

FAQs

(June 2021)

Q1: What is the 2 Year Notice?

It is a legal procedure included in the Agreement relating to the Implementation of Part XI of the UN Convention on the Law of the Sea (known as the “1994 Agreement” -Section 1, Paragraph 15), that allows a State Party and Member of the International Seabed Authority (ISA) who intends to apply for an exploitation contract to request that the legislative organ of ISA (the “Council”) adopt rules and regulations for the exploitation of seabed minerals of the Area within two years of this notification.

Q2: What does the 2 Year notice involve?

Nauru has submitted a letter to the President of the ISA’s Council requesting that it completes its work in relation to the negotiations and adoption of the draft exploration regulations.

Q3: Why has Nauru given the 2 Year Notice?

Nauru has proudly taken a leading role in developing the international legal framework governing seafloor nodules in the international seabed area (the Area).

As the first developing country to sponsor an application for an exploration contract in the Area, Nauru helped realise the vision of the United Nations Convention for the Law of the Sea (UNCLOS) that this new industry be accessible and available to developing States.

Given that Nauru Ocean Resources Inc (NORI), a Nauruan entity sponsored by Nauru, intends to apply for approval of a plan of work for exploitation, Nauru is following the appropriate procedure as detailed in the 1994 Agreement.

The draft exploitation regulations for minerals of the Area have been under development for more than seven years and involved a series of transparent, inclusive discussions by the international community, facilitated and led by ISA. Nauru considers that the process is nearly complete and stands ready to continue working diligently with ISA and all its Members and other stakeholders to finalise, negotiate and adopt a world class regulatory regime that allows for the responsible collection of seafloor nodules while ensuring the protection of the environment.

At the same time, Nauru considers that there is urgency of concluding this work in order to provide the legal certainty required for this industry to move forward.

Q4: Why is there an urgency?

NORI has significantly advanced its project since obtaining an exploration contract 10 years ago. Significant effort and capital has been committed to advance the project using leading scientists and engineers with the

Public Information on the 2 Year Notification

objective of submitting an application for an approval of a plan of work for exploitation to ISA. It is necessary to finalise the draft exploitation regulations so that there is regulatory certainty.

Nauru believes that we have a duty to the international community to carry out this request to bring this certainty for the benefit of all stakeholders, and to ensure that polymetallic nodules are considered as part of the solution for the global transition from fossil fuels and towards renewable energy.

As a Pacific Small Island Developing State, Nauru stands to lose the most from climate change. Achieving the emissions reductions necessary to avoid its worst impacts cannot happen without metals. The responsible development of this new industry offers a rare opportunity for our social and economic development, while also supplying the world with a lower-impact source of metals for the low-carbon technologies needed to combat climate change.

Q5: Is this rushing the adoption of the Exploitation Code?

No. UNCLOS was signed in 1982, and is perhaps the most comprehensive international convention passed in world history. Since 2014, the ISA has been developing the draft exploitation regulations for the seabed minerals of the Area, with extensive engagement and input from all stakeholders over the many years.

With the process nearly complete, the time has now come to finalise the rules for the benefit of all stakeholders and the international community, and to ensure that seafloor nodules are considered as part of the solution for the global transition away from fossil fuels and towards renewable energy, and the creation of a circular economy.

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The development of these draft exploitation regulations is a good illustration of the attention that has been given for many years by the international community to design a regulatory regime that provides for strong measures and mechanisms to ensure the protection of the environment and which, for the first time in history, will be put in place prior to the commencement of a new industry.

Q6: When does the 2 Year period start?

The two-year period starts from 30 June 2021.

Q7: When does NORI plan to submit its application for an Exploitation Contract?

NORI is undertaking multi-year comprehensive environmental baseline studies involving leading deep sea scientists and research institutions. At the completion of those studies, it is expected that NORI will be in a position to submit an application for approval of a plan of work for exploitation to ISA.

Q8: What role did NORI play in your decision to utilise the 2-Year Notice? Did they ask Nauru to do this?

The decision to utilise the two-year notice is a decision made by the Government of Nauru. The Government has a great relationship with NORI, and are aware of NORI's timeline and the progress they are making. It should be emphasised and reiterated that the decision to utilise the two-year notice was Nauru's, and we look forward to working with the other members and stakeholders to finalise and adopt the draft exploitation regulations.

Q9: What happens if the ISA doesn't have the Exploitation Code adopted in two years?

We are confident that the draft exploitation regulations will be adopted within two years. However, if for some unlikely reason it is not, the 1994 Agreement expressly deals with this potential scenario by allowing a work plan to be considered based on the provisions of UNCLOS and the 1994 Agreement as well as any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in UNCLOS.

Q10: There are some stakeholders who do not support using the 2 Year Notice.

We believe that regulatory certainty is important, and that such regulatory certainty will benefit *all* stakeholders. This clause was purposefully added to UNCLOS and is a legitimate tool available to every State Party and Member of ISA.

Nauru is comfortable with being a leader on these issues. This is very similar to 2009 when Nauru took the initiative and requested that the ISA seek an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS) on the responsibilities of Sponsoring States. At the time, some stakeholders had reservations because this marked the first time that such a request for an advisory opinion had been made. Since submitting the request, there has been overwhelming consensus that the Advisory Opinion was extremely beneficial to the development of international law in this area.

Q11: How will Nauru benefit from seafloor mineral production in the Area?

As a small Pacific Island Developing State, Nauru now has the ability to participate and benefit from an industry that is critical to our livelihood. We do not have land-based resources and have limited economic opportunities which, in turn, makes mitigation of, and adaptation to, the worst impacts of climate change increasingly challenging. The provisions contained within UNCLOS specifically provide for developing States such as Nauru to participate in this new industry.

As a Sponsoring State, Nauru currently receives support for training and capacity development, community and social programs and, in the future, we will receive a nodule recovery fee.

Since becoming the first developing country to sponsor an application for an exploration contract in the Reserved Area, Nauru has seen many other developing countries follow its example, as they too see the benefits

of being a Sponsoring State. We are excited to be part of a project that will benefit Nauru, other developing countries and the international community.

Q12: How does Nauru respond to those who say we don't know enough about the deep sea and are calling for a moratorium?

No commercial collection of seafloor nodules can or will take place until rigorous, multi-year environmental impact studies are conducted, vetted, reviewed and evaluated through the global regulatory mechanism established by UNCLOS and administered by ISA. If this research shows that the risks outweigh the benefits, the global community, through ISA, can decide that the project should not go ahead. NORI has clearly stated that if the research shows that producing metals from seafloor nodules will do more planetary harm than good, they will not apply for an exploitation contract with ISA.

Those calling for a moratorium risk undermining the very research that they are calling for while the climate crisis continues.

Q13: What are the biggest remaining hurdles to get the exploitation code completed?

We believe that the draft exploitation regulations can be completed within the next two years, as a significant amount of progress has been made over the last seven years. The major aspects of the draft exploitation regulations have all been advanced significantly. The exploitation regulations have undergone six rounds of stakeholder comment and review and are with the Council for final negotiation.

Ten Standards and guidelines were identified as needing to be completed with the adoption of the exploitation regulations. Three have undergone stakeholder comment and review, and the comment period for the remaining seven closes on July 3. This will allow the ten standards and guidelines to be reviewed at the next Council meeting.

Significant work has occurred on the financial regime and we are expecting a report from the working group prior to the next Council meeting reflecting the recent reports that were commissioned.

Q14: What about COVID-19? Is Nauru taking advantage of the Covid-19 situation?

The draft exploitation regulations were in its final stages and it was anticipated that they would be adopted prior to Covid-19. Since Covid-19, the world has seen a step change in communications technology, making it even easier now for ISA Members and stakeholders to meet remotely and more frequently. As such, we believe that there is an even greater opportunity now for all stakeholders and ISA Members to work together to finalise the draft exploitation regulations.