Regulatory Development: *Discussion Paper on the “Environmental Regulations” – approach and challenges*

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Disclaimer
A whistle-stop tour....

- Provide some background to the Discussion Paper
- Take a look at the structure of the tentative working draft
- Present some of the challenges and gaps
- Q&A (time permitting)
Background
What is the main goal here?

To develop a set of regulatory provisions that ensure the approval process for a Plan of Work for exploitation **fully integrates environmental considerations** and that such considerations **continue throughout** the life (including closure) of a mining project in the Area

And particularly........
Main goal

- to prescribe for key procedural obligations with regard to environmental assessment and management
- contribute to the delivery of Article 145 RRPs requirement (effective protection of the marine environment)
- to deliver expectations for applicants as to documentation requirements / evaluation process
- build on requirements under existing Exploration regulations / exploration contract
- to further promote access to information & consultation in the environmental process
The paper and tentative draft.....

- Draw on the Convention and good national practices, and
- Wealth of workshops & stakeholder submissions over the last years

Key questions: para 13.1 DP (page 17)
Toward an outcome-based approach

Monitoring / assessing Performance / Management responses
(Note: development of "environmental incentives")

(Qualitative / quantitative mix)

Targets?

Objectives for Article 145?

"to ensure effective protection for the marine environment from harmful effects..." (Article 145)

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Targets? (Qualitative / quantitative mix)

Objectives for Article 145?
Structure of draft

- Split into XVI Parts + Annexes
- Varying degrees of content population
- Application Process: flowchart
Part II Guiding values

• A number of guiding values / approaches

• Best Available Scientific Evidence

• Precautionary approach: application throughout framework
  • rationale for its application to be stated

• Best environmental practices
  • dynamic / requires criteria

• Access to environmental information

• Consultation
Overview of tentative draft I

Part III – Environmental assessment
- Impact area
- Baseline (adequate?)
- Risk assessment

Part IV – Content of Plans
- EIS
- [EMS]
- EMMP
- Closure Plan
- [ERCP]

Part V – Review by Authority
- Further information

Part VI – Publicity and Consultation
- Review by Interested Persons
- Applicant’s response
- Assessment report for LTC

Part VII – Consideration by LTC
- Matters for consideration
- Conditions
- EMMP delivery
- “Bond”
- Criteria for evaluation
- Report to Council

Part VIII – Modification / Periodic Review
- Review of environmental performance
- Public availability

Towards an ISA Environmental Management Strategy for the Area
Berlin, March 2017
Part XV – Annual reporting
- [template / detail]

Part XVI – Other administrative matters
- Avoidance of duplication
- Public register

Annexes
- Content of Plans
- Standard contract terms (more work)
Challenges & gaps
Challenges and gaps

- Relevant technical expertise / input e.g. risk assessment (DR 21)
- Structure: clearer, logical sequence?
- Timelines: responsive and time-bound decision-making process
- “Authority”: who and how? experts, staff of inspectors, day-to-day functioning as regulator + resourcing?
Discussion Paper on “Environmental Regulations”

- Stakeholder expectations: a process of what, when and how
- Role of sponsoring States
- “Confidentiality”: exploitation regulations
- Building blocks & developing the “detail” (regulations, guidelines, recommendations, standards)
- Regional (strategic) planning and management
Practical considerations

- **Adaptive management** (see background document by Neil Craik & questions p. 62 of DP)
- Technical and economic constraints
- Costs of compliance and regulations
Definitions (Schedule 1)

- Content to drive definitions
- Best environmental practice / Best available techniques: examples of dynamic terms perhaps needing criteria
- Serious harm.....
Siri, how to define serious harm?
"serious harm to the marine environment" means any effect from activities in the Area on the living or non-living components of the marine environment and associated ecosystems beyond that which is negligible or which has been assessed and judged to be acceptable by the Authority pursuant to these regulations and the relevant rules and regulations adopted by the Authority and which represent:

a. significant adverse changes in the living and non-living components of the marine and atmospheric environment;

b. significant adverse changes in the ecosystem diversity, productivity and stability of the biological communities within the environment; or

c. loss of scientific or economic values which is unreasonable in relation to the benefit derived from the activity in question.

PrepCom 1990

So, acceptable impact criteria for assessment & evaluation?
• Let’s not get too hung up on terminology: content is key
• But stick to Convention / generally accepted
There is some way to go....but we have a good base to work from