Szczecin, 22 November 2017

Comments provided by the Interoceanmetal Joint Organization IOM to the document "Draft regulations on exploitation of mineral resources in the Area"

Part 1 – specific comments

Reg.	Point	Page	Comment
1	4	2	The regulation requires additional directive or recommendations for preventing and resolving possible conflicts between the rights of marine scientific research and exclusive rights for exploitation in the areas of possible mining operations. The Article 240 of the Convention provides merely *General* principles for the conduct of marine scientific research, in particular, point c) requires further and more formal clarification of the used term *unjustifiably interfere*. As a minimum, a reporting system can be created ensuring the control (not restriction) of the Authority at least in the areas of possible mining operations or being a subject of exclusive rights for exploitation or exploration. Better version of regulations would provide a reporting system and some sort of interference possibility assessment with mining and exploration operations. Such a reporting system should be introduced for the conformity with the existing draft regulation in the Annex V - Environmental Impact Statement Template point 6.2.4 Marine Scientific Research, where it can be read: *An outline of the current scientific research programs taking place in the area should be provided here.* Without a reporting system, there is no information about ongoing research programmes in the application area unless they are carried out by an applicant.
2	5	3	The term *lead member* requires clarification or definition at least. Leadership may mean different categories, not necessary connected with the controlling. Moreover, in the case of a consortium of States operating on the principle of an intergovernmental agreement (intergovernmental organization) there is as a rule no leader, e.g. IOM that effectively carries out exploration. Instead, something like the following could be proposed: *In the case of a consortium or any group referred to in regulation 2(1), the applicant shall specify in its application the management system and the manner of representation.*
2	6	3	It is not clear from this provision whether only an applicant with approved plan of work for exploration is entitled to apply for exploitation within the considered application area covering exploration and exploitation activities. In particular the last part of the regulation: *except for information collected prior to the entry into force of the Convention for the sponsoring State*. Does it mean that Convention might have entered into force at different times for different sponsoring States?

			Moreover, this regulation can be interpreted in a way precluding an application from an applicant (fulfilling other criteria) that acquired the rights for exploration from other entity under the agreement between the two. It is very likely that entities with the rights of exploration may wish to transfer their rights to other entities and additional provisions are needed for that particular situation – transferring the rights for exploration and resulting from effective exploration before the application for exploitation.
3	1	4	We suggest the following sentence should be added to the regulation: *The application of an international governmental organization controlled by a constitutional principal organ, established by a group of member States with the exclusive objective of exploration and exploitation in the Area, exercising supreme powers over the organization, shall be accompanied by a certificate of sponsorship issued by the constitutional principal organ.*
9	1	8	At least some prerequisites for such recommendation to the Council for Performance Guarantee deposited by an applicant should be proposed; otherwise, it is not clear why this point is needed at all. Is it for the purpose of some measure of insurance or risk mitigation if an applicant's performance is not satisfactory? If so prerequisites should be analyzed by the LTC before recommendation.
14	6	12	The general idea behind this regulation is fully justified; a contractor cannot work in the Area without sponsorship. However, it should be carefully analyzed because actual *suspension of mining operations* in the Area, taking into account the risks associated, predicted structure of the operational costs and cash flow regime may very likely result in the real life in the mining termination with little chances for recovering the production and all risks associated are included, including environmental.
20	2	16	We suggest replacing the phrase: *They shall remain open for comments for a period of no less than 60 days after posting* with the following: *They shall remain open for comments for a period of 60 days after posting*.
20	3	17	It should be considered whether an applicant "may revise" or "shall revise" with regard to the draft regulation 22. The process of revising of the EIS, EMMP and CP is not very clearly described in regulations 20, 21, 22. E.g. regulation 20 provides for Publication and Review, whereas there is another publication step of the revised plans in regulation 22, it is clear that the intention was to double-check the original plan and the revised one, we suggest joining the regulations 20, 21 and 22 into one regulation, describing consecutive steps.
22	1-8-3	17,18	Wrong numbering of points, 3 at the end after 8.
27	1(b)	20	Insurance cost should be recognized for the proper considerations of contractor's economic models ongoing now in the Authority. Probably, some kind of common insurance conditions valid for all contracts should be proposed in further regulations. It is not clear if there is now market for such kind of insurance. Discussion and justification is needed for such a long period of 10 years.

51	Def.	31	Definition of the Valuation Point is ambiguous. Whereas the "sales point" is reasonably clear, the second part of the definition is unclear. The concept of "transfer" cannot be defined by the "point" as they are different categories. At least the following revision replacing existing definition is suggested: *Valuation Point is the point of first sale or the first point of transfer of the mineral-bearing ore delivered onto a vessel transporting the ore from the Contract Area.*
61	1(a)	34	The concept of "wet metric tonnes" and "wet nodules" is a statistical geological category that may vary during extraction and storing onboard. In other words, "wetness" may have different levels and this will certainly result in different results of actual weighting. Moreover, the process of weighting ores in large quantities at sea is not technically obvious with sufficient accuracy. In ports, the actual weighting is carried out by so-called draft survey procedure in calm water. At sea, in the environment of waves, a ship's hull deformations and motions can create much more uncertainty to the method. Most likely, the problem can be sorted out with the use of some new methods. We suggest here an additional technical analysis and probably later in the process of regulation development, a specific technical procedure can be proposed.
81	d,e	44	Definition of flag Sate is needed. E.g flag State - The flag state of a mining, transport or any other vessel taking part in mining operations executed in accordance with the exploitation contract - is the state under whose laws the vessel is registered or licensed.
85	4(h)	48	It is the usual practice that a contractor should not assume any expenses of the inspection since it might create possible conflict of interests.
88		50	Perhaps some provision for informing a contractor directly upon completion of the inspection can considered if any results of it require urgent measures to be taken.
Annex X	10/10.3	93	It should be clearly distinguished if the renewal is a process of application considered by the Authority (Council?) or a renewal based on the Secretary-General assessment that the Contractor complies with the conditions.