

Briefing paper on conceptual topics related to the environmental matters

Facilitated by Dr. Raijeli Taga

I. Background

1. As it appears from the Indicative Programme of Work for the first part of the twenty-ninth session, four conceptual topics relating to environmental matters will be discussed within the Intersessional Working Group on the Preservation and Protection of the Marine Environment.
2. The following briefing paper sets out the proposed structure of these meetings, what the focus areas will be, and what the objectives are.

II. The Environmental Compensation Fund

3. Half a day has been allocated for the discussions of the Environmental Compensation Fund.
4. The discussions of the regulations on the Environmental Compensation Fund in the draft exploitation regulations have been ongoing. The significance of the Environmental Compensation Fund has been stressed by many delegations, and many details have been added since the original wording of Regulations 54 to 56 were presented, including procedures for the Fund and the modalities of operation.
5. It is now necessary to finalize these deliberations and focus on the purpose of the Fund and its funding. The objective of the meeting is to discuss and finalize the drafting of Regulations 54 to 56.
6. Valuable guidance can be found in the ITLOS Seabed Dispute Chamber Opinion of 1 February 2011. Delegations should also recall the ISA [Technical Study no. 27](#), which is entitled Study on an Environmental Compensation Fund for Activities in the Area. This Study is a useful background source of information.
7. In preparation, some guiding questions are provided, that might help clarify and prepare for the discussions:
 - (a) What kind of damage is to be compensated?
 - (b) How will the funds and any interest generated be managed and by whom?
 - (c) Whom is to be compensated?
 - (d) The standard of proof that will be required to access the fund
 - (e) What happens if there is damage to the environment before the money is paid?
 - (f) What elements should be addressed in the Regulations and what parts should be covered in the Standard and Guidelines, or in rules and procedures of the fund?

III. Test mining

8. Two hours have been allocated to the further negotiations of Regulation 48 ter on Test Mining.

9. Valuable work has been carried out by the Intersessional Working Group on Test Mining, and the [outcome reports and related documents](#) can be accessed via the Authority's website.

10. The rationale put forward by the proponent of the proposal is the wish for imposing an obligation on the contractor to provide evidence by data of "field experiments" that an effective protection of the marine environment is ensured when applying the envisaged technique ([outcome report](#)).

11. It will be necessary to discuss the concept of test mining, and especially the timing of when such test mining must be carried out. In this regard, delegations are asked to consider the following guiding questions:

- (a) What is the purpose of test mining?
- (b) Is the aim to inform the Environmental Impact Assessment?
- (c) Is test mining required before or after the approval of a plan of work?
- (d) Should there be a choice to have test mining prior to or after the approval of a plan of work?
- (e) How should it be regulated?

12. The objective of the meeting is to clarify these questions and get a better understanding of the overall concept of test mining. Furthermore, the aim is to reach consensus on some of the outstanding elements in Regulation 48 ter.

IV. The Environmental Impact Assessment and the Environmental Impact Statement

13. 1,5 hours have been allocated to the further negotiations on the Environmental Impact Assessment (EIA) and the Environmental Impact Statement (EIS).

14. The Intersessional Working Group related to streamlining the structure of the EIA provisions have conducted valuable work. The [outcome reports and related documents](#) can be accessed via the Authority's website. This includes (in annex 1 to the report) an overview of the placement hierarchy criteria for structuring the different provisions in either Draft Regulations, Annexes or in relevant Standard or Guidelines. Furthermore, joint proposals have been received on Part IV, section II, annex III bis and Annex IV, and this with a focus on the allocation of EIA provisions to their appropriate and logical locations across the Regulations, Annexes, Standards and Guidelines. This with an aim to increase the usability of the EIA provisions for all parties and allow Council to discuss the content instead of the structure. This also includes moving relevant parts of Regulation 47 bis on the Scoping Report, and Regulation 48 on the Environmental Impact Statement to the relevant Annexes.

15. Based on these structural proposals, the relevant parts of the Regulations and Annexes have been updated in the consolidated text, and delegations are thus invited to continue the deliberations on the substance of the EIA process.

16. The objective of this meeting is to reach consensus on the proposed restructure and agree on a way forward to finalize the substantive work in relation to the EIA and EIS process.

V. Regional Environmental Management Plans

17. 1,5 hours have been allocated to the deliberations on the legal nature of Regional Environmental Management Plans (REMPs).

18. REMPs are area-based management tools that are important to ensure the protection and conservation of the marine environment. The REMPs provide the relevant organs of the Authority, Contractors, Sponsoring States and other stakeholders with a proactive area-based management tool to support informed decision making. A tool that balances resource development with conservation. REMPs also provide the Authority with a clear and consistent mechanism to identify particular areas which are believed to be representative of the full range of habitats, biodiversity and ecosystem structures and provide those areas with appropriate levels of protection. The REMPS establishes principles, goals and objectives and identifies area based and other management measures, as well as an implementation strategy.

19. During the development of the Regulations, several references have been made to REMPs and this in different ways. For example, in Regulation 44 bis, it is suggested that the prior existence of a REMP in the relevant area, is a prerequisite for the granting of an exploitation contract in the Area. In addition, Regulation 50 bis (previous Regulation 46) envisages that the environmental management systems of Contractors should consider the relevant REMP.

20. It is thus necessary to further discuss and consider the legal consequences for Contractors following from REMPs and to streamline the references to REMPs in the Regulations. Delegations are invited to consider the following guiding questions:

- (a) How should the Contractors' Environmental Management and Monitoring Plan and Environmental Management System be coordinated with the relevant REMP?
- (b) How can legal consequences be imposed on the basis of REMPs, in particular concerning exploitation activities?

1 March 2024