



NORTHERN
TERRITORY
DIVISION

16 November 2020

Mr Paul Purdon
Executive Director, Environmental Assessment and Policy
Department of Environment, Parks and Water Security
GPO Box 3675
DARWIN NT 0801

Emailed to paul.purdon@nt.gov.au and ntepa.consult@nt.gov.au

Dear Mr Purdon

RE: Comments on NT EPA Review of Seabed Mining in the NT: Environmental Impacts and Management

Thank you very much for providing the Minerals Council of Australia – Northern Territory Division (MCA NT) an opportunity to comment on the NT EPA's draft report '*Review of Seabed Mining in the Northern Territory – Environmental Impacts and Management*' released in September 2020 for community and stakeholder comment.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally. The MCA's strategic objective is to advocate public policy and operational practice for a world class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

The MCA has a long history of leadership in sustainable mining practices. MCA members have committed to *Enduring Value – The Australian Minerals Industry Framework for Sustainable Development*.¹ The principles underlying *Enduring Value*, while developed for land-based mining activities, can be extended to stewardship of the ocean environment and the management of sea floor mineral exploitation.

The MCA supports the principles contained within the International Marine Minerals Society Code of Practice² and considers similar principles could underpin a regulatory framework for seabed mining in waters administered by the Northern Territory government. Importantly, the Code aligns with relevant principles/elements of industry-led sustainable mining frameworks, including those of the MCA and the International Council on Mining and Metals.

The MCA NT understands that this framework will align with and be guided by the government's recently enacted *Environment Protection Act* and Regulations that provide a comprehensive and robust framework for community involvement in environmental impact assessment (EIA) and approvals processes to guide sound decision-making by the government for development proposals with potential for significant environmental impacts.

The MCA NT notes that in March 2012 the government introduced a moratorium on seabed mining in NT coastal waters in response to community concerns and the limited information and knowledge available for

¹ <https://minerals.org.au/enduring-value-framework>

² http://www.immsoc.org/IMMS_code.htm

government to adequately assess environmental impacts of seabed mining and their management, and that this moratorium is scheduled to end in March 2021.

The Review provides factual information from independent experts, including from case studies around Australia and overseas, upon which the NT EPA has formulated draft advice to the NT government on impacts and their management, including whether or not the moratorium should be lifted, and, if so, how proposed developments for seabed mining should be assessed and managed.

Feedback on the Review from the MCA NT is provided below.

OVERVIEW OF MCA NT FEEDBACK

- After March 2021, the current moratorium should be replaced by evidence- and project-based regulation under the *NT Environment Protection Act and Regulations* which are adequately comprehensive and robust for assessment and management of seabed mining projects.
- Policy and guidance documents tailored to the specific characteristics and needs of a Territory-based seabed mining industry should be developed to assist both the regulators and proponents navigate requirements under the new regulatory framework for environmental impact assessment and approvals.
- This should allow proposals to be assessed not only on the basis of assessment and management of potentially significant environmental impacts but also consider potential for economic and social benefits.
- The Review cites case studies where seabed mining has been done in coastal waters in Australia and overseas without unacceptable environmental impacts, which suggests that moratoria are an unnecessarily 'blunt instrument' if applied to all seabed mining proposals. Despite this, several sections of the Review appear to be biased in favour of extending the current moratorium.
- Instead, the MCA NT recommends that proposed developments be assessed on their own merits, based on adequate knowledge of the environment, and be risk based, accounting for likely significant impacts from the proposed project and the effectiveness of mitigation measures.

More specific comments on the Review have been summarised in **Attachment A**.

The MCA NT would welcome the opportunity to discuss the above feedback. We also wish to express our interest in future engagement in the development of a regulatory framework for seabed mining in the NT, if the government decides to proceed in this direction. Should you need further information, please do not hesitate to contact me on 08 8981 4486 or Janice.warren@minerals.org.au.

Yours sincerely,



(DR) JANICE WARREN
Manager – Policy & Research – MCA NT

ATTACHMENT A: SPECIFIC COMMENTS FROM THE MCA NT ON THE NT EPA DRAFT REPORT REVIEW OF SEABED MINING IN THE NORTHERN TERRITORY – ENVIRONMENTAL IMPACTS AND MANAGEMENT (Sept 2020)

Statement in Review		MCA NT Response	
Executive summary			
p 2	In contrast, seabed mining activities on a large scale, in sensitive environments and/or where data is scarce, will require a very substantial investment by the proponent to provide adequate baseline data, describe potential impacts with sufficient certainty, and develop evidence-based mitigation measures. In some situations, the costs to the proponent to collect the necessary information to support a proposal is likely to be highly prohibitive to the viability of the proposal. As a consequence, the NT EPA expects that some proposals may be unacceptable and result in a recommendation of early refusal by the Minister for Environment to provide certainty to proponents and government, avoiding unnecessary expenditure and delay.	The NT EPA should not recommend an early refusal to the Environment Minister on the basis that costs to obtain adequate background information could be substantial; this is a commercial decision associated with costs that might be acceptable to a company. Like land-based activities, there is always the possibility some proposals may be rejected through an assessment of project merits and potential impacts. While data to underpin assessments and decision-making is important, similar to land based assessments, perfect datasets are rarely if ever achieved. Instead projects should be allowed to proceed with appropriate monitoring and adaptive management arrangements, supported by the minimum baseline information to inform the assessment	
p 4 Finding 9.	Requirements to achieve environmental protection outcomes must include: extensive baseline information, appropriate financial assurance, progressive rehabilitation, agreed rehabilitation objectives, completion criteria and monitoring of rehabilitation success. These requirements should be captured in specific closure and rehabilitation criteria and guidance developed by government with substantial industry and stakeholder input.	Not all sites will have to be rehabilitated, e.g. the Cullen Bay sandbar has been subject to a number of large dredging projects to collect sand, and the sandbar always re-establishes itself through re-deposition of sand transported by coastal currents. Further, if seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud. These and other environmental factors should be considered.	
p 5 Finding 10.	The cost of funding an expert advisory group would appropriately lie with the proponent with its scope and membership determined by the regulator in line with the 'user pays' principle.	The advisory group is the responsibility of the NT EPA and DEPAWS, not industry. Facilitating development is a function of government, resulting in public benefits (through the provision of taxes and royalties and local investment.	
Body of the review		MCA NT Response	
p 14	Seabed mining, the extraction of seabed material for commercial purposes, however, comes with the expectation of closure planning and rehabilitation, just as for terrestrial mining.	If seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud; therefore, such sites would not require rehabilitation and closure, as they would be naturally re-established.	
p 20	Techniques may vary depending on the mining methods used, the location of the mined area and the desired future use of that area, but active rehabilitation of the seabed in terms of both the substrate (habitat) and associated biological communities is not usually feasible and rehabilitation generally relies on natural recovery	As stated above, rehabilitation might not be required if hydrodynamics and sediment transport naturally restore the pre-mining state of the seabed. A rehabilitation endpoint can simply be safe, stable and non-polluting, taking into account the pre-mining environment. Rehabilitation requirements should be specific to environmental values impacted. In some cases, the appropriate mitigation might be to require offsets for residual impacts on habitat.	
p 45	Impacts on benthic communities and habitats may be direct, with often substantial and irreversible damage to habitat and communities, or indirect through shading or smothering from sedimentation.	Or, in an environment of extensive and largely homogenous sands or muds, impacts might be small or negligible. This is one of the examples wherein the Review describes only worst case scenarios (negative bias). Like land-based assessments, assessments should be risk-based, accounting for the range of likely significant impacts.	
p 47	On-shore activities may create both tangible and intangible, and positive and negative impacts, such as the construction of project-related facilities, the influx of workforces, use of social infrastructure and changes to landscapes and lifestyles. Given the state of development in the NT, unless seabed mining is accompanied by substantial onshore infrastructure, benefits to the community are likely to be low.	Or benefits to the community might be substantial, e.g. if seabed mining is done by regional or remote communities (e.g. Aboriginal-owned and/or operated companies) or operators contribute to community benefit funds or employ members of regional or remote communities. Negative bias.	
p 60	While the NT EPA review is necessarily broad and considers the large range of potential seabed mining activities, it also recognises that significant impact is strongly related to the scale and nature of individual seabed mining proposals.	This should also reference local hydrodynamics, sediment transport dynamics and the nature of the seabed.	
p 60	The significance of actual and potential impacts, and the extent to which they can be managed to meet environmental objectives and outcomes influences the environmental acceptability of any proposals to mine the seabed. The NT EPA considers that there may be circumstances where seabed mining can be environmentally acceptable, provided that proposals are supported by adequate information, comprehensive consultation and engagement, transparent assessment and a clear, robust framework for environmental regulation and compliance to ensure environmental acceptability.	Agreed.	
p 60	There are other scenarios where the scale and nature of seabed mining would likely result in proposals with such high levels of uncertainty or residual environmental impact that they are environmentally unacceptable. In some cases the information requirements may result in proposals that are not financially viable.	The NT EPA should not recommend an early refusal to the Environment Minister on the basis that costs to obtain adequate background information could be substantial; this is a commercial decision associated with costs that might be acceptable to a company. (See comment for p 2)	

BODY OF THE REVIEW (Cont'd)		
p 63	A clear policy position on seabed mining would provide certainty to industry, investors and the community on the Northern Territory Government's expectations.	MCA NT agrees with this statement. The position should be to assess each project on its own merits, as part of an appropriate overarching regulatory framework. Moratoria are not an appropriate regulatory mechanism.
p 66	Assessment is conducted in accordance with the EP Act and EP Regulations to: promote ecologically sustainable development so that the well-being of the people of the NT is maintained or improved without adverse impact on the environment	Should read promote ecologically sustainable development so that the well-being of the people of the NT is maintained or improved without unacceptable adverse impact on the environment. Most developments will have at least some impact on the environment, which could be positive, negative, or negligible. The statement could be further refined to 'promote ecologically sustainable development' which already accounts for human well-being and environmental impacts.
p 67	Key finding and Conclusion 2. The Northern Territory Government should consider declaring a 'seabed mining' activity trigger under the Environment Protection Act 2019 for all seabed exploration and mining activities so that referral to the NT EPA is required to determine whether environmental impact assessment is required.	Agreed, to ensure that all proposals for seabed mining are referred to the NT EPA to determine whether or not they need to be formally assessed under the NT Environment Protection Act and Regulations.
p 70	Key finding and Conclusion 3 Seabed mining activities can be broadly categorised into three classes, based on their potential for significant environmental impact: Unacceptable impacts – are likely in some situations where serious risks and high uncertainty remains and no amount of information or knowledge is likely to adequately address the residual impacts in a reasonable time and at a reasonable cost. The NT EPA considers these proposals are likely to be unacceptable and may trigger a recommendation for early refusal.	The NT EPA should not recommend an early refusal to the Environment Minister on the basis that costs to obtain adequate background information could be substantial; this is a commercial decision associated with costs that might be acceptable to a company. (Also see previous comments on minimum data requirements and adaptive management).
p 71	The NT EPA considers it appropriate that a fit for purpose guidance document for environmental impact assessment of seabed mining be developed through government and industry collaboration, in line with the best practice example from the United Kingdom (case study 7).	Agreed
P 72 and p 73	The information available for environmental impact assessment also affects the level of confidence in both the prediction of impacts and in the success of proposed mitigation. The level of confidence is likely to be low for most seabed mining proposals due to the limited information available to support temporal predictions.	Or, in an environment of extensive and largely homogenous sands or muds, impacts might be small or negligible. This is one of the examples wherein the Review describes only worst case scenarios (negative bias).
p 72	Where scientific knowledge is lacking and there are risks of serious or irreversible environmental harm, the precautionary principle is likely to apply.	Agreed
p73	Key finding and Conclusion 4. Currently, the lack of adequate environmental information and knowledge about the existing condition of environmental values and the potential impacts from seabed mining is a major barrier to the robust environmental impact assessment, approval and appropriate conditioning of seabed mining in the Northern Territory. It will be important to communicate to proponents the considerable information requirements necessary for robust environmental impact assessment, including adequate baseline data that encompasses the substantial natural, temporal and spatial variation in marine and coastal environments.	Not necessarily. In an environment of extensive and largely homogenous sands or muds, knowledge might be adequate or obtainable at acceptable cost to proponents, as impacts are likely to be small or negligible. This is another example wherein the Review describes only worst case scenarios (negative bias). Noting comments above, proponents should be required to provide minimum appropriate information to guide decision-making. Projects can still proceed in the absence of perfect data (See previous comments re: adaptive management). 'Considerable information' is subjective. Instead, data requirements should only be fit for purpose.
p 73	A collaborative approach to data collection and information management, involving industry, government and research agencies would, over time, address many of these data gaps and reduce uncertainty around effective mitigation of impacts.	Agreed

BODY OF THE REVIEW (Cont'd)		MCA NT Response
Statement in Review		
p 75	Key finding and Conclusion 5. The collection of adequate data at a regional scale required for environmental impact assessment requires coordination between industry, government, research agencies and other stakeholders, rather than a piecemeal approach at the individual project scale. The establishment of a government managed and resourced central data repository is essential to support environment protection and the assessment and regulation of any proposed seabed mining activities in the Northern Territory. An accessible data repository would enable the most effective use of environmental data collected by industry, research organisations and government agencies and ensure that data are • Collected to appropriate data standards • Verified and stored securely • Shared amongst all stakeholders. Over time, this approach would further reduce the barriers to the robust assessment, approval and appropriate conditioning of seabed mining in the NT. Any NT seabed mining policy should ensure that data collected for the purposes of understanding the marine environment to support seabed mining must be made available to the broader community.	Agreed (noting comments made above regarding data requirements)
p 78	Key finding and Conclusion 6. Should seabed mining be approved, relevant approvals should require environmental monitoring that informs regulation of proposal-specific management targets, as well as evidence-based understanding of environmental impacts to support future impact assessment and regulation of the industry. Data should be available to the public.	Agreed
p 81	Key finding and Conclusion 8 The NT EPA considers that environmental offsets cannot currently be readily or easily applied to seabed mining proposals in NT coastal waters. The collection of pre-impact baseline data does not qualify as an environmental offset.	Agreed. The collection of data does not qualify as an offset. Regarding offsets generally, this issue requires further consideration. Lessons from other seabed activities (e.g. port development) should be considered before offsets are discounted.
p 81	Closure and rehabilitation are important aspects of mining management, and this applies equally to seabed mining as to terrestrial mining activities.	Not necessarily. If seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud; therefore, such sites will not require rehabilitation and closure, as they will be naturally re-established.
p 82	As with terrestrial mining, any seabed mining proposal would require a mine closure plan that includes progressive rehabilitation, leading to self-sustaining ecosystems, and supported by regular robust monitoring to determine rehabilitation success.	As above: not necessarily. This requirement should be risk-based.
p 82	However, the requirement for upfront detailed information on the marine environment and processes, necessary to inform closure and rehabilitation is paramount due to the likelihood of irreversible change from most seabed mining activities.	There is no evidence to support this statement. It does not follow that most seabed mining results in irreversible change. Instead, each project is context specific If seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud; therefore, such sites will not require rehabilitation and closure, as they will be naturally re-established. Another example of negative bias in the Review
p 83	Key finding and Conclusion 9. Closure and rehabilitation are important considerations for the assessment, approval and management of seabed mining.	Not necessarily. If seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud; therefore, such sites will not require rehabilitation and closure, as they will be naturally re-established. Any closure requirements should be evidence- and risk-based.
p 83	In the absence of specific guidance, seabed mine closure and rehabilitation should follow the best practice principles of the International Marine Minerals Society Code for Environmental Management of Marine Mining	Agreed

BODY OF THE REVIEW (Cont'd)		
Statement in Review	MCA NT Response	
p 83	Requirements to achieve acceptable environmental protection outcomes must include: extensive baseline information, appropriate financial assurance, progressive rehabilitation, agreed rehabilitation objectives, completion criteria and monitoring of rehabilitation success. These requirements should be captured in specific closure and rehabilitation criteria and guidance developed by government with substantial industry and stakeholder input.	Not necessarily. If seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud; therefore, such sites will not require rehabilitation and closure, as they will be naturally re-established. See previous comments regarding the ability of projects to proceed in the absence of perfect datasets by applying adaptive management approaches.
p 83	Effective rehabilitation and biological recovery is unlikely to be feasible where seabed mining removes or alters extensive areas of the seafloor or for seabed mining proposals greater than five years duration.	As above, not necessarily. Again, context-specific.
p 84	Key finding and Conclusion 10. Independent expert groups can provide valuable advice to regulators and industry during the planning, assessment, operational and rehabilitation stages of seabed mining projects, should seabed mining proceed in the Northern Territory beyond a limited number of small-scale operations.	Agreed
p 84	The cost of funding an expert advisory group would appropriately lie with the proponent with its scope and membership determined by the regulator in line with the 'user pays' principle.	Disagree. The advisory group is the responsibility of the NT EPA and DEPAWS, not industry.
p 85	Key finding and Conclusion 11 The powers afforded by the Environment Protection Act 2019 to the Northern Territory Government and the NT EPA (section 6.1) provide a strong framework for community involvement in the environmental impact assessment and approvals process and, ultimately, environment protection. Transparent, meaningful community engagement and consultation should commence early in project planning prior to the impact assessment and approvals process, and extend to project implementation and closure. The NT EPA conducts ongoing community consultation and engagement on policy and technical guidance, but there is still much to be done to address community concerns and strengthen community involvement and trust. Further investigation of learnings from the Northern Territory (Hydraulic Fracturing Inquiry), national (NOPSEMA) and international (NZ and BMAPA) experiences will be valuable to guide the Northern Territory Government's position, implementation and communication pathways.	Agreed
p 86	Where uncertainty exists about environmental values, impacts or management associated with large-scale mining projects, extensive data is required. These data provides information about existing environmental conditions and the extent of potential impacts, including cumulative impacts from multiple stresses or multiple mining projects. The NT EPA considers that this information base does not exist yet, and must be obtained by strategic, collaborative and long-term baseline data collection to provide the basis for robust assessment of environmental impacts.	Disagree. If seabed mining takes place in large expanses of fairly homogenous sand or mud, then removal of sand or mud via seabed mining is unlikely to impact biodiversity or have any long-term impacts, and any pits are likely to re-fill from transport and re-deposition of sand and mud; therefore, such sites will not require rehabilitation and closure, as they will be naturally re-established. Information required from the proponent might therefore not be extensive or expensive. (See previous comments)
p 86	The NT EPA considers that best practice management of the impacts from seabed mining can be assessed, and that significant impacts can be managed under the EP Act and EP Regulations. Proposed reforms of the environmental regulation of mining provide an opportunity to consider whether further changes are required to effectively regulate seabed mining.	Agreed.
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