

15 September 2022

Mr Michael Lodge - Secretary-General  
Mr Tomasz Abramowski – President of the Council  
Mr Harald Brekke - Chair of Legal and Technical Commission  
International Seabed Authority, Kingston, Jamaica

Dear Mr Lodge, Mr Abramowski and Mr Brekke,

We are writing to express serious concerns about the process by which the environmental impact statement (EIS) submitted by Nauru Ocean Resources Incorporated (NORI) for its upcoming collector test has apparently been approved by the Legal and Technical Commission (LTC). We request that the LTC rescinds its recommendation and that the LTC or the Secretariat urgently makes public the correspondence and decisions pertaining to the approval of the EIS.

On 9 November 2021, we wrote to you with concerns relating to the EIS submitted by NORI and the lack of transparency surrounding it. Given that the EIS lacked the necessary biological baseline data or a monitoring plan, we asked that the EIS not be approved and expressed our observations of the shortcomings of the public consultation undertaken on the incomplete EIS.

Following the stakeholder consultation conducted by NORI in 2021, a revised EIS was submitted – including hundreds of pages of new data – after which the consultation period was said to be closed, and no opportunity was provided for further review by stakeholders. A consultation conducted on incomplete data and information cannot be considered adequate or meaningful, yet no steps were taken for a further review of this revised EIS. Now the EIS and environmental monitoring and management plan (EMMP) have been revised again, also without any public consultation or even notice to the public.

Specifically, we understood that the Commission's assessment of the revised EIS raised serious concerns as noted in the LTC's report of July 2022, that it 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". The LTC further noted that "the monitoring programme lacked sufficient detail with regard to the overall sampling design and integrated environmental monitoring specifications that the Commission needed in order to adequately evaluate the accuracy and statistical reliability of the environmental impact statement and the Monitoring Plan".

In the Report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its twenty-seventh session, [ISBA/27/C/16/Add.1](#) you, Mr Brekke, reported as follows:

46. The Commission therefore decided that it 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.

47. The Commission made further specific comments on areas in which it felt the environmental impact statement (and especially the EMMP) needed to include more detail or in which certain elements needed further consideration by NORI. They included aspects of the survey design, the

level of benthic sediment plume monitoring, the pelagic sampling of biological impacts of the plume discharge, temporal issues of survey timing and duration, and the extent of noise monitoring.

The results of the review by the Commission were sent to NORI on 15 July, from which date NORI had 30 days to respond.

We agree that the matters cited by the LTC are significant shortcomings.

We were therefore shocked to learn that on September 7, the Metals Company (TMC) [announced](#) that the ISA recommended that NORI, its subsidiary, proceed with its forthcoming collector test, presumably upon NORI having submitted amended documentation. But that documentation was not made available by NORI or the ISA, was not to our knowledge notified to the Council members and nor was any notice given of its consideration by the LTC. We note that the LTC meets behind closed doors, despite being specifically asked by the Assembly in 2017 to hold open meetings.

This breach of transparency is enough to vitiate the LTC's approval, but we understand that the entire LTC did not even meet to consider the revised EIS, but that it was asked to approve the EIS under a silence procedure.

Council Decision [ISBA/26/C/48](#), concerning the decisions adopted under silence procedure in 2020 and 2021 recalled "the impossibility of convening in-person meetings of the Council during the second part of the twenty-sixth session in 2020 and early 2021 owing to the coronavirus disease (COVID-19) pandemic" and "agreed to adopt under silence procedure decisions on time-sensitive matters while the COVID-19 pandemic prevents in-person meetings at the headquarters of the Authority". This was the basis for the Council adopting the silence procedure in 2020. There is absolutely no basis for adopting this procedure for reviewing the NORI EIS.

Approval of the NORI EIS is clearly an inappropriate use of this procedure. The LTC could have been convened virtually, with no COVID implications. Furthermore, the NORI EIS is not time sensitive from the perspective of ISA member States, nor is it in the interest of the ISA or of member States for the approval to be rushed through in secrecy.

This procedure and the lack of transparency or accountability gives absolutely no confidence in the procedures adopted and that will be adopted around Nauru's triggering of the two-year rule.

We trust that the approval will be reversed, that the relevant documentation and decisions be released, that a transparent full LTC meeting will be called, that independent scientific advice will be obtained and that the EIS will be re-examined in its entirety and be made available for public scrutiny. In the interests of transparency this letter will be shared with a wider set of contacts.

Yours sincerely



Sian Owen  
Director  
Deep Sea Conservation Coalition