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Kingston, 19–23 July 2021*

Agenda item 12

Draft regulation for exploitation of mineral resources in the Area

Status of the draft regulations on exploitation of mineral resources in the Area and a proposed roadmap for 2022 and 2023

Report of the Secretary-General

I. Introduction

1. The Council is currently considering draft regulations on exploitation of mineral resources in the Area ('the draft regulations'). The draft regulations were prepared by the Legal and Technical Commission and submitted to the Council in 2019 (ISBA/25/C/WP.1) following an iterative process of development and consultation that began in 2011, when the representative of Fiji requested the Council to begin consideration of regulations for the exploitation of the mineral resources of the Area (ISBA/17/C/22). The main steps in the preparation of the draft regulations from 2011 to 2019 are identified in Annex I. Annex II provides a complete hyperlinked list of relevant documents, reports and studies relating to the preparation of the draft regulations.

2. As of July 2020, a complete set of regulations has been prepared by the Legal and Technical Commission and submitted to the Council pursuant to Article 165, paragraph 2 (f), of the United Nations Convention on the Law of the Sea. The draft regulations are currently under consideration by the Council. The Commission has also prepared drafts of 10 standards and guidelines to support the implementation of the draft regulations. Owing to the impossibility of holding face to face meetings of the Council since February 2020, the Council has not been able to advance its consideration of the draft regulations. The purpose of the present report is to outline a proposed roadmap and workplan for the Council in 2022 and 2023, aimed at completing the adoption of the draft regulations and associated Phase 1 standards and guidelines by July 2023.

* New dates of the in-person meetings originally scheduled for July 2020.

II. Review of the development process from 2017 to February 2020

3. It will be recalled that at the twenty-third session in 2017, the Council agreed on a road map for the adoption and approval of the draft regulations by July 2020.¹ At the same session, the Assembly endorsed a revised schedule of meetings for 2018, 2019 and 2020 designed to enable the Commission and the Council to deliver the regulations in accordance with the roadmap. The revised schedule of meetings envisaged two meetings per year of the Commission and the Council for two weeks each and one week each respectively.²

4. In accordance with the revised schedule of meetings, the Commission and the Council worked in parallel on the draft regulations during 2018 and 2019. At the twenty-fourth session in 2018, the Council reiterated its view that the draft regulations should be adopted as a matter of urgency, commended the Commission for the considerable work that it had accomplished and encouraged it to pursue its efforts at its meetings in 2019.³ The Council also provided the Commission with comments on the draft regulatory text under consideration⁴ and initiated a stakeholder consultation process to enable all stakeholders to submit specific comments in writing for consideration by the Commission.⁵ The Commission reviewed those comments and finalized its recommendations on the draft regulations at its meetings during the first part of the twenty-fifth session.⁶

5. One of the key outcomes of the 2019 stakeholder consultation was that many stakeholders agreed that standards and guidelines implementing the draft regulations must be developed in parallel with the regulatory text. Stakeholders also advocated putting in place critical phase one standards and guidelines by the time of adoption of the draft regulations are adopted. Such was the importance of this issue that a separate report was prepared for the Council, including, as an annex, a proposed priority list of standards and guidelines to be developed.⁷ To further support the work of the Commission and the Council, an international workshop on the development of standards and guidelines was held in Pretoria, South Africa, in April 2019 (between the first and second parts of the twenty fifth session).⁸

6. During the second part of the twenty-fifth session, the Council considered the report of the Chair of the Commission, which incorporated recommendations in relation to the development of standards and guidelines, including the list of documents for development under Phase 1.⁹ The Council held an interactive discussion on the draft regulations and also

¹ The roadmap is in the annex to the report of the Chair of the Legal and Technical Commission on the work of the Commission at its session in 2017 (ISBA/23/C/13).

² In response to a proposal by the Netherlands, the Council decided that the spring session of the Council should take place before the meetings of the Legal and Technical Commission, whilst the summer session should take place after the Commission's meetings. In response to concerns by some delegations about limited financial support for developing countries to attend additional meetings of the Council, a voluntary trust fund was established to support the participation of developing States members of the Council.

³ Statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session (ISBA/24/C/8/Add.1, para. 7).

⁴ *Ibid.*, para. 10 and annex I.

⁵ The main thematic issues raised in the written submissions were summarized in document ISBA/25/C/2.

⁶ The draft regulations are contained in document ISBA/25/C/WP.1. An explanatory note by the Commission is in document ISBA/25/C/18.

⁷ ISBA/25/C/3.

⁸ <https://www.isa.org.jm/event/workshop-development-standards-and-guidelines-mining-code>.

⁹ ISBA/25/C/19/Add.1, paras. 20-22 and the Annex.

adopted a decision in which it, *inter alia*, expressed its intention to ensure the thorough and timely development of the draft regulations, bearing in mind that necessary standards and guidelines should be developed before the adoption of the draft regulations, and requested the Commission to work on standards and guidelines as a matter of priority.¹⁰ The Council also 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, for consideration by the Council at its twenty-sixth session in 2020.¹¹

7. The first part of the twenty-sixth session of the Council took place in February 2020. The Council resumed its consideration of the draft regulations, which it had commenced at the twenty-fifth session, and considered parts IV, V and VI of the draft and their related annexes IV, VII and VIII. The Council also adopted a decision on working modalities for its further consideration of the draft regulations.¹² In that decision, the Council agreed to establish three informal working groups on thematic issues, each to be led by a facilitator, in addition to the existing open-ended working group in respect of the development and negotiation of the financial terms of a contract.¹³ The new groups are:

- (a) Informal working group on the protection and preservation of the marine Environment (chaired by Dr Rajeli Taga (Fiji));
- (b) Informal working group on inspection, compliance and enforcement (chaired by Ms Janet Omoleegho Olisa (Nigeria)); and
- (c) Informal working group on institutional matters (including the role and responsibilities of the various organs of the Authority, timelines, recourse to independent expertise and stakeholder participation) (to be chaired by a nominee of the Latin American and Caribbean Group).

8. The Council requested the facilitators to report on progress in their work at the next meeting of the Council in July 2020.

III. The process subsequent to March 2020

9. Since February 2020, the Council has been unable to meet in person and accordingly, no progress was made in any of the newly-established informal working groups. In relation to the work of the open-ended working group on the development of the financial terms of a contract, a series of informal webinars were organized on 9, 11 and 12 June, and 28 October 2020 in which the methodology and outcomes of studies relating to a comparative analysis of the financial aspects of deep seabed mining and land-based mining were presented, as requested by the Council.

10. In addition, the secretariat was able to continue its work on the preparation of studies and reports concerning the draft regulations as requested by the Commission and by the

¹⁰ ISBA/25/C/37.

¹¹ All comments and proposals submitted are available at the website of the Authority. A summary of the main thematic elements in the comments is contained in ISBA/26/C/2. A collation of specific drafting suggestions made by members of the Council is available in ISBA/26/C/CRP.1.

¹² ISBA/26/C/11.

¹³ The open-ended working group on the development of the financial terms of a contract is chaired by Mr Olav Myklebust (Norway). The working group has held four meetings so far.

Council respectively. This included preparation of studies and reports concerning (i) matters related to insurance; (ii) the environmental compensation fund; (iii) competencies of the International Seabed Authority and the International Maritime Organization; (iv) the environmental performance guarantee; (v) remote monitoring in the context of inspections; (vi) the potential impacts on land-based producers; and (vii) the application of International Labour Organization instruments to activities in the Area.

11. Concerning the Phase 1 standards and guidelines, during 2020 and 2021 the Legal and Technical Commission met remotely and prepared and released the following draft standards and guidelines for stakeholder consultation: (i) Guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation; (ii) Standard and Guidelines on the development and application of environmental management systems; (iii) Standard and Guidelines on the form and calculation of an environmental performance guarantee; (iv) Guidelines for the establishment of baseline environmental data; (v) Standard and Guidelines for Environmental Impact Assessments; (vi) Guidelines for the preparation of an environmental impact statement; (vii) Guidelines for the preparation of an environmental management and monitoring plan; (viii) Guidelines on tools and techniques for hazard identification and risk assessment; (ix) Standard and Guidelines for the safe management and operation of mining vessels and installation; and (x) Standard and Guidelines for the preparation and implementation of emergency response and contingency plans. The Commission will review stakeholder comments and finalize revisions to the Phase 1 standards and guidelines in September 2021.

IV. Proposed roadmap for 2022 and 2023

12. It is noted that, through a letter dated 25 June 2021, the Republic of Nauru notified the Council of the intention of Nauru Ocean Resources Inc. (NORI), a Nauruan entity sponsored by Nauru, to submit an application for approval of a plan of work for exploitation in the Area.¹⁴ In such circumstances, Section 1, paragraph 15 (b), of the annex to the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea requires the Council to complete the elaboration of the rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area within two years of the request.¹⁵

13. In order to meet this timeline and to ensure that a robust and holistic regulatory framework is adopted by the Council on or before 9 July 2023, it is clearly necessary for the Council to commit more time and financial resources to accelerate work on the draft regulations.

14. As a preliminary measure, therefore, it is suggested that the Council increases its physical meetings in 2022 to two sessions per year, each of three weeks' duration and that the primary focus of these meetings is the draft regulations. As previously agreed, much of the work will take place in informal working groups, with no parallel meetings and sessions would be organized accordingly, with plenary meetings planned in advance. In the event that savings could be realized from the overall conference services budget for the financial period 2021-2022, a third meeting of the Council in 2022 could also be considered. A proposed meeting schedule for 2022 is in Annex III.

¹⁴ ISBA/26/C/38.

¹⁵ The effective date of the request is 9 July 2021 (see ISBA/26/C/38) which means that the regulations must be adopted by 9 July 2023.

15. It is expected that the workload of the Legal and Technical Commission will be lower in 2022 than in 2021, given that the Commission has completed its work on the Phase 1 standards and guidelines as directed by the Council. It is further envisaged that both the Commission and the Finance Committee will adopt a hybrid meeting format in future, with a combination of virtual and physical meetings, which will facilitate savings on travel costs. Both organs met virtually throughout 2020 and 2021 and managed to complete their scheduled work efficiently. Although members expressed a strong preference to retain physical meetings, it was noted that the opportunity to consider and discuss agenda items in advance in a virtual format promoted greater efficiency and could reduce, but not completely eliminate, the need for physical meetings.

16. The budget of the Authority for the financial period 2021-2022 is based on a scenario of eight weeks (42 days) of meetings with full services, which are notionally allocated as follows: Assembly (five days), Council (12 days), Legal and Technical Commission (20 days) and Finance Committee (five days). Within this overall cap, meeting days can be reassigned between different organs. Some of the days allocated to the Legal and Technical Commission could therefore be assigned to the Council in 2022, with no financial impact. The planning also does not take into account meetings of informal working groups, which may not require full services.

17. For 2023, the meeting schedule is subject to consideration in the context of a budget proposal for the next financial period. This will need to be formulated in the first quarter of 2022 but will clearly need to include sufficient additional resources for development of the regulatory framework for activities in the Area.

18. It is likely that additional resources will also be needed for the voluntary trust fund to support the participation of members of the Council from developing States in additional meetings of the Council. On the basis that three meetings of the Council would take place in 2022, the estimated additional requirement for the fund would be in the region of \$130,000.

V. Capacity of the Secretariat

19. In addition to increasing the duration of meetings to allow members of the Council adequate time for discussion of the draft regulations, the secretariat will also need to increase its capacity to support member States and deliver appropriate regulatory functions.

20. The Secretary-General has already taken steps to increase the capacity of the secretariat to deliver the regulatory functions expected of it under the draft regulations. The first step was to establish a Contract Management Unit in 2017. The Unit has since evolved into the Compliance Assurance and Regulatory Management Unit (CARMU), established by the Secretary-General in August 2021. CARMU's initial functions and responsibilities will include processing applications for plans of work for exploration and exploitation, overseeing the activities of contractors, processing the reports, data and information submitted by contractors, reporting to the Legal and Technical Commission and the Council, and supporting the systematic publication and ongoing review of standards and guidelines. Ultimately, it is anticipated that CARMU will also manage the inspection mechanism, which is a fundamental requirement of the draft regulations and is also provided for in articles 162 (2) (z) and 165 (2) (m) of the Convention. No such capacity currently exists, but the Legal and Technical Commission has begun to consider the necessary scope and functions of such a mechanism.

21. In addition to enhancing increased capacity within the secretariat, it is clear that in order to meet the accelerated timetable to complete the draft regulations by 9 July 2023 it will be necessary for an increase in expert legal support to ensure the draft regulations and supporting standards and guidelines are a holistic and robust regulatory package.

Annex I

Timeline of regulatory development from 2011 to 2020

2011	
July	Fiji requested the Council to begin consideration of regulations for the exploitation of the mineral resources of the Area and the Council requested the secretariat to prepare a strategic workplan for the formulation of regulations for the exploitation of deep-sea minerals in the Area (ISBA/17/C/22).
2012	
July	The Council considered the report of the Secretary-General on the workplan for the formulation of regulations for the exploitation of polymetallic nodules in the Area (ISBA/18/C/4).
2013	
July	The Commission discussed issues relating to proposed regulations for exploitation of polymetallic nodules in the Area. Members of the Commission acknowledged the work done by the secretariat in producing International Seabed Authority Technical Study No. 11. The Commission considered that the proposed strategic plan set out in chapter 10 of the report provided a useful indication as to how the Authority could proceed to develop the regulatory framework. The Commission endorsed the suggestion to prepare background studies and conduct a stakeholder survey (ISBA/19/C/14).
	The Council commended and took note of the report of the Secretary-General on the development of an exploitation code for polymetallic nodules in the Area and agreed that more in-depth studies should be done. The Legal and Technical Commission was also encouraged to review those issues while continuing its work on the drafting of the mining code (ISBA/19/C/18).
2014	
February	The Commission considered a detailed technical study on the development of a financial regime for deep-sea mineral exploitation (ISBA/20/C/20).
March	The Secretariat launched a stakeholder survey aimed at soliciting relevant information for the development of a regulatory framework for the exploitation of minerals in the Area from members of the Authority and other stakeholders (ISBA/20/C/20).
July	The Commission considered the responses to the stakeholder survey and requested the Secretariat to prepare a possible draft framework of the regulations for exploitation (ISBA/20/C/20).

	The Council requested the Commission continue its work on the regulations governing exploitation as a matter of priority and to make available to all members of the Authority and all stakeholders a draft framework for the regulation of exploitation as soon as possible after its February 2015 meeting (ISBA/20/C/31).
2015	
February	The Commission decided to circulate a draft exploitation framework to all stakeholders, together with a summary of the high-level issues under discussion. In addition, the Commission agreed to circulate a draft action plan flowing from the draft regulatory framework. The Commission agreed to provide to the Council in July 2015 an updated report, including a revised draft framework and revised action plan following the receipt of stakeholder responses to the framework report, together with a summary of priority action areas.
June	Stakeholder workshop held in Singapore relating to the draft framework and a payment mechanism (ISA Briefing Paper 04/2015).
July	The Commission discussed the stakeholder responses to the suggested draft framework, high-level issues and action plan and issued a revised draft framework and action plan, taking account of any material comments by stakeholders (ISBA/21/C/16).
	The Council took note with appreciation of the Commission's work on the framework for the exploitation regulations and requested the Commission to continue its work on exploitation regulations as a matter of priority and endorsed the Commission's list of priority deliverables for the development of the exploitation code over the next 12 to 18 months, as set out in annex III to the report of the Chair of the Legal and Technical Commission (ISBA/21/C/20).
2016	
July	The Commission released the first draft regulations and standard contract terms on exploitation for stakeholder consultation. https://isa.org.jm/files/documents/EN/Regs/DraftExpl/Draft_ExplReg_SC T.pdf
2017	
February	The Commission considered a report by the Secretariat containing an overview of stakeholder submissions of the first working draft and continued its review of the draft regulations (ISBA/23/C/13).
March to July	Several technical workshops and seminars held in relation to the draft regulations.
August	The Commission prepared revised draft regulations and released revised draft regulations for stakeholder consultation (ISBA/23/LTC/CRP.3).

2018	
March	Following stakeholder consultation, the Commission prepared further revised draft regulations, including provisions suggested by the Commission's working groups. The Commission requested the secretariat to incorporate its suggestions and comments into the text and to produce a further revised version (ISBA/24/C/9).
July	The Commission issued revised draft regulations (ISBA/24/LTC/WP.1/Rev.1).
	The Council responded to the Commission with comments on the revised draft regulations and released the revised draft regulations for stakeholder consultation (ISBA/24/C/8/Add.1, annex I).
December	Note by the Secretariat provided an overview of stakeholder consultation of the draft regulations (ISBA/25/C/2).
2019	
March	The Commission provides the Council with its final recommendations on the draft regulations following stakeholder consultation (ISBA/25/C/WP.1).
July	The Council considered the draft regulations recommended by the Commission as contained in document ISBA/25/C/WP.1, together with an explanatory note from the Commission. The Council invited further stakeholder consultation by October 2019 (ISBA/26/C/2).
2020	
February	Council considered stakeholder comments, drafting suggestions and agreed to establish three informal working groups on remaining thematic issues (ISBA/26/C/11).

Annex II

List of relevant documents, reports and studies relating to the draft regulations

Draft Regulations on Exploitation of Mineral Resources in the Area, proposed by the Legal and Technical Commission, ISBA/25/C/WP.1, available at <https://www.isa.org.jm/node/19311>

- [Draft regulation 30 and draft annex VI to the Draft Regulations on Exploitation of Mineral Resources in the Area \[ISBA/26/C/17\]](#)

Draft Standards and Guidelines:

- [Draft guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation](#)
- [Draft standard and guidelines on the development and application of environmental management systems](#)
- [Draft standard and guidelines on the form and calculation of an environmental performance guarantee](#)
- [Draft guidelines for the establishment of baseline environmental data](#)
- [Draft standard and guidelines for environmental impact assessments](#)
- [Draft guidelines for the preparation of an environmental impact statement](#)
- [Draft guidelines for the preparation of an environmental management and monitoring plans](#)
- [Draft guidelines on tools and techniques for hazard identification and risk assessment](#)
- [Draft standard and guidelines for the safe management and operation of mining vessels and installations](#)
- [Draft standard and guidelines for the preparation and implementation of emergency response and contingency plans](#)

Official Documents:

2020

- Decision of the Council concerning working methods to advance discussions on the Draft Regulations on Exploitation of Mineral Resources in the Area [[ISBA/26/C/11](#)]

2019

- Consideration of a mechanism and process for the independent review of environmental plans and performance assessments under the Regulations on Exploitation of Mineral Resources in the Area [[ISBA/25/C/10](#)]
- Key terms: distinguishing between good industry practice and best practices under the Draft Regulations on Exploitation of Mineral Resources in the Area [[ISBA/25/C/11](#)]

- Content and development of standards and guidelines for activities in the Area under the Authority's regulatory framework [[ISBA/25/C/3](#)]
- Relationship between the Draft Regulations on Exploitation of Mineral Resources in the Area and regional environmental management plans [[ISBA/25/C/4](#)]
- Implementing an inspection mechanism for activities in the Area [[ISBA/25/C/5](#)]
- Delegation of functions by the Council and regulatory efficiency [[ISBA/25/C/6](#)]
- Implementing the precautionary approach to activities in the Area [[ISBA/25/C/8](#)]

2018

- Functions of the organs of the Authority in relation to the preparation of rules, regulations and procedures on exploitation of mineral resources in the Area and in relation to the system of compensation envisaged under article 151 (10) of the United Nations Convention on the Law of the Sea [[ISBA/24/C/10](#)]
- Draft Regulations on Exploitation of Mineral Resources in the Area. Note by the Legal and Technical Commission. 24th session [[ISBA/24/C/20](#)]
- Draft Regulations on Exploitation of Mineral Resources in the Area. Note by the Legal and Technical Commission. 25th session [[ISBA/25/C/18](#)]

2017

- Draft Regulations on Exploitation of Mineral Resources in the Area. Note by the Secretariat. 23rd session [[ISBA/23/C/12](#)]

Studies, Reports and Workshop Reports:

2021

- MIT Update [Report on the Development of an Economic Model and System of Payments for the Exploitation of Polymetallic Nodules in the Area \(Based on Stakeholder Feedback\)](#)

2020

- [Study of the Potential Impact of Polymetallic Nodules Production from the Area on the Economies of Developing Land-based Producers of those Metals which are Likely to be Most Seriously Affected](#)
- [Technical Study 27: Study on an Environmental Compensation Fund for Activities in the Area](#)
- [Comparative Analysis of the Financial Aspects of Seabed Mining and Land-based Mining](#)
- [A Study to Determine the Appropriate Social Discount Rate for the International Seabed Authority](#)
- [Developing a Financial Model for Other Deep-sea Minerals](#)
- Study on the application of ILO instruments to activities in the Area

2019

- [Report on the Financial Regimes for Polymetallic Nodule Mining: A Comparison of Four Economic Models](#)
- [Polymetallic Nodule Valuation Report](#)
- Technical Study 25: [Competencies of the International Seabed Authority and the International Maritime Organization in the Context of Activities in the Area](#)
- Study on Remote Monitoring Systems in the Context of Exploitation (coming soon)

2016

- Technical Study No. 17: Towards an ISA Environmental Management Strategy for the Area
- Technical Study No. 16: Environmental Assessment and Management for Exploitation of Minerals in the Area

2015

- [Discussion Paper on the Development of Financial Terms for Exploitation in the Area](#)
- [Draft Framework for Deep Sea Mineral Exploitation in the Area](#) (March 2015)
- [Revised Draft Framework and Action Plan for Deep Sea Mineral Exploitation in the Area](#) (July 2015)

2014

- [Developing Financial Terms for Deep Sea Mining Exploitation](#)

2013

- Technical Study No. 11: Towards the Development of a Regulatory Framework for Polymetallic Nodules Exploitation in the Area

Other items:

In addition to the above materials, the Council has facilitated several rounds of stakeholder consultation in respect to the draft regulations. Details of the stakeholder consultations and all submissions received are accessible here: <https://isa.org/jm/node/20318>

Annex III**Provisional schedule of meetings for 2022**

Twenty-seventh session (2022)		
<i>First part (February/March)</i>		
<i>Legal and Technical Commission</i>	<i>1 week</i>	<i>Standards and guidelines</i>
<i>Council</i>	<i>3 weeks</i>	<i>Financial working group Environmental working group Inspection, compliance and enforcement working group Plenary</i>
<i>Second part (July)</i>		
<i>Finance Committee</i>	<i>3 days</i>	
<i>Legal and Technical Commission</i>	<i>1 week</i>	
<i>Council</i>	<i>3 weeks</i>	<i>Working groups (as required) Institutional working group Plenary (Standards and Guidelines)</i>
<i>Assembly</i>	<i>1 week</i>	
<i>Third part (subject to resources)</i>		
<i>Council</i>	<i>2 weeks</i>	<i>Working groups (as required)</i>
		<i>Review of working group outputs</i>