

Comments of the Federated States of Micronesia
on draft guidelines for the preparation of an environmental impact statement

<i>Document reviewed</i>	
Title of the draft being reviewed:	Draft Guidelines for the preparation of an environmental impact statement
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<i>General Comments</i>	
<p>As these and other Standards and Guidelines are being drafted while the exploitation regulations are still in draft form and are intended to be in place in time for the adoption of the latter, it is unclear to us how such Standards and Guidelines will take into account developments in the drafting and finalization of exploitation regulations. Will the Standards and Guidelines, once adopted, be subject to amendment once the exploitation regulations are adopted in case the latter deviate substantively from the former in relevant parts, and if so, what will be the timeline for such amendment? Or, will there be a presumption that in the case of inconsistency, the exploitation regulations will prevail once they are adopted?</p>	
<p>The current draft exploitation regulations – specifically, draft regulation 47(3) – require that an environmental impact statement (“EIS”) be in the “form” prescribed by the International Seabed Authority in annex IV to the draft exploitation regulations. However, the draft Guidelines for the preparation of an EIS (e.g., in line 95) say that the applicant or contractor “should” prepare an EIS following the template provided in the abovementioned annex IV. Additionally, annex IV specifies that the template therein is recommendatory rather than obligatory. It appears that the word “form” in the draft exploitation regulations refers to the overall format/structure of an EIS, particularly the major elements therein, rather than specific elements contained in the template in annex IV. To avoid any doubt and possible inconsistency, the draft Guidelines for the preparation of an EIS should make this clarification. Micronesia also supports making the template in annex IV mandatory rather than recommendatory, but that will require revising the relevant draft exploitation regulations and then revising the relevant draft Guidelines for the preparation of an EIS to reflect this revision, as the template in the current draft guidelines is very similar to the template in annex IV.</p>	
<p>A key element of an environmental impact assessment (“EIA”) process is consultations with stakeholders, which are typically mandatory for such a process. However, the current draft exploitation regulations do not mandate such stakeholder consultations – they only recommend them – and so there appears to be a concomitant lack of a mandate in the current draft Standard and Guidelines for EIAs as well as in the current draft Guidelines for the preparation of</p>	

<p>an EIS. Micronesia strongly supports making stakeholder consultations mandatory for EIAs, including consultations with coastal States with marine spaces that are adjacent to sites for exploitation activities as well as consultations with Indigenous Peoples and local communities with relevant traditional knowledge. Micronesia will advocate for such an approach during the still-ongoing development of the relevant draft exploitation regulations. The current draft Guidelines for the preparation of an EIS will likely need to be revised prior to finalization in order to take into account developments in the draft exploitation regulations pertaining to stakeholder consultations, including potential mandatory language in the draft guidelines pertaining to reporting in an EIS all the steps taken to identify and incorporate stakeholders and their comments in the EIA process.</p>
<p>The current draft exploitation regulations speak of Mining Areas and Contract Areas but do not seem to anticipate (at least explicitly) the possibility that planned activities could have environmental effects for parts of the Ocean (inclusive of marine biological diversity therein) beyond the formal coordinates of such Mining Areas and Contract Areas (e.g., in the water column above a Mining Area). There is a similar lack of consideration in the current draft Guidelines for the preparation of an EIS with respect to such a potential for dispersed impacts and the need to account for such impacts in an EIA covered/reported by an EIS.</p>
<p>In the Introduction section of an EIS, regarding text on Project Viability, the considerations should not be limited to “physiochemical, biological, and socioeconomic considerations,” as the current draft Standard for EIAs defines an EIA expansively to include not just those considerations but also “other relevant effects of development proposals.” (See Lines 1238-9 of the draft Standard for EIAs.) Micronesia supports this expansive definition of an EIA and therefore suggests either expanding the text on Project Viability to be more in line with the definition of EIAs or replacing “i.e.” with “e.g.” in Line 169 of the draft Guidelines for the preparation of an EIS.</p>
<p>In the Policy, Legal, and Administrative Context section of an EIS, it is Micronesia’s view that the aspects listed under paragraph 28 of the draft Guidelines as ones that a Contractor should address in terms of the Contractor’s compliance with them include relevant international legal instruments such as the to-be-adopted 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 (“BBNJ instrument”). The current reference to “UNCLOS” in line 244 is, in Micronesia’s view, expansive enough to include that BBNJ instrument.</p>
<p>In sections 5 and 6 of the template of an EIS in the draft Guidelines, starting on Line 334 and ending on Line 679, the text describes physiochemical, biological, and socioeconomic environments and discusses how to assess impacts on those environments as part of an EIA contained in / reported by an EIS. However, as discussed above, the current draft Standard for EIAs defines an EIA expansively to include not just considerations of a physiochemical, biological, and/or socioeconomic nature, but also considerations about “other relevant effects of development proposals.” In this connection, Micronesia proposes expanding sections 5 and 6 to include new subsections that describe such “other relevant effects [or environments]” and</p>

discuss how to assess those impacts.

Additionally, it is Micronesia’s view that consideration must be given to potential impacts on cultural uses and appreciation of relevant marine spaces, inclusive of the marine biological diversity therein (e.g., culturally significant migratory marine species). Such considerations could be captured as part of the sub-sections on “socioeconomic environments” or on “other relevant effects” in the draft Guidelines for preparation of an EIS.

Specific Comments

Page	Line	Comment
6	241	Please replace “exploration” with “exploitation”
<i>Additional rows can be added to this table by selecting “Table” followed by “insert” and “rows below”</i>		

Comments should be sent by e-mail to ola@isa.org.im