

Submission by the International Seabed Authority to the Secretariat of the Convention on Biological Diversity to support the objectives of the expert workshop to develop options for modifying the description of areas meeting the criteria for ecologically or biologically significant marine areas (EBSAs), for describing new areas, and for strengthening the scientific credibility and transparency of EBSA process, 5-8 December 2017 – Berlin, Germany

I. Introduction

1. The purpose of this note is to provide examples and insights of the manner in which the International Seabed Authority ('the Authority') has discharged its responsibilities concerning the administration and control of activities in the Area, the protection of the marine environment from effects arising out of activities in the Area and marine scientific research in the Area, in accordance with the framework of the 1982 Convention on the Law of the Sea ('the Convention') and the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ('the Agreement'). The regulations of the Authority lay down in even greater detail the obligations of all actors concerning the protection of the marine environment when carrying out activities in the Area. These rules elaborate also on Annex III (in particular Art. 17 (2) (f)) and the 1994 Agreement. Together with the Convention, these instruments form a single legal regime on the protection of the marine environment with respect to deep seabed activities. In this sense, it is important to highlight that the competence entrusted to the International Seabed Authority is unique in the system of the Law of the Sea Institutions as the Authority has a central role to play in ensuring protection of the marine environment from the adverse effects of activities in the Area, which comprises the deep ocean floor and the subsoil thereof beyond national jurisdiction. This is a major achievement of the Convention that it provides a unifying legal framework for the protection of the marine environment.

2. In addition, this note is also aimed at sharing the Authority's practice in (a) procedures to modify the geographical scope and/or status of the network of areas of particular environmental interests (APEIs) as an integral part of the first regional scale environmental management plan for the Clarion-Clipperton Zone (CCZ-EMP); (b) the incorporation of new scientific information after the establishment of the CCZ-EMP; (c) ensuring scientific credibility and transparency in the use of scientific criteria for the establishment and implementation of the CCZ-EMP, including its network of APEIs. In so doing, the aim is to contribute to the compilation to be prepared by the CBD Secretariat to assist participants in their deliberations at the expert workshop to develop options for modifying the description of areas meeting the criteria for ecologically or biologically significant marine areas (EBSAs), for describing new areas, and for strengthening the scientific credibility and transparency of EBSA process.

II. Strong legal and scientific basis for the establishment, implementation and review of the Authority's environmental management plan for the Clarion-Clipperton Zone (CCZ-EMP)

3. The process that has led to the 2012 decision of the Council of the Authority relating to an environmental management plan for the Clarion-Clipperton Zone acting on recommendation of the Legal and Technical Commission, recalls the strong legal and robust scientific basis on which a regional

management plan lies, both for its establishment and review in the specific and integrated legal regime that applies to activities in the Area. Similar environmental management plans will also be required in respect of the other minerals for which the Authority has adopted rules, regulations and procedures for prospecting and exploration (polymetallic sulphides and cobalt-rich ferromanganese crusts).

A - Strong legal basis

4. The decision of the Council to establish the first regional scale environmental management plan recalls article 145, article 165, article 162, article 143, the rights of the Authority's contractors, the implementation of the precautionary principle as well as a broader international legal context. These will be briefly recalled below.

5. The Convention and the Agreement entrusts the Authority, on behalf of the States parties to the Convention, with the unique competence to administer and control the mineral resources of the Area, including prospecting, exploration and exploitation activities in the Area. As part of its responsibility, pursuant to article 145 of the Convention, the Authority has the competence to take the measures necessary to ensure effective protection of the marine environment from the harmful effects that may arise from such activities. For that purpose, the Authority must adopt appropriate rules, regulations and procedures designed to:

1. Prevent, reduce and control pollution and other hazards to the marine environment, including the coastline, that have the potential to interfere with the ecological balance of the marine environment. In doing this, its mandate calls for particular attention to be paid to the need for protection from the harmful effects of such activities as drilling, dredging, excavating, disposing of waste, and constructing and operating or maintaining installations, pipelines and other devices related to such activities;

2. Protect and conserve the natural resources of the Area, preventing damage to the flora and fauna of the marine environment.

6. The Council of the Authority noted that the implementation of a comprehensive environmental management plan at the regional level was one of the measures appropriate and necessary to ensure effective protection of the marine environment of the Clarion-Clipperton Zone from harmful effects that may arise from activities in the Area (ISBA/28/C/22).

7. The Council also based its competence to establish the CCZ-EMP on article 162 of the Convention which empowers the Council, the 36-member political organ of the Authority, to adopt the specific policies for the Authority on any question or matter within the competence of the Authority.

8. The second organ of the Authority which is involved in the adoption of regional management tool is the Legal and Technical Commission, the technical subsidiary organ of the Council. Under article 165 (2) (d) and (e) of the Convention, the Commission is competent to 'prepare assessments of the environmental implications of activities in the Area' and to 'make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in the

field.’ The decision to establish the CCZ-EMP acts on a recommendation of the Commission made pursuant to article 165, to the Council (see below for a brief account of the scientific process that has led the Commission to make such a recommendation).

9. In its decision of 26 July 2012 approving the CCZ-EMP, the Council further called for marine scientific research to be conducted in the areas of particular environmental interest, in accordance with article 143 of the Convention, and for the full and effective dissemination of the results of such research through the Authority. The acquisition of data is crucial in the implementation and review of the plan which is flexible in nature.

10. The establishment of the CCZ-EMP is recognized as an implementation of the precautionary approach as long as scientific knowledge is still fragmented. Today, the deep seabed is described as one of the most species rich habitats on Earth although the scientific knowledge of the deep seabed is still limited in comparison with other marine ecosystems, in spite of the substantial progress in recent years. The Council of the Authority recognized that the recommendations of the Commission were designed to give effect to the precautionary approach, as called for in the Regulations on prospecting and exploration for polymetallic nodules in the Area. The Authority’s Regulations expressly require the Authority, sponsoring States and contractors to apply a precautionary approach, as reflected in Principle 15 of the Rio Declaration. In the opinion of the Seabed Disputes Chamber, the principle applies to all activities in the Area.

11. The establishment of the CCZ-EMP represents an effective measure for the protection of the marine environment from harmful effects that may arise out of activities in the Area. It is inseparable from the context, the mandate of the Authority as a whole and the purpose for the establishment of the plan. Therefore, the participation of contractors in the establishment and implementation of the CCZ-EMP is fundamental. The rights and obligations of contractors as well as their essential contribution by means of providing resource assessment and environmental data are recognized by the organs of the Authority involved in the establishment and implementation of the plan as well as in the plan itself. The requirements for reporting data and results in a standardized manner¹ and the obligations to establish environmental baselines and conduct monitoring programmes are essential for the implementation and review of a regional environmental management plan. Further, the recommendations for guidance of contractors provide for the use of environmental baseline data for ‘regional environmental management’², including the need to address molecular taxonomic standardization. Steps towards these aims were taken by convening a series of taxonomy workshops for various benthic fauna species.

¹ At the twenty-first session of the Authority in July 2015, the Legal and Technical Commission issued recommendations (ISBA/21/LTC/15) for the guidance of contractors on the content, format and structure of annual reports. Annual activity reports which contractors are required to submit to the Authority should be submitted in hard copy and electronic format and all environmental and geological data should be submitted in a digital and spatially georeferenced format that is compatible with the Authority’s requirements, using the templates listed on the website of the Authority (available at: <https://www.isa.org.jm/reporting-templates>).

² “In addition to analyses of the data, raw data should be provided in electronic format with annual reports as agreed with the secretariat. These data will be used for regional environmental management and assessment of

12. It is also important to stress the need of cross-sectoral information exchange and coordination with other sectors conducting activities on or above the CCZ. In view of this, the Council, the Legal and Technical Commission and the plan itself acknowledged the need for cooperation among all stakeholders in several ways. First, the decision to establish the CCZ-EMP is placed in a broader legal context than the mandate of the Authority. The context of various resolutions of the United Nations General Assembly relating to oceans and the law of the sea is recalled in which the General Assembly had noted the importance of the responsibilities entrusted to the Authority in respect of marine scientific research and the protection of the marine environment. Secondly, the Council encouraged 'further dialogue with all stakeholders to ensure complementarity' regarding the network of APEIs, 'the precise location of which may be reviewed'. Upon request of the Council, the Secretary-General circulated the decision of the Council, together with the environmental management plan, to members and observers to the Authority, as well as all relevant international and regional organizations. In that regard, information on the implementation of the environmental management plan is also provided regularly to the General Assembly of the United Nations in the context of the resolutions on oceans and the law of the sea as well as in the context of the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and through submissions to the Secretariat of the Convention on Biological Diversity and to its experts workshops.

13. The CCZ-EMP also makes an explicit link between the establishment of the APEIs and the achievement of the goals and targets set forth in the Plan of Implementation of the 2002 Johannesburg World Summit on Sustainable Development including halting biodiversity, establishing ecosystem approaches to management and developing marine protected areas, in accordance with international law and based on the best scientific information available, including representative networks.

B – Robust scientific process for establishing and reviewing the CCZ-EMP and its network of APEIs

14. The CCZ-EMP is meant to evolve to remain based on a robust scientific case. It is to be implemented over an initial three-year period, including the designation, on a provisional basis, of a network of nine areas of particular environmental interest. The plan and its nine APEIs is a spatial management tool which includes the protection of areas thought to be representative of the full range of habitats, biodiversity and ecosystem structure and functions within the management area. The identification of a network of nine areas may be the most significant feature of the plan. These nine areas, each of which is approximately 160,000 square kilometres in size, are located as to include a wide range of the different habitat types present in the CCZ.

15. The plan which was adopted by the Council had been formulated by the Commission over a period of three years, taking into account data and assumptions from workshops in 2007 and 2010.

16. The plan has derived from the results of data supplied by contractors involved in nodule exploration in the CCZ essentially and by results provided by scientists involved in the Kaplan project

cumulative impacts." ISBA/19/LTC/8, Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area, paragraph 16.

(2002-2007), name after the main financial contributor of the project. The Kaplan project was a collaborative one undertaken by the Authority in cooperation with some contractors in order to assess levels of biodiversity, species range and gene flow using molecular and morphological methods. Then, those data and results were discussed at workshops convened by the Authority which gathered scientific experts and policy-maker experts. At the workshop in 2007, it was reported that faunal communities vary across the CCZ, with north-to-south and east-to-west gradients in productivity, depth and other environmental variables. In order to protect the full range of habitats and biodiversity across the Zone, the workshop in 2007 recommended that an ecologically and biogeographically reasonable approach to the design of a spatial management plan would be to divide the CCZ into three east-west and three north-south strata for conservation management because of the strong productivity-driven gradients in ecosystem structure and function. This yields to nine distinct sub-regions which were reviewed by the expert members of the Legal and Technical Commission which has the competence to make recommendations to the Council of the Authority as recalled above. This has resulted in the representative network of nine APEIs where no exploration and exploitation can take place. This brief summary shows that the process of elaboration of the plan has associated a broad range of stakeholders around the main suppliers of data and that it lies on building a strong scientific case which has been reviewed by the Commission prior to its recommendations to the Council of the Authority who has the competence to adopt regional management tools as special policies of the Authority.

17. This strategy to integrate all stakeholders in the process is pursued during the implementation and review phase. The plan is designed to accommodate more recent scientific findings. Indeed, the Council of the Authority has decided that the application of the plan must be in a flexible manner so that it 'may be improved as more scientific, technical and environmental baseline and resource assessment data are supplied by contractors and other interested bodies'. The decision of the Council recognized the important role played by the suppliers of data at the implementation stage as well.

18. The decision of the Council establishing the CCZ-EMP indicates the process for its review. The Council requested the Legal and Technical Commission to report on implementation of the plan. The Commission regularly reports to the Council on this subject matter. The Legal and Technical Commission is to make recommendations to the Council concerning the network of representative areas which are to be based on the outcomes of workshops the objectives of which will be to redefine, if needs be, the details of the size, location and number of required APEIs. This is also recommended in the plan itself (ISBA/17/LTC/7, para. 42; see also ISBA/18/C/20, para. 20). In addition, the Council encouraged the secretariat and the Commission to continue their work on the implementation of the environmental management plan for the Clarion-Clipperton Zone up to and beyond 2015, and encouraged the Commission to consider the development of similar plans in other regions where the Authority had issued exploration contracts, in line with the calls from the General Assembly.

19. In 2014, an interim report was provided by the Commission to the Council in which the Commission strongly endorsed the validity of the CCZ-EMP but also stressed the need for more data to be collected before any changes to the plan be reviewed. In 2015 and 2016, the Commission considered progress reports on the implementation of the plan and the steps to be taken until 2021. During the discussions, a suggestion was made to create two additional APEIs. The rationale behind the creation of

the new areas was based on recent work by contractors, most notably using molecular genetic methods, which showed that species ranges in the Zone might span a few hundred kilometres. The Commission also mentioned the need for cross-sectoral planning of areas, such as with areas closed to fishing on seamounts. In order to determine the suitability or need for amendment of the APEIs, the Commission decided to consider convening a scientific workshop together with marine reserve/management specialists for purposes of reviewing the data. The participants should define the size, location and number of such areas in order to enable the Commission to make a recommendation to the Council. The Authority is going to dedicate a workshop to the review of the status of implementation of CCZ-EMP. This will be held during the first half of 2018.

20. In July 2017, the Council of the Authority recognized once again that the Authority depends on the all contractors who in collecting samples according to Authority's standards, in complying with their reporting requirements and in making their environmental data readily and publicly available, are key providers of data and supporter of the development of regional environmental management plans.

21. During the twenty-third session of the Authority as well, the Commission expressed support for and encouraged the emerging trend of collaboration between contractors. One contractor has proposed to convene a forum for contractors in 2018 to discuss issues of common concern, such as the development of exploration methods and technologies. It was noted that collaboration has extended to environmental surveys and data collection, which potentially enables an improved regional understanding of environmental patterns. Mapping of biological communities at a regional scale is required for the creation of robust regional environmental management plans. In that regard, the Commission noted improved taxonomic standardization, collaboration between contractors, linkages between contractors and international research programmes, sampling in areas of particular environmental interest as well as contract areas, and several joint contractor voyages in recent years.

III. Establishment, implementation and review of future environmental management plans as a key element of the ISA strategic plan.

22. During the twenty-fourth session of the Authority, the Council encouraged the Secretariat and the Commission to make progress on the development of environmental management plans in other international seabed area zones, in particular where there are currently exploration contracts, recalling paragraph 60 of General Assembly resolution 70/235 of 23 December 2015.

23. The establishment and review of other regional environmental management plans in the Mid-Atlantic Ridge and in the Indian Ocean have been identified as priorities for the Authority. Undoubtedly, these spatial management practices will form an integral part of the strategic plan that the Authority will adopt in 2018. They will pursue the integrated approach and involve all stakeholders to elaborate a plan which is fit for purpose and tailored to respond to the objective of conservation and management of activities in the Area. In that regard, an important point to bear in mind is the magnitude and scale of future mining operations and the characteristics of ecosystems associated with other exploration areas than those related to polymetallic nodules in the Clarion-Clipperton Zone.