



Legal and Technical Commission

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Status of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area

Note by the Secretariat

1. The purpose of the present document is to provide the Commission with updated background information on the status of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (“the draft regulations”), which are currently under consideration by the Legal and Technical Commission.¹

2. It will be recalled that the Commission began consideration of the draft regulations during the thirteenth session (2007) in accordance with a request made by the Council in 2006, having previously submitted (in 2004) draft regulations on prospecting and exploration for both cobalt-rich crusts and polymetallic sulphides. At the twelfth session, in 2006, the Council had decided to separate the draft regulations dealing with cobalt-rich crusts from those dealing with polymetallic sulphides and to remit the former to the Commission for further and more detailed consideration in light of the discussions that had taken place in the Council in 2005 and 2006 as well any new or updated technical information that might become available.

3. In accordance with the Council’s request, the Secretariat prepared a revised version of the draft regulations, issued under the symbol ISBA/13/LTC/WP.1. The revised draft was based on document ISBA/10/C/WP.1/Rev.1, with technical adjustments consistent with the recommendations that emerged from discussions during the Authority’s 2006 workshop on technical and economic considerations relating to polymetallic sulphides and cobalt-rich crusts as well as the discussions in the Council in 2006.

¹ The present document may be read in conjunction with ISBA/13/LTC/1 for a more detailed background to the discussions on the draft regulations.

4. In considering the draft during the thirteenth session, the Commission had available to it a note by the Secretariat setting out the background to the draft regulations (ISBA/13/LTC/1) as well as the technical information papers prepared by the Secretariat for the Council in 2006 (ISBA/12/C/2 and C/3) and the report and papers prepared for the Authority's 2006 workshop mentioned above (ISBA/12/C/7). The Commission focused its consideration on two key issues, the size of the area to be allocated for exploration and the progressive fee system, but considered that the background information available at that time was not sufficient to provide a recommendation to the Council.

5. The Commission continued its work on the draft regulations at the fourteenth session (2008). After reviewing all the information available to it, including additional material prepared by the Secretariat, as well as the document prepared for the Council relating to the draft regulations for prospecting and exploration for polymetallic sulphides (ISBA/14/C/4), the Commission decided that, in the light of the current state of knowledge, and taking account of the need to complete its work on the draft regulations in a timely manner, it was appropriate to proceed to finalize a recommendation to the Council. The Commission's recommendation to the Council would be to adopt regulations on prospecting and exploration for cobalt-rich crusts on the basis of the draft regulations contained in document ISBA/13/LTC/WP.1, but with the following proposed revisions:

(a) The basic unit for defining the exploration area should be a 20-square-kilometre block. An applicant may apply for up to 100 such blocks, which may be arranged in non-contiguous clusters within a geographical area of 550 kilometres by 550 kilometres;

(b) A progressive fee system, as proposed in ISBA/14/C/4, should apply, and the Council should be empowered to review the fee every five years;

(c) In view of the current state of knowledge in relation to both polymetallic sulphides and cobalt-rich crusts, the Commission endorsed the proposal in ISBA/14/C/4 to include a clause providing for an automatic review of the regulations every five years or at any time when the development of scientific knowledge so requires;

(d) The provisions relating to financial accounting should be revised in the light of experience in order to ensure that contractors maintain and provide information which fully discloses the actual and direct expenditures incurred by contractors on exploration work and facilitates effective audit;

(e) The Commission would also consider whether further elaboration of the requirement of effective control was required.

6. The Commission also considered that, in the light of recent developments, it was important to include an anti-monopoly provision in the draft regulations. It was noted that the anti-monopoly provision contained in annex III of the Convention in relation to polymetallic nodules could not be applied effectively to either polymetallic sulphides or cobalt-rich crusts. In place of that provision, the Commission recommended that the regulations for both polymetallic sulphides and cobalt-rich crusts should prevent multiple applications by affiliated applicants in excess of the overall size limitations referred to in regulation 12 (i.e. 2,000 square kilometres in the case of cobalt-rich crusts and 10,000 square kilometres in the case of polymetallic sulphides). For the purposes of this provision, applicants would be

regarded as affiliated if they are directly or indirectly controlling, controlled by or under common control with one another.

7. Accordingly, the Commission requested the Secretariat to prepare a revised text (issued as ISBA/14/LTC/CRP.6) of the proposed draft regulations for prospecting and exploration for cobalt-rich crusts, incorporating the Commission's recommendations as set out above and also fully aligning the text of the draft regulations with the adjustments to the text of the draft regulations on polymetallic sulphides agreed by the Council in 2007 (ISBA/13/C/CRP.1) and in 2008. The Commission would then review the revised text at the fifteenth session, with a view to formally adopting it for submission to the Council, taking into account the requirements under articles 162(2) (o) (ii) of the Convention together with section 1, paragraph (15)(a) of the annex to the 1994 Agreement, that such rules, regulations and procedures were to be adopted within three years following the decision to undertake their elaboration upon a request being made by a member of the Authority.

8. Following the Commission's meeting in 2008, the Council completed its review of the draft regulations on prospecting and exploration for polymetallic sulphides in the Area. During the course of the review, a number of further adjustments to the text of the draft were agreed. At the conclusion of the fourteenth session, the Council requested the Secretariat to issue a revised text of the whole of the draft regulations concerning the sulphides, harmonized in all languages and incorporating all the revisions agreed to that point. Such a revised text has now been issued under the symbol ISBA/15/C/WP.1 and Corr.1.

9. In the light of the above, the Secretariat has prepared a further revised text of the proposed draft regulations on prospecting and exploration for cobalt-rich crusts which incorporates not only the Commission's recommendations as set out in paragraphs 5 and 6 above, but also aligns the text of the draft regulations with the most recent revision of the text of the draft regulations on polymetallic sulphides, including the revisions agreed to by the Council in both 2007 and 2008. The text is available to the Commission under the symbol ISBA/15/LTC/CRP.1.

10. In line with its previous decision as reflected in paragraph 7 above, the Commission is invited to review the revised text of the draft regulations with a view to formally adopting it for submission to the Council during the fifteenth session.
