
Stakeholder Submission On The Report Of March 2015
“DEVELOPING A REGULATORY FRAMEWORK FOR
MINERAL EXPLOITATION IN THE AREA”

ISBA/cons/2015/1

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Abbreviations

CCZ : Clarion-Clipperton Zone

CNRS: Centre National de la Recherche Scientifique (FR)

EIA: Environmental Impact Assessment

EIS: Environmental Impact Statement

EMP: Environmental Management Plan

ISA: International Seabed Authority

RRPs: Rules, Regulations and Procedures

SEMP: Strategic Environmental Management Plan

I. Presentation of eCOAST

eCOAST is an independent research centre specialized in the marine and coastal environment. It was founded at the end of 2009 as an initiative of Ghent University, and is based in Ostend, at the heart of Belgium's marine community. At eCOAST, we combine in-house expertise with the unique scientific knowledge and facilities of Ghent University for marine environmental sciences. We offer high-quality applied research and consultancy, combining desk-based research with laboratory and field experiments in the areas of:

- Aquaculture and sustainable fisheries
- Marine ecosystems and marine environment
- Ecological monitoring
- Marine Policy and Law
- Blue economy

In the past few years, eCOAST has been involved in European research projects related to maritime and marine environmental legislation, international marine policy as well as the interaction between policy makers on the one hand and the involved stakeholders on the other. Within this constellation, eCOAST acts as a go-between or bridging-facilitator – by identifying and translating relevant interests, demands and conflicting issues raised by stakeholders to policy-makers. And vice versa.

eCOAST & Deep Sea Mining

eCOAST is involved in the EU Horizon 2020 project 'Maribe', looking at offshore business models, including multi-use platforms and deep sea mining.

Another project of eCOAST looks into the development of the environmental policy and legislation of this new sector. This is an academic research project conducted by an employee of eCOAST, who is affiliated as a PhD candidate to the faculty of law of the University of Ghent (Belgium). The project looks into the environmental aspects of the legal framework in the Area, particularly focusing on the environmental impact assessment and management framework.

II. About Section 1 Executive Summary

We regret that no further work is planned yet on a mining inspectorate, nor on a revenue management by the Authority. We consider these elements just as critical as others in the exploitation framework. However we do not see the Enterprise as a priority.

III. About Section 2 Draft framework for the Exploitation Regulations

Form of applications – areas covered

With regards to the areas covered by a plan of work for exploitation, we encourage the Authority to engage in a constructive dialogue with contractors to better understand what will a mining project look like and what are the implications of requesting several plans of work or separate documents. An exploration area may well be divided in several exploitation areas, which may themselves be divided in distinct mining blocks and so on. Moreover, different contractors may have different approaches.

Considering the options proposed, option (2) sounds more reasonable. However, the requirement of providing separate documents for each exploitation areas should be flexible, considering that different exploitation areas may or may not have different physical characteristics and environmental conditions. Some characteristics might not be differing enough to justify requesting separate documentation.

The onus could be on the contractor to demonstrate the need / the absence of need to provide separate documents. To ensure the quality of an EIA and avoid “abuse” from applicants trying to reduce their costs by minimizing their application requirements, the RRP of the Authority could provide for a “pre-application” step. It is common in national mechanisms to find a scoping phase during which the scoping of an EIS is evaluated / negotiated / approved by the competent authority before the actual development of the EIS by the project developer is started.

Further information on EIA practice can be found, *inter alia*, in Glasson et al. (2013)¹, and in the UNEP guidelines on EIA (2004)².

Undertakings

The exploration regime has faced problems with regards to uniform and non-discriminatory application of the Mining Code to contractors, due to the contractual nature of the system. While the regulations have been amended in accordance with the evolution of the law and the increase of knowledge, the amendments couldn't be enforced to previous contractors having undertaken to respect the older version of the regulations. With the exploitation regime and all the unknowns of an “experimental” aspect of a new sector, the adaptive management approach, and all the additional knowledge gained from thorough monitoring during the life of a project, the improvement of the regulations and recommendations of the Authority is likely to be constant. However the Convention specifically provides that exploration and exploitation shall be authorised by the means of contracts, and thus not by another mean.

How is the Authority going to ensure that contractors comply with the most updated (and therefore the most adequate) RRPs? Is the current wording of article 13 of the standard clauses of the Exploration Regulations sufficient, and will it therefore be used for the exploitation regulations?

Data and information to be submitted for approval of the plan of work for exploitation

As suggested, we believe that the social impact study should be integrated with the EIS.

Environmental impact statement – costs and independent review (p.12, 17, 18)

On bullet point nr.1: We welcome the suggested independent verification of the EIA by an environmental consulting firm. However, we wonder how would this be put in place in practice? Who would pay for it (cf. comments p.17 of application fee)?

If the ISA would pay for it, this would ensure the choice of the firm and its independence, but we have doubts as to the capacity of the Authority to bear the costs. If the contractor would have to pay for it, on the other hand, the independence of the firm would be more difficult to ensure.

- One way could be for the Authority to provide with a pool of selected firms. The contractors could chose one of them and pay for its services, but the appointment and directions given to the firm would be left to the Authority.
- Another way is to estimate the costs of this verification and add it to the administration fees requested from the contractor with the application. After which the choice of the firm and its appointment are left within the hands of the Authority.

We would like to point out that along the draft framework, independent review / verification is suggested on several occasions. In terms of time and costs effectiveness, there might be a need to limit the independent review to one mechanism. If the independent expert / peer review suggested p.18 would be retained, then is there really a need for verification by and independent consulting firm on top of it? The verification by a firm, if its independence can be ensured, is probably an easier system to put in place. Indeed, setting up a review panel of experts would require more time and effort in selecting experts from various disciplines, who are willing to participate both for desk-based review and plenary meeting of the panel and produce an advice / commentary, considering that such experts would be doing this as an additional task to their usual occupation.

Environmental Management Plan

Same comment as above about EIS.

Public review of the EIS and EMP

We concur that public participation is an essential element of an EIA process. There is a necessity to ensure that the public submissions are adequately taken into consideration. To ensure this, specific procedures are needed (cf. comments about section 3), including but not limited to:

- a review of submitted responses;
- a formalised summary of what was relevant and what was not;

- how it was included in the final decision, or how it influenced the decision-making.

IV. About Section 3 Summary of the response of the LTC to Stakeholder Survey submissions

We believe that a more comprehensive response could be given to stakeholders with regards to consultation submissions. Although Section 2 refers occasionally to “stakeholders suggestions”, this gives very few information on how the Commission “took account of all submissions”.

While we understand the necessity to respect the confidentiality wishes of some respondents, it could be possible to provide with a better view of what elements of the draft framework originate from which stakeholders. The typical type of information in a response to stakeholders could include for instance whether one element of the draft framework emanates from one or a few responses, or from a general consensus, and which category of stakeholder made such a suggestion. It is also very likely that amongst the responses received, only some were relevant or selected. It would be much appreciated if the Commission could provide information on how they reviewed, assessed and selected the responses, and why they chose to consider or not the responses.

We would like to recall that, with the approval of the Environmental Management Plan for the CCZ by the Council in 2012 (ISBA/18/C/22), there is now an obligation for the ISA to “*enable public participation in environmental decision-making procedures in accordance with the Aarhus Convention and its own rules and procedures*” (ISBA/17/LTC/7, section C, par.13 (f)).

We thus encourage the Authority to look into the requirements and the national practice in implementing the Aarhus convention³, particularly its article 6 par. 8 & 9:

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

To this regard, we encourage the Authority to consider the EU legislation on the Aarhus Convention, and all the guidance documents produced in relation to its implementation⁴. We are hoping to see a more detailed declaration than this section 3 with the Council decision to be made this July.

V. About Section 4 Summary of high level issues

1. Information and data

We recognise the deficiency in data for the deep-sea environments and we therefore welcome the pressing recommendation to establish a “fit-for-purpose data management strategy” for the Authority.

However, we would like to point out that for 15 years, contractors have been conducting research, gathering data and knowledge, and submitting annual reports about it to the Authority. On top of that, scientific research has been conducted independently for decades on the deep-sea environments. Existing knowledge has been compiled and assessed by research associations and institutions – one recent example being the scientific collective expertise of 2014 requested by the French government to the Ifremer and the CNRS⁵.

While recognizing that there are still a lot of knowledge gaps, we would like to emphasize that there is nevertheless some knowledge, most likely scattered. The Authority has had over 15 years to collect, receive and manage data, and yet we are still at the stage of “recommending” that a data management system be set up. What happened to all these years of research and related results? Where / how is the data stored / treated? If anything has been done in this respect, then we clearly lack visibility about it.

We would like to seize this opportunity to recall that under article 143 of the LOSC, the ISA has the obligation not only to promote and encourage marine scientific research, but also “*to co-ordinate and disseminate the results of such research*”.

2. An interim framework

We welcome the flexibility adopted in the enormous task represented by the drafting of an exploitation framework. However, we would like to point out that knowledge gaps will continue being filled for decades – in fact probably many years after the closure of exploitation sites.

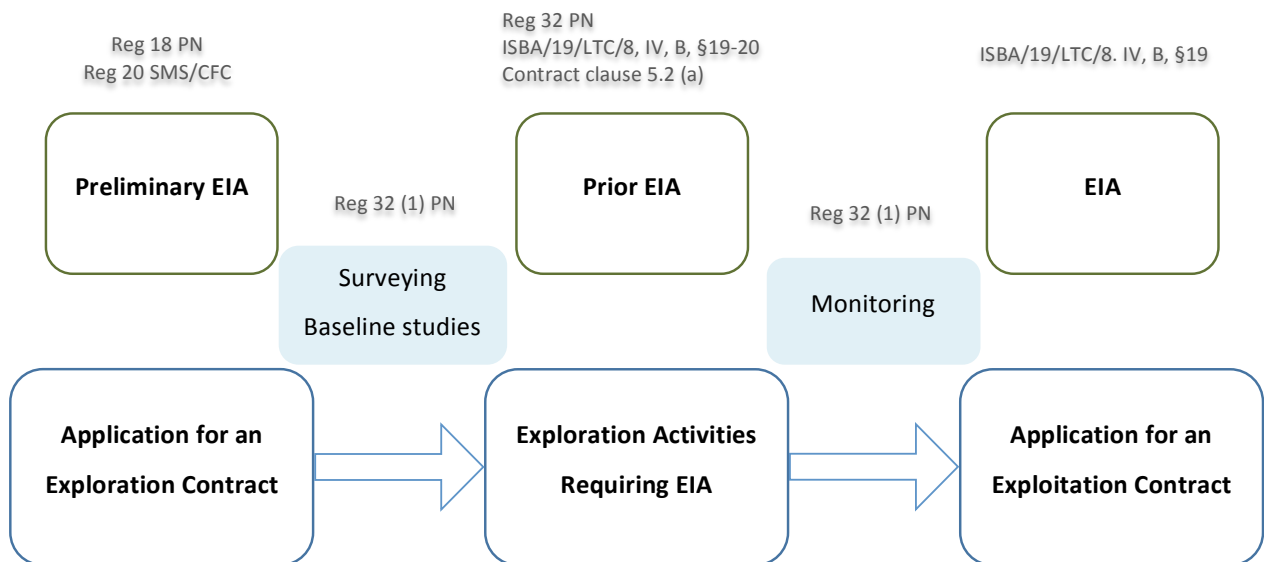
This should not be a reason for postponing indefinitely the drafting and adoption of exploitation regulations in more detail, but rather justify the constant evolution, amendment and improvement of the Mining Code.

4. Boundary points

We concur. With regards to environmental competence of the Authority, it is especially important to define the boundary point at the moment of trans-boarding minerals from the operating surface vessel to the transportation vessel. This is a critical moment during which the risk of accident is a bit higher, and where the applicable liability regime needs to be clearly determined in case of damage (i.e. competence of the ISA or the IMO?).

5. Transition between exploration and exploitation phase

We concur with the first point about the necessity to develop procedures for prior EIA in the exploration regime. This is an important step towards a more comprehensive EIA that will result in an application for a Plan of Work for exploitation (cf. figure below summing up the process). In fact, the prior EIA is an integral part of the entire EIA process for deep seabed mining. For this reason, we believe that setting up an appropriate review procedure is the most pressing issue, with the highest level of priority, considering that exploration is on-going. This implies the formulation of an adequate procedure for the review and approval of the exploration activities requiring prior EIA, including evaluation criteria and time limits. There should be a mechanism of disapproval and suspension of the plan of work in case of unsatisfactory prior EIA and / or inadequate management and monitoring plan.



We concur with the second point. Although we understand the idea behind the suggestion in Technical Study nr. 11 of a provisional pilot-mining period before the approval of a longer plan of work for exploitation, we do not believe that this is a realistic and feasible system from a contractor's point of view. This might prevent contractors from securing investments and commercial partnerships. We welcome the idea of a substantive review period after 5 years, although for the same reasons, performance indicators, evaluation criteria and conditions should be strictly predetermined not to impair the ability of a contractor to design their project plans and secure their investments and partners. In other words, to provide them with enough certainty to be able to plan ahead.

6. Risk assessment, evaluation and management

We concur. This is crucial and intrinsically linked to the sus-mentioned need to set up evaluation procedures, which is equally important for the prior EIA phase, the application review phase, and the periodic reviews along the project's lifetime.

7. Time limits and costs

Again, this is linked to the two previous issues. The ISA decision-making mechanism relies between the LTC and the Council, two organs that only meet occasionally, while a review process at national levels are often taken care of by permanent agencies / institutions / administrations. The amount of documents and information that will need to be reviewed will be consequent and require a lot of expertise. To facilitate the process, we advise that EIA expert(s) be permanently appointed within the Secretariat, i.e. as a new department or within the current OREM. Their role could be to prepare assessment and evaluation of the documents, including taking into account potential peer reviews and public participation results, in preparation of LTC meetings. This would enable an informed decision-making within reasonable timeframes, for the contractors but also for the ISA organs having heavy agendas with a lot of other items to be dealt with, usually within a limited amount of time.

9. Effective protection for the marine environment from harmful effects

We concur that a lot of work is still needed in determining criteria and specifically defining what constitute “significant adverse change”, “vulnerable marine ecosystems”, “harmful effects”, and so on. This is a crucial step in setting up specific criteria for the review and evaluation of an application for a plan of work, especially EIS and EMP.

VI. About Section 5 Draft Action plan

Environmental Management Plan

We believe that EMP should be given priority A, as in an EIA process the EIS and EMP are intrinsically linked, designed and drafted together. Equally, experts’ involvement and multi-stakeholders workshops should be addressed together. This could also be a time and cost effective approach.

Social impact assessment

This can be included in the joint effort for EIS and EMP.

Size of exploitation area

We believe that it is inconsistent to give priority A to the “Guidelines for the preparation of a plan of work for exploitation”, and priority B to the size and location of exploitation areas. The latter should be a part of the former.

Consideration by the LTC

Similarly, we believe that it is inconsistent to give priority B to the “guidelines on evaluation criteria to be used by the Commission”, whereas priority A is given to “guidelines for the preparation and evaluation of an EIS”. When an EIS is drafted for a specific project, it is done according to the evaluation criteria against which it will be assessed, in view of producing the most adequate EIS and for the project to be

successfully approved. Consequently, these two elements are linked and should be addressed with the same level of priority.

Strategic Environmental management plan

Ideally, and SEMP should be done by region before exploration areas are allocated. Given the current situation, where the management plan for the CCZ was done after a number of contractors began exploration, and where exploration has already started in other regions, we suggest that SEMP be given priority A.

Environmental management systems & Adaptive management approach

These should be given at least priority B, if not A, as it is part of the work to be undertaken with EMP, SEMP and will result in inputs for the periodic review procedures.

VII. General comments

A number of sub-sections of the draft framework have not been dealt with in this submission. There are two reasons for this:

- All the elements relating to anything other than environmental law, impact assessment or management fall outside of eCOAST's field of expertise and thus, while considered, were deemed only as informative.
- All the environmental-related aspects of this report that have not been commented on in the present submission are in line with our position, or seem sufficiently adequate to us to require additional commenting.

We would like to stress that, although some of our comments might be quite critical, this is only meant to help taking the development of exploitation regulations forward. We praise the efforts put in by the Authority and its organs since 1994 to fulfil its functions. However, we are also concerned that the Authority might be lacking both human and financial resources to achieve the tremendous amount of work requested to perform its duties and functions, which will keep increasing with the development of activities in the Area.

In this respect, the capacity of the Authority could perhaps represent another high level issue.

VIII. References

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<http://www.unep.ch/etb/publications/EnvImpAss/textONUBr.pdf>

3. Aarhus Convention: United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998:
<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>
4. EU legislation relating to the Aarhus Convention:
<http://ec.europa.eu/environment/aarhus/legislation.htm>
5. J. Dymont, F. Lallier, N. Le Bris, O. Rouxel, P.-M. Sarradin, S. Lamare, C. Coumert, M. Morineaux, J. Tourolle (coord.), 2014. Les impacts environnementaux de l'exploitation des ressources minérales marines profondes. Expertise scientifique collective.
<http://www.developpement-durable.gouv.fr/Impacts-environnementaux-de-1.html>

IX. Consent to publication of the submission

We hereby consent that this submission be made publicly available, together with the details of our contact points.

X. Future engagement

We are favourable to the use of our contact details by the Authority for further surveys, consultations and engagement.

As eCOAST's expertise is related to environmental services, we would gladly consider any engagement / involvement in workshops or groups on environmental law aspects, as well as environmental assessment and management groups.

XI. Contact details

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The logo for eCOAST Marine Research. It features the word "eCOAST" in a bold, sans-serif font, with a blue "e" and "COAST" in black. Below it, the words "MARINE RESEARCH" are written in a smaller, all-caps, sans-serif font.

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