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Letter

to Secretary General – Mr. Michael Lodge
International Seabed Authority
from Kris Van Nijen
our ref. GSR/2019/E/018/KVN
date 15/10/2019
pages 5
subject **Comments by Global Sea Mineral Resources (GSR) to the Draft Regulations on Exploitation of Mineral Resources in the Area - ISBA/25/C/WP.1.**

Dear Secretary General,

GSR is pleased to provide its comments to ISBA/25/C/WP.1 containing the Draft Regulations on Exploitation of Mineral Resources in the Area, distributed on 25 March 2019 and presented during the second part of the twenty-fifth session of the Council.

On 30 September 2018, GSR submitted comments to the former version of the regulations included in ISBA/24/LTC/WP.1. The endeavours of the Authority in translating responses from stakeholders into updated regulations are patent in the latest version. Alignment with the provisions and principles of the LOSC, streamlining of the application procedure and the removal of redundant terms to ensure responsible seabed mining are some of the main updates found in document ISBA/25/C/WP and GSR commends the Authority on progress made to date.

Under its contract for prospecting and exploration for polymetallic nodules, signed on 14 January 2013, GSR has achieved and continues to work on two main aspects of project development. First, GSR's implementation of the precautionary approach where collaboration with the scientific community is key to gather evidence about the impacts of nodule collection on the marine ecosystem, while guaranteeing the highest level of transparency so all the environmental data collected can be made available. And second, GSR's investment of significant resources in the development of responsible technology and the best environmental practices in the management of deep-sea mining operations.

GSR encourages timely regulations that enable the exploitation of polymetallic nodules in a responsible manner, while providing certainty, stability and predictability for investors and stakeholders. GSR is aware of the complexity of developing such a regulatory framework and trusts that by 2020 it will be in place, so that the first analysis of the feasibility phase can take place, along with the preparation of the necessary infrastructure for future commercial production.

Yours sincerely,

Kris Van Nijen
Managing Director GSR

GSR
ISBA/25/C/WP.1
Draft Regulations on Exploitation of Mineral Resources in the Area

Reference	Issue	Comment
Part I - Introduction		
DR 1(5)	<p>Regulations are intended to be supplemented by Standards and Guidelines, as well as further rules, regulations and procedures of the Authority.</p> <p>Standards are legally binding on Contractors (DR 94(4)).</p>	<p>The main concerns include:</p> <ul style="list-style-type: none"> - The Commission may recommend to the Council the adoption or revision of Standards, pursuant to DR 94(1). The Draft Regulation does not establish time limits for the Commission to suggest the adoption or revision of Standards. - As Contractors will have to adjust their activities to be compliant with new/revised Standards, the Draft Regulations should include a procedure to: <ul style="list-style-type: none"> o Ensure that Contractors are part of the drafting and/or revision procedure of Standards to ensure changes imposed are technologically and economically achievable; and o Provide a mechanism where both parties (Authority and Contractor) assess the cost-benefit impact of the new standard and mutually agree on the adjustments to the terms of the Contract.
Part II – Applications for approval of Plans of Work in the form of contracts		
DR 12(4)	When considering an application, the Commission must consider the way the proposed Plan of Work contributes to realizing benefits for mankind.	<p>The Commission does not have objective Guidelines to establish whether an application for a Plan of Work realizes benefits for mankind.</p> <p>Suggestion is to delete DR 12(4).</p>
DR 15 (3)	The Commission shall not recommend approval of a proposed Plan of Work if it determines that such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work.	For the Commission to determine if a conduct monopolizes the conduct of activities in the Area, the Commission should carry out a study of the relevant market for such Resource and the ability of such a State to effectively monopolize activities therein.
DR 16	For consideration and approval of Plans of Work, the Council follows the procedure established in paragraph 11 of section 3 of the Annex to the Implementation Agreement.	The Draft Regulations should include an explicit provision stating that if the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 days, the Plan of Work shall be deemed to have been approved by the Council.
Part III – Rights and Obligations of Contractors		

DR 22 (4)	The Council needs to give consent prior to recording a security interest on the contract.	<p>Consent could be issued by the Secretary General. Please note:</p> <ul style="list-style-type: none"> - The Secretary General has all the necessary information to approve the security interest, so it is best placed to give timely consent on this regard. - As the Council has two sessions per year, an approval by the Council may largely delay the registration of the security interest.
DR 23 (7)	The Council needs to give consent for the transfer of Contractor's rights and obligations under an exploitation contract.	<p>Consent could be issued by the Secretary General. Please note:</p> <ul style="list-style-type: none"> - The Secretary General has all the necessary information to approve the transfer, so it is best placed to give timely consent on this regard. - As the Council has two sessions per year, an approval by the Council may largely delay the transfer of the rights and obligations under the Contract.
DR 24 (3) (b)	In the event of a change of control, the Secretary-General may choose to treat a change of control as a transfer of rights and obligations, pursuant to regulation 23.	<p>Treating a change of control as a transfer of rights and obligations may not render the desired effects.</p> <p>In an event of change of control, the controlling entity of a contractor changes while the identity, qualifications and assets of the contractor, in principle, remains the same. This is different than transferring Contractor's rights and obligations under the contract to Contractor's controlling entity. If the regulation on transfer of Contracts (23) is applied to Contractor's controlling entity, as a transferee, it can be the case that such controlling entity does not fulfil all conditions, while the initial Contractor remains compliant with the required criteria.</p> <p>It is suggested to elaborate further on how the transfer of rights and obligations provisions would be applied to a change of control.</p>
DR 28 (3)	The Contractor is requested to reduce or suspend production when such is needed to protect the Marine Environment from Serious Harm or a threat of Serious Harm.	The Contractor should only temporarily reduce or suspend production if Contractor deviates from what has been foreseen in the Plan of Work , approved EIS, EMMP, and Closure Plan or when Serious Harm is caused by a wrongful act.

DR 29 (3)	In the event Contractor suspends all production for more than five years, the Council may terminate the exploitation Contract.	Contractor should be given the opportunity to justify suspension of production for more than 5 years, prior to the termination of the contract.
DR 31(1)	Contractors are required to exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.	Contractors should only be required to exercise such due diligence with pre-existing or agreed to submarine cables or pipelines.
Part IV - Protection and preservation of the Marine Environment		
DR 52 (6)	An independent competent person is required to conduct the performance assessment when the Commission deems that Contractor cannot satisfactorily conduct it.	The independent competent person should be agreed by the ISA and the Contractor.
Part VII – Financial terms of an exploitation contract		
DR 70 (4)	The Council may approve the payment of any royalty due by way of instalment where special circumstances exist justifying payment by instalment.	These special circumstances must be specified in the regulations, objectively and easily ascertainable by contractors. Payment of royalty by way of instalments should be applicable and available to any Contractor who can objectively justify invoking those circumstances with regard to itself, in order to avoid distorting competition.
DR 82(2)	The Council may only apply the adjustment to the rates of payments to existing exploitation contracts from the end of the Second Period of Commercial Production.	The First Period of Commercial Production should be 5 years, while the Second Period of Commercial Production should be a minimum of 15 years. A total of 20 years generates sufficient certainty and stability for the contractor.
Part XI - Inspections, Compliance and Enforcement		
DR 104 (2)	If the Authority takes remedial action or measures under paragraph 1, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.	The Guarantee should cover for duly proven costs and expenses, and not “reasonable” costs.
Schedule – Material Change	The definition of Material Change is crucial for the commencement of production in a Mining Area, as it will determine whether the original environmental plans of the approved Plans of Work must be once again reviewed by the Commission (DR 11) and approved by the Council (DR 16).	The Material Change definition should exclude the following events: - Adoption of alternatives to technologies already foreseen in the documents submitted by the Contractor with the approved Plan of Work; and - Test results when such results are comprised within the threshold values

		foreseen in the environmental plans of the approved Plan of Work, among other.
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