



Council

Distr.: General
23 August 2021

Original: English

Twenty-sixth session

Council session, part II

Kingston, 19–23 July 2021*

Agenda item 12

Draft regulations for exploitation of mineral resources in the Area

Status of the draft regulations on exploitation of mineral resources in the Area and proposed road map for 2022 and 2023

Report of the Secretary-General

I. Introduction

1. The Council is currently considering draft regulations on exploitation of mineral resources in the Area ([ISBA/25/C/WP.1](#)), which were prepared by the Legal and Technical Commission and submitted to the Council in 2019 following an iterative process of development and consultation that began in 2011, when the representative of Fiji requested the Council to begin consideration of regulations for the exploitation of mineral resources of the Area ([ISBA/17/C/22](#)). The main steps taken in the preparation of the draft regulations from 2011 to 2019 are listed in annex I. Annex II provides a complete list of relevant documents, reports and studies relating to the preparation of the draft regulations.

2. As of July 2020, a complete set of regulations had been prepared by the Commission and submitted to the Council pursuant to article 165, paragraph 2 (f), of the United Nations Convention on the Law of the Sea. The draft regulations are currently under consideration by the Council. The Commission has also prepared the drafts of 10 standards and guidelines to support the implementation of the future regulations. Owing to the impossibility of holding in-person meetings of the Council since February 2020, the Council has not been able to advance its consideration of the draft regulations. The purpose of the present report is to outline a proposed road map and workplan for the Council in 2022 and 2023, with a view to the adoption of the draft regulations and associated phase 1 standards and guidelines by July 2023.

* New dates of the in-person meetings originally scheduled for July 2020.



II. Review of the development process from 2017 to February 2020

3. At the twenty-third session, in 2017, the Council agreed on a timeline for the adoption and approval of the draft regulations by July 2020.¹ At the same session, the Assembly endorsed a revised schedule of meetings for 2018, 2019 and 2020 designed to enable the Commission and the Council to deliver the regulations in accordance with the road map. The revised schedule of meetings envisaged two annual meetings of two weeks each for the Commission and two annual meetings of one week each for the Council.²

4. In accordance with the revised schedule of meetings, the Commission and the Council worked in parallel on the draft regulations during 2018 and 2019. At the twenty-fourth session, in 2018, the Council reiterated its view that the draft regulations should be adopted as a matter of urgency, commended the Commission for the considerable work that it had accomplished and encouraged it to pursue its efforts at its meetings in 2019.³ The Council also provided the Commission with comments on the draft regulatory text under consideration⁴ and initiated a consultation process to enable all stakeholders to submit specific comments in writing for consideration by the Commission.⁵ The Commission reviewed those comments and finalized its recommendations on the draft regulations at its meetings during the first part of the twenty-fifth session.⁶

5. One of the key outcomes of the stakeholder consultation held in 2019 was that many stakeholders agreed that standards and guidelines implementing the draft regulations must be developed in parallel with the regulatory text. Stakeholders also advocated putting in place critical phase 1 standards and guidelines by the time of adoption of the regulations. Such was the importance of that issue that a separate report was prepared for the Council, which included a proposed priority list of standards and guidelines to be developed.⁷ To further support the work of the Commission and the Council, an international workshop on the development of standards and guidelines was held in Pretoria in April 2019 (between the first and second parts of the twenty fifth session).⁸

6. During the second part of the twenty-fifth session, the Council considered the report of the Chair of the Legal and Technical Commission, which incorporated recommendations for the development of standards and guidelines, including the list of documents to be developed under phase 1.⁹ The Council held a discussion on the draft regulations and adopted a decision in which, inter alia, it expressed its intention to ensure the thorough and timely development of the draft regulations, bearing in mind that the necessary standards and guidelines should be developed before the

¹ ISBA/23/C/13, annex.

² In response to a proposal by the Netherlands, the Council decided that the first part of the session of the Council would take place before the meetings of the Legal and Technical Commission, while the second part would take place after the Commission's meetings. In response to the concerns of some delegations about limited financial support for developing countries to attend additional meetings of the Council, a voluntary trust fund was established to support the participation of developing States members of the Council.

³ ISBA/24/C/8/Add.1, para. 7.

⁴ Ibid., annex I.

⁵ The main thematic issues raised in the written submissions were summarized in document ISBA/25/C/2.

⁶ The draft regulations are contained in document ISBA/25/C/WP.1, and an explanatory note by the Commission is contained in document ISBA/25/C/18.

⁷ ISBA/25/C/3, annex.

⁸ See www.isa.org.jm/event/workshop-development-standards-and-guidelines-mining-code.

⁹ ISBA/25/C/19/Add.1, paras. 20–22 and annex.

adoption of the draft regulations, and it requested the Commission to work on standards and guidelines as a matter of priority.¹⁰ The Council also decided that additional written comments on the draft regulations, including specific drafting suggestions, could be sent to the secretariat no later than 15 October 2019, and it requested the secretariat to prepare a compilation of the proposals and observations submitted by members of the Council and a compilation of proposals and observations submitted by other States members of the Authority, observers and other stakeholders, for consideration by the Council at its twenty-sixth session, in 2020.¹¹

7. The first part of the twenty-sixth session of the Council took place in February 2020. The Council resumed its consideration of the draft regulations, which it had commenced at the twenty-fifth session, and considered parts IV, V and VI of the draft and the related annexes IV, VII and VIII. The Council also adopted a decision on working methods to advance discussions on the draft regulations,¹² in which it decided to establish three informal working groups on thematic issues, each to be led by a facilitator, in addition to the existing open-ended informal working group in respect of the development and negotiation of the financial terms of a contract.¹³ The new groups are:

(a) The informal working group on the protection and preservation of the marine environment, facilitated by Raijeli Taga (Fiji);

(b) The informal working group on inspection, compliance and enforcement, facilitated by Janet Omoleegho Olisa (Nigeria);

(c) The informal working group on institutional matters (including the role and responsibilities of the various organs of the Authority, timelines, recourse to independent expertise and stakeholder participation), to be facilitated by a nominee of the Latin American and Caribbean Group.

8. The Council requested the facilitators to report on progress in their work at the following meeting of the Council, in July 2020.

III. Process since March 2020

9. Since February 2020, the Council has been unable to meet in person and, accordingly, no progress has been made in any of the newly established informal working groups. In relation to the work of the open-ended informal working group in respect of the development of the financial terms and negotiation of the financial terms of a contract, a series of informal webinars were held on 9, 11 and 12 June and 28 October 2020, in which the methodology and outcomes of studies relating to a comparative analysis of the financial aspects of deep seabed mining and land-based mining were presented, as requested by the Council.

10. In addition, the secretariat was able to continue its work on the preparation of studies and reports concerning the draft regulations, as requested by the Commission and the Council, respectively. This included the preparation of studies and reports concerning: (a) matters related to insurance; (b) the environmental compensation fund; (c) competencies of the International Seabed Authority and the International

¹⁰ [ISBA/25/C/37](#).

¹¹ All comments and proposals that have been submitted are available on the website of the Authority. A summary of the main thematic elements in the comments is contained in document [ISBA/26/C/2](#). A collation of specific drafting suggestions made by members of the Council is contained in document [ISBA/26/C/CRP.1](#).

¹² [ISBA/26/C/11](#).

¹³ The open-ended working group is chaired by Olav Myklebust (Norway). It has held four meetings so far.

Maritime Organization; (d) the environmental performance guarantee; (e) remote monitoring in the context of inspections; (f) potential impacts on land-based producers; and (g) the application of International Labour Organization instruments to activities in the Area.

11. Concerning the phase 1 standards and guidelines, during 2020 and 2021, the Commission met remotely and developed the following draft standards and guidelines, which were open to comments from stakeholders: (a) guideline on the preparation and assessment of an application for the approval of a plan of work for exploitation; (b) standard and guidelines on the development and application of environmental management systems; (c) standard and guidelines on the form and calculation of an environmental performance guarantee; (d) guidelines for the establishment of baseline environmental data; (e) standard and guidelines for environmental impact assessment process; (f) guidelines for the preparation of an environmental impact statement; (g) guidelines for the preparation of environmental management and monitoring plans; (h) guidelines on tools and techniques for hazard identification and risk assessments; (i) standard and guidelines for the safe management and operation of mining vessels and installations; and (j) standard and guidelines for the preparation and implementation of emergency response and contingency plans. The Commission will review stakeholder comments and finalize its revision of the phase 1 standards and guidelines in September 2021.

IV. Proposed road map for 2022 and 2023

12. By letter dated 25 June 2021, the President of Nauru notified the Council of the intention of Nauru Ocean Resources Inc., a Nauruan entity sponsored by Nauru, to submit an application for approval of a plan of work for exploitation in the Area.¹⁴ In such circumstances, section 1, paragraph 15 (b), of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 requires the Council to complete the elaboration of the rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area within two years of the request.¹⁵

13. In order to meet that deadline and to ensure that a robust and holistic regulatory framework is adopted by the Council on or before 9 July 2023, it is clearly necessary for the Council to commit more time and financial resources to accelerate work on the draft regulations.

14. As a preliminary measure, therefore, it is suggested that the Council extend the duration of the two parts of the twenty-seventh session in 2022 from one week to three weeks each, and that the primary focus of its meetings be the draft regulations. As previously agreed, much of the work will take place in informal working groups, with no parallel meetings. In the event that savings could be realized from the overall conference services budget for the financial period 2021–2022, a third part to the Council session in 2022 could also be considered. A proposed meeting schedule for 2022 is provided in annex III.

15. It is expected that the workload of the Commission will be lower in 2022 than in 2021, given that the Commission has completed its work on the phase 1 standards and guidelines, as directed by the Council. It is further envisaged that both the Commission and the Finance Committee will adopt a hybrid meeting format in future, with a combination of virtual and physical meetings, which will facilitate savings on

¹⁴ ISBA/26/C/38, annex I, enclosure.

¹⁵ The effective date of the request being 9 July 2021 (ISBA/26/C/38, annex II), the regulations must be adopted by 9 July 2023.

travel costs. Both organs met virtually throughout 2020 and 2021 and managed to complete their scheduled work efficiently. Although members expressed a strong preference for retaining physical meetings, it was noted that the opportunity to consider and discuss agenda items in advance in a virtual format promoted greater efficiency and could reduce, but not completely eliminate, the need for physical meetings.

16. The budget of the Authority for the financial period 2021–2022 is based on a scenario of eight weeks (42 days) of meetings with full services, which are notionally allocated as follows: Assembly (5 days), Council (12 days), Commission (20 days) and Finance Committee (5 days). Within this overall cap, meeting days can be reassigned among organs. Some of the days allocated to the Commission could therefore be assigned to the Council in 2022, with no financial impact. The planning does not take into account meetings of informal working groups, which may not require full services.

17. For 2023, the meeting schedule is subject to consideration in the context of a budget proposal for the next financial period. This will be formulated in the first quarter of 2022 but will clearly need to include sufficient additional resources for the development of the regulatory framework for activities in the Area.

18. It is likely that additional resources will also be needed for the voluntary trust fund to support the participation of members of the Council from developing States in additional meetings of the Council. On the assumption that the session of the Council is held in three parts in 2022, the estimated additional requirement for the fund would be in the region of \$130,000.

V. Capacity of the secretariat

19. In addition to increasing the duration of meetings to allow members of the Council adequate time for discussion of the draft regulations, the secretariat will also need to increase its capacity to support member States and deliver appropriate regulatory functions.

20. The Secretary-General has already taken steps to increase the capacity of the secretariat to deliver the regulatory functions expected of it under the draft regulations. The first step was to establish the Contract Management Unit, in 2017. The Unit has since evolved into the Compliance Assurance and Regulatory Management Unit, established by the Secretary-General in August 2021. Initially, the functions and responsibilities of the Unit will include processing applications for plans of work for exploration and exploitation, overseeing the activities of contractors, processing the reports, data and information submitted by contractors, reporting to the Commission and the Council and supporting the systematic publication and ongoing review of standards and guidelines. Ultimately, it is expected that it will also manage the inspection mechanism, which is a fundamental requirement of the draft regulations and is also provided for under article 162, paragraph 2 (z), and article 165, paragraph 2 (m), of the Convention. No such capacity currently exists, but the Commission has begun to consider the necessary scope and functions of such a mechanism.

21. In addition to enhancing increased capacity within the secretariat, it is clear that, in order to meet the accelerated timetable to complete the draft regulations by 9 July 2023, an increase in expert legal support will be necessary to ensure that the draft regulations and supporting standards and guidelines are a holistic and robust regulatory package.

Annex I

Timeline of regulatory development from 2011 to 2020

2011	
July	Fiji issued a statement in which it requested the Council to begin consideration of regulations for the exploitation of mineral resources in the Area (ISBA/17/C/22), and the Council requested the secretariat to prepare a strategic workplan for the formulation of regulations for the exploitation of deep-sea minerals in the Area
2012	
July	The Council considered the report of the Secretary-General on the workplan for the formulation of regulations for the exploitation of polymetallic nodules in the Area (ISBA/18/C/4)
2013	
July	The Commission discussed issues relating to proposed regulations for the exploitation of polymetallic nodules in the Area. Members of the Commission acknowledged the work done by the secretariat in producing ISA Technical Study No. 11, entitled “Towards the Development of a Regulatory Framework for Polymetallic Nodule Exploitation in the Area”. The Commission considered that the proposed strategic plan set out in chapter 10 of the study provided a useful indication as to how the Authority could proceed to develop the regulatory framework. The Commission endorsed the suggestion to prepare background studies and conduct a stakeholder survey (ISBA/19/C/14)
	The Council commended and took note of the report of the Secretary-General on the development of an exploitation code for polymetallic nodules in the Area and agreed that more in-depth studies should be done. The Legal and Technical Commission was also encouraged to review those issues while continuing its work on the drafting of the mining code (ISBA/19/C/18)
2014	
February	The Commission considered a detailed technical study on the development of a financial regime for deep-sea mineral exploitation (ISBA/20/C/20)
March	The secretariat launched a stakeholder survey aimed at soliciting relevant information for the development of a regulatory framework for the exploitation of minerals in the Area from members of the Authority and other stakeholders (ISBA/20/C/20)
July	The Commission considered the responses to the stakeholder survey and requested the secretariat to prepare a possible draft framework of the regulations for exploitation (ISBA/20/C/20)
	The Council requested the Commission to continue its work on the regulations governing exploitation as a matter of priority and to make available to all members of the Authority and all stakeholders a draft framework for the regulation of exploitation as soon as possible after its February 2015 meeting (ISBA/20/C/31)
2015	
February	The Commission decided to circulate a draft exploitation framework to all stakeholders, together with a summary of the high-level issues under discussion. In addition, the Commission agreed to circulate a draft action plan flowing from the draft regulatory framework. The Commission agreed to provide to the Council in July 2015 an updated report, including a revised draft framework and revised action plan following the receipt of stakeholder responses to the framework report, together with a summary of priority action areas (ISBA/21/C/16)
June	A stakeholder workshop was held in Singapore in relation to the draft framework and a payment mechanism (see briefing paper 04/2015)

July	The Commission discussed the stakeholder responses to the suggested draft framework, high-level issues and action plan and issued a revised draft framework and action plan, taking account of any material comments by stakeholders (ISBA/21/C/16)
	The Council took note with appreciation of the Commission's work on the framework for the exploitation regulations, requested the Commission to continue its work on exploitation regulations as a matter of priority and endorsed the Commission's list of priority deliverables for the development of the exploitation code over the following 12 to 18 months, as set out in annex III to the report of the Chair of the Legal and Technical Commission (ISBA/21/C/20)
2016	
July	The Commission issued a report containing the first draft regulations and standard contract terms on exploitation for stakeholder consultation ¹
2017	
February	The Commission considered a report by the secretariat containing an overview of stakeholder submissions of the first working draft and continued its review of the draft regulations (ISBA/23/C/13)
March to July	Several technical workshops and seminars held in relation to the draft regulations
August	The Commission prepared revised draft regulations and invited comments from stakeholders (ISBA/23/LTC/CRP.3)
2018	
March	Following stakeholder consultation, the Commission considered revised draft regulations, which included provisions suggested by its working groups. It requested the secretariat to incorporate its suggestions and comments into the text and to produce a further revised version (ISBA/24/C/9)
July	The Commission issued revised draft regulations (ISBA/24/LTC/WP.1/Rev.1)
	The Council responded to the Commission with comments on the revised draft regulations and released the revised draft regulations for stakeholder consultation (ISBA/24/C/8/Add.1, annex I)
December	The secretariat issued a note containing an overview of stakeholders' comments on the draft regulations (ISBA/25/C/2)
2019	
March	The Commission provided the Council with its final recommendations on the draft regulations following stakeholder consultation (ISBA/25/C/WP.1)
July	The Council considered the draft regulations as contained in document ISBA/25/C/WP.1, together with an explanatory note from the Commission (ISBA/25/C/18). The Council invited stakeholders to provide additional comments by October 2019 (ISBA/26/C/2)
2020	
February	The Council considered stakeholders' comments and drafting suggestions and agreed to establish three informal working groups on remaining thematic issues (ISBA/26/C/11)

¹ Available at https://isa.org.jm/files/documents/EN/Regs/DraftExpl/Draft_ExplReg_SCT.pdf.

Annex II

List of relevant documents, reports and studies relating to the draft regulations*

Draft regulations

- Draft regulations on exploitation of mineral resources in the Area, prepared by the Legal and Technical Commission ([ISBA/25/C/WP.1](#))
- Note by the secretariat on draft regulation 30 and draft annex VI to the draft regulations for exploitation of mineral resources in the Area ([ISBA/26/C/17](#))

Draft standards and guidelines

- Draft guideline on the preparation and assessment of an application for the approval of a plan of work for exploitation
- Draft standard and guidelines on the development and application of environmental management systems
- Draft standard and guidelines on the form and calculation of an environmental performance guarantee
- Draft guidelines for the establishment of baseline environmental data
- Draft standard and guidelines for environmental impact assessment process
- Draft guidelines for the preparation of an environmental impact statement
- Draft guidelines for the preparation of environmental management and monitoring plans
- Draft guidelines on tools and techniques for hazard identification and risk assessments
- Draft standard and guidelines for the safe management and operation of mining vessels and installations
- Draft standard and guidelines for the preparation and implementation of emergency response and contingency plans

Other documents

2020

- Decision of the Council concerning working methods to advance discussions on the draft regulations for exploitation of mineral resources in the Area ([ISBA/26/C/11](#))

2019

- Note by the secretariat on implementing the precautionary approach to activities in the Area ([ISBA/25/C/8](#))
- Note by the secretariat on the consideration of a mechanism and process for the independent review of environmental plans and performance assessments under the regulations on exploitation of mineral resources in the Area ([ISBA/25/C/10](#))

* All documents, reports and studies are available on the website of the Authority.

- Note by the secretariat on key terms: distinguishing between good industry practice and best practices under the draft regulations on exploitation of mineral resources in the Area ([ISBA/25/C/11](#))
- Draft regulations on exploitation of mineral resources in the Area ([ISBA/25/C/18](#))

2018

- Note by the secretariat on the content and development of standards and guidelines for activities in the Area under the Authority's regulatory framework ([ISBA/25/C/3](#))
- Note by the secretariat on the relationship between the draft regulations on exploitation of mineral resources in the Area and regional environmental management plans ([ISBA/25/C/4](#))
- Note by the secretariat on implementing an inspection mechanism for activities in the Area ([ISBA/25/C/5](#))
- Note by the secretariat on the delegation of functions by the Council and regulatory efficiency ([ISBA/25/C/6](#))
- Note by the secretariat on the functions of the organs of the Authority in relation to the preparation of rules, regulations and procedures on exploitation of mineral resources in the Area and in relation to the system of compensation envisaged under article 151 (10) of the United Nations Convention on the Law of the Sea ([ISBA/24/C/10](#))
- Note by the Legal and Technical Commission on the draft regulations on exploitation of mineral resources in the Area ([ISBA/24/C/20](#))

2017

- Note by the secretariat on the draft regulations on exploitation of mineral resources in the Area ([ISBA/23/C/12](#))

Studies, reports and workshop reports

2021

- Massachusetts Institute of Technology, "Update: Report to the International Seabed Authority on the Development of an Economic Model and System of Payments for the Exploitation of Polymetallic Nodules in the Area Based on Stakeholder Feedback"
- ISA Technical Study No. 27, "Study on an Environmental Compensation Fund for Activities in the Area"

2020

- Study of the Potential Impact of Polymetallic Nodules Production from the Area on the Economies of Developing Land-based Producers of those Metals which are Likely to be Most Seriously Affected
- Analysis of Tax Regimes: Comparative Analysis of Tax Regimes of Land-based Mining in 15 Countries
- A Study to Determine the Appropriate Social Discount Rate for the International Seabed Authority
- Developing a Financial Model for Other Deep-sea Minerals

- Study on the Application of International Labour Organization Instruments to Activities in the Area (in preparation)

2019

- Financial Regimes for Polymetallic Nodule Mining: A Comparison of Four Economic Models
- Polymetallic Nodule Valuation
- ISA Technical Study No. 25, “Competencies of the International Seabed Authority and the International Maritime Organization in the Context of Activities in the Area”
- Study on Remote Monitoring Systems in the Context of Exploitation (in preparation)

2017

- ISA Technical Study No. 16: “Environmental Assessment and Management for Exploitation of Minerals in the Area”
- ISA Technical Study No. 17: “Towards an ISA Environmental Management Strategy for the Area”

2015

- Developing a Regulatory Framework for Mineral Exploitation in the Area: A Discussion Paper on the Development and Implementation of a Payment Mechanism in the Area for Consideration by Members of the Authority and all Stakeholders
- Developing a Regulatory Framework for Mineral Exploitation in the Area: Report to members of the Authority and Stakeholders
- Developing a Regulatory Framework for Deep Sea Mineral Exploitation in the Area: Draft Framework, High-Level Issues and Action Plan, version II

2014

- Making the Most of Deep Seabed Mineral Resources: Developing Financial Terms for Deep Sea Mining Exploitation

2013

- ISA Technical Study No. 11, “Towards the Development of a Regulatory Framework for Polymetallic Nodule Exploitation in the Area”

Other sources

In addition to the materials above, the Council has facilitated several rounds of stakeholder consultation with regard to the draft regulations. Details of the stakeholder consultations and of all submissions received are available at www.isa.org.jm.

Annex III

**Provisional schedule of meetings for the twenty-seventh session,
in 2022**

<i>First part (February/March)</i>		
<i>Organ</i>	<i>Duration</i>	<i>Working methods relating to draft regulations</i>
Legal and Technical Commission	1 week	
Council	3 weeks	Open-ended informal working group in respect of the development and negotiation of the financial terms of a contract Informal working group on the protection and preservation of the marine environment Informal working group on inspection, compliance and enforcement Plenary
<i>Second part (July)</i>		
Finance Committee	3 days	
Legal and Technical Commission	1 week	
Council	3 weeks	Working groups (as required) Institutional working group Plenary (standards and guidelines)
Assembly	1 week	
<i>Third part (subject to resources)</i>		
Council	2 weeks	Working groups (as required) Plenary (review of working group outputs)