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Foreign Affairs,
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SANTÉ PUBLIQUE, SÉCURITÉ DE LA CHAÎNE ALIMENTAIRE ET ENVIRONNEMENT

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H.E. Michael LODGE
Secretary General
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your communication of your reference

our reference

Date

J3/AM/04.04.12.05/2018/10380

06/22/2018

To be quoted in all correspondence

RE: Belgian non-paper "Strengthening Environmental Scientific Capacity of the ISA"

Mr. Secretary General,

It is our pleasure to send you herewith a Belgian non-paper entitled "*Strengthening Environmental Scientific Capacity of the ISA*".

This non-paper has been drafted throughout an internal in-depth process involving all Belgian administrations responsible for Deep Seabed Mining. Several stakeholders have been consulted, including representatives of the Belgian contractor and of the civil society.

This document is a testament to Belgium's many commitments toward the conservation and sustainable use of the Oceans and to our continued support to the International Seabed Authority.

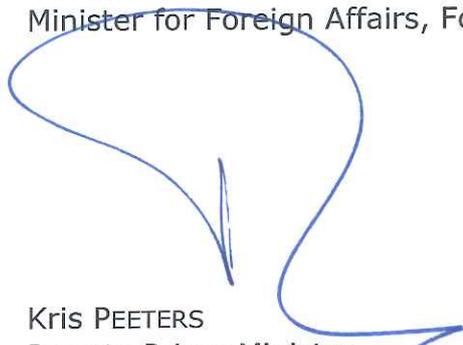
With this contribution, Belgium aims to contribute to the works of the Council and of the Assembly, in particular to the discussions relating to agenda item 11 "*Draft regulations for exploitation of mineral resources in the Area*" of the "*Provisional agenda of the Council*".

We would be thankful if you could submit this paper to the Council for its consideration, in advance of the 24th session of the International Seabed Authority, between 16 and 20 July 2018, in Kingston, as well as to the States Parties.

Sincerely,



Didier REYNDERS
Deputy Prime Minister
Minister for Foreign Affairs, Foreign Trade and Development Cooperation



Kris PEETERS
Deputy Prime Minister
Minister for Economy, S.M.E.s, Self-employed and Energy



Philippe DE BACKER
Secretary of State for the Fight against Social Fraud, Privacy and the North Sea

Annex : non-paper entitled "*Strengthening Environmental Scientific Capacity of the ISA*"



Strengthening Environmental Scientific Capacity of the ISA

Background

The public consultation on the first version of the draft regulations on exploitation of mineral resources in the Area as well as the discussion held at the first session of the Council in March 2018 highlighted several aspects that require further development by State Parties. Ensuring an exploitation with respect for environment is an important concern expressed by several countries and environmental NGO's. There is a great need for a satisfactorily environmental evaluation in the regulatory development process of the exploitation phase and in its implementation.

The preparation of exploitation regulation entails the adoption of clearly and sufficiently detailed binding environmental objectives that need then be translated in regional and habitat specific binding standards and thresholds. Further on, the implementation of these objectives, standards and thresholds will not be possible without an appropriate and independent environmental scientific expertise.

A need for enhancing environmental scientific expertise of the Authority has been underlined on several occasions, notably in a 2017 decision of the Assembly of ISA, which requested the Council *“to reflect on the balance of expertise and required areas of specialization within the Legal and Technical Commission (...)”*¹. In the same decision, the Assembly encouraged the Secretary-General *“to consider how to engage more extensively with the scientific community and deep-sea science projects and initiatives related to the Area, including by seeking to leverage extra budgetary funds to engage with the scientific community and support relevant initiatives”*².

The Assembly also stressed the necessity for stronger transparency when it emphasized *“the importance of the sharing and accessing of environmental data”* and of the dissemination of the knowledge related to the marine scientific research in the Area³. Likewise, the Assembly affirmed *“that non-confidential information, such as that relating to the protection and preservation of the marine environment, should be shared widely and be readily accessible.”*

Besides, the significant increase of the workload of the Secretariat and the LTC, recognized by the Assembly⁴, should not be overlooked, as it makes these requirements for enhancing environmental scientific expertise and for stronger transparency more challenging to meet.

¹ Decision of the Assembly of the International Seabed Authority relating to the final report on the first periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea, [ISBA/23/A/13](#), 18 August 2017 (consulted on 15.06.2018), operative paragraph G.3, p. 3.

² *Ibid.*, operative paragraph H.2., p. 4.

³ *Ibid.*, operative paragraph H.1.

⁴ *Ibid.*, operative paragraphs D.1. and H.3.

Fundamental principles and action for strengthening environmental scientific capacity in the ISA

Efforts have been made since the conclusion of the article 154 review to improve the ability of the ISA to address environmental issues, but most of the challenges remain. To help meet them, it is proposed to strengthen the environmental scientific capacity of the ISA through operationalising three fundamental principles in the environmental performance of the ISA:

1. Expertise;
2. Independence;
3. Transparency;

These fundamental principles would be established through a fivefold action:

During the exploitation phase:

1. Ensuring a publicly available independent evaluation of environmental reviews and monitoring for exploitation as well as exploration activities;

Prior to the exploitation phase:

2. Providing specific scientific advice on binding environmental objectives, standards, thresholds and other environmental aspects for the development of the exploitation regulations;
3. Compiling broad scientific advice for the development of Regional Environmental Management Plans;
4. Enhancing the environmental expertise of the LTC;
5. Enhancing the environmental expertise of the secretariat.

This action would hence represent a substantive assistance in creating and maintaining a level-playing field among contractors, while respecting scrupulously the respective prerogatives of each of the ISA bodies, and enhancing the ability of the ISA to ensure the effective protection of the marine environment.

During the exploitation phase:

1. Ensuring a publicly available independent evaluation of environmental reviews and monitoring

Scope

For each of the environment-related reviews and compliance assessment framework foreseen by the draft regulation on exploitation of mineral resources in the Area, three external evaluations would be carried out separately and simultaneously by independent and internationally recognized experts. These external evaluations would abide by the principles of expertise, independence and transparency.

Due to the complex scientific nature and the limited extent of knowledge of the deep sea environment and in respect of the precautionary principle to respond to uncertainties and risks, three external evaluations are proposed in order to facilitate the provision of complementary insights, potentially following a proper evaluation of the first and current practice with the two external evaluations of the Environmental Impact Assessment for a test in the Clarion Clipperton zone during the current exploration phase.

Setting up the external evaluations

The principles, objectives, format and procedure for these triple simultaneous external evaluations would be set out in the draft regulations.

Tasks and functioning

- Three independent and simultaneous environmental scientific evaluations would be required for the Environmental Plans in the application for the Plan of Work, including on any revisions of the Environmental Performance Assessment. Each selected expert would provide his or her view as to whether the relevant application for approval of a Plan of Work or proposed Material Change (i) provides for the effective protection of the marine environment pursuant to Article 145 of the Convention, (ii) conforms with the applicable Regional Environmental Management Plan, and (iii) conforms with any other applicable standards or guidelines promulgated by the Authority relating to the marine environment.
- Similarly, external independent environmental scientific advice could be requested by the Secretariat, the LTC or the Council on environmental policies or other environmental matters, e.g. advice on how many baseline information would be needed to make a proper EIA assessment.

The external evaluations would be made available by the Secretariat to the LTC and the Council ahead of their review of the Environmental Plans or Environmental Performance Assessment, for which the evaluation is provided. The evaluations could include some advice that would not be binding and the contractor would have the possibility to respond thereto. These evaluations would also be made public.

Appointment procedure

The procedure for the appointment of experts would have to be designed to ensure the greatest level of expertise and of independence.

A preselection of available and interested experts would be done by the Secretariat, with the assistance of the scientific community and relevant partners, such as INDEEP, the Deep Ocean Stewardship Initiative and GESAMP. The preselection would then be screened by an independent international organization, for example the Joint Programming Initiative Healthy and Productive Seas and Oceans (JPI Oceans) or the secretariat of the Intergovernmental Oceanographic Commission (IOC) of UNESCO, to constitute a pool of candidates. The screening would consist, firstly, in the identification of the relevant

different specific fields of expertise of all candidates and, secondly, in an assessment of the required high level of expertise and of the independence of these candidates. Thirdly, with respect to the independence principle, the screening would attest that there is not any conflict of interests involving, on the one hand, the candidates and, on the other hand, any of the contractors, sponsoring States or members of the Council. It would also be forbidden for the candidates to be a member of the LTC or the secretariat of ISA.

The pool of candidates would be constantly updated and enriched, with respect to the screening procedure. Regular calls will be made to this effect to the scientific community and to relevant partners, such as INDEEP, the Deep Ocean Stewardship Initiative, GESAMP and other potential sources.

Whenever an external independent environmental scientific evaluation or advice is required, the secretariat would proceed, through a transparent procedure, to the selection and appointment of three members of the pool. At least one expert will be the same for performing all the reviews related to one exploitation request, in order to ensure some continuity in the evaluation process for one exploitation request.

No disclosure of industrial secret

The appointed experts shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority or any other confidential information coming to their knowledge by reason of their duties for the Authority.

Prior to the exploitation phase:

2. Providing specific scientific advice on environmental objectives and their standards and thresholds for the exploitation

Three experts of the pool described *supra* would be appointed by the Secretariat through a transparent selection procedure, to draft clear, precise and detailed environmental objectives and a methodology how to derive standards and thresholds for environmental objectives. For the selection of the candidates for this task, a specific assessment of the required high level of expertise and of the independence of these candidates will also be performed.

The drafting of these clear, precise and detailed environmental objectives would have to take into account the fact that the objectives will need to be translated in regional and habitat specific standards and thresholds, through a developed methodology and in close exchange with the contract/technology holders. They would also need to be integrated in the Regional Environmental Management Plans and the Environmental Management and Monitoring Plan.

3. Compiling broad scientific advice for the development of Regional Environmental Management Plans

Before approving any application for exploitation in a region, the Authority should adopt a Regional Environmental Management Plan providing clear, precise and detailed environmental objectives, standards and thresholds for any activities in the region and identifying areas to be set aside from mining to ensure effective protection of the marine environment.

A number of experts of the pool described *supra* would be appointed by the Secretariat through a transparent selection procedure, to propose these areas in close exchange with the already existing networks and integrate environmental objectives during their development, for example during workshops. For the selection of the candidates for this task, a specific assessment of the required high level of expertise and of the independence of these candidates would also be performed. The draft Regional Environmental Management Plans would be subject to a period of Member States and stakeholders review and consultation and revised accordingly. It would then be submitted to the LTC for its recommendation and to the Council for its adoption.

4. Enhancing the environmental expertise of the LTC

In its decision [ISBA/22/C/29](#), the Council decided that, no later than the twenty-fifth session (2019) of the Authority, it will reach a clear and binding decision on a process to govern the next election of members of the LTC, which is currently composed of ten specialists in mineral resources, a specialist in oceanology, four specialists in the marine environment, a specialist in economy and ten specialists in legal matters. In 2017 the Council discussed the report of the Secretary-General on the election of members of the LTC (doc [ISBA/23/C/2](#)), but thought it was premature to come to a decision. The Council requested the Secretary-General to prepare an updated and extended report prior to the next election and that conference room paper ISBA/23/C/CRP.1 be recirculated at that session.

While a large weight is expected to be given to the need for equitable geographical distribution of the members, foreseen in article 163, 4, of UNCLOS, the decision of the Council should give more weight to the requirement for *“appropriate qualifications in the area of competence of the Commission”* than to geographical considerations, foreseen in article 163, 3, and article 165, 1, of UNCLOS.

A way to ensure that relevant expertise would be present in the future LTC, is to equally distribute the needed expertise, as identified by the Council, over the regional groups, taking into account the differences in the number of seats assigned to these groups. Due to the proximity of exploitation, assigning one third of the seats to experts in the protection of the marine environment or oceanology would be strongly recommended.

Full transparency would need to be achieved on the written comments, discussions and conclusions of the LTC with regard to all environmental issues presented to it, with the exception of issues involving proprietary information and data, as they should be a matter of public record and available for public scrutiny on the ISA website.

5. Enhancing environmental expertise of the Secretariat

Not only the environmental expertise of the LTC should be ensured, but the secretariat as well would benefit from more expertise to manage, coordinate future exploitation contracts and, in particular, implement the necessary environmental scrutiny of the exploitation, as well as in the development of REMP's and some of the other tasks.

It is suggested that the budget of the Authority would allow for this increase in environmental expertise of the secretariat, in view of the importance of the exploitation activities. The contracting fee for exploitation could be fixed so as to, at least partially, finance this necessary increase of the secretariat's staff with at least two candidates that are selected on the basis of demonstrable relevant technical expertise and qualifications.