

General comments from Norway
on Draft Regulations on Exploitation of Mineral Resources in the Area
October 2019

Norway appreciates the opportunity to provide written comments on the Draft Regulations on Exploitation of Mineral Resources in the Area as issued on 22 March 2019 (ISBA/25/C/WP.1), and acknowledges the significant progress made by the secretariat of the International Seabed Authority and the Legal and Technical Commission (LTC). Pending further consideration by Government, Norway would like to provide some initial views regarding issues that we consider important.

Precautionary approach

As regards the protection of the environment, the regulations refer to the precautionary approach as one of the guiding principles (see Regulations 2(e)(ii) and 44(a)).

In Norway's understanding, the "precautionary approach" will imply that decisions on measures to be taken shall be based on science, knowledge and facts to the extent possible, to ensure prudent and sustainable economic activities.

Part X - General procedures, Standards and Guidelines

Regulations 94 and 95 deals with Adoption of Standards and Issue of Guidelines, respectively.

Norway welcomes the Legal and Technical Commission's recommendations related to the development of the large number of standards and guidelines to be included in the regulatory framework as presented in the Annex of the report of the Chair of the Commission (ISBA/25/C/19/Add.1). It is noted that the report of the Chair also submits that the Commission recommends that Regulation 94 should be amended to comply with the Convention. The amendment will imply that standards of the Authority are to be recommended by the Commission, adopted by the Council and approved by the Assembly.

It is important that there is a common understanding of the definitions of standards. In its recommendations to the Council (ISBA/25/C/3), the Commission distinguishes between process standards and performance standards. In addition, there is the concept of thresholds that may be standards on their own or are part of the aforementioned standards. The ISA standards should be based on the same principles as those referred to in the assessment of contractors set out in Draft Regulation 13: Good Industry Practice, Best Available Techniques, and Best Environmental Practices.

Norway agrees with the Commission (ISBA/25/C/3) that it is important that such standards be developed in close contact with the industry.

Norway agrees with the list of priority and three-phase approach to development of standards and guidelines as recommended by the Commission.

Part XI - Inspection, compliance and enforcement

Norway considers that the following UNCLOS provisions on inspections are particularly relevant in relation to structuring and implementing an inspection mechanism (emphases added):

Article 153 (5):

The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract.

*The ISA shall have the **right to inspect** all installations in the Area used in connection with activities in the Area*

Article 162 (2)(z):

*The Council shall ... establish appropriate mechanisms for **directing and supervising a staff of inspectors** who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.*

Article 165 (2)(m):

*The Commission shall ... make recommendations to the Council regarding the **direction and supervision of a staff of inspectors** who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.*

In Norway's opinion, the inspection mechanism shall work as a safeguard to ensure that all the rules of the Mining Code and the fundamental principles of Part XI of the UNCLOS, especially the aspects mentioned in Article 145 on Protection of the marine environment and Article 150 on Production policies, are complied with. The precautionary principle should therefore be prominent also when it comes to designing an inspection system.

In general, Norway is of the view that the development of a system of inspection should consider the experience which has come out of the well-established system of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

The Authority lacks a description of its future inspectorate and how such a body or function should be at arm's length from any economic interests of the Authority. Norway is of the view that such an inspectorate must be established before the onset of any exploitation activity.

It is crucial that the inspection mechanism be robust, transparent and independent of all Member States and other stakeholders. Procedures for the designation of inspectors are still to be identified and must be elaborated with this in mind.

At the same time, the inspection system needs to be effective and able to respond to situations that require swift action, if necessary pre-emptively to protect the marine environment. Taking into account that the Commission and the Council only meet twice a year, we agree with delegating authority to the Secretary-General when timely action is of critical importance, on the condition that appropriate accountability and good governance are ensured. We therefore support the Secretary-General having decision-making authority in draft regulation 103 to issue a compliance notice and to identify what remedial action is required. In our view, the power to suspend or terminate the exploitation contract (DR 103(5)) and to impose monetary penalties (DR 103(6)) should also be extended or delegated to the Secretary-General. It may be necessary for the Secretary-General to take immediate action outside of Council meetings to prevent unanticipated damage or loss, and the regulations should provide for this ability.

Norway has the following additional points to make regarding specific provisions:

- Draft regulations 96 and 103 make reference to “reasonable grounds” which in our view should be specified by adding some criteria.
- Similarly, in draft regulation 101 (2), consideration on what constitutes “reasonable action” may be required.
- Draft regulation 98(6) makes reference to the code of conduct for Inspectors and inspections. We would like to see more detail on how this code of conduct will be drawn up.
- Draft regulation 99 sets out the Inspector’s powers to issue instructions. We consider that this provision should also explicitly include the ability to prohibit certain activities.
- In draft regulation 100 (1) on the requirement of inspectors to report on inspections, we support the inclusion of the relevant coastal State or States among the recipients of the report when appropriate.
- Logistical challenges need to be considered in relation to on-site inspections given the remoteness of the sites and the water depths of the operations. With respect to draft regulation 102 regarding electronic monitoring system, it would be useful if this could also provide environmental data.
- In draft regulation 103, we would suggest to add “and suspension” to the title of the provision to better reflect its content (“Compliance notice **and suspension** and termination of exploitation contract”). In general, we welcome the changes made to 103(5) to make it in line with the wording of Article 18(1)(a) of annex III to the Convention. However, we wonder whether a paragraph 5bis should be added to also reflect Article 18(1)(b) of annex III to the Convention, regarding termination as a result of failure to comply with a final binding decision of the applicable dispute settlement body. Furthermore, bearing in mind the severity of issuing a compliance notice, we are of the view that this should be reported to the Council.

Norway looks forward to continue working with the Authority and other interested States and partners in developing the Regulations on Exploitation of Mineral Resources in the Area.