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### Draft regulations for exploitation of mineral resources in the Area

## Procedure for the development, approval and review of regional environmental management plans

**Submitted by the delegations of Germany and the Netherlands,  
with co-sponsorship by Costa Rica**

### Introduction

1. Regional environmental management plans have been interpreted as essential tools to ensure effective protection of the marine environment according to article 145 of the United Nations Convention on the Law of the Sea.<sup>1</sup> During the consultation process on the draft exploitation regulations, many States parties stressed that, in principle, a plan of work for exploitation should not be approved by the Council unless a regional environmental management plan were in place for the relevant area.
2. A regional environmental management plan provides region-specific information that facilitates the decision-making process for exploitation activities in the relevant areas. Region-specific objectives, taking into account the carrying capacity of the region, cumulative effects and conflicts with other legitimate uses, can only be considered appropriately through regional environmental management plans. The plans furthermore provide for long-term planning reliability and a level playing field for contractors, in particular when shifting from exploration to exploitation.
3. The International Seabed Authority has already approved the environmental management plan for the Clarion-Clipperton Fracture Zone region. Regional environmental management plans for polymetallic sulphides along the northern Mid-Atlantic Ridge and cobalt-rich ferromanganese crusts in the north-west Pacific are under development. Furthermore, the Authority has determined several specific

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\* [ISBA/26/C/L.1](#).

<sup>1</sup> See, for example, the adoption of the environmental management plan for the Clarion-Clipperton Zone ([ISBA/17/LTC/7](#) and [ISBA/18/C/22](#)), the submission of the Netherlands in 2014 ([ISBA/20/C/13](#)) and the International Seabed Authority's strategic plan 2019–2023.



regions as priority areas for the development of regional environmental management plans (see [ISBA/24/C/3](#) and [ISBA/25/C/13](#)).

### **Background**

4. According to the strategic plan adopted by the Assembly in 2018 ([ISBA/24/A/4](#)), a regional environmental management plan is a means to protect the marine environment. As indicated under strategic direction 3 – protection of the marine environment – a regional environmental management plan should be developed, implemented and kept under review.

5. The draft regulations on exploitation of mineral resources in the Area – in the current version – require that a contractor’s environmental impact statement (draft regulation 47), environmental management and monitoring plan (draft regulation 48) and closure plan (annex VIII) be in accordance with the relevant regional environmental management plan.

6. In November 2019, the secretariat of the Authority, having consulted the Legal and Technical Commission, issued a document on guidance to facilitate the development of regional environmental management plans.<sup>2</sup>

7. The required contents of regional environmental management plans, the procedure for the development, approval and review of such plans, as well as the relationship between the plans and activities in the Area, have so far not been explicitly clarified and agreed.

8. During the consultation process on the draft exploitation regulations, many States parties expressed the view that a standardized approach concerning the development and the contents of regional environmental management plans was required.

9. To this end, Germany and the Netherlands, with co-sponsorship by Costa Rica, hereby submit a proposal for a procedure for the development, approval and review of regional environmental management plans.

10. A proposal for a standardized regional environmental management plan template is contained in a separate submission by Germany and the Netherlands, with co-sponsorship by Costa Rica.

11. Both documents reflect the outcome of the international workshop held on the theme “Towards a standardized approach for regional environmental management plans in the Area”, which was organized by Germany, the Netherlands and the Pew Charitable Trusts in Hamburg, Germany, from 11 to 13 November 2019. The workshop was attended by more than 80 experts, as well as by members of the Council, organs of the Authority and other international bodies, reflecting broad regional representation and a variety of stakeholder perspectives.

12. The need for a standardized approach as well as for defined minimum requirements and contents for all regional environmental management plans and the need for a specified procedure were strongly supported by the workshop participants.

13. The report on the workshop will be submitted to the Council during the first part of the twenty-sixth session of the Authority.

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<sup>2</sup> See [www.isa.org.jm/workshop/workshop-regional-environmental-management-plan-area-northern-mid-atlantic-ridge](http://www.isa.org.jm/workshop/workshop-regional-environmental-management-plan-area-northern-mid-atlantic-ridge).

**Rationale for a procedure for the development, approval and review of regional environmental management plans**

14. In carrying out its regulatory function for deep seabed mining, the Authority has the obligation to ensure that the marine environment is protected from any harmful effects that may be caused by mining activities. Regional environmental management plans are essential tools for ensuring effective protection of the marine environment.

15. A procedure for developing, approving and reviewing a regional environmental management plan should be in place as part of the regulatory function of the Authority.

16. The United Nations Convention on the Law of the Sea and 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 contain the legal basis for developing such a procedure by the Authority and its organs (see section 1 of the annex to the present document).

17. The proposed procedure set out in the annex to the present document addresses the explicit role of the Council and the Legal and Technical Commission, as well as the role of an independent body (expert committee). This expert committee would be responsible for preparing a draft regional environmental management plan for a specific region and for submitting the draft to the Legal and Technical Commission for its consideration and recommendation for adoption by the Council.

18. The procedure provides for the involvement of all stakeholders, including scientists and other international bodies, in the preparation of a regional environmental management plan. The procedure also facilitates the development of broad consensus on any decisions regarding mining activities in the Area, while ensuring the effective protection of the marine environment.

19. A procedure for developing, approving and reviewing regional environmental management plans is required as an essential part of good governance, promoting issues such as accountability and transparency, reliability and acceptability, the clarification of standards of environmental protection and a level playing field for contractors.

20. There is a sense of urgency with regard to the establishment of a procedure for developing, approving and reviewing regional environmental management plans, in view of the progress of the drafting of the draft regulations on exploitation of mineral resources in the Area. This sense of urgency is reflected in the document on guidance to facilitate the development of regional environmental management plans, as well as in the many workshops that are being convened to address the development of the plans.

**Recommendations**

21. The Council is invited to take note of the above issues when considering the annex to the present document.

22. The Council is further invited to adopt the procedure in the annex with the aim of ensuring that the development, approval and review of regional environmental management plans are conducted in a clear and unambiguous manner.

## Annex

### **Procedure for the development, approval and review of regional environmental management plans**

#### **1. Introduction**

In carrying out its regulatory function for seabed mining in the Area, the International Seabed Authority has the obligation to ensure that the marine environment is effectively protected from harmful effects that may be caused by seabed mineral activities. In section 1, paragraph 5, 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, it is stipulated that:

Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

[...]

- (g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;
- (h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;
- (i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
- (j) Assessment of available data relating to prospecting and exploration;
- (k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

A regional environmental management plan should assist the Authority in achieving those objectives. The procedure for regional environmental management plan development, set out below, also takes into account that:

- (a) Pursuant to article 162, paragraph 2 (d), of the United Nations Convention on the Law of the Sea, the Council has the power to establish such subsidiary organs as it deems necessary for the exercise of its functions;
- (b) The Legal and Technical Commission shall make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field (art. 165, para. 2 (e), of the Convention) and, in the exercise of its functions, the Commission may consult with, *inter alia*, any international organizations with competence in the subject matter of such consultation (art. 163, para. 13, of the Convention).

#### **2. Initiation of the regional environmental management plan development process**

For each regional area that is under consideration for the conduct of exploitation activities in the Area, a regional environmental management plan shall be developed by the Authority.

The Council is responsible for the initiation of the development of each regional environmental management plan.

### **3. Development of a regional environmental management plan**

#### **Expert committee**

The Council, acting on a recommendation of the Legal and Technical Commission, shall establish an expert committee for the development of a first draft of the regional environmental management plan for a specific region.

This expert committee should be established as a technical body of the Legal and Technical Commission and be characterized as an ad hoc committee that is assigned to develop and review one regional environmental management plan for a specific region. The committee should support the Commission in its task of advising the Council.

The selection and appointment of experts should be undertaken in line with relevant guidelines and United Nations procurement processes, with a focus on competences identified as relevant for the specific regional environmental management plan. It should be configured as an independent expert body, comprising about five to seven experts acting in their individual capacity. The experts should have expertise in the following areas, at a minimum: biology, geology, oceanography, spatial planning and modelling. The expertise in biology shall include, at a minimum, expertise related to biodiversity, connectivity and the ecosystem function of benthic and pelagic communities.

Region-specific knowledge should be considered in particular when selecting the experts.

Members of the expert committee shall have no personal financial interest in any activity relating to exploration and exploitation in the Area.

#### **First draft of the regional environmental management plan**

The expert committee is responsible for preparing a draft of the regional environmental management plan, on the basis of all available data and the information from the workshops and consultations described below. The content of the regional environmental management plan should follow the format set out in the regional environmental management plan template ([ISBA/26/C/7](#), annex).

The secretariat of the Authority should facilitate the development of the first draft of the regional environmental management plan.

The expert committee should take steps to ensure it has access to all available data. These data include:

- (a) Contractor data submitted to the Authority that pertain to the region and are not deemed as confidential in accordance with the rules, regulations and procedures of the Authority;
- (b) Scientific information, in particular from peer-reviewed articles and publicly accessible databases;
- (c) Any other information that the committee is able to gather and compile and that is required to complete the sections of the regional environmental management plan template and its minimum requirements.

The expert committee should organize, with the support of the secretariat of the Authority, one or more international expert workshops in order to develop the first

draft of the regional environmental management plan. Relevant experts, stakeholders in the field (including representatives of relevant coastal States, experts with traditional knowledge and representatives of local communities) and representatives of relevant international bodies should be invited to the workshop, on the basis of an expert and stakeholder mapping exercise (conducted by or for the expert committee), in accordance with the relevant guidelines. The objective of the workshops is, inter alia, to gather all available information and to involve all relevant perspectives, interests, information and expertise.

The expert committee, facilitated by the secretariat, shall compile all available data in a specific database (for example, using the DeepData platform). The region-specific databases should be kept updated during the development and implementation of the regional environmental management plan.

Where data gaps are identified, the regional environmental management plan should be developed on the basis of proxies, applying the precautionary approach.

### **Consideration by the Legal and Technical Commission**

The expert committee will submit its draft of the regional environmental management plan to the Legal and Technical Commission for consideration, accompanied by a statement describing the process undertaken and the stakeholders engaged in its development.

### **Formal stakeholder consultation**

Upon receipt from the expert committee, the Legal and Technical Commission should make the draft regional environmental management plan and a summary of the information gathered (pursuant to the plan template and its minimum requirements) publicly available for at least 90 days by placing these documents on the website of the Authority, and should solicit comments from interested parties within this time frame.

The secretariat of the Authority should publish any responses received as part of the consultation on the website of the Authority.

### **Recommendations by the Legal and Technical Commission**

After the (minimum 90-day) consultation period has closed, the Legal and Technical Commission should, at its subsequent regular meeting, consider the draft regional environmental management plan, taking into account the comments submitted during the formal stakeholder consultation and any further information from the Commission. The Commission should also satisfy itself that the proper procedure has been followed in the development of the plan, in accordance with any relevant guidelines.

The Legal and Technical Commission should either recommend that the Council adopt the regional environmental management plan or ask the expert committee to make revisions to the draft plan and/or to undertake further processes to develop or verify its contents.

Any recommendation by the Legal and Technical Commission to the Council on the adoption of a regional environmental management plan should be accompanied by a justification for that recommendation, a description of the process that has been undertaken in developing the plan, and the report of the expert committee. These documents should be made publicly accessible on the Authority's website at least three months in advance of the Council meeting during which the plan will be put forward for adoption.

### **Adoption of the regional environmental management plan**

On the basis of a recommendation by the Legal and Technical Commission, the Council decides on the adoption of the regional environmental management plan. Should the Council not adopt the plan, it may ask the Commission to task the expert committee with making specific revisions to the plan and/or with undertaking further processes in developing or verifying its contents.

## **4. Review of the regional environmental management plan**

### **Annual reporting**

Every year, the expert committee, with administrative support from the secretariat, shall provide to the Council a report that summarizes new environmental data from all contractors, as well as new scientific literature data that are relevant to the regional environmental management plan and monitoring data and information. Furthermore, the committee shall provide recommendations as to the implications (if any) of new knowledge and findings for the plan.

The annual report should be made publicly accessible by the secretariat of the Authority.

If a State member of the Authority or an observer wishes to discuss the outcomes contained in an annual report, they may include the topic in the agenda of the Council at its subsequent session.

### **Timing**

Each regional environmental management plan should undergo a review, at the latest five years after its adoption by Council, or earlier if requested by the Council.

Events that may lead the Council to request an earlier review may include:

- (a) Issue of an Authority emergency order that relates to a site within the region;
- (b) Request by another organ of the Authority;
- (c) Submission of substantial new environmental knowledge or data for the region;
- (d) A major environmental change in or affecting the region (e.g., a natural or anthropogenic disaster);
- (e) Relinquishment of areas previously under contract within the region;
- (f) Submission of a new application for a plan of work for exploitation in the region, when the exploitation would be for a new resource category in the relevant area.

### **Responsibility**

The expert committee leads the review process (taking into account any specific instructions from the Council) and reports on the outcome to the Legal and Technical Commission.

The Legal and Technical Commission considers the review report of the expert committee to satisfy itself that the proper procedure has been followed in the review of the regional environmental management plan, in accordance with any relevant guidelines. The Commission recommends to the Council any proposed amendments regarding the plan and its contents, objectives and measures. In submitting such

recommendations to the Council, the Commission should include a rationale for its recommendations and a description of the process followed in conducting the review of the plan.

The Council reviews the amendments recommended by the Legal and Technical Commission and either adopts the revised plan or reverts the recommendations to the Commission for further work.

The Secretariat provides administrative support throughout the regional environmental management plan review process.

### **Consultations**

Relevant persons identified through an expert and stakeholder (including relevant international bodies) mapping exercise shall be invited to provide inputs to the expert committee as part of the review process.

Upon receipt from the expert committee, the Legal and Technical Commission should make the proposed revised regional environmental management plan and a copy of the expert committee's report publicly available for 90 days on the website of the Authority, and should solicit comments from interested parties within that time frame.

Following the public consultation period, the recommendations of the Legal and Technical Commission and the revised regional environmental management plan proposed for adoption by the Council are to be made accessible on the website of the Authority at least three months in advance of the Council meeting at which the revised plan is to be put forward for adoption.

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