

**Comments to the Draft Regulations on Exploitation of Mineral Resources in the Area:  
Transboundary harm and the rights of Coastal States adjacent to the Area**

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Introduction

While there are other crucial areas within the Draft Exploitation Regulations that would require further scrutiny, our comments here relate specifically to a specific issue. As is common knowledge, the conduct of activities in the Area may affect the rights and interests of coastal States adjacent to the Area. This is twofold: first mineral resources that are spread across both areas may be a subject of interest (particularly if the coastal State is yet to demarcate its continental shelf with finality); and second, transboundary environmental harm. Our comments focuses on the latter. In our view, the Draft Exploitation Regulations do not sufficiently address this concern of transboundary environmental harm and its effects on adjacent coastal states.

In this regard, it is pertinent to recall the Advisory Opinion on the Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area of 2011. Here, the Seabed Disputes Chamber relied on the contemporary norms of international law pertaining to transboundary environmental harm in the context of activities in the Area. Although the Seabed Disputes Chamber did not specifically address the issue of potential transboundary harm that may arise and affect the rights of adjacent coastal states, it is implicit (through referencing of Article 206 of UNCLOS and the *Pulp Mills on the River Uruguay* at paragraphs 146-148) that the same rules should apply.

Accordingly, the ISA, the Enterprise (when it comes into existence), member States, sponsoring States, and other entities engaging in activities in the Area are under the obligation to control, reduce and prevent transboundary harm arising therefrom. Hence, we stress that the Draft Exploitation Regulations should address this further, beyond a cursory reference in Draft Regulation 4.

Specific Comments

Draft Regulation 4 currently places the burden on coastal states adjacent to the Area to notify the ISA if there are grounds for believing that the conduct of activities in the Area may cause transboundary environmental harm. We believe that the default position should be that the ISA and other relevant parties (e.g. prospective sponsoring States and contractors) should extensively consult adjacent coastal states before issuing out exploitation licenses. In this regard, we categorically support Section II of the submission made by the African Group

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(dated September 2018) on this matter and on other related provisions of the Draft Exploitation Regulations.

### General Comments

Additionally, we wish to highlight several matters that we believe requires greater attention.

1. There is an urgent need for the design of Regional Environmental Management Plans that are specific to particular geographic areas at the ISA. This measure should precede the granting of any exploitation licenses. Such plans should identify the rights and interests of coastal States adjacent to the Area, including any claims they may have to an extended continental shelf. Through this exercise, buffer zones should be created around areas within national jurisdiction and the Area, in which any exploitation licenses should not be granted. An exception to this rule of thumb could be if the adjacent coastal State itself is the applicant or a joint applicant to a Plan of Work that crosses the buffer zone.

2. The establishment of impact reference zones (IRZ) and preservation reference zones (PRZ) specifically should be created at strategic points where the potential of transboundary harm could be detected. This should reflect the proximity of activities in the Area that take place adjacent to the coastal State and should be set up in consultation and cooperation with the adjacent coastal State to represent their rights and interests.

3. Additionally, establishing transboundary monitoring zones is also a matter for further consideration. These sites should be created in areas of buffer zones (as suggested earlier), subject to random but regular monitoring, and should be jointly coordinated by the ISA, the adjacent coastal State and independent third parties (e.g. deep-sea research groups/consortiums). This should be created at the expense of the contractors.

### Conclusion

In our opinion, the Draft Exploitation Regulations do not sufficient represent the rights and interests of coastal States adjacent to the Area. We recommend that the Draft Exploitation Regulations be modified pursuant to the specific comments made by the African Group to sufficiently address the rights and interests of these adjacent coastal states. Further regulatory work (which may come as an independent, binding document aside from the Exploitation Regulations) also seems necessary. Given the importance of this subject of transboundary environmental harm and yet the little attention it has received hitherto, we strongly recommend that a technical workshop or dedicated working group be set up. Their task would be to consider all relevant matters that may arise from activities in the Area in connection with the rights and interests of coastal States adjacent to the Area and how they can be better protected.