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Agenda item 15

Development of standards and guidelines for activities in the Area

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Note by the secretariat

I. Introduction

1. This report provides the Legal and Technical Commission with an overview of the development of standards and guidelines in the context of the deliberations of the Council of the International Seabed Authority, with a view to assisting the Commission in addressing the requests made by the Council during the first part of the thirty-first session.

II. Background

2. The Commission may recall that the development of standards and guidelines has featured in discussions on the draft regulations on exploitation of mineral resources in the Area since around 2014. During the early discussions, several stakeholders considered that the technical and administrative aspects of the regulatory framework for exploitation would be more appropriately addressed through the relevant standards and guidelines, given the flexibility that such an approach would afford with respect to amending or updating the standards and guidelines in response to improved scientific knowledge or technological developments (see [ISBA/23/C/12](#)). To that end, the Commission may recall that the report of the President of the Council for the twenty-third session noted that priority should be given to the adoption of the draft regulations, while standards and guidelines could be further developed and/or updated after 2020 ([ISBA/23/C/13](#), para. 33).

3. Substantive work on standards and guidelines commenced with the note on the content and development of standards and guidelines for activities in the Area under the Authority's regulatory framework, prepared by the secretariat for consideration by the Council during the first part of its twenty-fifth session in 2019 ([ISBA/25/C/3](#)). The note was informed by comments received on the first draft of the regulations on exploitation ([ISBA/24/LTC/WP.1/Rev.1](#)), which underscored the importance of standards and guidelines as integral components of the regulatory framework. Those comments also highlighted the



need for critical standards and guidelines to be developed in parallel with the regulations and, importantly, with the involvement of relevant stakeholders (see [ISBA/25/C/17](#)).

4. In 2019, the Council requested the Commission to examine critical issues with respect to the provisional and non-exhaustive list of standards and guidelines contained in document [ISBA/25/C/3](#) and to make subsequent recommendations to the Council. To support the Commission in this task, a workshop was convened by the secretariat in Pretoria from 13 to 15 May 2019.

5. On the basis of the report prepared following the workshop, the Commission made the following recommendations to the Council:

(a) The terms “standards” and “guidelines” should be understood in the context of draft regulations 94 and 95 of the draft regulations on exploitation (at the time, document [ISBA/25/C/WP.1](#)), i.e. standards are regarded as mandatory, whereas guidelines are recommendatory;

(b) An outcome-based approach should be used in the development of standards and guidelines, bearing in mind that such an approach provides for rigorous and contractually binding outcomes, while affording flexibility in the processes used to achieve those outcomes;

(c) Standards and guidelines should be developed in phases, as follows:

(i) Phase 1: completion by the time of the adoption of the draft regulations;

(ii) Phase 2: completion prior to the receipt of the first application for a plan of work for exploitation;

(iii) Phase 3: completion by the time of commencement of commercial mining activities;

(d) Six sets of guidelines should be developed, and work on three additional sets should be initiated in phase 1;

(e) Two technical working groups, led by members of the Commission and including an appropriate number of recognized experts in the field selected on the basis of article 165, paragraph 2 (e), of the United Nations Convention on the Law of the Sea, should be established in 2019 to support the development of several environmental guidelines;

(f) Members of the Commission and the secretariat would prepare draft environmental goals, objectives and principles to support the development of standards and guidelines.

6. The Commission also recommended processes for the development of standards and guidelines. These included a step to allow for stakeholder consultations and comments. The adoption of standards by the Council and their approval by the Assembly had been considered in the suggested process.

7. During the twenty-sixth session, the President of the Council noted in his statements on the work of the Council ([ISBA/26/C/13](#) and [ISBA/26/C/13/Add.1](#)) that, while delegations recognized the importance of the Commission’s work on the development of standards and guidelines, some expressed a preference for these instruments to be developed as part of an integrated regulatory package together with the draft regulations on exploitation. A road map for advancing work on standards and guidelines was established in that context, following which a number of phase 1 standards and guidelines were subsequently developed. In the decision of the Council on the reports of the Chair of the Commission for that year, the Council expressed its intention to make every effort to ensure the thorough and timely development of the regulations, bearing in mind that the necessary standards and guidelines should be developed in parallel and be consistent with the finalization of the regulations as a package ([ISBA/26/C/57](#), para. 5).

8. At the twenty-seventh session, the Commission delivered to the Council for its consideration 10 draft standards and guidelines under phase 1, based on several rounds of stakeholder consultation ([ISBA/27/C/3](#), [ISBA/27/C/4](#), [ISBA/27/C/5](#), [ISBA/27/C/6](#) and [ISBA/27/C/6/Corr.1](#), [ISBA/27/C/7](#), [ISBA/27/C/8](#), [ISBA/27/C/9](#), [ISBA/27/C/10](#), [ISBA/27/C/11](#) and [ISBA/27/C/12](#)). During deliberations, delegations again shared divergent views: some suggested that the review of draft standards and guidelines should proceed together with the corresponding provisions of the draft regulations on exploitation, while others preferred to revisit the draft standards and guidelines at a later stage, when the draft regulations were more stable (see [ISBA/27/C/21](#), para. 22, and [ISBA/27/C/21/Add.1](#)). In its decision [ISBA/27/C/44](#), the Council emphasized that the regulations, standards and guidelines must be an integrated package in order for them to be developed into requirements for submitted plans of work for exploitation, and that the phase 1 draft standards and guidelines required in-depth consideration by the Council, as well as review, to ensure consistency with the draft regulations.

9. At the twenty-ninth session, following discussions in the informal working group on the protection and preservation of the marine environment and requests from several delegations to revisit the issue of standards and guidelines, the secretariat prepared a matrix to link the environmental standards and guidelines to the relevant provisions of the consolidated text of the draft regulations on exploitation. This work was further developed and formed the basis for the updated draft list of standards and guidelines subsequently presented to the Council at the thirtieth session.

10. Since the twenty-seventh session, no further work has been carried out by the Commission on the standards and guidelines, pending a more definitive structure of the draft regulations on exploitation. At the thirtieth session, the Council conducted a high-level discussion on standards and guidelines based on the updated draft list of standards and/or guidelines associated with the draft regulations ([ISBA/30/C/CRP.5](#)), without, however, adopting a decision thereon.

11. At the first part of its thirty-first session, the Commission considered the status of work relating to the development of standards and guidelines and agreed to map the current proposed list of standards and guidelines, identifying necessary updates to existing drafts and addressing any potential duplication, and to facilitate the structured and timely completion of the relevant standards and guidelines. It was considered that this exercise would enable the Commission to be prepared to commence substantive work once guidance had been received from the Council on the next steps to be taken and their scope, while at the same time noting that resources would be required to support the processes ([ISBA/31/C/4](#), para. 27).

12. In light of the foregoing, the Council, during the thirty-first session, endorsed the proposal of the President (see [ISBA/31/C/19/Rev.1](#)) to request the Commission to:

- (a) Consider the current list of standards and guidelines;
- (b) Prepare an updated and consolidated version, including by merging specific standards and guidelines, where appropriate;
- (c) Revise the list of standards and guidelines that should be ready by the time of the adoption of the draft regulations;
- (d) Identify those standards and guidelines that have already been prepared and that may require revision in the light of the current state of negotiations;
- (e) Develop a timeline or road map and recommendations on the development of standards and guidelines by the Commission to be provided before the Council meetings in July 2026.

III. Recommendations

13. The Commission is invited to take note of the present report and, pursuant to the request of the Council and based on document ISBA/30/C/CRP.5, to:

- (a) Prepare an updated and consolidated version, including by merging specific standards and guidelines, where appropriate;
 - (b) Revise the list of standards and guidelines that should be ready by the time of the adoption of the draft regulations;
 - (c) Identify those standards and guidelines that have already been prepared and that may require revision in the light of the current state of negotiations;
 - (d) Develop a timeline or road map and recommendations on the development of standards and guidelines by the Commission to be provided to the Council.
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