



Council

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Proposed amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area

Note by the secretariat

I. Introduction

1. At its meeting in 2011, the Council of the International Seabed Authority endorsed the recommendation of the Legal and Technical Commission to amend the current Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (Nodules Regulations), as approved by the Assembly of the International Seabed Authority on 13 July 2000, in order to bring them into line with the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (Sulphides Regulations), as approved by the Assembly on 7 May 2010.

2. The Commission, having had insufficient time during its meeting in 2012 to consider the amendment of the Nodules Regulations, took up the matter at its meeting in February 2013. To facilitate the consideration by the Commission of the proposed amendments, the secretariat prepared an informal document (ISBA/18/LTC/CRP.1) showing the amendments that would be necessary to align the Nodules Regulations with the Sulphides Regulations. An explanatory note was also made available to the Commission (ISBA/18/LTC/5).

3. Following deliberations, the Commission agreed on the amendments necessary to align the Nodules Regulations with the Sulphides Regulations and decided to submit them to the Council for consideration at its meeting in July 2013. The amended Nodules Regulations, as adopted by the Commission and proposed to the Council for adoption, are contained in document ISBA/19/C/WP.1.¹

¹ To facilitate the review by the Council, the secretariat has also prepared an informal document (ISBA/19/C/CRP.1, available in English only) highlighting all proposed amendments, including some minor and consequential revisions.



II. Further alignment of regulation 19

4. The Council will recall that, in 2012, following intensive deliberations, it adopted a detailed regulation on the fee for processing applications for approval of plans of work for exploration for cobalt-rich ferromanganese crusts (regulation 21 of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (ISBA/18/A/11, annex)). The changes made in the Cobalt-crusts Regulations are not reflected in regulation 19 of the amended Nodules Regulations as adopted by the Commission. The Council may therefore wish to consider whether it is necessary to further align regulation 19 of the Nodules Regulations with regulation 21 of the Cobalt-crusts Regulations. The secretariat has prepared a possible text for consideration by the Council, which is contained in annex I to the present note.

5. A further matter for the Council to note is that, as a result of the decision made in relation to the Cobalt-crusts Regulations, the corresponding fee provision in the Sulphides Regulations is now inconsistent with both the Nodules Regulations and the Cobalt-crusts Regulations. The Council may therefore wish to request the Legal and Technical Commission to consider this matter and make a recommendation for the consideration of the Council in 2014.

III. Entry into force and effect of amendments on existing and new contracts

6. Any amendments to the existing Nodules Regulations would enter into force on a provisional basis on the date of adoption by the Council, unless the Council specifies a different date. They would then enter into force on the date of their approval by the Assembly.

7. The adoption of amendments to the Nodules Regulations would also have implications for existing and new contracts with the Authority. In the case of existing contracts for exploration, section 24.2 of the Standard Clauses (annex 4 to the Nodules Regulations) states that the contract may be revised by agreement between the Contractor and the Authority to facilitate the application of any rules, regulations and procedures adopted by the Authority subsequent to the entry into force of the contract. This suggests that, following adoption of the amended Nodules Regulations, it would be necessary for the Secretary-General to consult each of the existing contractors with a view to making necessary revisions to the standard terms of contracts.

8. In cases in which applications have been submitted prior to entry into force of amendments but contracts have not been concluded, the Council, when provisionally adopting the amended Nodules Regulations, may wish to request the Secretary-General and the applicant to consult prior to the signature of the contract with a view to incorporating any necessary revisions into the contract.

IV. Recommendation

9. The Council is invited to consider and adopt the amended Nodules Regulations, as proposed by the Legal and Technical Commission in document ISBA/19/C/WP.1, with the additional amendment proposed in annex I to the present note. A draft decision for the consideration of the Council is set out in annex II to the present note.

Annex I

Suggested amendment to regulation 19 of the amended Nodules Regulations adopted by the Commission

1. The fee for processing an application for approval of a plan of work for exploration for polymetallic nodules shall be **a fixed amount of 500,000 United States dollars or its equivalent in a freely convertible currency, to be paid in full** at the time of **the submission of** an application.
2. **If the administrative costs incurred by the Authority in processing an application are less than the fixed amount indicated in paragraph 1 above, the Authority shall refund the difference to the applicant. If the administrative costs incurred by the Authority in processing an application are more than the fixed amount indicated in paragraph 1 above, the applicant shall pay the difference to the Authority, provided that any additional amount to be paid by the applicant shall not exceed 10 per cent of the fixed fee referred to in paragraph 1.**
3. **Taking into account any criteria established for this purpose by the Finance Committee, the Secretary-General shall determine the amount of such differences as indicated in paragraph 2 above and notify the applicant of its amount. The notification shall include a statement of the expenditure incurred by the Authority. The amount due shall be paid by the applicant or reimbursed by the Authority within three months of the signing of the contract referred to in regulation 23 below.**
4. **The fixed amount referred to in paragraph 1 above shall be reviewed on a regular basis by the Council in order to ensure that it covers the expected administrative costs of processing applications and to avoid the need for applicants to pay additional amounts in accordance with paragraph 2 above.**

Annex II

Draft decision of the Council of the International Seabed Authority relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters

The Council of the International Seabed Authority,

1. *Adopts* the amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area as contained in the annex to the present decision;

2. *Decides* to apply the amended Regulations provisionally from the date of their adoption by the Council, pending their approval by the Assembly of the International Seabed Authority;

3. *Requests* the Secretary-General, in the case of a pending application for approval of a plan of work for polymetallic nodules submitted prior to the entry into force of the amendments to the Regulations, to consult the applicant prior to the signature of the contract for exploration with a view to incorporating any necessary revisions into the standard terms of contract;

4. *Requests* the Legal and Technical Commission of the Authority to make a recommendation for consideration by the Council at its twentieth session to bring regulation 21 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides^a into line with regulation 21 of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area.^b

^a ISBA/16/A/12/Rev.1.

^b ISBA/18/A/11.