

**ISA Report on Developing a Regulatory Framework for Mineral
Exploitation in the Area, July 2016
Submission by Germany**

This submission is made by the Federal Republic of Germany. The Report on “Developing a Regulatory Framework for Mineral Exploitation in the Area” including the “Working Draft Regulations and Standard Contract Terms on Exploitation for Mineral Resources in the Area” has been duly noted by the German Federal Government. Germany welcomes the initial effort made by the Secretariat and the Legal and Technical Commission (LTC) in assembling draft regulations and contract terms and considers the draft as an important step forward towards a comprehensive regulatory regime for mineral exploitation in the Area.

Germany recognizes that the draft is to be seen as phase 1 in the development of the full regulatory code, providing all stakeholders with an opportunity to elaborate. Germany welcomes and appreciates the efforts of the International Seabed Authority (ISA) to engage with a broad stakeholder base in a transparent manner. Since the present draft provides basic elements of the application process and subsequent administration of contractor activities, rights and obligations including a first blush of financial terms applicable to exploitation contracts only, Germany recognizes that more work has to be done and that other important elements of a full regulatory exploitation code, such as “Seabed Mining Directorate Regulations” and namely “Environmental Regulations”, are still be elaborated on.

The comments provided below constitute therefore a first and non-exhaustive input regarding some of the issues covered by the report. Comments presented here can only be regarded as provisional - further input and views will follow once the environmental regulations and further elements of the regulations are available as draft text. The development of the mining code is a unique task and will take time and further

discussion and elaboration. Germany will remain engaged in this process and reserves the right of further submissions of any kind and at any time throughout the negotiation and decision-making process in the ISA framework and its respective organs.

Following up on the **specific questions** as posed in the section “next steps” (pg. 7, pt. 16), Germany submits the following observations:

- (a) The working draft in its current structure and focusing on the basic elements of the application process and subsequent administration of contractor activities, as well as rights and obligations including a first outline of the financial terms applicable to exploitation contracts, is written in a clear manner. It represents a thorough first concept for further elaboration of future mining regulations and a comprehensive regulatory code for the regulation of exploitation activities in the Area. The concept “nothing is agreed until everything is agreed” is highly acknowledged and will contribute to a broad consent of stakeholders. We share the LTC’s view on the “building block approach” that no part of the exploitation code can be agreed upon nor enter into force without the other.
- (b) We support the view of the LTC that there is need for the development of a comprehensive set of Environmental Regulations and Mining Inspectorate Regulations that will be added to the draft at a later stage. However, we strongly suggest that the envisaged Environmental Regulations will be incorporated as an integral part of the regulatory framework for mineral exploitation in the Area to enforce their strength and effectiveness. They should not be developed as a “separate set of regulations”, as indicated in the present report, since this would degrade them as a requirement aside to the “exploitation regulations”.
- (c) The explicit need for the development of Environmental Regulations in their own right highlights the steadily increasing significance of environmental aspects of marine exploration and exploitation and ensures special awareness and adaptability of this topic. Therefore, all stakeholders should be invited to elaborate on the development of a set of comprehensive environmental

regulations integrated in the exploitation regulations, which aim at effectively protecting deep-sea ecosystems based on the precautionary principle and using best environmental practices as well as best available technologies. The collection of baseline environmental information and monitoring strategies during the exploitation phase can be based strongly on an updated version of ISBA/19/LTC/8 (Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration activities in the Area), e.g. by additionally considering the results and recommendations set out by the MIDAS project consortium (MIDAS Deliverable 9.4, available by the end of October 2016). Experience from the exploration phase shows that transparency in environmental analysis is ensured by the participation of independent and state-of-the-art research institutions as well as environmental governmental organizations.

We suggest to create some provisions on obligatory accompanying scientific research that is independent from the contractors to further examine the ecological impacts of ongoing exploitation of minerals in the Area systematically and, at the same time, to broaden the knowledge on marine and seabed ecosystems and marine biodiversity in the deep sea.

Environmental work is documented in annual reports but is also published as best scientific practice in peer-reviewed scientific papers and therefore is open to the public. In our view, the timely development of an ISA database containing all environmental data collected by both contractors and scientific entities and with open access to the public will be crucial for improving transparency and public consent as well as for facilitating Strategic Environmental Assessments that form the basis of regional/spatial planning activities associated with exploitation. The development of the regulations in a transparent and inclusive manner involves participation of all stakeholders, including the public, in the form of international workshops, surveys, and reviews. In our view the ISA already fulfills or is actively working towards fulfilling all of these duties.

In order to ensure a maximum of transparency in the licensing process, Germany suggests that an appropriate public review and consultation process involving stakeholders, NGOs etc. should be a mandatory step within the application procedure.

To develop a regulatory code that secures labour standards, the LTC should draw upon conventions and recommendations of the International Labour Organisation (ILO). Section 16, in particular point 16.2 should be more specific when addressing the responsibilities of contractors. Instead of speaking of competent international organisations, the draft should refer to the ILO core labour standards.

(d) No comments.

The following **general comments** on the Report on the draft Exploitation Regulations should be taken into consideration:

In our view no regulatory framework for the exploitation of mineral resources in the Area can be agreed nor enter into force nor can any exploitation of mineral resources activity take place in the Area without the existence of a comprehensive set of such Environmental Regulations. The Environmental Regulations need to include the overarching principles, such as the precautionary principle, the concept of “common heritage of mankind” and the ecosystem approach and further elements such as:

- environmental vision, targets and objectives,
- planning instruments,
- rules for the environmental impact assessment process,
- strategic environmental management plans,
- regional management plans,
- environmental management and monitoring obligations, including emergency orders,
- rules for the environmental approval process and

- provisions for compensatory measures and for enforcement, requirements for environmental restoration, for public participation as well as for the sharing of scientific knowledge.

As part of the environmental regulations, a requirement for the establishment of long-term protected seabed areas, equivalent in size and ecological properties to the mining area, should be made mandatory with any exploitation contract or license.

The Environmental Regulations must be elaborated on the basis of best science and it must also be assured that any application, decision taking and approval process under the exploitation code is informed by the best available and current scientific information on the ecological impacts of exploitation activities in the Area. For this purpose, we would strongly suggest, *inter alia*, to take into consideration the integration of independent scientific advice of internationally renowned experts to the competent organs during the application, approval and implementation process as well during the review process for exploitation activities in the Area.

Regarding environmental recommendations for project approval (e.g. collection of environmental baseline data, monitoring strategies, EIAs, mitigation measures) we suggest that these could be outsourced to different, binding documents such as ISBA/19/LTC/8 functions for the exploration code today.

Regarding the future payment regime we strongly support that the potential harmful and other external effects of deep sea mining are taken into account as explained under the note at the beginning of Part V (page 28 of the report).

Germany welcomes the Agreement of Cooperation between the International Maritime Organization (IMO) and the ISA and would appreciate this cooperation to be filled with life in the context of the drafting of the regulatory framework for mineral exploitation in the Area. Deep sea mining activities will involve ship-

based maritime activities. As pointed out before, harmonization under the ISA and IMO regimes and the avoidance of gaps in the regulations governing deep sea mining activities in the Area is crucial. The following aspects seem worthwhile to be addressed in more detail within the framework of cooperation between the two organizations and during the drafting process of the exploitations regulations:

- ship safety,
- ship-related marine environmental protection,
- maritime security,
- navigational requirements (concerns, e.g., safety zones, ship-routing measures),
- liability regimes
- search and rescue (concerns preparations for the increasing traffic and associated SAR-Plans).

Regarding the above mentioned aspects a comprehensive approach on responsibilities and liabilities on implementation, control and enforcement has to be elaborated. A mutually accepted approach (including, for example, a level-playing field) to ensure a fruitful and complementary co-existence of the roles of both the flag State and the sponsoring State has to be developed. Experts of both the ISA and the IMO should study and discuss these and other issues of common interest in order to identify interfaces between the respective work and avoid duplication of work with the objective to achieve a common, harmonized approach.

The following first and non-exhaustive **specific comments** on the working structure for the Exploitation Regulations should be taken into consideration:

Draft Regulation 4: The term 'applicable obligations' needs clarification as this could open the set of regulations and lead to a unequal treatment of applicants. An Environmental Management and Monitoring Plan is crucial for determining the effectiveness of environmental protection during the exploitation phase; a

mining permit cannot be granted without this information. Thus, allowing submission at a date later to that of the original application is unacceptable under all circumstances. A later permit for submission of a Closure Plan, however, would be feasible.

Draft Regulation 8 (pg. 18, pt. 4c): A statement saying "...in accordance with the Environmental Regulations" should be included in paragraph 4c. In addition, further details of the "best environmental practices" and the "precautionary approach" should be added to the text once the Environmental Regulations will have been finalized.

Draft Regulation 8 (pg. 19, pt. 7): It is crucial that the fulfillment of environmental requirements is examined by the Commission when assessing the applicant and its Plan of Work. These environmental considerations should take into account the project and site specific conditions. Again, such an assessment can only take place if the relevant documents and information according to the (future) Environmental Regulations are submitted as part of the application.

45 days to re-submit an application when it does not comply with the Regulations is too short. The applicant has to collect more information, increase public consultation, etc. A time frame of 90 days minimum would be more appropriate. This point should be streamlined with Draft Regulation 9, pt. 2 in which 60 days are given for amendments to a proposed Program of Work (PoW) for exploitation.

Draft Regulation 18 (pg. 26, pt. 1): A contractor that is not permitted to modify its PoW based on new developments in science and technology is not in line with the principles of adaptive management that are a bare necessity in any Environmental Management Plan. Therefore, there must be more room for adaptation if improvement can be guaranteed. If not, the specifications under draft regulation 19 suggest that changes are only permissible after each 5 year review period, which is too long. Either this review period should be shortened

considerably, or more flexibility should be granted for ongoing modifications of PoWs. This draft regulation is also in conflict with Annex IX (pg. 78) which suggests that application fees should be scheduled in respect of a material change to a PoW. If the change is part of a progressive adaptive management process, scheduling fees would be counterproductive.

Draft regulation 22 (pg. 28, pt. 2): The Annual Fixed Fee shall be computed by multiplying the total size of the exploitation area in km² by an annual rate per km². Surely this has to be different for the various deep-sea resource types, i.e. a potential exploitation area for polymetallic nodules (PN) for one company and one mining phase (5 – 10 years) will likely have a size of ca. 1500 km², whereas an area for polymetallic sulphide (SMS) mining will be much smaller (~1 km² for a 2 year mining project) as this one type has a third dimension. Will these differences be accounted for by adopting different annual rates per km² for the different resources? How will the third dimension in SMS resources be accounted for? Will there be a maximum allowable size for one PN mining site?

Germany will provide further general input and specific comments to the Environmental Regulations, the Seabed Mining Directorate Regulations and the regulations on the financial terms of a contract throughout the drafting and negotiation process.

Confidentiality

Germany hereby consents to making the contact details and this submission publicly available on the ISA website.

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