SEABED AUTHORITY BEGINS WORK ON EXPLOITATION REGULATION


It also took note of a document on addressing serious harm to the marine environment in the regulations for the exploitation of mineral resources in the Area, submitted by the delegation of the Netherlands.

The exploitation framework document is the revised version of the Draft framework, High level issues and Action plan embodying stakeholder responses to the Report to Members of the Authority and all stakeholders which was prepared by the Legal and Technical Commission and issued 23 March 2015.

It contains the draft framework for the Exploitation Regulations; a summary of high level issues and draft action plan/priority deliverables.

The draft framework for the Exploitation Regulations contains a Preamble which sets out the objectives and overarching principles/purpose of the regulations and ten parts and two annexes: Part I - Introduction and use of terms and scope; Part II - Applications for approval of plans of work for exploitation in the form of contracts; Part III – Contracts for exploitation; Part IV – Protection and preservation of the marine environment; Part V – Confidentiality; Part VI – General Procedures; Part VII – Enforcement, offences and penalties; VIII – settlement of disputes; Part IX – Other mineral resource categories and Part X – Review.

Annex I covers applications for approval of a plan of work for exploitation to obtain a contract, and Annex II deals with Standard Clauses for exploitation contract plus schedules.

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The summary of high level issues include information data; activities in the Area; the transition between exploration and exploitation phases; risk assessment, evaluation and management; time limits and costs and confidentiality. Other issues are: effective protection of the environment from harmful effects; adaptive management; “internationally recognized standards” and their significance in exploitation activities; a clear definition of the division of duties and responsibilities of the Authority and sponsoring States; and “high-grading” of mineral deposits.

The rest of the subjects are: existing best practice, learnings, co-operation and information-sharing; ISA-stakeholder consultation; mining inspectorate/directorate/environmental regulator; an interim framework; and whether there should be one over-arching framework.

The draft action plan/priority deliverables contains (1) a summary of priority deliverables for the next 12–18 months that the Legal and Technical Commission was to present to the Council during its current 21st session and (2) a revised Action plan and prioritization, based on stakeholder comments. The Commission proposes that further work is performed on the Action plan, including target/realistic milestone dates and full costing as its delivery will, inter alia, be dependent on adequate resources being made available.

In his introduction of the document, the Legal Counsel explained that work on the document had started last year and one of its main achievements was the organization of a successful online survey which received over 50 responses. The feedback was analysed by the Commission at its February meetings and a report was published in March 2015. The Council’s attention was drawn to Section 2 of the document which outlined high level issues on which the Legal and Technical Commission was seeking guidance from the Council.

The Chair of the Commission, Christian Reichert, presented the third section of the document, which included a summary of priority deliverables for the next 12 - 18 months. Seven priority deliverables were presented to the Finance Committee because of their budgetary implications. They are:

1) A zero draft of exploitation regulations and standard contract terms based on the working structure agreed by the Commission;

2) Financial modelling for proposed financial terms and payment mechanism;

3) Data management strategy and plan;

4) Environmental assessment and management;

5) Adaptive management approach;

6) “Serious harm”;

7) Responsibility and liability.
Items 1 and 2 would require input from external consultants, the Chair explained. The data management strategy and plan would be produced by the Secretariat but the installation of comprehensive databases would attract costs. Environmental assessment and management would involve expert working groups and workshops. It was hoped that some savings could be found in the current budget for work on those deliverables, although more resources would need to be allocated from the 2017-2018 budget, he stated.

**Netherlands’ paper on serious harm to the marine environment**

The Council then turned its attention to a proposal by the Netherlands circulated in the Council (ISBA/21/C/13). It proposed further incorporation of provisions into the exploitation regulations to cover serious harm and threats to the marine environment by activities of contractors in the international seabed Area. Its representative said the objective was to build upon the legal framework of the United Nations Convention on the Law of the Sea and the achievements of the Authority to date, including the adoption of the three sets of regulations governing exploration for mineral resources of the Area.

The Netherlands invited the Council to take account of the issues it had raised in the annex to its document and to request the Legal and Technical Commission to consider recommending that the exploitation regulations be based on the provisions on emergency orders in order to address threats of serious harm to the marine environment in the Area.

Other recommendations include an obligation by contractors to assess the technical and economic feasibility of implementing restoration measures and providing equivalent, compensatory measures and/or payment of monetary compensation if no adequate restoration measures had been or could be implemented.

The representative noted that the issue of serious harm was not only addressed in the March 2015 report of the Commission but also in the priority deliverables contained in annex 3 of the Chair’s report at the current session. The Netherlands also urged support and encouragement for private sector initiatives to address harm to the marine environment.

In closing, the delegate spoke of the symbiotic relationship between the Authority and the contractors which would further evolve as progress was made towards the commercial viability and sustainable use of the oceans’ resources.

Several delegations, including Nigeria, Norway, South Africa expressed their support for the Netherlands proposal, as it raised important issues to be considered by the Legal and Technical Commission. Cameroon suggested that the issue of serious harm to the environment should not be considered in isolation but in relationship with risk assessment.

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Discussions on the regulatory framework

The Council president then opened the floor for comments on the document on the regulatory framework for deep sea mineral exploitation which had been presented earlier at the meeting.

Referring to the “data deficient environment” cited in the first high level issue in the document, Nigeria expressed the view that it would be logical to extend the deadline for formulating the framework until 2017 or 2018. This would give some time for contractors to comply with the data reporting requirements and provide the basis for a framework. The representative also emphasised that in applying for an extension of contracts, contractors should be required to get their sponsorship revalidated.

Other speakers, including Australia, Norway, South Africa and the Observer from the United Kingdom in the Council, considered it important to proceed with expediency towards a “zero draft” of the regulations by February 2016 as this would give a clearer picture of what the actual regulations would look like. Norway added that without an exploitation code, exploitation could not take place and exploration contracts might have to be extended repeatedly.

Germany agreed that it was important to keep the momentum going and, like the speaker for the United Kingdom, saw some merit in establishing an action plan and setting a target date delivery of the final code.

Mexico urged the Council to apply a “preventive” approach as it deliberated on a plan of work for exploitation bearing in mind the possible impact the activity could create. The delegation called for mechanisms for guarantees of environmental protection from contractors, sanctions for their non-compliance, and compulsory contribution to an environmental protection fund. Another high-priority item, it said, would be the rights of coastal States.

Resolving to continue to work with the Authority to achieve a balance between the environment and exploration, Japan underscored that discussions must include viewpoints of mining enterprises and shall be advanced with technology and more exact economic assessment. Describing the conservation and sustainable use of resources as very important to the future of the international community, Trinidad and Tobago urged the Council to subscribe to the new laws of international environment, specifically the principle of inter-governmental and intra-governmental equity, which stipulated that resources were for the benefit of not only present but future generations as well. The sentiment was echoed by Argentina as a sustainable framework for deep sea mineral exploitation.

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Comments by Observers

The International Union for the Conservation of Nature and Natural Resources (IUCN) Observer said it would like to see the Authority develop a strategy (with a capital “S”) for regional environmental management plans to enable the effective protection of the full range of ecosystem structure, function, processes and biological diversity at a regional scale as well as protection for areas of special biological, environmental and scientific significance at the site-specific level. The IUCN would also welcome a continuation of the constructive approach to engaging stakeholders and ensuring their effective participation in the process.

On the issue of confidentiality, the Deep Sea Conservation Coalition (DSCC) Observer said that while legal options based on best practice and trends and proposals in the draft exploitation regulations both had merit, a technical paper setting out the legal options could be produced and then circulated to stakeholders for their input before the drafting of options for the exploitation regulations.

Greenpeace welcomed the paper from the Netherlands as an important step in starting the discussion about serious harm in the context of liability and redress specifically, what the response should be if serious harm occurred. The Observer welcomed Mexico’s call for the establishment of an environmental protection fund which it said could be split into both the liability fund and the sustainability fund as another Observer, the IUCN, had suggested.

The World Wildlife Fund Observer said information and data management strategy should include plans to deliver data sharing and transparency. This would aid the confidentiality issues as it would help to define what should remain confidential and what should be transparent. It said the provision of good quality comparable baseline environmental data would also aid in risk assessment, because lack of this type would stymie realistic risk frameworks.

The Council meets again on Wednesday afternoon, 22 July for further consideration of draft regulations for exploration of minerals resources in the Area and procedures for the election in 2016 of the members of the Legal and Technical Commission.

The Authority’s 167-member Assembly meets tomorrow morning to hear Secretary-General Nii Allotey Odunton (Ghana) deliver his annual report of the work of the Authority.

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