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Procedure for consideration of applications for plans of work for exploration for polymetallic nodules

Note by the Secretariat

1. The purpose of the present note is to assist the International Seabed Authority Council by presenting a summary of the procedure for the consideration by the Legal and Technical Commission and the Council of applications for approval of plans of work for exploration for polymetallic nodules in the Area. The procedure requires the Legal and Technical Commission to evaluate each application and submit its report and recommendations to the Council, which will then consider the application in accordance with paragraphs 11 and 12 of section 3 of the annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

I. Consideration by the Legal and Technical Commission

2. The procedure for evaluation by the Legal and Technical Commission of applications for plans of work is set out in regulation 21 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. In accordance with regulation 21 (11), the Commission is required to apply the Regulations and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner. As provided for in regulation 21 (9), in considering a proposed plan of work for exploration it is also required to have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the United Nations Convention on the Law of the Sea and the Agreement.

3. The Commission is required to make the following objective determinations.

4. First, as provided for by regulation 21 (3), the Commission shall determine if the applicant:

- (a) Has complied with the provisions of the Regulations;
- (b) Has given the undertakings and assurances specified in regulation 14;



(c) Possesses the financial and technical capability to carry out the proposed plan of work for exploration; and

(d) Has satisfactorily discharged its obligations in relation to any previous contract with the Authority.

5. In order to answer these questions, the Commission will need to consider the following:

Has the applicant complied with the provisions of the Regulations?

- Is the applicant entitled to make the application (i.e., is it one of the qualified entities specified in regulation 9 (a) or (b)?
- Since the application concerns a reserved area, does the applicant meet the requirements of regulation 17 (1)?
- Is the application in the proper form as required by regulation 10 and annex II?
- Is the certificate of sponsorship in the proper form (not required if the applicant is a Member State) (regulation 11)?
- Does the application contain the information set out in regulation 18?
- Has the applicant paid the appropriate fees?

Has the applicant given the undertakings and assurances specified in regulation 14?

Regulation 14 requires a written undertaking to be filed.

Does the applicant possess the financial and technical capability to carry out the proposed plan of work for exploration?

The relevant criteria are set out in regulation 12.

In particular, regulation 12 (5) provides that “an application for approval of a plan of work for exploration by an entity [...] shall include copies of its audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants; and [...] if the applicant is a subsidiary of another entity, copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial

resources to carry out the plan of work for exploration”. Regulation 12 (6) provides that where such an entity “intends to finance the proposed plan of work for exploration by borrowings, its application shall include the amount of such borrowings, the repayment period and the interest rate”.

To assess technical capability, regulation 12 (7) provides that the application shall include:

“(a) A general description of the applicant’s previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed plan of work for exploration;

(b) A general description of the equipment and methods expected to be used in carrying out the proposed plan of work for exploration and other relevant non-proprietary information about the characteristics of such technology; and

(c) A general description of the applicant’s financial and technical capability to respond to any incident or activity which causes serious harm to the marine environment.”

Has the applicant satisfactorily discharged its obligations in relation to any previous contract with the Authority? Not applicable.

6. If the answers to all these questions are in the affirmative, then the Commission, pursuant to regulation 21 (4), shall, in accordance with the requirements set forth in the Regulations and its procedures, determine whether the proposed plan of work for exploration will:

(a) Provide for effective protection of human health and safety;

(b) Provide for effective protection and preservation of the marine environment;

(c) Ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

7. Regulation 21 (5) provides that “if the Commission makes the determinations specified in paragraph 3 and determines that the proposed plan of work for exploration meets the requirements of paragraph 4, the Commission shall recommend approval of the plan of work for exploration to the Council”.

8. Regulation 21 (6) sets out the circumstances in which the Commission shall not recommend approval. These are: “if part or all of the area covered by the proposed plan of work for exploration is included in:

(a) A plan of work for exploration approved by the Council for polymetallic nodules; or

(b) A plan of work approved by the Council for exploration for or exploitation of other resources if such proposed plan of work for exploration for polymetallic nodules might cause undue interference with activities under such an approved plan of work for such other resources; or

(c) An area disapproved for exploitation by the Council in cases where substantial evidence indicates the risk of serious harm to the marine environment; or

(d) If the proposed plan of work for exploration has been submitted or sponsored by a State that already holds:

(i) Plans of work for exploration and exploitation or exploitation only in non-reserved areas that, together with either part of the area covered by the application, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;

(ii) Plans of work for exploration and exploitation or exploitation only in non-reserved areas which, taken together, constitute 2 per cent of that part of the Area which is not reserved or disapproved for exploitation pursuant to article 162, paragraph (2) (x), of the Convention.”

9. These are objective criteria. However, if the Commission finds that an application does not comply with the Regulations, it shall notify the applicant in writing, through the Secretary-General, indicating the reasons. The applicant may, within 45 days of such notification, amend its application. If the Commission after further consideration is of the view that it should not recommend approval of the plan of work for exploration, it shall so inform the applicant and provide the applicant with a further opportunity to make representations within 30 days of such information.

10. Finally, under regulation 21 (10), the Commission is required to consider all applications expeditiously and to submit its report and recommendations to the Council at the first possible opportunity, taking into account the schedule of meetings of the Authority.

II. Consideration and approval by the Council based on the recommendations of the Commission

11. The procedure for consideration and approval of plans of work for exploration by the Council is set out in regulation 22. The Council is required to consider the reports and recommendations of the Commission relating to approval of plans of work for exploration in accordance with paragraphs 11 and 12 of section 3 of the annex to the Agreement.

12. Pursuant to paragraph 11 of section 3 of the annex to the Agreement, the Council shall approve a recommendation by the Commission except if a two-thirds

majority of its members present and voting in each of the chambers of the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation is deemed to have been approved by the Council at the end of that period. The prescribed period is normally 60 days unless the Council agrees on a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

13. Pursuant to article 153, paragraph 3, of the Convention and paragraph 6 (b) of section 1 of the annex to the Agreement, an approved plan of work for exploration shall be in the form of a contract concluded between the Authority and the applicant. Therefore, after approving a plan of work, the Council requests the Secretary-General to take the necessary steps to issue the plan of work for exploration for polymetallic nodules in the form of a contract between the Authority and the applicant, as prescribed in annex 3 to the Regulations. The contract shall include the standard clauses that are set out in annex 4 in effect at the date of entry into force of the contract. The contract shall be signed by the Secretary-General on behalf of the Authority and by the applicant. Then the Secretary-General shall notify all members of the Authority in writing of the conclusion of the contract, as provided for by regulation 23.
