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Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission

Implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission

Report of the Secretary-General

I. Background

1. At its 258th meeting, held on 19 July 2019, the Council of the International Seabed Authority adopted a decision relating to the reports of the Chair of the Legal and Technical Commission (*ISBA/25/C/37*). In paragraph 26 of the decision, the Council requested that the Secretary-General report to it on the implementation of the decision at its twenty-sixth session and that such annual reporting remain on the agenda of the Council as a standing item. The present report has been prepared accordingly and provides an update on the implementation of the decision of the Council as at 2 December 2019.
2. Section II of the present report provides an update on the work in progress concerning the draft regulations on exploitation of mineral resources in the Area, in response to the matters addressed in paragraphs 2 to 10 of the decision of the Council.
3. Section III covers issues relevant to contractors, as raised in paragraphs 11 to 17 of the decision of the Council.
4. In response to paragraph 19 of the decision of the Council, environmental matters, including the drafting of environmental goals, objectives and principles, together with the development of regional environmental management plans, in particular where there are currently exploration contracts, are reviewed in section IV.
5. Section V provides an update on the implementation of the data management strategy of the Authority since the launch of the database, as mentioned in paragraph 20 of the decision of the Council.
6. In response to the concern about the sharp deficit in the voluntary trust fund, as noted by the Council in paragraph 23 of its decision, section VI of the present report provides an update on the balance of the fund.

* *ISBA/26/C/L.1.*



7. Further progress on implementation will be the subject of an addendum that will be prepared for the second part of the twenty-sixth session.

II. Draft regulations on exploitation of mineral resources in the Area

8. In paragraph 2 of its decision, the Council welcomed the continued work of the secretariat and the Commission on the regulations on exploitation and requested that the Commission undertake work on standards and guidelines as a matter of priority. Consequently, the indicative programme of work for part I of the twenty-sixth session has been prepared in such a way as to enable the Council to continue its review of the draft regulations as a matter of priority, bearing in mind the process for the development of standards and guidelines proposed by the Commission, as set out in the report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its twenty-fifth session ([ISBA/25/C/19/Add.1](#)).

A. Compilations of proposals and observations

9. Members of the Council will recall that, in July 2019, the Council met in an informal session to consider the draft regulations on the basis of the text issued by the Commission ([ISBA/25/C/WP.1](#)), along with a note by the Commission explaining the changes made to the text as well as areas requiring further consideration ([ISBA/25/C/18](#)). In paragraphs 7 and 8 of its decision, the Council decided that additional written comments on the draft regulations, including specific drafting suggestions, could be sent to the secretariat no later than 15 October 2019, and requested the secretariat to prepare a compilation of the proposals and observations sent by members of the Council and a compilation of proposals and observations sent by other States members of the Authority, observers and other stakeholders, to be submitted by the President of the Council and published no later than 30 December 2019, for consideration by the Council at its twenty-sixth session.

10. In response to the decision, 39 submissions were received by the secretariat from members of the Council, other States members of the Authority, observers and other stakeholders, and the submissions were posted on the website of the Authority in line with the above-mentioned request of the Council.¹ In addition to the compilations of proposals and observations sent and posted on the website, the secretariat prepared an overview of the main thematic issues raised in the written submissions ([ISBA/26/C/2](#)), as well as a conference room paper containing a compilation of the specific drafting proposals sent by members of the Council. In the overview, a set of critical areas is identified for discussion by the Council, with a view to advancing the work on the draft regulations.

11. Members of the Council will recall that, in respect of the development of a payment mechanism, the Council established an open-ended working group in 2018 to discuss the financial model (see [ISBA/24/C/8/Add.1](#), annex II). At its session in July 2019, the Council considered the report of the Chair of the open-ended informal working group on the outcome of its second meeting, held on 11 and 12 July 2019 ([ISBA/25/C/32](#)). The Council welcomed the progress made by the working group but recognized that further work still needed to be done. The Council therefore decided that the informal working group should convene its third meeting in 2020. Accordingly, the third meeting is scheduled for 13 and 14 February 2020.

¹ See www.isa.org.jm/legal-instruments/ongoing-development-regulations-exploitation-mineral-resources-area.

B. Standards and guidelines

12. The Council, in paragraph 3 of its decision, took note of the recommendations made by the Commission with regard to the outcomes of and suggestions made at the workshop held in Pretoria from 13 to 15 May 2019 on the development of standards and guidelines for activities in the Area (ISBA/25/C/19/Add.1, annex and enclosures I and II). In paragraphs 4 and 5 of its decision, the Council emphasized that any standards, draft environmental goals, objectives and principles required discussion and adoption by the Council, and expressed its intention to ensure the thorough and timely development of the regulations, bearing in mind that necessary standards and guidelines should be developed before the adoption of the regulations (see also section IV below).

13. At the first part of its session, to be held from 24 February to 6 March 2020, the Commission is expected to advance its consideration of a number of standards and guidelines, in particular those that, as it suggested, need to be in place by July 2020 and those to be initiated immediately but completed after July 2020. In that context, the Commission established two technical working groups to address standards and guidelines for environmental impact assessments and the preparation of an environmental impact statement and guidelines for the preparation of environmental management and monitoring plans on the one hand, and standards and guidelines on the expected scope and standard of baseline data collection on the other. To assist the Commission, the secretariat has also undertaken work, with the support of consultants where necessary, to develop, inter alia, the text of standards and guidelines for the preparation and assessment of an application for the approval of a plan of work for exploitation; for the development and application of environmental management systems; on tools and techniques for hazard identification and risk assessments; for the safe management and operation of mining support vessels; for the form and calculation of an environmental performance guarantee; and for the preparation and implementation of emergency response and contingency plans.

III. Activities of contractors

A. Issues relating to the 2018 annual reports

14. With reference to paragraphs 12 to 14 of the decision of the Council, the Secretary-General took the opportunity, at the third annual consultation between the Secretary-General and the contractors, held in Changsha, China, from 10 to 12 October 2019, to convey to the contractors the general comments made by the Commission in relation to the annual reports. Bilateral meetings were also held between individual contractors and the technical staff of the secretariat to review specific technical issues relating to those contractors. Twenty-six contractors were represented at the meeting.

15. Shortly after the meeting, for the purpose of resource reporting in annual reports, all contractors were reminded of the agreed mineral resource reporting template of the Authority.

16. As at 2 December 2019, individual feedback from the Commission in writing, including questions and requests for clarification, on the 2018 annual reports had been sent to each contractor. The final responses to the feedback from the Commission will be included in the contractors' annual reports for 2019, which are due by 31 March 2020.

17. The Secretary-General will continue to work with the contractors to address reporting issues.

B. Issues relating to the transparency of contracts

18. It was previously reported to the Council that work was currently in progress to draw up a summary template, for public release, that would cover the key elements of the non-standard provisions of each contract (see [ISBA/25/C/12](#), paras. 24–25). In this regard, at the meeting in Changsha, the format of the template was finalized,² and it was agreed that the Secretary-General would report on the decision of contractors to voluntarily submit the completed templates to the Council for publication and would inform the Council of the number of contractors that had already submitted the template at that time. It was agreed that contractors would submit completed templates on a rolling basis, but no later than 31 March 2020. Contractors further agreed to continue to explore whether there was any further information in the annual reports that could be categorized as non-confidential.

19. As at 2 December 2019, no contractor had submitted the template, although two contractors (the Federal Institute for Geosciences and Natural Resources of Germany and the Government of Poland) indicated that they had already published their contracts in full on their websites, as required by their respective national laws.

C. Contractor training programmes

20. In relation to the implementation of training programmes, as referred to in paragraph 17 of the decision of the Council, 25 training placements were awarded from July to December 2019. Details are provided in the annex to the present document.

D. Issues of alleged non-compliance by contractors

21. In relation to paragraph 13 of the decision of the Council, the Secretary-General has communicated in writing the various issues identified during the Commission's review of the annual reports of contractors to the relevant contractors and their sponsoring States and has held meetings with the contractors and the respective sponsoring States. The Secretary-General will continue to engage with those parties and is confident that any outstanding matters will be resolved.

22. In paragraph 15 of its decision, the Council requested the Secretary-General to report to it annually, identifying instances of alleged non-compliance and the regulatory action recommended or to be taken in accordance with the United Nations Convention on the Law of the Sea, the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and the regulations on prospecting and exploration, including any monetary penalties to be imposed by the Council.

23. As at 2 December 2019, the Secretary-General had not identified any issues of alleged non-compliance.

IV. Environmental matters

A. Draft environmental goals, objectives and principles

24. In paragraph 4 of its decision, the Council emphasized that any standards, draft environmental goals, objectives and principles required discussion and adoption by the Council.

² The template will be made available to the Council in due course.

25. Pursuant to the decision, relevant information was compiled by the secretariat and transmitted to the Commission in support of its efforts to articulate environmental goals and objectives as part of its work on standards and guidelines, drawing on relevant provisions of the Convention, international commitments related to environmental goals and targets and relevant policy documents, and, where appropriate, relevant scientific literature.

B. Review and development of regional environmental management plans, in particular where there are currently exploration contracts

26. As members of the Council will recall, the development of regional environmental management plans is an essential element of the strategic plan for the period 2019–2023, adopted by the Assembly of the International Seabed Authority in 2018 (ISBA/24/A/10), which occupies a central position in the high-level action plan endorsed by the Assembly in 2019 (ISBA/25/A/15 and ISBA/25/A/15/Corr.1). The Council also considered it essential that the development of those plans be carried out under the auspices of the Authority through a transparent and coordinated process in the light of its jurisdiction under the Convention and the 1994 Agreement (see ISBA/24/C/8). Plans are established by a decision of the Council, on the recommendation of the Commission,³ and each contractor “undertakes ... to comply with ... the decisions of relevant organs of the Authority”, including those establishing regional environmental management plans.⁴

27. As in the case of the first-ever environmental management plan (established for the Clarion-Clipperton Fracture Zone in 2012), the establishment of regional environmental management plans is representative of environmental policy decisions that the Convention expressly empowers the Council to take. Those plans are embodied in Council decisions. The development of further plans wherever activity takes place, which is at the core of the strategic plan for the period 2019–2023, confirms the process to establish plans as environmental policy instruments. Moreover, the establishment of such plans represents one of the appropriate and necessary measures that the Authority may take in accordance with article 145 of the Convention to ensure effective protection of the marine environment from harmful effects that may arise from activities in the Area. The use of the term “measure” underlines its broad reach to encompass environmental policy nature instruments, such as regional environmental management plans.

28. In paragraph 19 of its decision, the Council encouraged the secretariat and the Commission to make progress on the development of regional environmental management plans, in particular where there are currently exploration contracts, while taking note of the report of the Secretary-General on the implementation of the Authority’s strategy for the development of regional environmental management plans for the Area (ISBA/25/C/13), including a programme of work to develop those plans through a series of workshops.

29. In accordance with the tentative schedule set out in document ISBA/25/C/13, several workshops have been planned during 2019 and 2020 to facilitate the review and development of regional environmental management plans.

30. An expert workshop on deep Clarion-Clipperton Zone biodiversity synthesis was convened by the secretariat and the Deep Clarion-Clipperton Zone (CCZ) Project

³ For an illustration of this process in the case of the environmental management plan for the Clarion-Clipperton Fracture Zone, see ISBA/18/C/22 and ISBA/17/LTC/7.

⁴ Annex IV, section 13.2 (b) of each set of regulations of the International Seabed Authority on prospecting and exploration.

and hosted by the University of Hawaii in Friday Harbor, United States of America, from 1 to 4 October 2019. The main objectives of the workshop included the following: (a) to review and analyse recent sea-floor ecosystem data from the Clarion-Clipperton Zone; (b) to synthesize patterns of biodiversity, biogeography, genetic connectivity, ecosystem function and habitat heterogeneity along and across the Clarion-Clipperton Zone; and (c) to assess the effectiveness of the existing network of areas of particular environmental interest, in particular its representativeness in relation to exploration contract areas. The workshop was an essential step in the review of the environmental management plan for the Clarion-Clipperton Zone, including the consideration of the potential need for additional areas of particular environmental interest. The report on the workshop will be made available on the workshop website⁵ and will be submitted to the Commission for its consideration during the first part of the twenty-sixth session.

31. A workshop on the regional management plan for the Area of the northern Mid-Atlantic Ridge was held in Évora, Portugal, from 25 to 29 November 2019, in collaboration with the Atlantic regional environmental management plan project (funded by the European Commission) and the Government of Portugal. The main objectives of the workshop included the following: (a) to review, analyse and synthesize scientific data and information on ecosystems and habitats of the northern Mid-Atlantic Ridge; (b) to review current exploration activity within contract areas and the distribution of resources (polymetallic sulphides) along the northern Mid-Atlantic Ridge; and (c) to describe potential areas that could be impacted by the exploitation of mineral resources in the Area and would require enhanced management measures, including through the designation of areas of particular environmental interest. As inputs for the workshop discussion, the following background documents were prepared and made available: (a) a data report in which 75 geographic information system overlays of biogeographical, physical, geological and biological data were compiled and synthesized; and (b) a draft regional environmental assessment report containing a descriptive analysis of the environment and mineral resources of the region. The report on the workshop will be made available on the workshop website and will be submitted to the Legal and Technical Commission for its consideration during the first part of the twenty-sixth session.

32. The scientific results of the above-mentioned workshop held in Portugal will provide inputs for the second workshop on the same region, which will be convened by the secretariat in Saint Petersburg, Russian Federation, from 15 to 19 June 2020, in collaboration with the Atlantic regional environmental management plan project and the Ministry of Natural Resources and Environment of the Russian Federation. The workshop will be focused on identifying environmental management measures for inclusion in the draft regional environmental management plan.

33. A second workshop on the development of a regional environmental management plan in the cobalt-crust area of the north-west Pacific will be convened by the secretariat in the province of Jeju, Republic of Korea, from 18 to 22 May 2020, in collaboration with the Ministry of Oceans and Fisheries of the Republic of Korea and the Korea Institute of Ocean Science and Technology, and will build on the work of the first workshop, held in Qingdao, China, in May 2018.

⁵ www.isa.org.jm/workshop/deep-ccz-biodiversity-synthesis-workshop.

V. Data management strategy

34. In paragraph 20 of its decision, the Council welcomed the secretariat's progress towards the implementation of the data management strategy of the Authority, including public access to non-confidential data.

35. Subsequently, the public launch of the International Seabed Authority database (DeepData) was carried out as part of the special commemorative session of the Assembly convened to celebrate the twenty-fifth anniversary of the Authority.

36. With its public launch, the environmental data have been made available for public access and use, which will further enhance the collective ability of humanity to protect the marine environment in the Area.

37. Furthermore, the secretariat organized a side event on DeepData at United Nations Headquarters on 26 August 2019, at the third session of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and delivered a presentation on the database at the International Conference on Legal, Scientific and Economic Aspects of Deep Seabed Mining, held in Kingston from 14 to 16 November 2019, and organized by the secretariat of the Authority and the Center for Oceans Law and Policy of the University of Virginia School of Law.

38. The secretariat continues its work on the following: (a) uploading of historical data submitted; (b) publication and quarterly updating of a list of all available files and a structured dataset on the DeepData website; and (c) finalization of the data management strategy report of the Authority, covering data identification, data storage, data provisioning, data processing and data governance, with a view to submitting it to the Commission in July 2020.

VI. Voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and of the Finance Committee from developing countries in meetings of the Commission and of the Committee

39. In paragraph 23 of the decision, the Council noted with concern the sharp deficit in the voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and of the Finance Committee from developing countries in meetings of the Commission and of the Committee, which was established in 2002.

40. As at 2 December 2019, the fund showed a negative balance of -\$12,559.84 after the costs of the two parts of the twenty-fifth session, in the amount of \$142,111, were recorded. Notes verbales were sent in September 2019 to urgently appeal to all members of the Authority to make contributions to the voluntary trust fund. While several requests for financial assistance had been received, no contributions had been made as at 2 December.

41. The urgency of the situation cannot be overstated, as the participation of several members of the Legal and Technical Commission at its next meeting, to be held from 24 February to 6 March 2020, could be compromised.

VII. Recommendations

42. The Council is invited to take note of the present report and to provide such guidance as may be necessary.

Annex

Contractor training programmes, July–December 2019

<i>Contractor</i>	<i>Training type</i>	<i>Number of trainees</i>
Nauru Ocean Resources Inc.	At sea	4
Nauru Ocean Resources Inc.	Environmental workshop	4
Ocean Mineral Singapore Pte. Ltd.	Internship on adaptive path-planning framework	1
Interoceanmetal Joint Organization	Comprehensive six-week multidisciplinary training in project management relating to polymetallic nodules	2
Ministry of Natural Resources and Environment of the Russian Federation	At sea	2
Japan Oil, Gas and Metals National Corporation	On land/at sea	4
Government of the Republic of Korea	Three-month internship	1
Marawa Research and Exploration Ltd.	Underwater Mining Conference, 2019	2
Deep Ocean Resources Development Co. Ltd.	At sea	5
Total training placements awarded		25