



## Legal and Technical Commission

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### **Implementation of the provisions of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area relating to the extension of plans of work for exploration**

#### **Note by the Secretariat**

1. Pursuant to regulation 26, paragraph 1, of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, a plan of work for exploration shall be approved for a period of 15 years. Upon expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so, has obtained an extension for the plan of work for exploration or decides to renounce its rights in the area covered by the plan of work for exploration.
2. The provisions of regulation 26 are taken directly from paragraph 9 of section 1 of the annex to the Part XI Agreement (see General Assembly resolution [48/263](#), annex), which established the limited duration of plans of work for exploration. As a result of those provisions, each contract for exploration also has a limited duration of 15 years from the date of its entry into force, provided that the contract may be extended in accordance with standard clauses 3.2 and 17.2.
3. Seven exploration contracts are due to come to an end between March 2016 and March 2017, involving the following contractors: Interoceanmetal Joint Organization, Yuzhmorgeologiya, Government of the Republic of Korea, China Ocean Mineral Resources Research and Development Association, Deep Ocean Resources Development Co. Ltd., Institut français de recherche pour l'exploitation de la mer and the Government of India. A list of the contractors, their sponsoring State(s) and the dates upon which their contracts will expire, is contained in the annex to the present document.
4. At its meetings in 2013, and at its meetings in February 2014, some members of the Legal and Technical Commission had noted the need to anticipate the possibility that some contractors may not be in a position to proceed to exploitation by 2016, and may therefore seek an extension of their current exploration contracts.



During the meetings of the Council during the nineteenth session of the International Seabed Authority, at least one delegation had also suggested that the Council adopt some kind of standard criteria in reviewing any requests for contract extension (see [ISBA/19/C/18](#)).

5. The present note provides a preliminary review of the relevant provisions of the regulations and standard clauses regarding such extensions and offers a suggested way forward for the Commission to consider.

6. Section 3.2 of the standard clauses, contained in annex 4 to the Regulations, provides that, not later than six months before the expiration of a plan of work for exploration, a contractor may apply for extensions for the plan of work for exploration for periods of not more than five years each. Such extensions shall be approved by the Council, on the recommendation of the Commission, if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

7. It should be noted that section 17.2 of the standard clauses also permits an extension of contract in cases of force majeure. In such case, the duration of the extension shall be equal to the period by which performance of the contract was delayed due to force majeure. This situation is not relevant to the current discussion and does not need to be considered further.

8. A number of problems of a procedural and substantive nature may arise with regard to the implementation of section 3.2. Substantively, section 3.2 provides two separate grounds upon which an extension may be approved. Those are:

(a) That the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage;

(b) That the prevailing economic circumstances do not justify proceeding to the exploitation stage.

9. Both of those grounds are subjective and imprecise tests. It is not clear, for example, whether "prevailing economic circumstances" refers to global market conditions or to the economic feasibility of the contractor's particular project, which may perhaps be demonstrated by a pre-feasibility study. In the latter case, if after 15 years a particular contractor's project is not viable for reasons that are unconnected to global economic conditions, it seems difficult to understand why an extension for a further five years is justified. It is also not clear what data and information must be submitted by the contractor to support an application for an extension. A specific question that arises is whether the contractor is required to submit a proposed programme of activities covering the extension period, and the relationship between that programme of activities and the original plan of work for exploration. If the ground for extension is that the contractor has been unable to complete the necessary preparatory work for proceeding to the exploitation stage, it would seem logical that the programme of activities during the extension period should focus on completing that preparatory work in order to proceed to exploitation. The programme of activities should also be sufficiently detailed to

enable the Commission and the Council to carry out their functions of supervising activities in the Area. Furthermore, it is not clear whether an extended contract period may entail additional training and related obligations, although it may perhaps be inferred that all standard clauses of the contract continue to apply throughout the extension period.

10. There are also procedural difficulties with section 3.2. Although it does provide that an application for an extension shall be submitted not later than six months before the expiration of a contract, and shall be approved by the Council on the recommendation of the Commission, it does not specify any minimum period of notice for consideration by the Commission, for example, 30 days, as in the case of applications for approval of plans of work for exploration. Nor is there any stipulation as to processing fees, the form of applications, the procedure for consideration by the Commission, including the order in which applications shall be considered, and the form of certification by sponsoring States.

11. Initial discussions with contractors have revealed that several of the existing contractors may seek an extension, but they are concerned that section 3.2 should be applied in a uniform and non-discriminatory manner according to a common understanding as to its interpretation and application. In the view of the secretariat, the best way to ensure this would be for the Council to adopt procedures and criteria for consideration of applications for extensions. Such procedures and criteria should be adopted well in advance of any possible application for extension, which means in effect that they would need to be adopted during the twenty-first session of the Authority in 2015, given that the first applications for extension could be anticipated by September 2015.

### **Recommendation**

12. In the light of the above, the Commission may wish to take the opportunity in the context of the summary report of the Chairman of the Commission to draw the attention of the Council to the implications of anticipated applications for extension of contracts.

13. The Commission may also wish to recommend to the Council, pursuant to paragraphs 2 (a) and (g) of article 165 of the United Nations Convention on the Law of the Sea, that the Commission be requested, as a matter of priority, to formulate draft procedures and criteria for applications for extensions of contracts for exploration, for consideration by the Council at its next session in 2015.

**Annex****List of contracts for exploration expiring between March 2016 and March 2017**

<i>Contractor</i>	<i>Date of entry into force</i>	<i>Sponsoring State or States</i>	<i>General location of exploration area</i>	<i>Date of expiry</i>
Interoceanmetal Joint Organization	29 March 2001	Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia	Clarion-Clipperton Fracture Zone	28 March 2016
Yuzhmoregeologiya	29 March 2001	Russian Federation	Clarion-Clipperton Fracture Zone	28 March 2016
Government of the Republic of Korea	27 April 2001		Clarion-Clipperton Fracture Zone	26 April 2016
China Ocean Mineral Resources Research and Development Association	22 May 2001	China	Clarion-Clipperton Fracture Zone	21 May 2016
Deep Ocean Resources Development Co. Ltd.	20 June 2001	Japan	Clarion-Clipperton Fracture Zone	19 June 2016
Institut français de recherche pour l'exploitation de la mer	20 June 2001	France	Clarion-Clipperton Fracture Zone	19 June 2016
Government of India	25 March 2002		Indian Ocean	24 March 2017