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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 necessary background to the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (“the draft cobalt crusts regulations”) as contained in document ISBA/16/C/WP.2 which are currently before the Council for its consideration. The draft cobalt crusts regulations were adopted by the Legal and Technical Commission in 2009 for consideration by the Council during the sixteenth session of the Authority. Although the Council took up this matter during the sixteenth session, it did not have sufficient time to complete its work. Some general comments were exchanged concerning the issues that the Council would need to discuss in more detail in relation to the draft regulations, including that of the appropriate size and configuration of areas for exploration, and an informal proposal was submitted by the delegation of China.

2. The Council agreed to continue its work on the draft regulations at the seventeenth session, noting that the draft regulations proposed by the Commission would require further revision in order to bring them into alignment with the text of the Regulations on prospecting and exploration for polymetallic sulphides in the Area (ISBA/16/A/12/Rev.1).

I. Background and progress to date

3. Members of the Council will recall that, at the resumed fourth session in 1998,¹ the delegation of the Russian Federation formally requested the Authority to develop regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts. In 1999, the Secretariat prepared a preliminary review of the status of knowledge and research regarding these resources. To assist

¹ For a detailed chronology, with references to relevant documents, see the annex to the present document.

in advancing the drafting process, it convened a workshop in June 2000 on the characteristics of and prospects for resources other than polymetallic nodules in the Area. The Secretariat summarized the outcomes of that workshop in document ISBA/7/C/2, which also contained model clauses for the issues to be addressed in the development of a regime for prospecting and exploration of sulphides and crusts. Following extensive discussions, the Council decided to further consider the possible elements of the future regime for prospecting and exploration, for both polymetallic sulphides and cobalt-rich ferromanganese crusts, at the eighth session in 2002. While keeping the matter on its agenda, the Council requested the Secretariat to provide more background information, and requested the Legal and Technical Commission to begin its consideration of the issues associated with the elaboration of the draft regulations on prospecting and exploration.

4. During the eighth session in 2002, the Secretariat invited experts at a one-day seminar to make presentations on the status and environmental context of, and prospects for, polymetallic sulphides and cobalt crusts. With assistance from the Secretariat and external experts, the Legal and Technical Commission undertook a preliminary consideration of the approaches set out in the Secretariat's document (ISBA/7/C/2). In its initial conclusions, the Commission insisted on the need to proceed cautiously and logically in developing the regulations. Moreover, in the light of the uncertainties relating to prospecting and exploration for the resources concerned, any regulatory system for prospecting and exploration should be reviewable after an initial period. While creating incentives for potential prospectors by means of rights over certain areas and priority of application for exploration contracts, it was also essential that the Authority should obtain relevant data and information, in particular in respect of the protection and preservation of the marine environment. The Commission requested the Secretariat to gather additional information for its resumed consideration of three elements in 2003: the adoption of a progressive fee system instead of a relinquishment system; an appropriate grid system for allocation of a commercially viable exploration area that avoids monopoly situations; and a participatory system for the Authority. Benefiting from the presentations made at the seminar and from the parallel considerations of the Commission, the Council further discussed the issues involved in the draft regulations, encouraging a flexible approach consistent with the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, which can compete with similar regulatory frameworks in place under municipal legislations. The Council decided to keep the matter under consideration at its following session.

5. During the ninth session in 2003, the Commission had before it an extensive set of draft regulations based on the existing regulations on prospecting and exploration for polymetallic nodules and including the model clauses set out in document ISBA/7/C/2, along with elements that had emerged from discussions in the Council and in the Commission during 2002. The Commission held a two-week meeting in 2003. During the first week, it convened informal working groups to conduct a detailed consideration of the three main issues identified in 2002. The Commission took the view that the basic procedures for the submission and approval of applications, and most of the standard clauses, should be the same as those for nodules, with necessary adjustments to reflect the differences in the nature, distribution and political and economic context of sulphides compared to crusts. The

adjustments would relate to prospecting, the size of the allocation area for exploration, the application of the site-banking system and the procedure for settlement of overlapping claims. Proposals were made in the light of developments in international environmental law since 1982 and the limited scientific knowledge available. At the end of its session, the Commission requested the Secretariat to prepare a consolidated set of draft regulations reflecting the discussions and proposals of the working groups, to assist the continued consideration of the matter in 2004. The Commission further requested the Secretariat to provide an informative paper to facilitate a more focused review of the outstanding issues. The Council took note of the progress made by the Commission, recalling the need to proceed in a technically sound and timely manner, and decided to keep the matter under consideration at the following session, in parallel with the ongoing development of draft regulations by the Commission.

6. During the tenth session in 2004, to facilitate final deliberations by the Commission, the Secretariat prepared a complete set of draft regulations, based on the nodules regulations, the model clauses and elements of discussion that had emerged from the Commission in 2002 and in 2003. During the first week of the session, the deliberations of the Commission also benefited from input by three experts, in particular on matters relating to the size of the exploration area and the environmental context of sulphides and crusts. After intensive discussions, the Commission expressed the view that the size of the exploration area for both resources should be 10,000 square kilometres, and that a high percentage of relinquishment would be appropriate in the light of the probably large areas of poor resources. The Commission completed its review of the draft regulations, underlining that future regulations should follow the framework of the existing nodules regulations and conform with the Convention and the Implementation Agreement. The Commission submitted its recommendations to the Council for consideration at the tenth session. Lack of time prevented a detailed reading by the Council.

7. During the eleventh session in 2005, the Council completed a first reading of the draft regulations recommended by the Commission (ISBA/10/C/WP.1), with the assistance of explanatory notes or the rationale behind some of the key elements, which had been prepared by the Secretariat. The notes focused on six areas of uncertainty that had emerged from the deliberations of the Council in 2004, namely, (a) the establishment of a single set of regulations for both resources, instead of a set for each type; (b) the definition of a block size as 10 by 10 kilometres; (c) the decision that up to 100 blocks may be allocated to an exploration programme; (d) the requirement for contiguity of blocks before relinquishment; (e) the rate and apportionment of blocks during relinquishment; and (f) greater emphasis on the protection and preservation of the environment at the prospecting and exploration phases. The Council requested the Secretary-General, in consultation, as necessary, with the Legal and Technical Commission, to provide further explanation and analysis relating to the key elements around which the deliberations revolved. The Council further commented on the need for an appropriate provision, consistent with the Convention and the Agreement, on resolving overlapping claims submitted by different applicants. The Council also pointed out that the draft regulations did not fully reflect the anti-monopoly provisions contained in annex III to the Convention. Subsequently, the Council agreed to resume its consideration of the draft regulations in 2006 and requested the Secretariat to prepare a revised set of draft regulations

reflecting the progress made during the session. To further assist its review, the Council also requested the Secretariat to provide technical papers and clarifications on the key elements of the draft regulations that required further consideration.

8. At the twelfth session in 2006, the Council resumed its consideration of the draft regulations as contained in document ISBA/10/C/WP.1/Rev.1, having before it a set of technical information papers (ISBA/12/C/2, Parts I-III, and ISBA/12/C/3, Parts I and II) prepared by the Secretariat and introduced with the assistance of two technical experts, James Hein and Charles Morgan. In addition, the Council was provided with the preliminary outcomes of a workshop on the technical and economic considerations relating to the mining of polymetallic sulphides and cobalt-rich crusts convened by the Secretariat immediately before the twelfth session. At the request of the Council, the Secretariat prepared a summary of the possible adjustments to the draft regulations recommended at the workshop (ISBA/12/C/7). The delegation of the Russian Federation also submitted a proposal relating to the draft regulations (ISBA/12/C/6). Following an exchange of views on the way to address the outstanding technical issues associated with the draft regulations, the Council decided to separate the draft regulations into two sets, one for each resource, and requested the Secretariat to prepare two sets of draft regulations, to be revised in the light of the outcomes of the workshop and of the presentations, proposals and discussions conducted during the twelfth session. The Council also requested the Commission to review the draft sulphides regulations as a matter of priority, to enable their further consideration by the Council in 2007, and requested the incoming Commission to review the draft crusts regulations and submit its recommendations to the Council in 2008.

9. Given the decision of the Council in 2006 to draft separate sets of regulations on polymetallic sulphides and cobalt crusts, the legislative history of the two sets has evolved in parallel since the thirteenth session in 2007. In accordance with the Council's request, the Secretariat revised the cobalt crusts draft regulations (ISBA/13/LTC/WP.1) for review by the Legal and Technical Commission. The revised draft was based on document ISBA/10/C/WP.1/Rev.1 and incorporated technical adjustments in line with the recommendations of the workshop on technical and economic considerations relating to mining polymetallic sulphides and cobalt-rich crusts in the Area held from 31 July to 4 August 2006. The Secretariat also prepared a note summarizing the progress made in respect of the draft regulations (ISBA/13/LTC/1). In its review, the Commission decided to focus its consideration on two sensitive questions: the size of the allocated area for exploration, and the progressive fee system. While there was agreement concerning the use of a block system, the main divergence of views concerned the configuration of the blocks and the size of the overall area to be allocated for exploration and, ultimately, exploitation. The Commission found the background information insufficient to make a recommendation to the Council on the design of a system for site allocation for exploration. The Commission decided to pursue its work during the fourteenth session.

10. During the fourteenth session in 2008, the Legal and Technical Commission resumed its consideration of the draft crusts regulations. The Commission decided that, in the light of the available knowledge and given the need to complete its review in a timely manner, it was appropriate to finalize a recommendation to the Council at that session. The Commission proposed a number of revisions to document ISBA/13/LTC/WP.1. In particular, it recommended that the basic unit for

defining the exploration area for cobalt crusts should be a 20-square kilometre block. The maximum exploration area would consist of up to 100 such blocks that could be arranged in non-contiguous clusters within a geographical area of 550 kilometres by 550 kilometres. The Commission recommended a progressive fee system that should be reviewed by the Council every five years. It also endorsed the idea of including a clause on the automatic review of the regulations every five years or whenever necessitated by the development of scientific knowledge. The Commission also considered it important to include an anti-monopoly provision in both the crusts and draft sulphides regulations. The purpose was to prevent multiple applications by affiliated applicants in excess of the overall size limitations (2,000 square kilometres in the case of crusts and 10,000 square kilometres in the case of sulphides). The Commission requested the Secretariat to prepare a revised text (ISBA/14/LTC/CRP.6)² incorporating the Commission's recommendations and aligning the text of the draft crusts regulations with the adjustments to the draft sulphides regulations agreed by the Council in 2007 (ISBA/13/C/CRP.1). The Commission further requested the Secretariat to align document ISBA/14/LTC/CRP.6 with any adjustments to the draft sulphides regulations made by the Council later in 2008. The Commission indicated its intent to review that document (ISBA/15/LTC/CRP.1), with a view to formally adopting it for submission to the Council at the fifteenth session.

11. During the fifteenth session in 2009, the Commission adopted the revised text of the draft crusts regulations contained in document ISBA/15/LTC/CRP.1 as its recommendation to the Council for consideration at the sixteenth session.

II. Commentary and action by the Council

12. The Council is invited to take note of the background to the development of the draft regulations on prospecting and exploration for cobalt crusts, as described above. Essentially, it should be noted that there has been a constant exchange of views and interaction between the Council and the Commission throughout the drafting process. It should be noted that the Commission was mindful of the need to ensure that, as far as possible, the draft crusts regulations are fully aligned with the regulations on polymetallic sulphides. As a result, most of the draft crusts regulations as proposed by the Commission were identical to the draft regulations on polymetallic sulphides under consideration by the Council at that time. As noted by the Council in 2010, some further alignment of the crusts regulations is required, to take account of the revisions to the sulphides regulations agreed by the Council in 2009 and 2010.

13. As requested by the Council, the Secretariat has prepared an informal version of the draft cobalt crusts regulations showing where further consequential revisions would be needed in order to bring the regulations into alignment with the regulations on polymetallic sulphides adopted by the Council and approved by the Assembly in 2010. This is available as document ISBA/17/C/CRP.1.

14. The main substantive areas of difference between the regulations on polymetallic sulphides and the draft regulations on cobalt crusts relate to: (a) the

² Documents issued as conference room papers under the CRP symbol are circulated in their original language only and are not translated.

question of the size and configuration of the area to be allocated for exploration (regulation 12); and (b) the progressive fee system (regulation 21). In relation to the former matter, the delegation of China submitted an informal proposal during the sixteenth session for further revisions to draft regulations 12 and 27. That proposal, which was not discussed during the sixteenth session owing to lack of time, will be made available in all official languages prior to the session.

15. The Council is invited to review the draft crusts regulations during the seventeenth session, with a view to their adoption following the adoption of the draft regulations on polymetallic sulphides.

Annex

Chronology of the development of the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area

<i>Year</i>	<i>Event</i>	<i>Reference</i>
1998	The Russian Federation requests the Authority to develop regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts.	ISBA/4/A/18
2000	The Authority convenes an international scientific workshop on the status and prospects for seabed minerals other than polymetallic nodules.	Kingston 26-30 June 2000
2001	Following the adoption in 2000 of the regulations on prospecting and exploration for polymetallic nodules, the Secretariat presents a report to the Council on considerations relating to the regulation of prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts, including a summary of the outcomes of the 2000 workshop and draft model clauses.	ISBA/7/C/2
	The Council decides to continue its consideration of the issues at the next session and requests the Secretariat to provide additional background information. It also decides that the Legal and Technical Commission should commence consideration of the regulations.	ISBA/7/C/7
2002	A one-day technical seminar is held during the eighth session of the Council to provide members of the Council with additional information about polymetallic sulphides and cobalt-rich ferromanganese crusts and the marine environment in which they occur.	ISBA/8/A/1 and Corr.1 ISBA/8/C/7
	The Legal and Technical Commission begins consideration of the issues associated with the proposed regulations.	ISBA/8/C/6

<i>Year</i>	<i>Event</i>	<i>Reference</i>
2003	The Legal and Technical Commission meets for two weeks. During the first week, it breaks into informal working groups for detailed consideration of specific technical issues. The Secretariat is asked to prepare a consolidated draft of the regulations, taking into account the discussions from 2002 and 2003.	ISBA/9/LTC/5 and ISBA/9/C/4
2004	The Legal and Technical Commission completes its work on the draft regulations covering both resources and submits the outcome of its work to the Council. The Council has insufficient time for a detailed review of the draft.	ISBA/10/LTC/WP.1 ISBA/10/C/WP.1 ISBA/10/C/10
2005	The Council undertakes a first reading of the draft prepared by the Legal and Technical Commission. It identifies substantive issues for further consideration and requests the Secretariat to prepare a revised text incorporating minor revisions arising from the first reading.	ISBA/10/C/WP.1/Rev.1 ISBA/11/C/5 (explanatory notes)
2006	(March) The Authority convenes an international scientific workshop on cobalt-rich crusts and the diversity and distribution patterns of seamount fauna.	Kingston 26-31 March 2006
	(July) Immediately prior to the twelfth session, the Authority convenes an international workshop on technical and economic considerations relating to mining of polymetallic sulphides and cobalt-rich ferromanganese crusts. A summary of the workshop recommendations is presented to the Council.	ISBA/12/C/7
	(August) During the twelfth session, the Secretariat presents a paper to the Commission on the outcomes of the workshop held in March 2006 on cobalt-rich crusts and the diversity and distribution patterns of seamount fauna.	ISBA/12/LTC/CRP.2
	The Council resumes consideration of the draft regulations, which still covers both resources. The Secretariat provides additional clarification on critical issues, as requested by the Council, and provides a technical briefing, with the assistance of experts.	ISBA/12/C/2, Parts I-III ISBA/12/C/3, Parts I and II ISBA/10/C/WP.1/Rev.1
	The Russian Federation submits a draft proposal relating to the draft regulations.	ISBA/12/C/6

<i>Year</i>	<i>Event</i>	<i>Reference</i>
	By the end of the twelfth session, the Council decides to request the Secretariat to further revise the draft regulations in the light of the outcomes of the technical workshop and of the presentations, proposals and discussions of the Council. The Council decides further that separate sets of regulations will be prepared for polymetallic sulphides and cobalt-rich ferromanganese crusts, and that the draft regulations on polymetallic sulphides should be circulated to the members of the Legal and Technical Commission before the end of 2006, so that the Council can be in a position to give them substantive consideration in 2007.	ISBA/12/C/12
2007	(May) The Secretariat prepares a revised text of the draft crusts regulations, together with an explanatory note. The revised draft is based on document ISBA/10/C/WP.1/Rev.1, with technical adjustments in line with the recommendations made by the workshop on technical and economic considerations relating to both resources. The main substantive changes relate to a new formula for determining the size of the exploration area, the relinquishment schedule and the participation by the Authority.	ISBA/13/LTC/WP.1 ISBA/13/LTC/1
	(July) The Legal and Technical Commission begins consideration of the draft regulations on cobalt-rich ferromanganese crusts prepared by the Secretariat. The Commission focuses its consideration on two sensitive issues, the size of the area to be allocated for exploration and the progressive fee system, but considers that the background information available to date is not sufficient to provide a recommendation to the Council on any given system for site allocation for prospecting and exploration.	ISBA/13/C/3
2008	The Secretariat prepares a review of outstanding issues relating to the draft sulphides regulations and containing suggested language. This also serves for the draft crusts regulations under review by the Commission.	ISBA/14/C/4
	The Legal and Technical Commission resumes its consideration of the draft crusts regulations. At the end of the session, the Commission requests the Secretariat to prepare a revised text incorporating the revisions proposed during the	ISBA/14/C/8 ISBA/14/LTC/CRP.6

<i>Year</i>	<i>Event</i>	<i>Reference</i>
	meetings of the Commission and aligned with the informal text of the draft sulphides regulations as agreed by the Council during the thirteenth session (ISBA/13/C/CRP.1).	
2009	(January) The Secretariat prepares an updated version of ISBA/14/LTC/CRP.6 issued at the end of the fourteenth session. The updated version incorporates all the revisions proposed by the Legal and Technical Commission during the fourteenth session (2008) and is aligned with the revised text of the draft sulphides regulations contained in document ISBA/15/C/WP.1 and Corr.1. The Secretariat also updates background information on the status of the draft crusts regulations.	ISBA/15/LTC/CRP.1 ISBA/15/LTC/3 ISBA/15/C/WP.1/Rev.1
	The Council resumes its consideration of the draft sulphides regulations. At the end of the session, the Council requests the Secretariat to prepare a revised text based on the discussions and proposals in the Council during the thirteenth, fourteenth and fifteenth sessions.	ISBA/15/C/5 ISBA/15/LTC/CRP.1
	The Commission adopts its recommendations on the draft crusts regulations and decides to submit them to the Council.	
2010	The revised draft crusts regulations as recommended by the Commission are translated and proposed to the Council for consideration. There is insufficient time during the session for the Council to complete its work. The Regulations on prospecting and exploration for polymetallic sulphides in the Area are adopted by the Council and approved by the Assembly (ISBA/16/A/12/Rev.1).	ISBA/16/C/WP.2