

Discussion paper

DEVELOPMENT OF REGIONAL ENVIRONMENTAL
MANAGEMENT PLANS BY THE INTERNATIONAL SEABED
AUTHORITY AND THEIR LEGAL STATUS



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ABBREVIATIONS

APEI	area of particular environmental interest
CCZ	Clarion-Clipperton Zone
ISA	International Seabed Authority
LTC	Legal and Technical Commission
REMP	Regional environmental management plans
RRPs	rules, regulations and procedures
UNCLOS	United Nations Convention on the Law of the Sea

EXECUTIVE SUMMARY

Regional environmental management plans (REMPs) are critical in safeguarding marine environments and are integral to the International Seabed Authority's (ISA) environmental strategy. This briefing paper examines the legal basis and status of REMPs within the framework of the United Nations Convention on the Law of the Sea (UNCLOS) and the 1994 Agreement.

While REMPs are not explicitly mentioned in UNCLOS, their approval by the ISA Council is based on Articles 162(1), 145 and 209(1) of UNCLOS. UNCLOS, Article 162(1) grants the Council authority to establish specific policies, making REMPs a valid pursuit within the ISA's mandate. However, it is essential to distinguish between binding legal instruments, i.e. rules, regulations and procedures and specific policies. REMPs have traditionally been approached as policy documents. The Legal and Technical Commission has relied on UNCLOS, Article 165(2)(e) to recommend REMPs to the Council, reinforcing their policy nature. The treatment of REMPs as policy instruments ensures legal certainty and flexibility in their implementation.

The fact that REMPs do not have a legal status similar to regulations or rules does not prevent ISA from giving effect to them. REMPs serve as proactive area-based management tools, balancing resource development with conservation. They guide decision-making, establish conservation measures and identify protected areas, contributing to meeting international environmental targets. The implementation of REMPs is dynamic, allowing for continual improvement based on scientific data and stakeholder input. While not legally binding, REMPs influence ISA's decision-making process, particularly in approving plans of work for exploration and exploitation activities. Draft regulations governing exploitation activities recognize the importance of REMPs, ensuring plans of work align with environmental objectives. Contractors are expected to cooperate with ISA, which entails a consideration of REMPs in performing their obligations.

While REMPs are policy instruments rather than regulations, they are duly considered in ISA's decision-making processes. They ensure flexibility, adaptability and effective environmental management in the supervision of activities in the seabed area, aligning with international legal frameworks and promoting sustainable resource utilization.

1. INTRODUCTION AND BACKGROUND

1. Regional environmental management plans (REMPs) are essential tools to ensure the protection and preservation of the marine environment. They constitute important elements of the environmental strategy of the International Seabed Authority (ISA).
2. The purpose of this briefing paper is twofold. First, it addresses the legal basis of the approval of REMPs by the ISA Council within the framework of the United Nations Convention on the Law of the Sea (UNCLOS) and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (the 1994 Agreement), with a view to analysing their legal status. Second, the note turns to the means of giving effect to REMPs in relation to “activities in the Area” as defined in UNCLOS in the light of their legal status. The annex provides a brief overview of the ISA’s work on REMPs since 2018, when the ISA Secretary-General presented the Preliminary strategy for the development of REMPs for the Area to the Council.¹

2. LEGAL BASIS AND THE ISSUE OF BINDING FORCE

3. REMPs are not mentioned in UNCLOS or in the 1994 Agreement. In approving the first REMP for the Clarion-Clipperton Zone (CCZ), the Council referred to UNCLOS, Articles 162(1) and 145 as the legal bases of its approving decisions.² As per Article 162(1), it is within the Council’s prerogatives “to establish, in conformity with [UNCLOS] and the general policies established by the Assembly, the specific policies to be pursued by [ISA] on any question or matter within the competence of [ISA].” As such, REMPs qualify as “specific policies to be pursued by [ISA].”
4. Given that Article 162(1) allows the adoption of “specific policies” only on “questions” or “matters” which are within the “competence of [ISA],” it is evident that this provision alone does not provide a sufficient legal basis for the adoption of REMPs on its own. UNCLOS, Article 209(1) clearly states that ISA has competence in matters of “prevention, reduction and control of pollution of the marine environment from activities in the Area.” “Rules, regulations and procedures” (RRPs) are legal techniques through which ISA exercises this competence, according to Article 209(1). Article 145 gives effect to Article 209(1). It imposes the specific obligation on ISA to adopt appropriate RRP for the prevention, reduction and control of pollution and, adding in this respect to the language of Article 209, of hazards other than pollution. It is also clear from the language of Article 145 that RRP are not necessarily the only categories of “necessary measures” ISA may take. Accordingly, in adopting the REMP for the CCZ, the Council also relied on Article 145, recognizing that REMPs are “necessary measures” for the purposes of Article 145.³
5. It emerges from the above that there is a clear distinction to be drawn between RRP, on the one hand, and “specific policies” referred to Article 162(1), on the other. “RRP” are binding instruments of international

1 ISA. 2018. Preliminary strategy for the development of regional environmental management plans for the Area: Report of the Secretary-General ([ISBA/24/C/3](#)).

2 ISA. 2012. Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone ([ISBA/18/C/22](#)), p. 1.

3 Ibid.

law, as recognized by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea.⁴ In contrast, there is no support in UNCLOS for the suggestion that “specific policies” (for the purposes of Article 162(1)) or all “necessary measures” (for the purposes of Article 145) – of which REMPs represent an example – should be binding legal instruments.

6. Consistent with the above distinction, when making its recommendation to the Council on the approval of the REMP for the CCZ, the Legal and Technical Commission (LTC) relied upon Article 165(2)(e) of UNCLOS pursuant to which it is the responsibility of LTC to “make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field.” In order to adopt binding measures, Article 165(2)(f) would have been the legal basis for the LTC to formulate and submit RREPs to the Council.⁵ The review of the REMP for CCZ has also proceeded on the basis of Article 162(2)(e).⁶ However, the draft REMP for the Area of the northern Mid-Atlantic Ridge with a focus on polymetallic sulphide deposits merely refers to Article 165(e) in more general terms, as follows:

[P]ursuant to article 165 of [UNCLOS], the [LTC] of [ISA] is responsible for making recommendations to the Council on the protection of the marine environment, with respect to relevant [RRPs], as well as a monitoring programme on the risks and impacts on the marine environment resulting from activities in the Area. In addition, [LTC] is responsible for keeping under review the [RRPs] on activities in the Area.⁷

7. If, by virtue of the regulations, REMPs were designated as binding legal instruments directly applicable to contractors, that would arguably amount to the creation of another sui generis category of binding instruments not envisaged in the framework of UNCLOS. It would be at least arguable that the creation of such a new, purportedly binding regulatory instrument by ISA may amount to an ultra vires act. From a legal standpoint, this would not be a desirable outcome, as it may expose any purportedly binding REMP to a challenge by a contractor if ISA were to enforce a REMP as such against the contractor. Similarly, if applications for the approval of plans of work were to be rejected with reference to REMPs per se (as opposed to the requirements of UNCLOS or the pertinent regulation), that may give rise to an argument that the decision to that effect rests on questionable legal grounds. Therefore, it is preferable to preserve legal certainty and to give effect to REMPs within the parameters of incontrovertibly binding regulatory measures, which are expressly provided for in UNCLOS and the 1994 Agreement. Contractors are not entitled to contest the validity of these measures under Article 189 of UNCLOS which encompass “RRPs” as well as contracts concluded pursuant to the regulations.
8. There is some ambiguity in the various proposals regarding what is meant by conferring a “binding” character on REMPs. A number of the relevant proposals suggest that the contents of REMPs may become “binding” as such either by declaring REMPs to be binding or by qualifying them as “regulations” or “quasi regulations.” An obvious difficulty with this approach is that drafting a normative instrument intended to regulate conduct is, by its nature, different than drafting a policy instrument. A legal norm has to have designated addressees. Its language should allow parties consulting it to understand what is permissible and what is prohibited

4 International Tribunal for the Law of the Sea. 2011. [Reports of judgments, advisory opinions and orders. Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area](#), p. 10, para. 60.

5 See ISA. 2018. Relationship between the draft regulations on exploitation of mineral resources in the Area and regional environmental management plans: Note by the secretariat ([ISBA/25/C/4](#)), para. 2.

6 ISA. 2021. Decision of the Council of the International Seabed Authority relating to the review of the environmental management plan for the Clarion-Clipperton Zone ([ISBA/26/C/58](#)), p. 1.

7 ISA. 2022. Regional environmental management plan for the Area of the northern Mid-Atlantic Ridge with a focus on polymetallic sulphide deposits: Issued by the Legal and Technical Commission ([ISBA/27/C/38](#)), para. 2.

conduct. This is a concern of legal certainty and the predictability of regulation. A policy instrument is drafted differently. It is addressed to the policymaker, emphasizes strategic objectives and its formulations are often deliberately less precise and generic to allow leeway for implementation. Consequently, if REMPs were to be treated as sources of law, i.e. as direct sources of rights and obligations of ISA, Member States and parties conducting activities in the Area, in addition to policy instruments, issues of interpretation and legal certainty may arise.

9. Alternatively, proposals on the “binding” character of REMPs may be construed as proposals to the effect that specific legal norms in the regulations or accompanying standards and guidelines shall include some reference to REMPs. There are provisions in the draft regulations which, in their present form, could function as “gateways” and provide grounds for the Council to give effect to REMPs, as described below.
10. Below, we address the function of REMPs and how REMPs do have an effect on all relevant actors, including ways in which their effect could be strengthened within the framework of existing regulatory instruments.

3. THE FUNCTION OF REMPs

11. In short, REMPs are area-based management tools devised to facilitate the exploitation of resources of the Area in an environmentally responsible manner.⁸ As explained in the Report of the Secretary-General on a Preliminary strategy for the development of REMPs for the Area:

[REMPs provide] a proactive area-based management tool to support informed decision-making that balances resource development with conservation. [REMPs] also provide [ISA] with a clear and consistent mechanism to identify particular areas thought to be representative of the full range of habitats, biodiversity and ecosystem structures and functions within the relevant management area and provide those areas with appropriate levels of protection, thus helping [ISA] to meet internationally agreed targets.⁹

12. In addition, it bears recalling the summary of the object and function of REMPs as defined by the LTC in its Guidance to facilitate the development of REMPs of 10 August 2022:

The purpose of a [REMP] is to set in place conservation and management measures and tools across the region in the Area to ensure the effective protection of the marine environment from harmful effects that may arise from activities in the Area, in accordance with article 145 of [UNCLOS] and the strategic plan of [ISA]. To this end, such a plan establishes principles, goals and objectives and identifies area-based and other management measures, as well as an implementation strategy.¹⁰

⁸ See ISA. 2011. Environmental Management Plan for the Clarion-Clipperton Zone ([ISBA/17/LTC/7](#)), para. 35, approved by the Council in ISA. 2012. Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone ([ISBA/18/C/22](#)).

⁹ ISA. 2018. Preliminary strategy for the development of regional environmental management plans for the Area: Report of the Secretary-General ([ISBA/24/C/3](#)), para. 5. The reference to internationally agreed targets should be construed as including, inter alia, the Aichi targets (as enumerated in the Strategic Plan for Biological Diversity 2011-2020, and adopted by the Parties to the Convention on Biological Diversity) and the 23 action-oriented global targets of the Global Biodiversity Framework.

¹⁰ ISA. 2022. Guidance to facilitate the development of regional environmental management plans: Report and recommendations by the Legal and Technical Commission ([ISBA/27/C/37](#)), para. 5.

13. Over the last decade, ISA has continually and progressively taken steps to develop and improve REMPs within the exploration regime. As mentioned above, Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone from 2012¹¹ approved the REMP for CCZ based on the recommendation of the LTC.¹² The following list is not intended to be an exhaustive summary of the REMP for CCZ, but it does include its key elements:
- a. Operational objectives include plans for the establishment of periodically updated baseline data for the entire region in question and plans for the requirement of undertaking cumulative environmental impact assessments as necessary based on exploitation proposals.
 - b. Recognition that the objective of the REMP is to facilitate the exploitation of seabed mineral resources in an environmentally responsible manner.
 - c. The management objectives include plans for the collection of data on environmental impact assessments from contractors and other sources, plans for the application of ISO standards on the certification of environmental management plans, or plans for the designation of the required preservation reference zones.
 - d. The designation of a network of nine areas of particular environmental interest (APEIs) on the basis of robust scientific criteria adopted through a collaborative process involving relevant stakeholders. Such networks and other area-based management tools identified in the context of regional plans have great potential to contribute to the effective conservation and management of biodiversity in marine areas beyond national jurisdiction and to help build the resilience of deep-sea benthic ecosystems to the impacts of climate change on the ocean. In addition, those areas may serve as scientific reference areas for monitoring natural variability and long-term change in the marine environment, which will be particularly important for enabling ISA to carry out its responsibility to manage the effects of mining activities.
 - e. The designation of priority actions for the ISA Secretariat, particularly regarding a standardized approach to data compilation and management.
 - f. The Council decided that the plan would be applied flexibly and dynamically so that it could be improved as more scientific, technical and environmental baseline and resource assessment data were supplied by contractors and other interested bodies. This militates against treating REMPs as binding legal instruments, which may not allow for this intended flexibility in application.
14. The above overview clearly shows key elements of the REMP for the CCZ have been framed as “objectives” and were articulated in the language of a policy instrument as opposed to a purportedly binding legal norm.
15. In line with the provisions contained in the CCZ plan, the LTC issued a Review of the implementation of the

11 ISA. 2012. Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone ([ISBA/18/C/22](#)).

12 See ISA. 2011. Environmental Management Plan for the Clarion-Clipperton Zone ([ISBA/17/LTC/7](#)), ISA. 2019. Decision of the Council of the International Seabed Authority relating to an environmental management plan for the Clarion-Clipperton Zone ([ISBA/17/C/19](#)) and ISA. 2012. Summary report of the Chair of the Legal and Technical Commission on the work of the Commission during the eighteenth session of the International Seabed Authority ([ISBA/18/C/20](#)).

environmental management plan for the CCZ in 2016¹³ and identified further actions in its Review of the implementation of the environmental management plan for the CCZ in 2021.¹⁴ In 2021, the Council further adopted a Decision of the Council of the ISA relating to the review of the environmental management plan for the CCZ, including the designation of four additional APEIs to enhance the effectiveness of the network of APEIs.¹⁵

4. GIVING EFFECT TO REMPs IN THE SUPERVISION OF ACTIVITIES IN THE AREA

16. As explained in section III, REMPs are not RRs and are not sources of binding legal norms. At the same time, they qualify both as “necessary measures” for the purpose of Article 145 and “specific policies” for the purpose of Article 162. However, the adoption of “specific policies” is not without legal consequences in the framework of UNCLOS and the 1994 Agreement. Article 162 provides that “specific policies” are “to be pursued by [ISA].” As such, ISA is required to pursue the policy identified in a REMP. Accordingly, its organs should not depart from it without first amending a REMP. This is not necessarily the consequence of the binding nature of REMPs per se but of the obligation under UNCLOS to “pursue” policies once they are adopted.
17. At the same time, REMPs may include plans and policies that impact the conduct of parties other than the ISA organs, particularly Member States and contractors. This raises the question of the legal status of any such plans and policies. For example, in the draft REMP for the Area of the northern Mid-Atlantic Ridge, several paragraphs are dedicated to the reporting of contractors, management measures and measures concerning particular sites within the contract area. However, even where REMPs contain such provisions, such wording does not indicate the inclusion of legally binding obligations for third parties. To take one example, the REMP for the CCZ defines as its “operational objective” to “[p]rovide a degree of certainty to existing and prospective contractors by laying out the location of areas closed to mining activities.”¹⁶ The Council gave effect to this part in deciding that “for a period of five years from the date of the present decision or until further review by the [LTC] or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in [APEIs] referred to in the annex.”¹⁷ This illustrates that the Council can give effect to protection of “areas closed to mining activities” in its decisions. The implementation of REMPs in this manner does not change their legal character. These remain formulations of policy directed at ISA and its organs and given effect by the Council in its decision-making.
18. The fact that REMPs do not have a status similar to regulations does not undermine ISA’s ability to give effect to REMPs and the policies and plans that they contain. Since the Council is required to pursue the policy enshrined in REMPs under Article 162, it is required to proceed on this basis when processing applications for a plan of work. There are no rules to prevent the Council from having recourse to REMPs

13 See ISA. 2016. Review of the implementation of the environmental management plan for the Clarion-Clipperton Fracture Zone: Prepared by the Secretariat ([ISBA/22/LTC/12](#)).

14 ISA. 2021. Review of the implementation of the Environmental Management Plan for the Clarion-Clipperton Zone: Report and recommendations of the Legal and Technical Commission ([ISBA/26/C/43](#)).

15 ISA. 2021. Decision of the Council of the International Seabed Authority relating to the review of the environmental management plan for the Clarion-Clipperton Zone ([ISBA/26/C/58](#)), p. 1.

16 ISA. 2011. Environmental Management Plan for the Clarion-Clipperton Zone ([ISBA/17/LTC/7](#)), para. 39.

17 ISA. 2012. Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone ([ISBA/18/C/22](#)), para. 6.

in carrying out its mandate in respect of approving or supervising exploitation activities. It is useful to refer to the example of the Regulations on prospecting and exploration for polymetallic nodules in the Area (Exploration regulations). Pursuant to the Exploration regulations, in assessing a plan of work for exploration, the LTC is required to assess whether the plan of work provides for the protection and preservation of the marine environment. If the exploitation regulations were to include an analogous regime as the current draft regulations under consideration indeed envisage,¹⁸ the LTC and, upon its recommendation, the Council would have to give effect to the REMPs when assessing plans of work. Their failure to do so would amount to a failure to “pursue” a previously adopted policy in accordance with Article 162(1).

19. The Draft regulations on the exploitation of mineral resources in the Area (Draft Exploitation Regulations) are intended to govern inter alia (a) the legal relationship between ISA and contractors as well as (b) the rights, obligations and procedures of ISA in carrying out its responsibilities. Draft Exploitation Regulations 18 and 18bis provide that contractors have to carry out their obligations in accordance with approved plans of work. In considering applications for the approval of plans of work pursuant to what are now Draft Exploitation Regulations 13 and 15 ensuring that REMPs are taken into consideration, REMPs will be given effect since approved plans of work, by definition, cannot be inconsistent with them. Otherwise, they are never approved. Draft Exploitation Regulation 50 envisages that the environmental management systems of contractors should give effect to the “environmental objectives” of ISA, which are to be elaborated in standards and may include reference to REMPs. These provisions may serve as sufficient gateways for ISA, particularly its Council, to apply in a flexible and dynamic fashion, as emphasized above, REMPs and all other policy instruments.
20. A further means of giving effect to REMPs may be to include appropriate references to them in the standard terms of the contracts concluded with contractors. To recall, the legal relationship between ISA and the contractors is governed by the respective contract and the applicable law thereunder, i.e. UNCLOS, 1994 Agreement, ISA RRP and other rules of international law not incompatible with UNCLOS, pursuant to Article 21 of Annex III. It may also be arguable that, as a matter of general international law and UNCLOS, a duty to cooperate in good faith with ISA in implementing the policies enshrined in REMPs would be incumbent on contractors even in the absence of a specific reference to REMPs. There is some precedent in the ISA practice for this approach in the context of the Guidance to facilitate the development of REMPs: Report and recommendations by the LTC.¹⁹ The contractors’ duty to cooperate with ISA and proceed in good faith entails an obligation to apply the recommendations for guidance issued by the LTC as far as reasonably possible and to disregard them would arguably amount to a breach of contract. In the same vein, it would be an untenable argument from contractors to suggest that in performing their duty to cooperate with ISA, they can disregard the content of REMPs.

¹⁸ See ISA. 2024. Draft Regulation 13(4) of the President’s Consolidated Text ([ISBA/29/C/CRP.1](#)).

¹⁹ ISA. 2022. Guidance to facilitate the development of regional environmental management plans: Report and recommendations by the Legal and Technical Commission ([ISBA/27/C/37](#)), para. 5.

5. CONCLUSION

21. It follows from the foregoing analysis that while REMPs are policy documents similar to regulations as opposed to quasi legislative measures with binding force, this does not undermine ISA's and, specifically, the Council's ability to give effect to the policies reflected in REMPs in the context of its decision-making when carrying out the supervision of activities in the Area. This approach also avoids the need of subjecting REMPs to a "codification" exercise similar to regulations. It allows their text to retain adaptability and flexibility, rendering them suitable to form the basis of the Council's decisions as a policy instrument.

ANNEX I. OVERVIEW OF ISA'S WORK ON REMP_s



1. Building on experiences in establishing and implementing the environmental management plan for the CCZ, the Council requested the LTC and the Secretariat to make progress in developing similar plans in other parts of the Area. At its twenty-fourth session in March 2018, the Council took note of a strategy proposed by the Secretary-General for the development of REMP_s for key mineral provinces in which exploration activities under contracts are carried out.²⁰ Following its consideration, the Council agreed on the priority areas identified on a preliminary basis: the Mid-Atlantic Ridge, the Indian Ocean triple junction ridge and

²⁰ ISA. 2018. Preliminary strategy for the development of regional environmental management plans for the Area: Report of the Secretary-General ([ISBA/24/C/3](#)).

nodule-bearing province, as well as the Northwest Pacific and South Atlantic for seamounts.²¹ The Council also noted that the strategy laid out a coherent and coordinated approach to the process and identified it is essential that REMPs are developed transparently under the auspices of ISA in light of its jurisdiction under UNCLOS and the 1994 Agreement. The development of REMPs became an essential element of the Strategic plan of ISA for the period 2019-2023 adopted by the Assembly in 2018²² and, subsequently, a central part of the High-level action plan adopted by the Assembly in 2019.²³

2. At its twenty-fifth session in 2019, the Council took note of a report by the Secretary-General on the implementation of ISA's strategy for the development of REMPs for the Area,²⁴ including a programme of work to develop the REMPs through a series of expert workshops. In line with the approach outlined, between 2018 and 2020, six expert workshops were convened by ISA in collaboration with various partner organizations to support the development of REMPs in priority areas, including the CCZ, the Mid-Atlantic Ridge and the Northwest Pacific.²⁵ Furthermore, as requested by the Council in Decision of the Council concerning a standardized approach for the development, approval and review of regional environmental management plans in the Area,²⁶ the LTC is preparing a guidance document to facilitate the development of REMPs, with a view to recommending to the Council for adoption a standardized approach for their development, including a template with indicative elements.²⁷ The first draft of the guidance document, which was presented to the Council at the twenty-seventh session, was developed based on previous experience from the LTC in developing and reviewing REMPs for various regions within the last decade. The Council requested the LTC to revise the draft standardized procedure, taking into account the Council's comments and submissions by Member States. During its twenty-eight session, the Council requested the LTC to prioritize this work.²⁸ The LTC is preparing the revised standardized procedure and template to be recommended to the Council.
3. In May 2023, a workshop has taken place on the development of the REMPs for the Indian Ocean in India and for the Northwest Pacific Ocean in February 2024 in Tokyo.

21 ISA. 2018. Statement by the President of the Council on the work of the Council during the first part of the twenty-fourth session ([ISBA/24/C/8](#)).

22 ISA. 2018. Decision of the Assembly of the International Seabed Authority relating to the strategic plan of the Authority for the period 2019–2023 ([ISBA/24/A/10](#)).

23 ISA. 2019. Decision of the Assembly of the International Seabed Authority relating to the implementation of the strategic plan for the Authority for the period 2019–2023 ([ISBA/25/A/15](#)), annex II.

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ISA. [Regional environmental management plans](#).

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ABOUT THE INTERNATIONAL SEABED AUTHORITY

Made up of 168 Member States and the European Union, ISA is mandated under the United Nations Convention on the Law of the Sea to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of humankind as a whole. In so doing, ISA has the duty to ensure the effective protection of the marine environment from harmful effects that may arise from deep seabed related activities.