

REFERENCE TO CLOSURE PLAN IN THE DRAFT EXPLOITATION REGULATIONS

Briefing note – Submitted by Fiji as Facilitator of the IWG on Closure Plan

1. During the second part of the thirty-first session, delegations seemed to agree to continue the discussion on the issue of EMM and Closure Plan on the basis of the proposal presented by Norway and Fiji, which would require the Contractor to include details on Closure in the Environmental Management and Monitoring Plan (EMMP), instead of preparing a standalone Closure Plan. Shortly before the end of Commercial Production, the contractor would then develop the Closure Plan (previously called “Final Closure Plan”).
2. Accordingly, the purpose of this proposal is to ensure that all the draft regulations reflect such understanding. At the end of each regulation contained in the annexed proposal, delegations will find comments suggesting how the reference to Closure Plan should be treated, together with the reasoning for each proposed approach.
3. This proposal does not address Regulations 49 to 53bis, as the purpose of the present document is to ensure that the rest of the regulations are aligned with the proposal of the group.
4. Participants are invited to consider the suggestions contained in this document and, should they have any comments, to bring them to the attention of the Facilitator during the intersessional working meeting scheduled to take place on 17 September 2026.

Regulation 7

Form of applications and information to accompany a Plan of Work

[...]

3.~~bis~~ An application shall contain sufficient information to demonstrate that the Applicant has ~~[or will have]~~ access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be accompanied by the following:

[...]

(h) ~~a~~An Environmental Management and Monitoring Plan prepared in accordance with regulation ~~5048~~ and Annex VII to these Regulations, ~~[including information regarding the Environmental Management System that the Contractor will implement in accordance with regulation 50~~ terbis and the applicable Standards, taking into account the Guidelines;‡

~~(i) a Closure Plan prepared in accordance with regulation 59 and Annex VIII to these Regulations;~~

Comments

- As the content of the (previous) Closure Plan is now included in the EMMP, paragraph 3(i) is no longer relevant.

Regulation 13

Assessment of Applicants and application

[...]

3. In considering the financial capability of an Applicant, the Commission shall determine, in accordance with these Regulations, Standards and taking into account the Guidelines, whether:

[...]

(b) the Applicant is [or will be] capable of committing sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any Exploitation Contract, including:

[...]

(ii) the estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan; and

[...]

4. In considering the technical capability of an Applicant, the Commission shall determine, in accordance with Standards and taking into account the Guidelines, whether the Applicant has ~~provided sufficient information to demonstrate~~ [sufficiently demonstrated that] it has [or will have]:

[...]

(c) the technology, ~~[data, information,]~~ and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan ~~and the Closure~~

Plan, ~~[taking into account] the applicable Regional Environmental Management Plan,~~ including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to ~~meet all environmental requirements~~ [ensure the effective Protection of the Marine Environment];

Comments

- Reference to the estimated costs to implement the Closure Plan in para 3(b)(ii) might still be relevant, as it might also serve as a basis to determine the amount of the Environmental Performance Guarantee.
- The reference in para 4(c) might be deleted, as the Closure Plan is no longer presented with the application.

Regulation 26

Alt. 1 Environmental Performance Guarantee / Alt. 2 Decommissioning and Emergency Response Guarantee/Alt. 3 Closure Guarantee

[...]

2. The required form and amount of the Environmental Performance Guarantee shall be included in the Plan of Work ~~[assessed and recommended by the Commission and]~~ ~~determined [by the Council]~~ ~~[at the time the Council approves the Plan of Work for Exploitation activities]~~ according to the applicable Standards and take into account the Guidelines, and shall reflect the forecasted costs required for implementation of the Contractor's Closure Plan and Emergency Response and Contingency Plan.

[...]

4. The amount of the Environmental Performance Guarantee shall be reviewed by the Commission and updated by the Contractor ~~[every five years]~~:

(a) where the ~~Closure Plan~~ Environmental Management and Monitoring Plan is updated in accordance with these Regulations;

[...]

(c) at the time of review by the Commission of a ~~Final~~ Closure Plan under regulation ~~51~~ 60.

Comments

- In para 2, the reference to the Closure Plan is still correct, as the EPG is lodged to cover its expected costs.
- In para 4(a), it should be replaced with a reference to the EMMP.
- The reference to "Final Closure Plan" in para 4(c) should be replaced with one to the Closure Plan. Reference to draft regulation 60 has been updated in line with the current structure of the proposal.

Regulation 29 bis

Procedure for suspensions or reduction in Exploitation activities

6. Throughout the duration of any suspension in Exploitation activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the relevant section of the Environmental Management and Monitoring Closure Plan.

7. Where a suspension in Exploitation activities continues for a period of more than 12 months, the Commission may require the Contractor to submit a ~~Final~~ Closure Plan in accordance with regulation ~~60~~51.

[...]

9. In the event that a Contractor elects to suspend all Commercial Production for more than five consecutive years, the Council may after discussion with the Contractor decide that Commercial Production has ceased and require the Contractor to implement the ~~Final~~ Closure Plan.

Comments

- During the second part of the thirty-first session, it was suggested by some delegations that the EMMP should detail the obligations of the contractor in instances of temporary suspension of commercial production. The amendments proposed in this section are without prejudice to this discussion and are only based on the current text.
- In para 6, the reference should be replaced with one to the EMMP.
- The word “Final” has been deleted in para 7 and 9. Reference to draft regulation 60 in para 7 has also been adjusted.

Regulation 39

Books, records and samples

[...]

3. ~~{A}~~ Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category₂ from each sample collection period identified in the applicable Standard₂ together with biological samples, obtained in the course of Exploitation until the termination of the Closure Plan. Samples shall be maintained taking into account the Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

Comments

- Reference to the Closure Plan in this paragraph can be still considered correct.

Regulation 74

Proper books and records to be kept

[...]

4. A Contractor shall maintain all records for the duration of the Exploitation Contract[, including during the period of post-mining monitoring] and[, at least, during] a period of 10 years following the completion of the Closure Plan, and make such records available for ~~[inspection]~~ and ~~[~~ audit under regulation 75.

Comments

- Reference to the Closure Plan in this paragraph can be still considered correct.

Regulation 92

Seabed Mining Register

[...]

1. bis The Seabed Mining Register shall contain the following information except to the extent it is Confidential Information in accordance with regulations 89(4) and 90(1) which shall be redacted:

[...]

(b) copy of original application for approval of Plan of Work and the accompanying documents submitted by each Contractor in accordance with Regulation 7 [as well as revisions to any such documents, comments received pursuant to Regulation 11, responses to Stakeholder consultation, reports and recommendations of the Commission, and the decision of the Council on the approval of the Plan of Work], [[including any modifications to any documents of the original application, [comments and responses of Stakeholder's consultation,] report and recommendation of the Commission, and decision of the Council on the approval of Plan of Work;]]

[...]

(l) copy of each Contractor's Closure Plan and, where available, its updates including the [Final Closure Plan], and implementation the report on its implementation of [Final] Closure Plan for each Contract Area;

Comments

- In para 1.bis(l) of draft regulation 92 it is suggested to make reference to the Closure Plan of each Contractor (in line with the other letters), and to the reports on its implementation when these are produced.

- As draft regulation 92 is covered by a Friend of the President initiative, it is suggested that – if the group agrees with the revision of the language – this proposal could be conveyed to the facilitator of that initiative.

Regulation 93~~ter~~atbis

Consultation with Coastal States

[...]

3. Applicants, Contractors, as well as the Enterprise, shall invite the coastal States referred to in paragraph 1(a) above, as well as any other coastal States which have written to the Applicant pursuant to paragraph 2 above, to submit written comments including on the following draft documents, taking into account Regulation 89 on confidentiality of information:

[...]

(f) Closure Plans.

Comments

- Draft regulation 51 currently provides (para 1.bis) that the Closure Plan shall be subject to consultation with Coastal States in accordance with draft regulation 93bis. Therefore, the reference to Closure Plans in para 3(f) of draft regulation 93bis is still relevant.

Regulation 94

Adoption of Standards

[...]

(k) procedural and substantive requirements relating to submissions or reports required by these Regulations, including but not limited to: Plans of Work, Environmental Management Systems, Environmental Impact Assessments, Environmental Impact Statements, Environmental Management and Monitoring Plans and Closure Plans.

Comments

- Reference to Closure Plans in this paragraph can be still considered correct.

Annex III

Financing Plan

[...]

(d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan ~~and Closure Plan~~;

Comments

- The reference to Closure Plan in letter (d) of Annex III has been proposed to be deleted, as the Applicant might not yet have a detailed estimate of the costs associated with the Closure Plan at the phase of submission of the Plan of Work.
- Should the group wish to retain the reference, it is suggested that it might be further refinement. For instance, the sentence could read: “including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and the estimated costs of the preparation and implementation of the Closure Plan”.

Annex IX

Exploitation Contract and schedules

[...]

The Schedules to the Exploitation Contract

[...]

~~Schedule 7~~

~~The Closure Plan.~~

Comments

- By the time the Applicant signs the contract with the Authority, the Closure Plan will not yet be developed. So, it is suggested to delete reference to Schedule 7.

Annex X

Standard clauses for Exploitation Contract

[...]

Section 3

Undertakings

[...]

3.2 The Contractor shall implement this ~~C~~contract in good faith and shall in particular implement the Plan of Work in accordance with regulation 18 bis Good Industry Practice ~~[and Best Environmental Practices]~~. For the avoidance of doubt, the Plan of Work includes:

[...]

(e) The Environmental Management and Monitoring Plan; and

~~—(f) The Closure Plan; and~~

[...]

Section 10

Renunciation of rights

10.1 The Contractor, by prior written notice to the Authority, may renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

[...]

Section 12

Suspension and termination of Contract and penalties

[...]

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

Section 13

Obligations on ~~Suspension or following Expiration, Surrender or Termination of a Contract~~

13.1 In the event of termination, ~~expiration or surrender~~ of this Contract, the Contractor shall:

[(a) comply with the Environmental Management and Monitoring Plan or the ~~Final~~ Closure Plan, as applicable, and the Environmental Management and Monitoring Plan and continue to perform the required environmental management of the Contract Area as set forth in the ~~Final~~ Closure Plan and for the period established in the ~~Final~~ Closure Plan];

Comments

- The plan of work no longer includes the Closure Plan. So, deletion of reference in section 3.2(f) is suggested.
- In section 10.1 and 12.8, reference to the Closure Plan could be retained, as it would still serve the purpose for which the provision was included.
- In section 13, it is proposed – just for consistency – to refer to the EMMP before the Closure Plan. The paragraph has in any case be placed in brackets because it might relate to the issue as to whether the end of the contract period corresponds to the end of the Closure Plan, still under discussion within the Group led by Norway. If the paragraph is retained, it is suggested that the second part of the sentence (“and continue to perform...”) might be deleted as redundant.

Schedule

Use of terms and scope

“Closure Plan”	means a document that contains an integrated environmental, social and economic base case for Decommissioning, closure and post closure activities and conditions against which future monitoring can be compared. It will be revised through the lifetime of the Exploitation Contract and must be considered as an integral part of operational planning. <u>Alt. means the document referred to in annex VIII.</u>
“Environmental Plans”	means the Environmental Impact Statement <u>and</u> the Environmental Management and Monitoring Plan and the Closure Plan.
“Final Closure Plan”	means the version of a Contractor’s Closure Plan that has been approved by the Council pursuant to regulation 60.

Comments

- In the definition of “Closure Plan”, the last sentence might no longer be accurate.
- The Closure Plan should no longer be included among the Environmental Plans, as provisions using this defined term mainly refer to temporal phases when details on Closure are still included in the EMMP.
- Consistent with the proposal of the group, the term “Final Closure Plan” can be deleted.