

Comments on ‘the Developing a Regulatory Framework for Mineral Exploitation in the Area 2015’

To whom it may concern:

Korea Institute of Ocean Science and Technology (KIOST) is the primary research institute with expertise for all fields of the ocean science and technology funded by South Korean government. This institute is currently engaged in the exploration of deep sea mineral resources on behalf of the government.

In addition to the submission of comments on the ISA Stakeholder Questionnaire in 2014, we are enclosing additional comments on the 2015 draft framework for the regulation of exploitation activities in the Area based on the reviews from our scientists and law experts.

We hereby grant consent for contact details and our comments to make publicly available.

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Section 2: Draft framework for the Exploitation Regulations

Relevant Items	Comments
<p>(p. 8)</p> <p>Part I Introduction Use of Terms and scope</p>	<p>This provision may include definitions on the following terms: 'sponsorship', 'reserved area,' 'relinquishment', 'environment baselines data,' which are included in the exploration code. In addition, based on this report and suggested content of the Code, definitions for the following terms may also be included: 'feasibility study,' 'environmental impact statement', 'environmental management plan,' 'social impact assessment', 'impact reference zone,' 'preservation reference zone,' 'environmental impact areas,' 'areas of particular environmental interests,' and other terms indicating protected areas, 'restoration and rehabilitation,' 'adaptive management approach,' 'serious harm,' 'vulnerable marine ecosystems,' etc.</p>
<p>(p. 13) commentary/suggested content</p> <p>v. Measures/plans for monitoring, management, conservation, remediation, restoration/ rehabilitation and control including those to avoid, minimize, mitigate, rehabilitate and offset, where appropriate, impacts on biological diversity within the impacted area and plans to prevent, minimize, mitigate impacts to water column.</p>	<p>Minimisation of environmental impact seems to be more practical than restoration/rehabilitation of which feasibility has not yet been proved. We think further efforts of seeking consensus on the inclusion of a provision on restoration/rehabilitation in the Code is required. It is supposed to be inappropriate for 'requiring' EMP to contain measures/plans for restoration/rehabilitation for the time being. Instead, we recommend that inclusion of plans for designation of a type of protected areas would be more appropriate.</p>
<p>(p. 14)</p> <p>Social Impact Assessment and Action Plan(SIA)</p>	<p>We agree that this item is integrated with EIS. We believe that the scope of the social impact and the subjects of the assessment is to be clearly defined in advance of developing a rule on this matter. This would include determination of whether other ocean uses can be considered in terms of SIA.</p>
<p>(p. 15) commentary/suggested content</p> <p>o Restorative obligations at the time of closure?</p>	<p>Restoration after closure might be considered as a potential duty. However, we believe it is currently too advanced to require contractors to restore mined area.</p>

<p>(p. 15) commentary/suggested content</p> <p>o post closure environmental management and monitoring obligations to be defined. Also to determine the period/duration of post closure monitoring-appropriate benchmark (years)?</p>	<p>The duty for environmental protection given under the Law of the Sea Convention is an obligation of conduct rather than an obligation of result as confirmed recently by the Seabed Dispute Chamber. Therefore, the post-closure monitoring would not aim to continue until it is confirmed that no serious harm left behind.</p>
<p>(p. 15)</p> <p>Size and location of exploitation area(s) covered by the plan of work</p>	<p>We recommend that size of the exploitation area is determined based on profitability, technical availability, and concentration of minerals with market values. A part of the contract areas which then decide not to be exploited would be returned to ISA. We think this would result in efficiency in time management, guaranteeing high profitability, conservation of marine environment in non-exploited area, and enhancing chances for more participation to the activities in the Area.</p>
<p>(p. 16) commentary/suggested content</p> <p>o The proximity of exploitation area(s) to marine protected areas(including APEIs) and vulnerable marine ecosystems.</p>	<p>We recommend clear distinction among different concepts of protected areas is to be provided in the Code in consideration of the existing concepts developed in the currently available guidelines. It may be a good idea to have a separate provision about the designation and management of protected areas.</p>
<p>(p. 24)</p> <p>Conservation of the natural resources of the Area</p>	<p>Title and contents of this provision (conservation of the natural resources of the Area) seem not to be consistent. If this provision is going to provide the general obligations on 'the protection and conservation of the natural resources of the Area and the Prevention of damage to the flora and fauna of the marine environment' as specified in Article 145(b) of the LOSC, it is better to be removed to Part IV of this Code. If this aims to reduce and manage wastes from mining facilities, the title would be 'waste management.'</p>

<p>(p. 30) commentary/suggested content</p> <p>o Not all jurisdictions request a bond in practice under mining regimes but may make provision in their regulations for a bond, particularly to secure any closure obligations (restoration/rehabilitation). In the case of activities in the Area these obligations may be minimal (save for any post closure monitoring) and a cash bond or guarantee connected with the performance of the EMP may be more preferable.</p>	<p>In the responses to the survey, many participants objected to the inclusion of an obligation on restoration/rehabilitation since it can be done only after thorough research of deep seabed ecosystems and feasibility of restoration/rehabilitation, which has not been proved yet. Bond for securing implementation of the obligation of restoration/rehabilitation after closure is preferably not to be considered at this stage.</p>
<p>(p. 31) commentary/suggested content</p> <p>o To include a general restoration obligation. Restoration to occur where directed to do so by the Council. This would be based on the Commissions' recommendations that would take account of the likely effectiveness of techniques based on necessity; technical feasibility; and cost-efficiency on the basis of a cost benefit analysis, where such quantification can be reasonably assessed.</p>	<p>We repeat that focus would be on minimisation of destruction of deep sea ecosystems instead of restoration because it has not been proved whether or not rebuilding deep sea ecosystems in the mined area is feasible yet.</p> <p>If this must be included in the Code different levels of duties would be imposed in different phases of technological development. For instance during the initial phase lower level of requirements could be given to contractors.</p>

Section 5: Draft action plan

Relevant item	Comments
<p>(p. 43)</p> <p>“Internationally recognized standards” and their significance in exploitation activities</p>	<p>Indeed the deep-seabed mining activities will have many similitudes with offshore oil-and-gas development. However, there are also clear differences at the same time.</p> <ul style="list-style-type: none">- In order to figure out the orderly approach for industry standard(s), two issues should be mentioned in 10:<ul style="list-style-type: none">(1) Guideline(s) of Deep-Seabed Mining Activities(2) Recommended Practice for Design and Operation of Deep-Seabed Mining System- Guideline(s), especially related with environmental issues, much be taken into consideration before industrial standards.- A Recommended Practice for Design and Operation of Mining System has to be developed together with adoption, modification and development of industry standards