

This discussion paper has been developed by the Pew Charitable Trusts as an input into the Council's discussions on Regional Environmental Management Plans (REMPs).

## **How do Regional Environmental Management Plans Fit within the ISA's Mining Code?**

With the mandate of the UN Convention of the Law of the Sea (UNCLOS) behind it, the International Seabed Authority (ISA) is obliged to take necessary measures to ensure effective protection for the marine environment from harmful effects which may arise from deep sea mining. But the ISA has significant internal hurdles to clear before the mandate becomes reality.

One of the policy tools the ISA plans to use to assess, manage, and protect marine ecosystems on a regional scale from deep sea mining are Regional Environmental Management Plans (**REMPs**). REMPs allow the ISA to assess and map particular expanses of the seabed, setting aside protected areas and tailoring management measures to meet the needs of the region. The plans are necessary elements of the ISA's regime for managing the activities on the seabed beyond the limits of national jurisdiction to protect the marine environment, including cumulative environmental impacts. There is an emerging consensus among ISA member States that no mining should be considered in a specific region unless a REMP has been adopted by the Council (the ISA's executive body) for that region.

While the process to develop and establish REMPs has progressed, and the importance of the plans as environmental management tools has been affirmed by the ISA, whether or how REMPs and their content can be given legally binding effect remains an open question. Unless this is addressed, REMPs risk being ineffective management tools, and the ISA risks falling short of its duty for environmental protection. Below, we look at the current status of REMPs within the ISA's regulatory framework and recommend ways to give them legal effect.

## Current Legal Status of REMPs Within the ISA's Regulatory Framework

As member States discuss the ISA's regulatory framework, it has become clear that States have different interpretations of the status of REMPs, particularly whether they have legally binding effect on contractors. The box below briefly spells out UNCLOS mandates and how members might interpret them.

UNCLOS does not specifically reference REMPs, or any type of ISA management plan for the protection of the marine environment. Instead, UNCLOS mandates the use of different types of instruments within the ISA's overall regulatory framework to achieve that objective. They include the following:

- "Rules, regulations, and procedures" (RRPs) for the protection of the marine environment, required from the ISA by Article 145, 162(2)(o)(ii) and Annex III Article 17 of UNCLOS.
- "Necessary measures" taken by the ISA under Article 145 of UNCLOS for the effective protection of the marine environment.
- "Specific policies" established by the Council under Article 162, to be pursued by the ISA on any question or matter within the scope of the Authority.

If REMPs are part of the ISA's RRP, then every approved plan of work for an ISA contract must be in conformity with, comply with, and be governed by REMPs (Annex III Articles 3(4) and 6(3)).

If REMPs are another type of measure or policy, then they would have no direct binding effect upon ISA contractors on their own. A Council decision or the regulations themselves could be used to give relevant parts of a REMP legal effect.

These distinctions are important and need to be discussed by members of the ISA. Unless an instrument of the ISA places specific and enforceable obligations on relevant parties (e.g., to develop REMPs, to comply with relevant parts of REMPs), a Regional Environmental Management Plan may have no legal force, and may be departed from, without repercussions. For example, there might be no sanction/recourse if there was mining in, or damage to, a protected area identified in a REMP.

## REMP Establishment to Date

Thus far, the ISA has established one REMP, for the [Clarion Clipperton Zone](#) (CCZ), a 4.5-million-square-kilometer (1.7 million square miles) stretch between Hawaii and Mexico. The CCZ has become an area of focus for deep sea mining interests due to the presence of polymetallic nodules. However, this area is also documented for its rich biodiversity, with a new study recently identifying more than 5,000 new species, of which around 90% have yet to be described, and estimating thousands more species remain to be discovered<sup>1</sup>. One of the key features of this REMP is the designation of a network of nine areas, named “areas of particular environmental interest” (APEIs), to protect these habitats and ecosystems from mining impacts, specifically, to maintain sustainable, intact, and healthy marine populations in the planning region, including by protecting a full range of habitat types, and maintaining minimum viable population size.<sup>2</sup>

The CCZ REMP was adopted via a Council decision in July 2012; at that time, it was noted that it should be applied in a flexible manner and improved over time. The Council requested that its technical body, the Legal and Technical Commission (LTC), report to the Council on the implementation of the CCZ REMP within three years. The Council decision also provided that, for a period of five years or until further review by the LTC or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in the APEIs. In 2021, the LTC reviewed the plan and recommended that four additional APEIs be established, to enhance the effectiveness of this network of set-aside areas. The Council adopted the revised CCZ REMP in December 2021.

REMPs for other areas are still under development. One, for the northern Mid-Atlantic Ridge (nMAR), was presented by the LTC and proposed for adoption in a Council decision in July 2022. The nMAR REMP differs from the CCZ REMP, in that it contains a series of region-specific goals and operational objectives, including specific ones for contract areas. In designating potential no-mining areas, rather than referring to APEIs, the nMAR REMP uses the terminology *areas in need of*

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<sup>1</sup> M. Rabone et al., “How Many Metazoan Species Live in the World’s Largest Mineral Exploration Region?” *Current Biology*, 2023, <https://doi.org/10.1016/j.cub.2023.04.052>.

<sup>2</sup> L.M. Wedding et al., “From Principles to Practice: A Spatial Approach to Systematic Conservation Planning in the Deep Sea,” *Proceedings of the Royal Society B: Biological Sciences* 280, no. 1773 (2013), <https://royalsocietypublishing.org/doi/abs/10.1098/rspb.2013.1684>.

*protection and sites in need of protection.* It also introduces a new category: *sites and areas in need of precaution.* However, in July 2022, the Council recommended revisions to the draft nMAR REMP and requested that the body continue to revise the plan. The ISA has also begun work on and conducted workshops to establish REMPs for the Indian Ocean and the North West Pacific regions.

Many members of the ISA have noted the need for a standardized approach to develop, review, and implement REMPs, as well as a template to ensure consistency among them, in terms of content. In July 2022, the LTC put forward a draft proposal for a REMP guidance document for the Council's consideration. Following its deliberations, the Council requested further revisions. It is expected that the LTC will resubmit the standardized framework in 2024 for the Council's consideration.

### **How to Give Legal Effect to REMPs**

It is apparent that member States view REMPs as essential regulatory instruments and consider that certain aspects of REMPs should be binding, such as the designation of no-mining areas. What is less apparent is how the ISA will integrate REMPs into its regulatory framework in a coherent and meaningful way. To aid this process, we suggest the following options:

- *Designate all REMPs as RRP*s: The Council can make a decision stating that REMPs are part of the rules, regulations, and procedures of the ISA.<sup>3</sup> This approach could also be taken in the ISA's Regulations, for example, by inclusion of REMPs in a definition of 'rules, regulations and procedures' in the Schedule of Terms. This would mean that REMPs would automatically have a binding effect, as Plans of Work are required by UNCLOS to conform and comply with all RRP of the ISA and must be governed by them. If this approach is adopted, then the content of the REMPs should be carefully designed so that it is clear which aspects are considered to be directly applicable obligations, and these should be drafted in clear and enforceable terms. This is important, as a contractor's rights under the contract may be suspended or terminated when, after warnings by the ISA, the contractor

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<sup>3</sup> This could be done under Articles 160, 162 and Annex III of UNCLOS

continues to conduct activities in a way that results in serious, persistent, and wilful violations of the RRP of the ISA.<sup>4</sup>

- *Designate specific management measures in REMP as binding:* The Council, in a decision adopting an individual REMP, can specify aspects of the REMP that need legal force (establishment of no-mining areas, etc.). The decision would bind the Council and subsidiary organs of the ISA, but, to have legal effect upon all contractors, management measures may need additionally to be reflected in ISA's regulations or contractual terms and conditions. With this approach, all subsequent REMPs should be drafted in a way to delineate which management or conservation measures need legal force. Consequently, the exploitation regulations would also need to be worded appropriately to reflect that certain aspects of a REMP may be binding.

- *Include specific provisions in the exploitation regulations to give REMP legal force:* This approach has been attempted in some way in the latest iteration of the draft exploitation regulations. For example, the adoption of a REMP for the region would be a prerequisite for consideration of an application for a contract; various aspects of a contractor's environmental impact assessment would be required to refer to or be in line with the relevant REMP; and a contractor's environmental management system would need to reflect the objectives of the REMP.

The draft regulations remain under negotiation, and it is not clear at this time whether there is consensus for such an approach. Currently, there seem to be inconsistencies in the way that REMPs are referenced in different regulations. Plus, there are other avenues not yet taken that could give regional plans a more formalized mandate and standing.

*To give legal effect to REMP in a comprehensive clear and consistent manner, the regulations should include the following elements, many of which are currently lacking\*:*

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<sup>4</sup> U.N. General Assembly, Resolution Annex III, Article 18, Convention on the Law of the Sea, [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/closindx.htm](https://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm).

<p>Legal status of REMP</p>	<p>Wording can be added to draft regulations (DR) 1 and 2 to reflect that:</p> <ul style="list-style-type: none"> <li>● REMP are a crucial part of the ISA’s environmental management regime, operating alongside the regulations, and relevant organs of the ISA will be responsible for developing and maintaining them.</li> <li>● REMP will contain aspects that will be applicable to applicants as they develop their applications for Plans of Work, and to contractors as they deliver on their contract.</li> </ul>
<p>Application conformity with REMP</p>	<p>The regulations should reflect that all aspects of an application for a Plan of Work should be prepared in accordance with the relevant REMP and that this will be a criterion examined by the ISA in reviewing the application. The regulations should also specify that an application can be returned to the applicant by the LTC or the Council, and cannot be approved, where there is a lack of conformity between the proposed Plan of Work, and the relevant REMP (DRs 7, 12, 13 &amp; 15).</p>
<p>Mining area covered by REMP</p>	<p>The prior existence of a REMP should be a prerequisite for the award of an Exploitation contract (DRs 8,15, and/or DR44bis).</p>
<p>Prohibited mining areas</p>	<p>The Regulations should specify that no exploitation can take place within an area identified in the REMP as a protected area (such as an APEI or “site in need of protection”). Contractors should also be prohibited from causing any harmful impacts to such areas from their activities, including indirect impacts (DRs 15 and 44). The regulations should outline repercussions for any contractor who does cause impacts to any such area, such as suspension of activities, pending further inquiry.</p>

<p>REMP minimum content requirements and procedures for development</p>	<p>The draft Regulations should outline or cross-reference documents that set out requirements for standardized content to be covered by all REMPs or the procedure for the development and review of all REMPs. The absence of such stipulation may lead to inadequate or inconsistent REMPs between regions. The draft standardized procedure for the development, review, and approval of Regional Environmental Management Plans (REMPs) currently under consideration by the LTC should be referenced (DR 44bis).</p>
<p>ISA decision making</p>	<p>The Regulations should further clarify how each organ of the ISA must take account of REMPs, and act consistently with them, as it performs its functions under the Regulations. The Regulations could provide that ISA organs are prohibited from taking any action (or inaction) that would lead to a contravention of any specific environmental objectives established in the REMP (DR 2).</p>
<p>Baseline data collection</p>	<p>Regulations should require a contractor to demonstrate that its baseline data studies are informed by, and are consistent with, any REMP in its vicinity and that those baseline studies are included in the regional database that will inform subsequent REMPs (DR45).</p>
<p>Environmental Monitoring and Management Plans</p>	<p>The format for the Environmental Monitoring and Management Plans (EMMPs) required for each contractor should align with the objectives and measures identified in the applicable REMP. The contractor should also be required in the EMMP to provide detail as to the applicant’s plan to implement the objectives and measures identified in the REMP . This is important, as the draft regulations establish that an EMMP is a part of a contractor’s Plan of Work, and a contractor is contractually required to implement the Plan of Work. Aspects of a REMP that are</p>

	referenced or adopted in an individual project’s EMMP are therefore legally binding on the contractor, as a condition of the contract (Annex VII to the draft regulations).
Plan of work updates when REMP is revised	DR 51 places upon contractors an obligation of “ <i>maintaining the currency and adequacy of the EMMP,</i> ” but this is not linked to REMPs or REMP review. DR 51 could be amended expressly to state that a contractor must review and update their Plan of Work, including its EMMP, whenever the relevant REMP is revised.

\*Some of these elements are already reflected in the latest facilitators’ drafts of the exploitation regulations or have been proposed by ISA member States and stakeholders in their submissions, but have yet to enjoy consensus from member States. Please see the annex for more detail.

**What about Exploration?**

REMPs are relevant not only for exploitation activities, but also during the exploration phase. However, according to available documentation, for the sixteen exploration contracts that have been issued in the CCZ region, none refer to the CCZ REMP for the region. The Exploration Regulations also make no reference to REMPs, or how contractors should refer to these in their activities.

In addition to the issues covered in this paper, which focuses on the ISA’s forthcoming regime for exploitation of minerals, the ISA should also consider how to formalise REMPs under the exploration regime, to ensure that REMPs are used in management and planning for all activities that the ISA oversees.

**Conclusion**

Member States appear to agree that REMPs are essential management tools for the ISA but have yet to agree on requirements for their content, or on their status within the ISA’s legal framework. We have set out a number of options above for how the



ISA may give REMPs relevant and meaningful legal effect. Any of those options would be effective. But it is necessary for the ISA proactively and clearly to agree upon a preferred option, and to implement it. Unless such matters are addressed and agreed upon, REMPs may prove ineffective, and the ISA's ability to manage environmental impacts—particularly at a regional scale—may be impaired.

It is therefore recommended that the Council prioritise a discussion about REMPs, during which the status and required content of REMPs is agreed upon. The exploitation regulations under negotiation can then be reviewed and amended, to ensure that REMPs are appropriately and effectively referenced. REMPs that have been already adopted should also be reviewed and amended in light of any policy decisions taken.

## ANNEX

### **REMP REFERENCES IN JULY 2023 DRAFT EXPLOITATION REGULATIONS (ISBA/28/C/IWG/ENV/CRP.2)**

<b>Draft regulation</b>	<b>Topic</b>	<b>REMP Reference</b>
DR 1	Use of terms and scope	That the regulations are accompanied by Standards and Guidelines of REMPs as well as RRs
DR 2	Fundamental policies	That the ISA's environmental policy includes Regional Environmental Management Plans (REMPs)
DR 4	Rights and legitimate interests of coastal States and duty to notify	That potentially affected coastal States shall be identified through the REMP
DR 20	Term of exploitation contracts	That the cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan
DR 31	Reasonable regard for other activities in the Marine Environment	Requirement to have due regard for other marine users in the region, as specified by the REMP
DR 38	Annual report	Annual reports should include information of environmental monitoring programmes pursuant to requirements in REMPs
DR 44	General obligations	Requirement for the Authority, sponsoring States, and contractors to implement measures for the protection of the marine environment, in accordance with the REMP for the region

DR 44bis	REMPs	That the Commission shall only consider a plan of work if a REMP has been adopted for that mining area
DR 46	Environmental management system (EMS)	That the EMS shall deliver on the ISA's environmental objectives as reflected in the applicable REMP
DR 46 ter	Environmental Management and Monitoring Plan (EMMP)	That the EMMP be prepared in accordance with the REMP
DR 47	Environmental Impact Assessment (EIA)	EIA shall include an environmental risk assessment based on the REMP
DR 47	Environmental Impact Assessment (EIA)	EIA process should take into account the relevant REMP
DR 48	Environmental Impact Statement	That the mining operation is conducted in accordance with the objectives of the REMP
DR 49	Pollution control	That a Contractor shall take measures to prevent pollution in accordance with measures set out in the relevant REMP
DR 59	Closure plan	A closure plan shall be prepared in accordance with the REMP
Annex IV Section 4	Environmental Impact Statement Template	Baseline data collected shall be in accordance with the REMP