, NORI submitted a new environmental management and monitoring plan in May 2022 ([https://isa.org.jm/files/files/documents/ISBA\\_27\\_C\\_16\\_Add.1-2211211E.pdf](https://isa.org.jm/files/files/documents/ISBA_27_C_16_Add.1-2211211E.pdf), para 43). Despite these significant and substantive revisions, another stakeholder consultation process was not conducted.

However, DOSI did undertake - on its own initiative - a scientific review of the first revised EIS from NORI, focusing only on the biological information. Findings were published in an information sheet posted on the DOSI website in July 2022 (see [https://www.dosi-project.org/wp-content/uploads/NORI\\_EIS\\_Case\\_Study.pdf](https://www.dosi-project.org/wp-content/uploads/NORI_EIS_Case_Study.pdf)). **DOSI concluded that whilst more relevant data were presented, the revised EIS was still inadequate** because of i) the ongoing nature of analyses, ii) the quality, quantity, and uncertainty of the presented biological information, and iii) consequently its incomplete assessment of the associated risks. Further, the revised EIS did not adequately show similarity between the preservation reference zone (PRZ) and impact reference zone (IRZ). These findings were also shared at the ISA Council, during an intervention delivered by DOSI on 26th July under Item 14: Report of Chair of LTC ISBA/C/16/Add.1 released 25 July 2022 ([https://www.dosi-project.org/wp-content/uploads/27th-session\\_Council-2\\_Report.pdf](https://www.dosi-project.org/wp-content/uploads/27th-session_Council-2_Report.pdf)).

On 15th July 2022, in ISBA/27/C/16/Add.1. para 46, it was stated in the report of the Chair of the LTC to the ISA's Council that, due to insufficiency of information about the monitoring plan for the test, the LTC "was unable to recommend to the Secretary-General of the Authority that the environmental impact statement be included in the programme of activities of NORI".

From mid July through early September 2022, no further information was made publicly available regarding the status of the NORI EIS. On 7th September 2022, TMC, NORI's parent company, shared online the news that NORI had received ISA recommendation to commence pilot nodule collection trials (<https://investors.metals.co/news-releases/news-release-details/metals-company-subsiary-nori-receives-isa-recommendation>), with press reports indicating that NORI's vessel disembarked from a port in Mexico on 14th September 2022 in order to commence the trial (<https://news.mongabay.com/2022/09/regulator-approves-first-deep-sea-mining-test-surprising-observers/>).

On 15th September, a press release was published on the ISA's website stating that the LTC had concluded its review of the EIS submitted by NORI, including **new information submitted by NORI to the LTC on 1st August 2022. This new information was, however, not published.** This means that the LTC's review and decision was taken on the basis of an EIS that was three times substantially revised, since it was opened by the Government of Nauru for stakeholder comment. If such a process is permitted by the ISA, it may create an incentive for contractors to submit incomplete environmental documents at the stakeholder consultation stage, knowing that any supplemented versions will not be subject to public scrutiny.

The ISA press release does not contain details about the LTC's deliberation process or rationale for its decision. DOSI notes an assertion by another ISA observer, that the LTC did not, as whole, meet to review the EIS or to approve its content, but rather the decision was taken by a small sub-committee and then adopted via a silence procedure over email (<https://www.savethehighseas.org/resources/publications/dscc-letter-to-isa-on-nori-test-approval/>). If this description of the process is accurate, it appears to us to be an unexpected departure from the LTC's Rules of Procedure [ISBA/6/C/9, [https://isa.org.jm/files/files/documents/isba-6c-9\\_1\\_0.pdf](https://isa.org.jm/files/files/documents/isba-6c-9_1_0.pdf)]. It is hard to see how the silence procedure - which we understand is usually reserved by public bodies only for highly urgent and/or purely procedural matters - is an appropriate method of decision-making for a precedent-setting, complex and sensitive environmental decision of significant public interest. We urge the ISA Secretariat and the LTC Chair to ensure that all LTC members are

given ample opportunity to be involved in decisions with the potential to affect the marine environment, including review and approvals of EISs. Processes that risk stifling debate should not be adopted.

We recall that environmental information contained in the EIS is non-proprietary (UNCLOS Annex III, Article 14) and that the ISA has repeatedly committed to providing public access to environmental data. As such, DOSI requests the publication of full copies of NORI's final EIS and supporting data. We would also like to understand the rationale for the LTC's decision, and are specifically interested to understand how DOSI's substantive concerns regarding the biological data and their analyses in the EIS have been addressed. In fact, UNCLOS requires the LTC, in making recommendations to the Council on the protection of the marine environment, to take into account the views of recognised experts in that field [UNCLOS 165(2)(e)] such as DOSI members.

We also respectfully suggest that the ISA's responsibility to exercise control over activities in the Area, and public trust and confidence in the ISA as a regulator, will be better supported if important decisions made by ISA organs are notified to the public and ISA stakeholders in a timely manner by the ISA itself, rather than leaving other stakeholders to dictate the public narrative.

We note that the LTC's 'Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area' may need to be revised to ensure that remaining defects in the ISA's Exploration EIS process are remedied.

**We support the ISA in its aim to be accountable and transparent in its decision-making. We submit that this includes providing opportunity for meaningful public consultation, providing timely notification and reasons for ISA organ decisions, and expressly addressing how the decisions take into account legitimate comments and objections that have been raised by stakeholders.**

**We would be most grateful to receive a response to our enquiries on (i) the content of the final revised EIS from NORI, (ii) the process that was undertaken in order to review and approve the EIS content, and (iii) the LTC's reasoning behind the recent recommendation, possibly including a public statement from the LTC to address both substantive and procedural issues raised in this letter.**

**Co-signed by:**

Dr. Patricia Esquete, DOSI Minerals Working Group Co-Lead  
Dr. Sabine Gollner, DOSI Minerals Working Group Co-Lead  
Dr. Jesse van der Grient, DOSI Minerals Working Group Co-Lead  
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