

9 November 2011

Mr Michael Lodge
Secretary-General
International Seabed Authority
Kingston, Jamaica

Dear Secretary-General,

We are writing with respect to the NORI environmental impact assessment (EIA) and statement (EIS) (1) to ask that the EIS not progress and request that it be withdrawn for its complete lack of - indeed the absence of even an attempt to include - the critical environmental baseline and (2) to express our serious concerns with the procedural shortcomings of the public consultation undertaken.

First, the NORI EIS is nowhere near complete. There is no baseline for the relevant areas. This is a fundamental deficiency which should stop the EIA process from proceeding. For this reason alone, the EIS should not proceed to review under paragraph 41(b) of the [Recommendations](#).ⁱ The Secretary-General review under that paragraph cannot properly have found it to be complete, hence it should not progress.

Establishing an adequate environmental baseline is a fundamental component of an EIA as it allows the proponent to evaluate environmental impacts from their activities. For this reason, it is also a key component of the Authority's procedures for conducting an EIA. A failure to include a biological baseline in this EIS, as well as any evidence of prior stakeholder consultation, disregards the Recommendations and the Authority's mandate to ensure the effective protection of the marine environment from the harmful effects of mining. That an EIS with these gaps is even being (or has been) considered by the Legal and Technical Commission (LTC) exposes severe deficiencies in the process currently used to evaluate proposed test mining. For these reasons, and others elaborated below, the EIA should be withdrawn and the test cannot be allowed to move forward.

Second, with the exception of one public relations exercise in San Francisco, there was no public consultation throughout the EIA, including during scoping. A number of States and stakeholders have expressed in the Standards and Guidelines consultation their strong support for public consultation during the conduct of the EIA. While this EIA is for a test mine, the same concerns apply.

It appears that the LTC has already commenced, or in any case was asked to commence, the process of review before the public consultation has been undertaken. This and other issues we set out below show there are serious procedural issues that need to be addressed with respect to transparency.

The Absence of a Baseline

A baseline is essential as it will not be possible to identify the impacts of the activity on the environment, if the natural conditions of the relevant environment are not known. We will cite paragraph 13 of the [Recommendations](#) in full:

13. It is important to obtain sufficient information from the exploration area to document the natural conditions that exist prior to test-mining or testing of mining components to gain insight into natural processes such as dispersion and settling of particles and benthic faunal succession, and to gather other data that should make it possible to acquire the capability necessary to make accurate environmental impact predictions, for example the assumed impact and its process, including the seabed-disturbance plume, discharge plume, potential toxicity, noise and intensity of light. The impact of naturally occurring periodic processes on the marine environment may be significant but is not well quantified. It is therefore important to acquire as long a history as possible of the natural responses of sea-surface, mid-water, near-bottom and seabed communities to natural environmental variability before the mining-related activities. The best available technology and methodology for sampling should be used in establishing baseline data for environmental impact assessments.

Paragraph 14 goes on to state that “Baseline data documenting natural conditions prior to test-mining or testing of mining components are essential in order to monitor changes resulting from these activities and to predict impacts of commercial mining activities.” As the EIS itself notes in its Section 3.1: “Baseline data documenting natural conditions prior to test mining is required in order to monitor changes in the receiving environment resulting from these activities and to predict impacts of commercial scale mining.” And yet, Section 6.2 of the EIS, while cataloging the various institutions and researchers engaged by NORI to research baseline conditions in the CCZ, notes that “no published biological findings from the NORI-D baseline campaigns are available,” and while “preliminary data has been provided by some researchers”, none of that data is synthesized in this report.

Instead, the EIS is replete with statements that data will be acquired in the future: e.g., 4.5.1.1 “the baseline studies are not yet complete” ... There are many other examples.ⁱⁱ A research plan is not a substitute for its anticipated results. The Secretariat’s suggestion in its [Note \(ISBA/26/LTC/10\)](#)ⁱⁱⁱ that NORI provides an updated status of environmental baseline studies before the start of its planned activities, including an overview and synthesis of all environmental data, is also problematic. A baseline, even if it is provided just before the start of the test, is too late and cannot be assessed by stakeholders in time, to say nothing of the fact that it does not comply with the timelines envisaged by the Recommendations. Moreover, the three items of information requested by the Secretariat (definition of key terms, status of environmental baselines, and high-resolution bathymetry map), even if provided, would not result in a complete EIS, due to the many non-compliances with the Recommendations.

It has been a month since the Secretariat’s deadline passed. No such further information has been provided to stakeholders. This EIS is premature and should be withdrawn.

The Importance of Consultation

The Environmental Monitoring Plan for the Clarion-Clipperton Zone^{iv} provides that the Authority shall enable public participation in environmental decision-making procedures in accordance with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998, and its own rules and procedures ([Aarhus Convention](#)). The European Court of Human Rights in *Giacomelli v. Italy*^v has held that article 8 of the Aarhus Convention requires the consideration of environmental impacts before decision-making, the provision to the public of information generated through the environment impact studies and the opportunity for individuals to have their views taken into account. The [Almaty Guidelines](#)^{vi} adopted under that Convention promotes the application of the Aarhus Convention in International Forums and states that access to information, public participation and access to justice in environmental matters are fundamental elements of good governance at all levels and essential for sustainability.

It is crucial that there is prior public review and consideration concerning the necessity of the disturbance to the deep-sea environment, alternatives to the proposed testing, the design of the technology used, the design of the monitoring programme, and post-activity collection and evaluation of data to assess environmental impacts and effects. It is also crucial to ensure transparency in the EIA process, and that reporting, monitoring, and assessment results should be made publicly available as timely as possible to enable experts and other stakeholders to help review the environmental impacts of the proposed activities.

The EIA Process

We understand that the EIS was submitted in July, the Secretariat's completeness Note was sent out at the end of August, and the Commission was to review the EIS in September - yet public comments are not due until 19 November.^{vii} We note that with the recent India test EIS, there was a public consultation prior to the consideration by the Commission.^{viii}

We strongly urge that the appropriate procedure is that (1) public consultation, including during the EIA, is conducted; (2) the EIS is published for consultation and the Contractor considers and incorporates the comments and forwards the revised EIS with the comments to the Secretary-General and then (3) the Commission undertakes the review - in light of public comments received.

Nature and Result of the Review

We also take this opportunity to recommend that the LTC considers amending the [recommendations](#) to: (1) give the Commission the mandate to undertake a substantive review and (2) give Council an opportunity to respond to the review. At present, under paragraph 41(h), the Commission is to undertake a review for "completeness, accuracy and statistical reliability" and "provide recommendations to the Secretary-General as to whether the environmental impact statement should be incorporated into the programme of activities under the contract. The Secretary-General will inform the contractor accordingly".

It is a serious shortcoming that this does not give the Commission a mandate for a substantive review of the EIS or give Council an opportunity to take any steps that are necessary following this review. We consider that it is crucial that Council, as the executive organ of the ISA mandated to control activities in the Area, should make the final decision as to whether the proposed test is permitted as planned, permitted with modifications to the plan, or is not permitted at all.

We suggest that this is urgently rectified and that the LTC revisits and amends the Recommendations to put into place a clear and transparent process whereby:

- (a) Stakeholder mapping and prior consultations are required to be carried out by the contractor during the EIA, including during scoping, and the EIS describes those consultations and how they led to modification of conduct of the EIA;
- (b) The sponsoring State conducts consultation and makes its own assessment of the EIS prior to the contractor submitting the EIS to the ISA;
- (c) The results of the consultations are taken into account by the contractor, sponsoring State, and the ISA, and the EIS is amended accordingly with public comments, then posted on a public website by the sponsoring State and the ISA, along with any responses from the contractor;
- (d) The LTC conducts a substantive review of the amended EIS based on the Recommendations, the public comments received, and best international practice, and makes a recommendation to the Council whether or not the proposed activity should be permitted to proceed, and if so upon what conditions; and
- (e) The results of that review are notified to the Council and placed on the ISA website in time for the Council to undertake its own review and permitting decision about the proposed activity.

The outcome of this process should also ensure that, in pursuance of Regulation 31(4) of the Nodules Regulations,^{ix} the Commission shall develop and implement procedures for determining, on the basis of the best available scientific and technical information, whether proposed exploration activities in the Area, including the testing of mining equipment by NORI, would have serious harmful effects on vulnerable marine ecosystems and ensure that, if it is determined that certain proposed exploration activities would have serious harmful effects on vulnerable marine ecosystems, those activities are managed to prevent such effects or not authorized to proceed.

Conclusions

We ask that the Secretariat notifies NORI that its EIA is incomplete, the review will not proceed, and it should be withdrawn until all requirements under the Recommendations have been complied with.

We further ask that the Commission initiates a review of the Recommendations to achieve the above aims.

We include for your information a chronology of EIAs to date.

We request that this letter be circulated to Council members.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sian Owen', with a stylized flourish at the end.

Sian Owen

Director

Deep Sea Conservation Coalition

cc Harald Brekke, Chair of Legal and Technical Commission

Chronology of Environmental Impact Assessments in the International Seabed Authority

Date: 28 March 2018

Document: Environmental Impact Assessment https://isa.org.jm/files/files/documents/EIA_BGR_0.pdf

Letter from German Government 17 December 2018:

https://isa.org.jm/files/files/documents/germany_0_0.pdf

Sponsoring State: Germany

Contractor: Bundesanstalt für Geowissenschaften und Rohstoffe (BGR)

Activity: Submission of EIA dated 15 February 2018 for testing of a pre-prototype manganese nodule collector vehicle in the Eastern German license area (Clarion-Clipperton Zone) in the framework of the European JPI-O MiningImpact 2 research project. EIA stated that “There is no obligation for public consultation at this stage of the process (communication with the Secretary-General of the ISA)”

Consultation: None Initially. 3-week consultation then undertaken October 2018.

Date: 1 April 2018

Document: Environmental Impact Statement <https://isa.org.jm/files/files/documents/GSR-EIS-compact.zip>

Letter from Belgian government: 11 December, 2018.

https://isa.org.jm/files/files/documents/belgium_1_0.pdf

Sponsoring State: Belgium

Contractor: Global Sea Mineral Resources (GSR)

Activity: Submission of Environmental Impact Statement: Small-scale testing of nodule collector components on the seafloor of the Clarion-Clipperton Fracture Zone and its environmental impact. Statement: “There is no obligation for public consultation at this stage of the process.”

ISA Activity:

20 April 2018: Secretary-General acknowledged receipt, placed on agenda for LTC (ISBA/25/LTC/4) https://isa.org.jm/files/files/documents/25ltc_4_e.pdf. Secretariat conducted an initial technical review of both submissions for completeness, accuracy and statistical reliability. Secretariat requested further information of each contractor on 17 May 2018, and the requested information was received from GSR and BGR on 1 and 14 June 2018, respectively.

Detailed evaluation reports by technical experts of the secretariat and by the external experts were made available to the Commission during its meeting in July 2018. On 20 June 2018, those reports were also sent to BGR and GSR for their comments. Responses were received from BGR and GSR on 28 and 29 June 2018, respectively, and circulated to the Commission. Furthermore, on 27 June 2018, the environmental impact

assessments submitted by BGR and GSR were posted on the Authority's website and made available to the general public.

July meeting of LTC: LTC decided to establish an informal working group to continue the review process intersessionally to ensure the completeness, accuracy and statistical reliability of both submissions and agreed to communicate its comments to the Secretary-General at the earliest opportunity.

On 18 July 2018, during the twenty-fourth session of the Council, the delegation of Belgium announced that its Government, as the sponsoring State of GSR, would open a consultation in Belgium from 1 July to 31 August 2018, and invited members of the Council and other stakeholders to take part in the process.

On 2 October, BGR informed the secretariat that the Government of Germany, as the sponsoring State of BGR, would be opening, for a period of three weeks, a public consultation in Germany on the environmental impact assessment submitted by BGR for the testing of a pre-prototype collector vehicle in its contract area. (ISBA/25/LTC/4)

On 17 December 2018, BGR informed the Secretary-General in writing that the Government of Germany had given its approval for the testing of a pre-prototype collector vehicle in the BGR contract area in April 2019 without imposing additional obligations. However, a note concerning the importance of long-term monitoring was included in the approval letter, appealing to BGR to integrate future monitoring programmes for the test area into future exploration cruises and, if relevant, third party-funded research cruises to the best of its ability. BGR informed the Secretary-General that it had taken due note of this request. That decision was taken after the 3-week consultation period.

Consultation: None initially. Consultation then undertaken 1 July 2018 to 31 August 2018.

Date: 6 February 2020

Document: Environmental impact statement from the Ministry of Earth Sciences of the Government of India relating to the proposed technical trials of a pre-prototype nodule collector in the Indian contract area of the Central Indian Ocean

Sponsoring State: India

Contractor: Indian Government

Activity: collector test

ISA Activity: The secretariat performed a preliminary review of the statement for completeness against the elements listed in paragraph 38 of the recommendations. Ministry was requested to provide additional information. Information Provided on 16 May 2020.

Consultation: None initially. Secretariat invited the Ministry to consider conducting a stakeholder consultation on the statement.

Ministry announced a stakeholder consultation by publishing the statement on its website and inviting comments from the public. In parallel and with the consent of the Ministry, the secretariat issued a press release about the stakeholder consultation and provided a link on the website of the Authority to direct users to the Ministry website. The stakeholder consultation period was initially for 30 days, beginning on 15 March

2020. However, this was later extended for a further 40 days following representations from stakeholders and in the light of the coronavirus disease (COVID-19) pandemic. The Ministry informed the secretariat that it will prepare a report on the outcomes of the stakeholder consultation and make it available to the Commission prior to its meeting in July 2020. (ISBA/26/LTC/5). That report, if it was submitted, has not been made public.

LTC Activity: ISBA/26/LTC/5 https://isa.org.jm/files/files/documents/ISBA_26_LTC_5-2008041E.pdf:
Review for completeness, accuracy and statistical reliability of the environmental impact statement submitted by the Ministry of Earth Sciences of the Government of India.

ⁱ ISBA/25/LTC/6/Rev.1 Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area. 30 March 2020. At https://isa.org.jm/files/files/documents/26ltc-6-rev1-en_0.pdf.

ⁱⁱ EIS paras. 6.3.1.1, 6.3.2.1 (“Baseline Investigations The methods and proposed survey array for NORI-D will provide data to ...”); 6.3.3.1 (“The methods and proposed survey array for NORI-D will provide data...”); 6.3.4.1 (“The methods and proposed survey array for NORI-D will provide data”); 6.3.5.1 (“The methods and proposed survey array for NORI-D will provide data..”); 6.3.6.1 (“The methods and proposed survey array for NORI-D will provide data...”); 6.3.7.1 (“The methods and proposed survey array for NORI-D will provide data to meet the following objectives:”); 6.3.8.1 (“The methods and proposed survey array for NORI-D will provide data to meet the following objectives”); 6.3.9.1 (“The methods and proposed survey array for NORI-D will provide data”); , 6.4.1, etc.

ⁱⁱⁱ [ISBA/26/LTC/10](#) Review of the environmental impact assessment statement submitted by Nauru Ocean Resources Inc. (31 August 2021)

^{iv} ISBA/18/C/22. Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone. 26 July 2012, adopting ISBA/17/LTC/7, Environmental Management Plan for the ClarionClipperton Zone 13 July 2011. At <https://undocs.org/en/ISBA/17/LTC/7>.

^v *Giacomelli v. Italy*, Application no. 59909/00, ECHR, Judgement of 2 November 2006, para. 78. At <https://www.elaw.org/content/european-court-human-rights-giacomelli-v-italy-application-no-5990900-2006112-european-court>.

^{vi} Decision II/4 promoting the application of the principles of the Aarhus Convention in international forums. ECE/MP.PP/2005/2/Add.5. 20 June 2005, Annex. At <https://unece.org/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>

^{vii} The EIS was submitted to the Secretariat, we understand before the end of July, and it was not until 29 September, some two months later, that a stakeholder consultation was [announced](#). During that time, the Secretariat issued a Note [ISBA/26/LTC/10](#), dated 31 August, stating that “The review of the environmental impact statement, along with any other available information provided by NORI, will be initiated by the Commission at its next meeting, in September 2021.” The same Note indicates that a stakeholder consultation will be held from September to November 2021 and will include the submission to the Secretary-General of a summary of the stakeholders’ comments and of the response of NORI to them and that “NORI indicated that it would also submit any revisions or updates to the statement resulting from the stakeholders’ comments to the Secretary-General, who will share them with the Commission.” The Secretariat Note stated that, in line with paragraph 41(b) of the [Recommendations](#), the Secretariat performed a preliminary review of the statement for completeness against the elements listed in paragraph 38 of the Recommendations.Paragraph 41 reads “(b) The Secretary-General will acknowledge the receipt of the environmental impact statement within 30 days and check for completeness against the template as contained in annex III to the present recommendations. If the submission is incomplete, the Secretary-General will contact the contractor to seek additional information. The contractor is to respond within 30 days. A contractor unable to respond in that time frame can request a reasonable extension to this period.

We contrast this with the procedure set out in paragraph 41 of the Recommendations for the event that a stakeholder consultation has not yet been conducted by the sponsoring State (which is the current situation). The Commission, through the Secretary-General, may encourage the sponsoring State(s) to conduct such consultation. Following that, if the sponsoring State replies that it does not intend to conduct a stakeholder consultation, the Secretariat is to publish the EIS on the Authority’s website and is to invite comments within 30 days; after that period, the Secretary-General is to forward to the contractor the comments by the Commission, together with the received stakeholder comments and within 60 days, the contractor is to respond to the Secretary-General and the Secretariat is to forward to the Commission the response from the contractor. Only after all that has happened would, under paragraph (h), the Commission undertake its review.

^{viii} According to the Secretariat Note [ISBA/26/LTC/5](#) , the Ministry of Earth Sciences of the Government of India had informed the Secretariat that it would prepare a report on the outcomes of the stakeholder consultation and make it

available to the Commission prior to its meeting in July 2020. But as far as we are aware, no such report was made available to the submitters of stakeholder comments or to the public, and there has been no publication of the comments, and no indication that they were ever taken into account, either by the Government of India or by the Commission.

^{ix} Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. At https://isa.org/jm/files/files/documents/isba-19c-17_0.pdf.