

Comments on ISA's "Draft regulations on exploitation of mineral resources in the Area" released August 2017 (ISBA/23/LTC/CRP.3*)

I. Introduction

Ifremer is a French institute that undertakes research and expert assessments to advance knowledge on the oceans and their resources, monitor the marine environment and foster the sustainable development of maritime activities. To carry out its missions, IFREMER designs and implements tools for observation, experimentation and monitoring and manages oceanographic databases.

Ifremer, on behalf of France, holds two contracts for exploration with the International Seabed Authority: a contract of exploration for polymetallic nodules in the Clarion-Clipperton Zone and a contract of exploration for polymetallic sulphides over the Mid-Atlantic Ridge.

Ifremer would like to thank the Authority for inviting stakeholders to comment on these new draft regulations on exploitation of mineral resources in the Area and is pleased to provide its comments on the draft. Ifremer's submission includes comments in response to the general and specific questions raised by the Commission (respectively section II and section III of this document) as well as additional comments on the draft regulations (section IV).

Ifremer gives its express consent to the International Seabed Authority to make this submission publicly available.

II. Comments on the General questions from the Commission

1. Structure and flow

From a general point of view, the draft regulations follow a logical structure and flow although there may be some modifications made to further improve the structure of the Regulations. For example, Part XI Inspections could be moved just after Part V Obligations of the Contractor and the Parts related to Financial terms and administrative fees could be brought together or one following the other.

2. Clear, concise and unambiguous manner

Although the draft regulations are clear and concise in general, there remain some ambiguous matters and areas that need further consideration.

It seems for example ambiguous whether or not recommendations that will be issued by the Authority will be legally binding or not. As these regulations will be supplemented by recommendations and procedures (as stated in Draft Reg. 1.(5)) to provide the required

operational details, it is important to be unambiguous across the regulations that such recommendations will be legally binding. Current drafting where Recommendations and Good Industry Practice are sometimes differentiated in the draft regulations (although the Good Industry Practice definition provided in Schedule 1 encompasses the Authority's recommendations) adds ambiguity on which texts will be legally binding.

The environmental Part of the draft regulations appears to be at an initial stage and will need further work to better define environmental principles and obligations that will apply to the exploitation stage. The general principles should take into account international legal instruments to avoid adverse impacts on the marine environment, such as UN resolution 61/105 (in particular section X) and its implementations to conserve and manage Vulnerable Marine Ecosystems. These general principles also need to be operationalized and periodically updated to follow the latest regulations and scientific knowledge. This would in particular include further clarification in regards to Environmental objectives that will have to be met by contractors and against which applications will be assessed by the Authority and performance tracked during the life of the contract. Further detailed comments are also provided in section IV of our submission.

6. Exploration regulations and regime

As mentioned in our comment to question 2., further work is required on the environmental part of the draft regulations. Developing recommendations on environmental matters for exploitation, as exist for the exploration (ISBA/19/LTC/8), could be very helpful in advancing this work.

III. Comments on the Specific questions from the Commission

3. Plan of work

Draft Reg.4.3.(a) specifies that the application shall be accompanied by a pre-Feasibility Study prepared in accordance with Annex II of the Regulations.

Draft Reg.29.1.(a) indicates that a contractor has to deliver a Feasibility Study to the Secretary General at least 12 calendar months prior to the proposed commencement of production in a Mining Area. The content of such Feasibility Study is however not defined and should be added as an Annex to the Regulations (as per the pre-Feasibility Study).

In addition, such Feasibility Study should be part of the Contract and be listed as one of the Schedules (Annex IX) and one of the elements of the Plan of Work as listed in Annex X Section 3.2.

4. Confidential information

Ifremer does not have any comment on and agrees with the definition given in Draft Reg. 75.

IV. Additional comments

1. Environmental matters

- **General principles Draft Reg. 17:**

- These general principles should be further developed and could for example include the Mitigation Strategy (Avoidance; Minimization; Rehabilitation/restoration; Offset).
 - Draft Reg. 17(e) states that “Access to data and information relating to the protection and preservation of the Marine Environment, accountability and transparency, and effective public consultation shall be encouraged”. The regulation could be made more binding.
- **“Environmental Impact Area”**: The draft regulations contain multiple references to the “Environmental Impact Area” (draft Reg. 19(2), draft Reg. 32(4), Annex IV, Annex VII). The proposed definition (Schedule 1) states inter alia that the “Environmental Impact Area” means that area of the Marine Environment where Environmental Effects (direct, indirect, or cumulative) are likely to occur as a result of Exploitation Activities.

However, impact assessment and monitoring would require to have knowledge and to monitor areas such as the Preservation Reference Zone which shall by definition not be impacted (being direct or indirect impacts) by the mining activities.

Therefore restricting the results of the EIA (Reg. 19(2.a)), the description of the existing status of the environment (Annex IV (d)) and the proposed location of the monitoring stations (Annex VII (h)) to the “Environmental Impact Area” as currently defined does not seem sufficient and consistent with existing definition of the Preservation Reference Zone and discussions held at the Berlin workshop. Some instances of the use of the “Environmental Impact Area” term may therefore need to be completed and or replaced by other terms (such as contract area or environmental impact assessment study area).

- **Consideration of the Environmental objectives in the assessment and approval of an application by the Commission**: Draft Reg. 7(4) and draft Reg. 21, which are cross-referenced, indicate that the application/plan of work (including EIS, EMMP and CP) will be assessed to verify if it provides for the effective protection of the Marine Environment in accordance with Article 145 of the Convention. Shouldn't the Regulations contain further details to operationalize this criteria and guide the assessment by the Commission (these details could for example include verification that the general principles defined in Reg. 17 have been applied by the applicant)?
- **Environmental Impact Statement**: Draft Reg. 19.2.b (“An environmental risk assessment in accordance with Good Industry Practice) should be completed by “and Recommendations issued by the Commission”. Otherwise, Good Industry Practice could be moved to Draft Reg. 19.1. (see also comment II.2. regarding recommendations and Good Industry Practice).
- **Review of Environmental Impact Statement**, draft Reg. 20: Further to the publication of the EIS, EMMP and CP for comments by Interested Persons (draft Reg. 20 (2)), it could be added that the applicant shall provide a report answering the comments made by Interested Parties and by the Secretary-General. This would add to the transparency of the process and would explain why the applicant has or has not revised the EIS, EMMP

and CP in response to the comments (draft Reg. 20(3)). Such report should also be published on the Authority's website.

- **Environmental Impact Statement Template (Annex V):** As is the case under some national legislation regarding environmental assessment, the guidance given in item 15 of the EIS template (Study team) could be further defined by adding that it should provide the name, occupation, qualification of the experts that have prepared the EIS and the studies that have contributed to the EIS.
- **Temporary suspension in production to protect the Marine Environment:** If draft Reg. 32(2) has been triggered to protect the Marine Environment, there should probably be additional requirements to the current notice that is required under draft Reg. 32(5). If production has been reduced/suspended for environmental reason there should indeed be sufficient information given to the Secretary-General to ensure that the environmental issue that triggered such reduction/suspension has been addressed and that resuming the production will not pose a new environmental risk.

2. Exploitation contracts

- **Term of exploitation contracts and renewal:** Draft Reg. 13 (and Annex X Section 10) states that an application to renew an exploitation contract shall be made no later than one year prior to the expiration of the initial period. It also states conditions that have to be satisfied for the renewal of an exploitation contract. However, the draft regulations do not provide information on the expected content of a renewal application.

As such a renewal is likely to imply a modified Mining Plan (with potentially new /modified mining areas within the contract area), it could be necessary to detail the information that will be required for the assessment of the application in the regulations (and reflect these changes in Annex X). This should likely include a revised Plan of Work including Mining Plan, EMMP and CP. Assessment to such revised Plan of Work could then be linked to draft Reg. 46 related to Modification of a Plan of Work for Exploitation by a Contractor.

- **Annual reporting:** Although the detailed requirements of the annual reporting may be dealt with in appropriate recommendations (as currently done for exploration with recommendation ISBA/21/LTC/15), it may be beneficial to state in the draft Reg. 37 the key topics that will need to be covered in the annual report including exploitation metrics and environmental performance.
- **Contract and Schedules Annex IX:** Shouldn't schedule 8 be the standard clauses as stated in Annex IX A. and defined in Annex X rather than the "Terms and Conditions agreed between the Authority and the Contractor during the application approval process"?
- **Annex X, Section 3.2 :** for clarity and consistency, it may be better to list the items that are included in the Plan of Work in the same order as the Schedules in Annex IX (see also comment regarding the addition of a Feasibility Study/Mining plan in the list).

- **Annex I Application for approval of a plan of work to obtain an exploitation contract:** It may be useful in Section V Attachments to either list the minimum required attachments or to state that the attachments should at least include the ones defined in the appropriate Regulation (draft Reg. 4).

V. Contact details

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