

**Comments of the Federated States of Micronesia**  
**on draft standard and guidelines for the environmental impact assessment process**

<b><i>Document reviewed</i></b>	
<b>Title of the draft being reviewed:</b>	Draft Standard and Guidelines for environmental impact assessment process
<b><i>Contact information</i></b>	
<b>Surname:</b>	Mulalap
<b>Given Name:</b>	Clement Yow
<b>Government (if applicable):</b>	Federated States of Micronesia
<b>Organization (if applicable):</b>	
<b>Country:</b>	Federated States of Micronesia
<b>E-mail:</b>	cmulalap@gmail.com
<b><i>General Comments</i></b>	
<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>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. 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. Some of the current content on stakeholder consultations in the draft Guidelines for EIAs (particularly in Part XI of the draft Guidelines) can be moved into the draft Standard for EIAs, although this will likely depend on how the exploitation regulations ultimately treat the issue of mandatory stakeholder consultations for EIAs.</p>	
<p>Micronesia supports requiring an applicant or contractor to submit a scoping report to the Secretary-General of the International Seabed Authority for publishing on the website of the Authority for an open and time-bound public consultations period, inclusive of comments in writing from all Members of the Authority and other stakeholders. At the end of that period, the Secretary-General transmits the received comments to the Legal and Technical Commission (“LTC”) as well as to the applicant or contractor. The applicant or contractor must be allowed</p>	

the opportunity to respond to such comments in writing, addressed to the LTC. The LTC then reviews all comments received during the consultations period as well as any responses from the applicant or contractor and makes necessary recommendations to the applicant or contractor prior to the latter proceeding with an EIA. The applicant or contractor must take into account these recommendations from the LTC.

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 draft Standard and Guidelines for EIAs with respect to such a potential for dispersed impacts and the need to account for such impacts in an EIA process.

The current definition of EIAs in the draft Standard covers a broad range of effects that would be subject to an EIA, including “socioeconomic” and “other relevant effects of development proposals.” It is the view of Micronesia that such effects include, among other things, effects on cultural uses and appreciation of the Ocean, inclusive of culturally significant migratory species therein as well as long-standing instrument-free traditional navigational practices reliant on close connections with the Ocean. In that connection, Micronesia strongly supports the inclusion of Indigenous Peoples and local communities with relevant traditional knowledge in the EIA process (including, but not limited to, the stakeholder consultations) as well as the utilization of such relevant traditional knowledge alongside best available scientific evidence when gathering relevant environmental baseline data and carrying out an EIA. Such utilization is, among other things, part of Best Environmental Practices.

Micronesia supports the current requirement that every application for exploitation must involve the undertaking of an EIA. Additionally, it is Micronesia’s view that an EIA must be required when a project previously approved in a Plan of Work subsequently undergoes a change that could produce environmental effects. This additional EIA could be an “initial EIA” that assesses the extent of such environmental effects and determines whether a “full EIA” is needed for such a change.

The draft Standard references the “significance” of impacts covered under an EIA. However, a number of relevant provisions of the United Nations Convention on the Law of the Sea reference “serious harm to the marine environment” resulting from activities in the Area. This potential inconsistency between “significance”/“significant” and “serious” needs to be addressed in a binding manner, ideally in the exploitation regulations.

Despite the foregoing, Micronesia generally supports the attempt in Table 3 (starting on Line 787) to specify the types of impacts that could be considered when determining significance, including legal and societal as well as environmental impacts. It is Micronesia’s view that such an expansive consideration of impacts includes considerations of impacts on cultural uses and appreciation of relevant marine spaces and biological diversity therein – e.g., culturally significant migratory species, sacral valuation of marine spaces, traditional navigational uses of

the Ocean. It is also Micronesia's views that potential legal impacts include non-compliance with relevant international legal instruments, including a future 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; as well as impacts on marine spaces within national jurisdictions, particularly in coastal States adjacent to areas for intended plans of work.

*Additional rows can be added to this table by selecting "Table" followed by "insert" and "rows below"*

*Comments should be sent by e-mail to [ola@isa.org.im](mailto:ola@isa.org.im)*