GSR

Global Sea Mineral Resources

Global Sea Mineral Resources NV
Member of the DEME Group
Slijkensesteenweg 2
B-8400 Oostende, Belgium

T +32 3 250 52 11
F +32 3 250 56 50

RPR Oostende
BE 0845 548 901

Letter

to International Seabed Authority
from Kris Van Nijen
copy NA
our ref. GSR-2017-E-022-KVN
date 13/12/2017
pages 1 (+ Annex)

subject **Comments to Draft Exploitation regulations (ISBA/23/LTC/CRP3/rev & ISBA/23/C/12)**

Dear Secretary General,

On 14th of January 2013, Global Sea Mineral Resources NV (GSR), part of the DEME-Group, signed a 15-year contract for prospecting and exploration for polymetallic nodules. GSR, being one of the new and few contractors, is investing significant resources in the development of responsible technology and to establish a framework of best environmental practices in the management of deep-sea mining operations. As indicated in previous stakeholder surveys, in order to sustain these investments and prove that polymetallic nodules can be exploited in a responsible manner during the feasibility phase, a regulatory framework has to be in place as soon as possible providing certainty, stability and predictably for investors. GSR is looking forward to having the final draft Exploitation Regulations in place by 2018 with the full implementation of these regulations by 2019.

In view of the above, GSR is pleased to submit its comments and support the further development of the draft exploitation regulations as published by the ISA last August 2017. To this end GSR trust this to be the main topic for next LTC meeting in March 2018. The comments on the draft regulations are hereby provided in annex I in tabular form. Furthermore, we hereby give explicit consent to the ISA to make GSR's comments on the draft regulations publicly available. GSR trusts that all comments will be taken into consideration.

GSR is fully aware of the complexity of these exploitation regulation under the umbrella of the LOSC and appreciates the recent efforts by the ISA in developing this first draft of the exploitation regulation. GSR seeks to further contribute to the development of a responsible exploitation regime for all stakeholders involved in a transparent manner. GSR is available for any further elaboration on the comments provided.

Yours sincerely,

Kris Van Nijen
Managing Director GSR

GSR

ISBA/23/LTC/CRP.3* Draft Regulations on Exploitation of Mineral Resources in the Area

Comments on the ISA Questions

<table>
<tr><th>Topic</th><th>Question</th><th>Comment</th></tr>
<tr><td>1. Structure and logic of the Regulations</td><td>Do the Regulations follow a logical structure and flow?</td><td>In principle the Draft Regulations seek to govern two aspects of Exploitation Activities: (i) application for an Exploitation Contract and (ii) execution of the Exploitation Contract itself.

The expected logic should be that a first part of the Draft Regulations is devoted to all the requirements and paperwork Applicants need to fulfil in order to apply and be granted an Exploitation Contract, and then, a second part on the obligations derived from the Exploitation Contract.

However, there are a number of parts that come after the contract signature which still govern the application process. The clearest example is Part IV regulating “Environmental Matters”. This part should be located before Part II on “Applications for approvals of Plans of Work”, as it conditions the very essence of the application process.

For instance, prior to the Plan of Work application, the Applicant must submit an Environmental Scoping Report, which will be open for comments for 60 days (DR 18.1). The same can be said about the Environmental Impact Statement (EIS), which is the result of the environmental impact assessment (EIA), where the Legal and Technical Commission (LTC) can refuse to consider an application for approval of the Plan of Work on the basis that the EIS has not been published (DR 20.1).

A suggested logic for the Draft Regulations would be:

<table>
<tr><td>Preamble</td><td>Part 5 –

Administrative Fees</td><td>Part 10 – Review of Plans of Work</td></tr>
<tr><td>Part I -</td><td>Part 6 –</td><td>Part 11 –</td></tr>
</table>
</td></tr>
</table>

<table>
<tr>
<td></td>
<td></td>
<td>
<table>
<tr><td>Introduction</td><td>Exploitation Contracts</td><td>Inspections</td></tr>
<tr><td>Part 2 -

Environmental Matters</td><td>Part 7 – Obligations of Contractor</td><td>Part 12 – Enforcement and Penalties</td></tr>
<tr><td>Part 3 - Application for Approval of Plans of Work</td><td>Part 8 – Financial terms of Contracts</td><td>Part 13 – Dispute Settlement</td></tr>
<tr><td>Part 4 – Information Gathering</td><td>Part 9 – General Provisions</td><td>Part 14 – Review of Authority’s DR</td></tr>
</table>
</td>
</tr>
<tr>
<td>2. Clarity, conciseness and unambiguity</td>
<td>Are the intended purpose and requirements of the regulatory provisions presented in a clear, concise and unambiguous manner?</td>
<td>The Draft Regulations could achieve better conciseness and unambiguity by using more defined terms.

I. Conciseness

In the definitions sections, for example, instead of referring to the “entity”, it could create a definition specifying that the “Entity” is a natural or juridical person which possesses the nationality of States or are effectively controlled by them or their nationals.

II. Unambiguity

A. Terms

There are some obligations that may lead to problems of interpretation, such as encouraging effective public consultation by Contractors and providing no actual means for such consultation (DR 17(e)). In addition, some terms require a clear definition, such as “precautionary approach” (DR 17(c) or the “ecosystem approach” (DR 17(d).</td>
</tr>
</table>

		DR 10(3) Comment: 'Area' is too broad - this needs to be redefined in anti-trust (competition law) terminology, analogizing from 'relevant market' concepts there to either defining 'a relevant part of the Area' or at least using that language here. Bear in mind that even the CCFZ as a whole is likely to be too broad in terms of being 'a relevant part of the Area'. DR 23(5). Comment: Delete 'on a continuous basis'. Impractical and unenforceable. "Monitoring in accordance with the EMMP" is sufficient. DR 30(1); DR 33(2). Comment: Need to define 'optimize recovery'. Annex X, Section 8.1. Comment: Contractor cannot be obliged to 'ameliorate' damage to the Marine Environment, as the environmental nature of this obligation does not allow this. B. Competencies Ideally, there should be a clear differentiating factor between the tasks of the Secretary-General and those of the LTC, as they tend to overlap in the application stage (DR 18.2). C. Procedures Another example of ambiguity is the procedure to review or modify Plans of Work, as the procedure is ultimately the same for changes during the application phase and during contract execution (DRs 46.2 and 47.4)
3. Terminology used in the UNCLOS	Are the regulations consistent and compatible with the provisions of the UNCLOS and the 1994 Agreement?	The terminology must be aligned with the UNCLOS where the UNCLOS uses it itself. - DR 2(6) This terminology is inconsistent with Maritime Scientific Research (MSR) rights and freedoms under the Convention. Applicants should be able to include information obtained under MSR rights and freedoms. - In addition, environmental objectives and standards should be in line with the general environmental principles (DR 17). Thresholds should be developed and approved

		based on the EIA under the EMMP in the Plan of Work. To guarantee legal uniformity and ring-fence the application of the Convention, Recommendations should remain outside the binding nature of Rules. In addition, the Council should not be given roles beyond those attributed in the UNCLOS, such as disapproving areas for Exploitation through regional management.
4. Stable, coherent and time-bound framework	Do the draft regulations provide for a stable, coherent and time-bound framework to facilitate regulatory certainty for contractors to make the necessary commercial decisions ?	I. Certainty for Contractors – Commercial Production Following DR 51 (Identifying a first and second commercial period) and DR 73 (Review of rates of payment), it seems there will be a third commercial period when the rates of royalty regime may be changed by the Council. Because DR13 (Term of exploitation contracts) provides for a 30-year term for the Exploitation Contract, which is granted before the Feasibility, construction and ramp-up period, the first phase would be expected to last between 8 and 10 years before production. Upon approval of the documents (DR 29.1), the Contractor would have a period of 20 years for commercial production. We request that the commercial production phase is scheduled as follows: - A first commercial period of 10 years (x) and - A second commercial period of 10 years (y) to guarantee sufficient stability, predictability and certainty for the investors. II. Time-bound Framework The following procedures lack time-limits: Environmental Scoping Report and applications for Plans of Work are considered at the next meeting of the LTC (DR 18, DR 5.2 and DR 10.5). It may not be feasible for the LTC to consider the application at its next meeting as described in the Regulation. The Commission should have a clear time period to decide on each application, regardless of the timing of its meetings. The Commission shall consider applications expeditiously and submit its report to the

		Council at the first possible opportunity (DR 6.3). If the LTC were to engage expert advisors for the assessment of Plans of Work, it should only be considered within strict time limits and under a transparent regulatory framework.
5. Balance between Regulations and Contract	Is an appropriate balance achieved between the content of the regulations and that of the contract?	The balance is appropriate to the extent that implementation of the Draft Regulations do not affect existing objectives set forward in the plan of work and contracts. Modifications to plans of work and contracts should only be possible under the applicable provision (such as DR 33.4, DR 47.1) and always subject to mutual agreement.
6. Experiences under the Exploration Regime	Are there any experiences or best practices that would be helpful to share with the Authority for the exploitation framework?	As part of the experience with the Exploration regime, it was noted that a more efficient decision-making process can be reached within the LTC. We ponder if there is a role for the "Mining" agency that would contribute to this decision making process. In addition, the information available for public consultation should always observe the restrictions imposed by confidentiality.

Topic	**Question**	**Comment**
1. Role of the Sponsoring States	What additional obligations should be placed on sponsoring States to secure compliance by contractors that they have sponsored?	I. Additional Obligations More than additional obligations, the Council should not suspend Contractor's mining activities in the event of a termination of sponsorship (DR 14.6). There is already a deadline running for Contractor to find a new sponsor, failing which will lead to termination of the Contract (DR 14.2, DR 14.3). II. Role of the Sponsoring States DR 91(a) seems sufficiently broad to encompass all of the obligations listed in DR 91. It should be made clear that the list is illustrative, but not exhaustive. In the event that one of multiple sponsoring States terminates its sponsorship, the

		Draft Regulations could provide further details on the legal implications.
2. Contract Area	What due diligence obligations should be placed on a contractor as regards continued exploration activities?	It should not be assumed that a contractor will indefinitely continue exploration once exploitation has started. An option for the contractor to cease exploration for the duration of the exploitation contract should be available.
	Are the concepts of "contract area" and "mining area" clearly presented in the draft regulations?	Yes. Ideally, the concept should also be reflected in the Contract (Annex X), as the granting of the exclusive right to exploit the Resource seems to cover the full Contract Area, when in reality it is only allowed within the Mining Area. Mining Areas sought for Exploitation need not be contiguous and shall be defined in the application in the form of sub-blocks comprising one or more cells of a grid as provided by the Authority (DR 4.4) and (DR 4.5). Further clarification is sought to this proposed concept of continuous areas (DR 4.4), as well as the criteria that will be applied to satisfy the LTC that a single set of documents is required.
3. Plan of Work	What information should be contained in the Plan of Work?	I. Timing of public consultations Before a Plan of Work is approved, the Draft Regulations provide for two opportunities for the public to comment on the environmental aspects of the project: - For comments of Interested Persons on the Environmental Scoping Report (DR 18.2); and - For comments of Interested Persons on the Environmental Impact Statement (EIS), Environmental Management and Monitoring Plan (EMMP) and the Closure Plan (CP) (DR 20.2). Once the Exploitation Contract has been granted, the Draft Regulations provide for an additional opportunity for public consultation: - For comments of Interested Persons on the revised EMMP and CP (DR 22.2(a)), as a condition precedent to start commercial production (DR 29.2). We request that once the Exploitation Contract has been granted (DR12.2), the EMMP

		and CP are revised by the Contractor and published on the Authority's website. In the context of approving plans of work, the ISA must be guided by the UNCLOS and the Implementation Agreement (IA), and as per IA Annex Section 1(15), rules, etc., governing public consultation cannot impede the required facilitation of the approval of the Plan of Work. The ISA must decide whether inviting public views on a Plan of Work is likely to assist it in facilitating its approval, and if so, how that is best achieved. There is a further need to clarify the content requested in Annex IV Environmental Scoping Report and Annex VII Environmental Management and Monitoring Plan. E.g. Annex IV (d) and (p) what is the difference, Annex VII (d) and (e) are understood to be assessments under EIA and covered in the EIS. II. Modifications to the Plan of Work Changes to the Plan of Work after contract signing are only permitted when these are administrative or minor changes. Any other changes need to go to the LTC for further recommendation to and action, as appropriate, by the Council (DR 46, 10 and 11). We request that the Draft Regulations provide a definition of non-significant changes to the Plan of Work. For example, changes to the Plan of Work to reach operational flexibility to adaptively manage the environmental objectives should be a non-significant change. Changes to these management and mitigation activities covered in the EMMP should be allowed for without the entire approval process.
	What should be considered supplementary plans?	'Supplementary Plans' is a concept that is not dealt with in the Convention. Adding this option may make the process more difficult to ensure the required level playing field and equal treatment among contractors.
	Have contractors anticipated for a pre-feasibility study? Is there a clear transition from pre-feasibility to	Contractors have anticipated a pre-feasibility study. The transition from pre-feasibility to feasibility is not entirely clear. The Draft Regulations mention the requirement to have a Feasibility Study (DR 29.1(a)) or use the Feasibility Study as a reference point (DR 13.1). However, there is no rule establishing how

	feasibility?	the Feasibility Study must be executed and to which extent it must contain information developed in the Pre-Feasibility Study.
4. Confidentiality	Any other observations or comments in connection with confidential information or confidentiality under the regulations?	Although there are a number of mechanisms to consider information confidential, DR 75 essentially states that such confidentiality designation will always require the approval of the Secretary-General. If this is the purpose of the Draft Regulations, then the mechanism should be simplified to reflect this approval procedure. Furthermore it is not clear that this is an appropriate function of the Secretary-General, whose function is administrative. It also weakens the UNCLOS' level-playing-field and equal-treatment requirements for contractors by giving the Secretary-General discretionary powers it is not clear (s)he is entitled to have under the UNCLOS. DR 75.1(d) may be introducing an incentive for unfair competition. If the laws of a State are more protective than others in delimiting confidential information, then Contractors from such a State will be able to cover a wider range of information as confidential. Contractors from other States would have to pass the confidentiality test (consultation) with the Secretary-General on the basis of DR 75.1(a). By establishing that information whose disclosure is necessary to protect the Marine Environment or human health is no longer confidential, the Contractor may be exposed to discretionary disclosure of its "confidential" information.
5. Administrative Review Mechanism	What categories of disputes (in terms of subject matter) should be subject to the administrative review mechanism?	UNCLOS allows parties to a contract to submit their disputes to binding commercial arbitration (Art. 188. 2(a)). We consider that this dispute settlement mechanism is the appropriate forum to solve disputes concerning the interpretation or application of the exploitation contract.
	How should experts be appointed?	From a list of experts administered by the International Tribunal for the Law of the Sea. The parties to the dispute should propose and preferably agree on at least three experts. The gold standard should be the technical competence of the experts.
	Should any expert determination be subject to review?	Yes, by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. The decision it adopts should be final and binding.
6. Exploitation Contract as security	What additional safeguards or issues, if any, should the Commission consider to	DR 16.3 should specify that the transfer of rights and obligations terms and conditions of the transferee's exploitation contract shall not be modified as a consequence thereof. In addition, the Draft Regulations could elaborate further on the implications and effects of

	use an exploitation contract as security?	third parties outside of the sponsoring state when using contracts as security.
7. Interested persons and public comments	How should the Authority interpret the term “interested persons”? What is the role and responsibility of sponsoring States in relation to public involvement? To what degree and extent should the Authority be engaged in a public consultation process?	The ISA should continue its present practice of placing draft regulatory items for public consultation on its website for anyone - regardless of whether they fit the IP definition - to respond to when those items have reached the level of ripeness for external comment. This is because good ideas can and do spring from the most unlikely places. However, in these written public consultation calls, the ISA should make it clear that submissions must be accompanied by the submitter's name, address, and (self-assessed) IP credential information, and that the submission will be published on the ISA's website. In addition, only IPs that have timely engaged in the public consultation processes by presenting their comments on a document subject to public consultation (i.e. the ESR) should be allowed to comment on a subsequent document (i.e. EIS).