



# Council

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## **The environmental management plan in the regulatory framework for mineral exploitation in the Area**

### **Explanatory note**

**Submitted by the Netherlands**

### **I. Introduction**

1. At its meeting in July 2011, 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. This decision of the Council was in response to the statement made by the representative of Fiji.
2. Following the decision of the Council, the secretariat prepared a strategic workplan for the formulation of regulations for the exploitation of polymetallic nodules in the Area and presented this workplan to the meeting of the Council held in 2012 ([ISBA/18/C/4](#)).
3. After consideration of the plan by the Council and its endorsement by a number of delegations, work on the development of a regulatory framework for exploitation activities in the Area has been ongoing in the secretariat, the Legal and Technical Commission and in this Council.

### **II. Reason for submitting**

4. The issues involved in the development of these exploitation regulations have proven to be highly complex. The report prepared for the secretariat by a consultant in *ISA Technical Study No. 11* contains a good overview of these issues. The executive summary of the study stated that (in complying with the request mentioned in para. 1 above) the Authority faces the challenge of developing an exploitation framework that ensures that the exploitation of polymetallic nodules will (a) benefit mankind as a whole (including future generations); and (b) foster



commercially viable and sustainable exploitation (including reasonable economic returns) of the Area's mineral resources.

5. *Technical Study No. 11* does not deal with the specifics of an environmental regime for the exploitation of polymetallic nodules. The study does, however, specify key environmental components that will have to be developed and included in an overall exploitation framework.

6. Key environmental components such as the collection of environmental data as part of an environmental monitoring plan during exploitation that will look at the environmental impact of exploitation, the analysis of all the environmental data collected to date to aid in understanding the cumulative environmental impact of all aspects of exploitation and the analysis of the data collected in the environmental monitoring programmes during exploitation that should provide important feedback to (and perhaps inform modification of) the environmental monitoring plans and systems.

7. In 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), it is stated that, owing to the complexity of the issues involved in the development of the exploitation regulations "it will be necessary to provide the Legal and Technical Commission with relevant technical advice and information prior to its consideration of detailed draft regulations. Such advice and information would include information on fiscal regimes for comparable land-based mining; economic assessments of mineral production, including capitalization, operating costs, depreciation and amortization of mines; anticipated tonnages, grades and recovery efficiencies; and other financial and technical issues. Further work will also need to be carried out on the assessment of the potential environmental impacts of future mining".

8. In view of the mandate of the Authority under section 1, paragraph 5 (k), of the annex to the 1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, which refers to the "timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment" and the role of the Council to adopt guidelines and directives for the exercise of functions by its organs, i.e. the Legal and Technical Commission (see art. 163, para. 9 of the Convention), the Netherlands submits the attached document on the environmental management plan in the regulatory framework for mineral exploitation in the Area (see annex).

### III. Objective

9. The exploitation regulations that are being developed by the Authority should contain:

(a) The obligation for the Authority to establish an environmental management plan as a requirement for granting contracts for exploitation in a designated area;

(b) The obligation for the contractor to timely carry out a prior environmental impact assessment and an environmental impact assessment.

10. We note in this regard that with this objective we wish to build on the legal framework of the United Nations Convention on the Law of the Sea and the achievements of the Authority to date, such as the three sets of regulations for exploration and various recommendations of the Legal and Technical Commission resulting, inter alia, in the adoption of an environmental management plan for the Clarion-Clipperton Zone (see [ISBA/17/LTC/7](#) and [ISBA/17/C/19](#)) and the Legal and Technical Commission recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area (see [ISBA/19/LTC/8](#)).

#### **IV. Recommendation**

11. The Council is invited to take note of the above when considering the annex to the present explanatory note.

12. The Council is further invited to request the Legal and Technical Commission to address the two following issues in the development of the exploitation regulations:

(a) The compulsory establishment by the Authority of an environmental management plan as a requirement for granting contracts for exploitation in a designated area;

(b) The obligation for the contractor to timely carry out a prior environmental impact assessment and an environmental impact assessment.

## Annex

### **The environmental management plan in the regulatory framework for mineral exploitation in the Area**

#### **I. Introduction: legal context**

1. The legal basis is set out in the following instruments:

(a) United Nations Convention on the Law of the Sea Agreement relating to the implementation of Part XI, annex, section 1, paragraph 5 (f), inter alia:

(i) Articles 194, 196 (1), 204 and 206;

(ii) Of particular relevance to deep seabed mining is article 194 (3) (c), which provides that States shall take measures to minimize to the fullest possible extent pollution from installations and devices in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea and regulating the design, construction, equipment, operation and manning of such installations or devices;

(b) Regulations and recommendations on prospecting and exploration, inter alia:

(i) Part V in Regulations on polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts;

(ii) Environmental management plan for the Clarion-Clipperton Zone ([ISBA/17/LTC/7](#)) and subsequent decision of the Council on an environmental management plan for the Clarion-Clipperton Zone ([ISBA/17/C/19](#));

(iii) Legal and Technical Commission recommendations for the guidance of contractors for the assessment of the possible impacts arising from exploration for marine minerals in the Area ([ISBA/19/LTC/8](#));

(c) Advisory opinion of the Seabed Disputes Chamber on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (2011), paragraphs 141-150.

#### **II. Role of the Authority**

2. The Authority should be charged with developing and establishing an environmental management plan<sup>a</sup> for a specific area within the Area. The establishment of an environmental management plan would be a precondition for concluding any exploitation contracts in relation to that specific area.

3. The environmental management plan is a supportive framework in the decision-making process. It aims to map out the relevant policy, programmes and plans relating to proposed exploitation activities. It should contain information in such a way that it can assist:

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<sup>a</sup> See United Nations Environment Programme, “Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach” (2004).

(a) The competent authority of the sponsoring State to take a substantiated/informed decision whether or not to sponsor the contractor in its bid for an exploitation contract with the Authority;

(b) The Authority to take a substantiated/informed decision whether or not to approve a plan of work for exploitation.

4. This information should include an evaluation of the potential cumulative environmental impacts on the marine environment of all mining activities in that specific area, including the evaluation of social, economic and health impacts. The information should also include a general environmental baseline assessment regarding current and potential impacts of activities, other than mining, taking place in that specific area. This general assessment would be useful for assessing mining impacts on the basis of existing conditions.

5. Additionally, the environmental management plan should contribute towards ensuring transparency and clarity on, inter alia, aspects of environmental impact assessment in the decision-making process of the Authority.

6. Following is a list of guiding principles of an environmental management plan (see also [ISBA/17/LTC/7](#)):

(a) Protection and preservation of the marine environment;

(b) Common heritage of mankind;

(c) Precautionary approach;

(d) Protection of the quality of life;

(e) Conservation and sustainable use of biodiversity;

(f) Contribution to the integration of environmental considerations into the preparation of plans and programmes for the purpose of promoting sustainable development;

(g) Prior environmental impact assessment (to be undertaken prior to the commencement of “commercial” exploitation activities);

(h) Environmental impact assessment (to be undertaken prior to the commencement of “commercial” exploitation activities);

(i) Cumulative environmental impact assessment;

(j) Best available techniques;

(k) Best practicable environmental option;

(l) Transparency: the Authority should enable public participation in environmental decision-making procedures in accordance with its own rules and procedures and in accordance with, for example, the United Nations Environment Programme Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, of 2010, or the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, of 1998.

### **III. Specific obligations of the contractor based on the requirements of the environmental management plan (compulsory) and for its periodic evaluation**

7. During the exploration activities, an iterative process between the contractor and the Authority is/will be crucial for the Authority to be able to develop the environmental management plan for exploitation activities in a specific area.

8. This process will continue during the exploitation phase requiring specific obligations of the contractor when reporting to the Authority with a view to a periodic evaluation of the environmental management plan. These obligations for the contractor should entail at least the following components:

(a) Prior environmental impact assessment: prior assessment of activities that may have significant adverse impacts on the environment;

(b) Environmental impact assessment: a process of evaluating the likely environmental impacts of a proposed project or development taking into account interrelated socioeconomic, cultural and human health impacts, both beneficial and adverse;<sup>b</sup>

(c) Procedural steps to complete the prior environmental impact assessment/ environmental impact assessment (minimum requirements/standards/components):

(i) Screening: for example, which activities may have significant adverse impacts on the environment;

(ii) Scoping: for example, evaluating the likely environmental impacts of a proposed project (for example, which technology will be applied by the contractor);

(iii) Assessing and evaluating impacts and development of alternatives;

(iv) Reporting of the Environmental Impact Statement (to include cumulative effects);

(v) Reviewing: for example, possible alternatives; opportunities for damage prevention; mitigation of adverse impacts;

(vi) Decision-making: regarding implementing/applying the environmental impact assessment as a component of the compulsory environmental management plan (including the designation of areas of particular environmental interest where mining would not take place);<sup>c</sup>

(vii) Monitoring, compliance, enforcement and environmental auditing<sup>d</sup> (feedback).

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<sup>b</sup> “Impact Assessment: Voluntary guidelines on biodiversity-inclusive impact assessment”, eighth Conference of the Parties to the Convention on Biodiversity, Decision VIII/28.

<sup>c</sup> See ISBA/17/LTC/7.

<sup>d</sup> Institute for Sustainable Development and International Relations, Elisabeth Druel, “Towards a global agreement on environmental impact assessments in areas beyond national jurisdictions”, Policy Brief No. 01, 2013.

#### **IV. Environmental impact assessments**

9. Environmental impact assessments are particularly useful for:

(a) Determining and analysing likely environmental impacts of proposed human activities;

(b) Developing mitigation measures or, wherever appropriate, recommending that an activity should not be authorized because the impacts would be too severe or because there is too much uncertainty about them;

(c) Helping the competent authority to make a final decision about the conduct of an activity.<sup>e</sup>

#### **V. Recommendation**

10. It is recommended that the two following issues be addressed in the exploitation regulations:

(a) The compulsory establishment by the Authority of an environmental management plan as a requirement for granting contracts for exploitation in a designated area;

(b) The obligation for the contractor to timely carry out a prior environmental impact assessment and an environmental impact assessment.

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<sup>e</sup> Ibid.