

General Comments

by Jan Boon

The Authority is a regulatory body charged with ensuring that development of the seabed in zones beyond the continental shelves benefits humankind and protects the environment.

Most regulatory bodies I am familiar with receive applications from project proponents; they publicize the application and seek feedback from interested parties through a hearing process conducted by a formal Board that, after weighing publicly presented evidence either approves the project (often subject to meeting a number of specified conditions) or denies approval.

For a regulatory body with a scope as wide as that of ISA, the draft exploitation regulations have the following shortcomings:

- Insufficient attention to social aspects.
- Unclear or absent public hearing and decision process.
- Insufficient degree of separation between the regulator and the entities being regulated, which may lead to conflicts of interest.
- Too many confidentiality considerations surrounding data and information. This approach seems oddly out of step with modern approaches like the Extractive Industries Transparency Initiative. The Alberta Energy Resources Conservation Board (now Alberta Energy Regulator) decided in the middle of the 20th century to require all data submitted to it to become public after a certain period – history has shown that both government and industry benefited hugely from this approach.

I have attached the original pdf document into which I have inserted detailed comments, and a separate list of these comments.

Detailed Comments

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Page 1

Who is in charge of collecting, compiling and organizing environmental information to support ISA in its approval process? For example, the government of the Province of Alberta (Canada) established the Alberta Oil Sands Environmental Research Program in the 1970s before the oil sands development boom. Unfortunately, subsequent Alberta governments lost sight of the importance of the environment. As ISA is probably more stable than provincial governments there is a much lower risk of such a thing occurring.

Page 2

A table of contents would be helpful.

Page 3, 2.2(b)

Does this mean that an Enterprise needs to be represented by a State? If so, does this mean that the State could have its own regulations with respect to the conditions under which it will represent enterprises?

Page 3, 2.6

Would this exclude public information collected by states, universities or public research institutions?

Page 5, 4.3(g)

The social aspect is completely missing. Deep sea mining will inevitably affect communities, in this case probably those that derive a livelihood from the ocean in the contract area, the communities

where the underwater efforts are staged, and the communities where the concentrates are received and processed.

Page 5, 4.4

Will depth be a factor? For example, in the Province of Alberta, Canada, rights to exploit oil and gas resources are assigned by geological formation, so that leases often are superposed.

Page 6, 6.2

Yet to be developed?

Page 6, 6.3

Gives the impression that the Commission acts like the technical and legal staff of the Authority but it is not clear what the actual set-up will be.

Page 6, 7.1.

Does the Authority have the expertise and the resources to make such determination?

Page 7, 7.3 (a)

Where could one find the standards of Good Industry Practice?

Page 7, 7.3(b)

Recognized by whom?

Page 7, 7.3(c)

Include social and human rights requirements.

Page 7, 7.4(a)

"Optimize" presupposes the existence of criteria against which to optimize.

Page 7, 7.4(b)

What does this entail?

Page 7, 4(c)

Would a precautionary approach not include comprehensive research on the strengths, weaknesses, opportunities and threats of the current state of knowledge and practices leading to a targeted research strategy and implementation?

Page 7, 4(d)

Is the present status of knowledge and expertise sufficient to judge whether a project will really can provide this protection?

Page 8, 7.5

Makes it look as though the Commission is comparable to an agency such as the National Energy Board in Canada. It would be good to describe the overall organizations set-up in more detail and specify the hearing and decision mechanisms in more detail.

Page 11, 13.1

Why 30 years? That seems a bit long in comparison to existing oil and gas and mineral regulations on land. Are there provisions for regular reviews and possible termination if certain conditions are not met?

Page 12, 14.2

Does this mean that the sponsoring state can regulate the activities of the contractor?

Page 12, 14.3

Does this not create the risk of (possibly unseemly) competition between states?

Page 12, 14.4

It may be useful to give some examples to clarify the meaning of this regulation.

Page 12, 15.1

Remove comma.

Page 12, 15.3

How does the authority intend to handle the environmental and social legacies that would result from foreclosure of a contract?

Page 14, 16.12(a)

Renovation?

Page 15, 17(b)

Which body will issue recommendations? Is there sufficient expertise and capacity available to develop and make such recommendations? Which body will keep track of and compile "best practices"?

Page 15, 17(c)

Who will decide what is the Best Available Scientific Evidence?

Page 15 17(e)

Why should effective public consultation only be encouraged and not required?

Page 15 17(f)

"Co-operation" between the Authority, sponsoring States and Contractors needs elaboration. The Authority, as the regulator, should maintain strict impartiality and "interaction" may be a more proper term.

Page 16 19.2(b)

How does one know what is Good Industry Practice in such a new industry?

Page 17 21.1

Does "comments made by interested parties" include formal hearings? Will there be support for parties that lack the resources to prepare a submission? Will there be mechanisms to ensure distribution of EIS, EMMP and CP to all parties upon whom the activity will have an impact, in language that is understandable to them? If certain circumstances (e.g. remote location, absence of communication networks) apply, should there not be a provision for extending the 60-day period?

Page 18, 23.1

Using formal risk assessment methodologies

Page 19, 25.1

One year seems to be too short a term for the submission of a final closure plan

Page 19, 25.5

"Quantum" has not been previously defined. Is this what you mean: "...a required or allowed amount, especially an amount of money legally payable in damages... the court must determine the quantum of compensation due"?

Page 40, 75.1(f)

The decision on confidentiality seems to be almost discretionary. It would be better to have a firm rule that technical and scientific information, as well as any samples collected during exploration and exploitation activities become publicly accessible after a fixed period.

Page 41, 75.3

There is too much attention to confidentiality and in the absence of a clear binding framework endless time could be spent on litigation. Also, there seems to be a lack of transparency and perceptions of misdeeds could easily arise.

Page 41, 77.1

This is very vague. More clarity is needed.

Page 41, 77.2

What does this mean?

Page 103 “Commission”

Is there a separate document describing the composition and operation of the Commission? How will it be staffed? What will its budget be? Will it conduct hearings? Will there be a formal process for interested parties to submit objections and be heard?

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