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Draft regulations for exploitation of mineral resources in the Area

Relationship between the draft regulations on exploitation of mineral resources in the Area and regional environmental management plans

Note by the secretariat

I. Background

1. The present note has been prepared to assist the Council in its consideration of the way in which the draft regulations on exploitation of mineral resources in the Area ([ISBA/24/LTC/WP.1/Rev.1](#)) should reflect the relationship between the regulations and regional environmental management plans. In particular, the Council needs to consider whether to impose a binding legal obligation on itself to establish such plans, which are not themselves legal instruments. It also needs to consider whether legal obligations flow from such plans and, if so, the nature and extent of those obligations in relation to States parties, sponsoring States and contractors.

II. Status of regional environmental management plans

2. A first regional environmental management plan, for the Clarion-Clipperton Fracture Zone, was established in 2012, by decision of the Council ([ISBA/18/C/22](#)), on the basis of recommendations made by the Legal and Technical Commission pursuant to article 165, paragraph 2 (e), of the United Nations Convention on the Law of the Sea. The decision set out the legal basis for the Council to establish such plans, pursuant to article 162 of the Convention and, in accordance with article 145 of the Convention, as one of the “necessary measures” to be taken to ensure effective protection for the marine environment from harmful effects that may arise from activities in the Area. The plan for the Clarion-Clipperton Zone also gave effect to the precautionary approach, as called for in the Authority’s regulations on prospecting and exploration for polymetallic nodules in the Area.

* [ISBA/25/C/L.1](#).



3. Following the endorsement by the Council of the environmental strategy of the Authority, and in the light of the priorities identified by the Council in February 2018, two important workshops were organized. The first, held in Qingdao, China, in May 2018, focused on the development of regional environmental management plans for cobalt-rich crusts in the north-west Pacific, and the second, held in Szczecin, Poland, in June 2018, was on the development of such plans for polymetallic sulphides in mid-ocean ridges. During the workshops, significant progress was made, mostly on suggested road maps to establish such plans by 2020. Guided by the experience of designing and implementing the plan for the Clarion-Clipperton Zone, participants emphasized in the road maps the need to develop regional environmental management plans through transparent and inclusive processes involving all stakeholders, as well as through the use of robust scientific case studies developed on the basis of the best available scientific knowledge.

4. Although the basis for the Council's decision to establish regional environmental management plans stems from the powers and functions allocated to the Council under the Convention, the plans are not themselves legal instruments but rather instruments of environmental policy. For example, a feature of the plan for the Clarion-Clipperton Zone is the establishment of a representative network of nine areas of particular environmental interest as an area-based management tool. By decision of the Council, no exploration or exploitation should be conducted in those areas for five years or until further review by the Legal and Technical Commission. Those provisions do not supersede the specific legal rights and obligations established under the Convention, nor do they supersede the rules, regulations and procedures of the Authority. Rather, they clarify how the Council intends to apply those rules, regulations and procedures in the light of the need to take a precautionary approach to the development of activities in the Area. Similarly, the plan for the Clarion-Clipperton Zone spells out the various activities that should be undertaken by various actors, including the secretariat, contractors, sponsoring States and scientific researchers, in order to develop, for example, sound scientific baselines. Such recommendations are not expressed in the form of binding legal obligations and, in fact, it would not be possible to do so.

III. Comments by stakeholders on the draft regulations

5. In a number of comments on the latest version of the draft regulations, it was pointed out that regional environmental management plans should be in place before beginning exploitation activities. For that reason, the Council had invited the Commission to review the use of the words "if any" in relation to regional environmental management plans in draft regulation 2 (5) and to consider making such plans mandatory (ISBA/24/C/8/Add.1, annex I, paras. 2 (d) and 5 (c)) in the next iteration of the draft regulations.

6. Stakeholders that had raised that point often noted that a regional environmental management plan should be established before an exploitation contract could be granted. Others commented on the need for contractors to comply with such plans, while some expressed the view that the plans should be mandatory. Some cautioned, however, that the situation should be avoided in which the approval of a plan of work is prevented simply by blocking the development and adoption of a relevant regional environmental management plan.

7. As noted above, it is difficult to require contractors to comply with regional environmental management plans since such plans are not binding legal instruments and, therefore, do not impose legal obligations on contractors. A more effective way to achieve the same objective may be to require that the environmental management

and monitoring plans of contractors be assessed against objectives in the regional environmental management plans. Should they not contribute sufficiently to those objectives, the contractors' environmental management and monitoring plans would need to be revised or rejected as inadequate.

8. As a matter of environmental policy, the Council may decide that no exploitation contract is to be granted in a particular region until a regional environmental management plan is implemented. However, the Council does not need to have a regulation in place to make such a decision. As demonstrated through the establishment of the plan for the Clarion-Clipperton Zone, the Council already has the power, under articles 162 and 145 of the Convention, to set environmental policy and take necessary measures. Furthermore, the draft regulations on exploitation of mineral resources in the Area are intended to govern the legal relationship between the Authority and contractors. Therefore, it seems unnecessary and legally inappropriate for the Council to bind itself through regulation, given that its powers to establish a regional environmental management plan are already embedded in the Convention.

IV. Suggested items for consideration and discussion

9. The Council is invited to take note of the issues raised in the present note and to provide further guidance to the Legal and Technical Commission, as appropriate.
