

## Draft Decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission

### Coordinated by the delegation of Australia

*The Council of the International Seabed Authority,*

*Recalling its decision ISBA/26/C/57,*

1. *Takes note* with appreciation of the reports of the Chair of the Legal and Technical Commission on the work of the Commission at the first and second parts of its twenty seventh session<sup>1</sup>, the hard work and considerable achievements of the Commission over the last six years (2017-2022), and the report of the Secretary-General on Implementation of the decision of the Council in 2021 relating to the reports of the Chair of the Legal and Technical Commission, noting that this represented the fifth such report of the Secretary-General<sup>2</sup>;

2. *Notes with appreciation* the Commission's report<sup>3</sup> to the Council summarizing feedback on the draft phase one standards and guidelines,<sup>4</sup> the reasons for the Commission's decisions, and translations of the draft phase one standards and guidelines in the official languages of the Authority;

3. *Emphasizes* that the regulations, standards and guidelines must be an integrated package in order to develop them into requirements for submitted plans of work, that the draft standards and guidelines require in-depth consideration by the Council, as well as review to ensure consistency with the draft regulations as those near completion;

4. *Underlines* the need for further interactive discussion during the meetings of the Council on the draft regulations, welcomes the proposals and observations presented by member States and observers, and requests the secretariat before Part I of the 28<sup>th</sup> session of the Council in 2023 to produce and circulate a consolidated version of the regulations incorporating all draft text prepared by the relevant working groups by the end of the 27<sup>th</sup> session, together with post-session submissions posted on the Authority's website, as a basis for further discussion in the working groups; *Placeholder: this paragraph may be amended or deleted to reflect discussions and/or it may be more appropriate to have a separate decision/statement of the President after Council's review of progress on the roadmap and necessary intersessional work*

5. *Also notes with appreciation* the Commission's consideration of annual reports on activities carried out by contractors in 2021 and welcomes that contractors have generally continued to comply with the template issued by the Commission, responded to questions raised by the Commission in the previous year, largely met the deadlines for submitting annual reports and continued to carry out their programme of activities despite challenges posed by the ongoing COVID-19 pandemic;

6. *Encourages* contractors to pursue the necessary improvements in their annual reports identified by the Commission, including the timely submission of annual reports,

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<sup>1</sup> ISBA/27/C/16 and ISBA/27/C/16/Add.1.

<sup>2</sup> ISBA/27/C/27

<sup>3</sup> ISBA/27/C/2.

<sup>4</sup> Contained in enclosure II of ISBA/25/C/19/Add.1

fulfilling their individual obligations for each contract and plan of work, the timely provision of expenses information in line with the recommended format,<sup>5</sup> to comply with the Commission's reporting templates,<sup>6</sup> and to undertake gap analyses to inform their data requirements with a view to enhancing the understanding of how they are developing their environmental baselines;

7. *Welcomes* the Secretary-General's engagement, through the Compliance Assurance and Regulatory Management Unit of the secretariat, with individual contractors on matters raised by the Commission and the secretariat's review of the responses of individual contractors ~~to facilitate continuous improvement~~, and requests the Secretary-General to continue this practice of communicating the various issues identified during the Commission's review of contractors' annual reports to the relevant contractors and sponsoring States, to follow up in writing with those contractors that are repeatedly performing inadequately or incompletely against an approved plan of work, or that have indicated that the implementation of the plan of activities will be made conditional on external factors regardless of the applicable contractual requirements, to request meetings with them, and to write to the respective sponsoring States to bring that issue to their attention and request a meeting with the sponsoring States to address it;

*Tbis. Requests* the Commission, beginning at the Authority's 28<sup>th</sup> session, to annually name those contractors that have repeatedly ignored the calls from the Council and the Commission to comply with their contractual obligations, in particular, the reporting requirements under the standard clauses of their contracts;

8. *Also requests* the Secretary-General to continue to report to the Council on an annual basis, identifying instances of alleged non-compliance and regulatory action in accordance with the United Nations Convention on the Law of the Sea,<sup>7</sup> the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982,<sup>8</sup> and the regulations on prospecting and exploration, including any monetary penalties to be imposed by the Council, and urges the relevant sponsoring States to provide any information relating to such non-compliance and measures taken to ensure compliance under contracts for exploration, in accordance with article 139 of the Convention;

9. *Commends* the progress made towards increasing the transparency of exploration contracts, and requests the Secretary-General to continue to pursue dialogue with contractors who have not yet submitted templates on their plans of work;

10. *Commends* contractors for their efforts in implementing their programme of activities and training programmes in spite of travel restrictions and other challenges relating to the ongoing coronavirus disease (COVID-19) pandemic, and notes the review of the recommendations for the guidance of contractors and sponsoring States relating to training programmes under plans of work for exploration by the training sub-group of the Commission, with a view to adopting a set of revised recommendations by the end of 2022;

11. *Notes* the Commission's consideration of an application for approval of plan of work for exploration for polymetallic nodules submitted by Circular Metals Tuvalu Ltd and that, following the sponsoring State's termination of sponsorship, there was effectively no application to consider, and requests the Secretary-General to remind applicants of the requirements of Article 153 of the United Nations Convention on the Law of the Sea;

12. *Welcomes* the Commission's development of a draft procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration<sup>9</sup> and ~~requests the Commission to revise its draft once the Council has considered issues relating to the transfer of rights and obligations under a contract for exploitation in the~~

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<sup>5</sup> Contained in ISBA/21/LTC/15, annex IV.

<sup>6</sup> Contained in ISBA/21/LTC/15.

<sup>7</sup> United Nations, Treaty Series, vol.1833, No.31363.

<sup>8</sup> Ibid., vol.1836, No.31364.

<sup>9</sup> ISBA/27/C/35.

draft Regulations for exploitation] [May require revision in light of report of LTC Chair and discussion in Council]

13. *Expresses its appreciation* for the Commission's development of the draft standardized procedure for the development, review and approval of Regional Environmental Management Plans (REMPs)<sup>10</sup> and requests the Commission to revise the draft standardized procedure to take account of the Council's comments, as summarised by the President of the Council, using the submissions of 2019 by Germany and the Netherlands, co-sponsored by Costa Rica, as a starting point, taking into account written comments submitted by delegations by 15 January 2022, and to explain in the revised draft submitted to the Council why it has departed from the comments made;

14. *Also expresses its appreciation* to the Commission for developing the draft Regional Environmental Management Plan for the Area of the northern Mid-Atlantic Ridge<sup>11</sup> and requests the Commission to review the draft in light of the Council's comments to take account of the standardized procedure for the development, review and approval of Regional Environmental Management Plans, once adopted, and further written comments from delegations;

15. *Welcomes* the Commission's review and adoption of revised recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area<sup>12</sup> to provide guidance to contractors on stakeholder consultation and requests the Commission to revise the recommendations further to require contractors to release the full EIS for stakeholder consultation and to request a new consultation round if substantial data is added after stakeholder consultation;

16. *Notes* the Commission's extensive review of the environmental impact statement (EIS) and environmental management and monitoring plan (EMMP) from Nauru Ocean Resources Inc (NORI),<sup>13</sup> and its adoption of the recommendation to the Secretary-General that the completed EIS be included in the programme of NORI's activities under its exploration contract,<sup>14</sup> of which the Secretary-General notified NORI, together with a request to report the results of its test of mining components in its next annual report and that the Compliance Assurance and Regulatory Management Unit of the secretariat has notified NORI of its intention to conduct an inspection of its activities pursuant to the Exploration Regulations; *[Placeholder: as the LTC's recommendation postdates Part II of the Council's session in July, more may need to be added here if this issue is discussed at Part III of the 27<sup>th</sup> Session of the Council]*

17. ~~*Continues to encourage*~~ *Urges* the Commission to hold open meetings, where appropriate, and allow for greater transparency in its work;

18. *Takes note* of the measures used to ensure confidentiality of the work of the Commission in a virtual format;

19. *Welcomes* the progress made by the secretariat towards the implementation of the data management strategy of the Authority, including public access to non-confidential data, its continued collaboration with the International Hydrographic Organization in relation to the compilation of bathymetric data, including through the AREA 2030 initiative, and continued scientific work and interpretation from its DeepData database with the assistance of experts from developing countries;

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<sup>10</sup> ISBA/27/C/37.

<sup>11</sup> ISBA/27/C/38.

<sup>12</sup> Contained in ISBA/25/LTC/6/Rev.2. ISBA/25/LTC/6/Rev.2 replaces ISBA/25/LTC/6/Rev.1 and ISBA/25/LTC/6/Rev.1/Corr.1 effective 8 July 2022.

<sup>13</sup> As reported in ISBA/27/C/16/Add.1.

<sup>14</sup> As reported in ISBA/27/C/16/Add.2.

20. *Welcomes* the report of the Secretary-General<sup>15</sup> concerning the operationalization of the Economic Planning Commission, including its financial implications **and that this item is reviewed at each session of the Council;**

21. *Welcomes* the report of the Special Representative of the Secretary-General of the Authority for the Enterprise<sup>16</sup> **and welcomes the draft decision of the African Group;**

22. *Calls upon* contributions to the voluntary trust fund to support the participation of members of the Council of the Authority from developing States in the meetings of the Council to secure the continued participation of developing States at this critical juncture in the development of the regulatory framework of the Authority;

23. *Requests* that the Secretary-General report to the Council on the implementation of the present decision at its twenty-eighth session, in 2023, and that such annual reporting remain on the agenda of the Council as a standing item.

277th meeting  
XX November 2022

*[meeting number and date of adoption tbc]*

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<sup>15</sup> ISBA/27/C/25.

<sup>16</sup> ISBA27/C/34.