An EIA Process for Deep Sea Mining in the Area:

Facing Key Issues in an International Context

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1. Introduction

2. Independent Peer Review

3. Public participation

4. EIA Office
1. INTRODUCTION

EIA = an on-going process

Exploration

- Preliminary EIA
  - Surveying
  - Baseline studies
  - Application for an Exploration Contract

- Prior EIA
  - Exploration Activities Requiring EIA
  - Monitoring

- EIA
  - Application for an Exploitation Contract

Exploitation

- Evaluation & Modification
  - Exploitation activities Reporting

Reg 18 PN
Reg 20 SMS/CFC

Reg 32 PN
ISBA/19/LTC/8. IV, B, §19-20
Contract clause 5.2 (a)

ISBA/19/LTC/8. IV, B, §19

Reg 32 (1) PN

Reg 32 (1) PN

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1. INTRODUCTION

**EIA: a Major Issue for Exploitation Regulations**

<table>
<thead>
<tr>
<th>Draft regulation description</th>
<th>Actions for operationalization of draft regulation</th>
<th>Priority Action (A, B or C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental impact statement</td>
<td>• Draft EIS template in Technical Study No. 10 to be reviewed and updated.</td>
<td>A</td>
</tr>
<tr>
<td></td>
<td>• Guidelines for the Preparation and Evaluation of an Environmental Impact Statement to be drafted. Should</td>
<td></td>
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<tr>
<td></td>
<td>include simple rating criteria. Needs to be resource-category specific.</td>
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<tr>
<td></td>
<td>• It is recommended that the above be undertaken by an expert and a draft template and guidelines</td>
<td></td>
</tr>
<tr>
<td>Public review of the environmental impact statement and</td>
<td>• A working paper needs to be drafted setting out the public participation options and procedures available,</td>
<td>A</td>
</tr>
<tr>
<td>environmental management plan [and social impact assessment and</td>
<td>including independent expert review(s), based on stakeholder submissions and best practice regimes. The</td>
<td></td>
</tr>
<tr>
<td>closure plan]</td>
<td>paper can then be circulated to stakeholders for comment.</td>
<td></td>
</tr>
</tbody>
</table>


**Related « High Level Issues »**

5. The transition between exploration and exploitation phases  
6. Risk assessment, evaluation and management  
7. Time limits and costs  
9. Effective protection for the marine environment from harmful effects  
10. “Internationally recognized standards” and their significance in exploitation activities

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1. INTRODUCTION

Building on Good Practice

**UNCLOS art. 208 (5)**

*States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. [...]*

**Advisory Opinion 2011, ITLOS**

« interpreted in light of the development of the law ».(§137)

- Consultation and comparison of consensus areas amongst different categories of stakeholders
- Similarities / common elements in National legislations
- Doctrine on EIA (Craik 2008, Druel 2013, Glasson et al 2013, Warner 2012...)

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1. INTRODUCTION

An International Organisation to Review a Project EIA: Structural difficulties

**National Mechanism**
- Decision-Making Body
  - Environmental Agency
  - Permanent

**ISA**
- Secretariat
- Council
- Assembly
  - SG
  - LTC
  - Finance Committee
  - Legal Affairs
  - Resources & Environmental Management
  - Administration & Management
  - Occasional

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Key Elements Identified For an EIA review

A procedural perspective

→ Independent Peer Review

→ Public Participation

→ EIA Advisory Office
1. Introduction

2. Independent Peer Review

3. Public participation

4. EIA Office

Dr. Prebish didn’t always fit in with the other scientists.
2. INDEPENDENT PEER REVIEW

Why?

2014 Survey:
• Widely advocated by stakeholders
• Consensus amongst all categories of stakeholders

→ Especially relevant in the context of a new rising sector, with a lack of scientific knowledge, a lot of uncertainty...

And Mankind will be watching.

Thus:
2. INDEPENDENT PEER REVIEW

Legal Grounds

153 (3) System of exploration and exploitation

« Approved [or disapproved] by the Council after review by the LTC »

165 (2) (e) LTC powers and functions:

The LTC « make[s] recommendations to the Council [...] taking into account the views of recognized experts in that field; »
2. INDEPENDENT PEER REVIEW

LTC Report March 2015

• An EIS and EMP must be: « verified by an independent environmental consulting firm » p. 12 & 13

• « Frequent independent audit » during project. p. 13

• « review mechanisms by independent experts and panels and the public availability of relevant documents and information for review ». p.18

→ Independent review, yes.
But who? How? How much?
2. INDEPENDENT PEER REVIEW

Independent, multidisciplinary peer review
Multiple possibilities...

→ Pool of multidisciplinary experts
→ Pool of independent firms
→ No pool, ad hoc appointment

→ Nomination by States, but real “independence”?
→ identified and appointed by the Secretariat?
→ elected by LTC members out of a pool of experts?
→ Left to the discretion of Sponsoring States?

→ ad hoc group,
→ permanent group,
→ mandate based group, meeting on ad hoc basis.
→ Mandate for specific project
→ Or mandate for specific duration

Etc...
2. INDEPENDENT PEER REVIEW

Submission of application with EIS & EMP

Independent Expert Review
Advice*

LTC Revisions document*

Public Participation*

Modifications

LTC Re-evaluates*

Recommendation

Council Approval
2. INDEPENDENT PEER REVIEW

Fitting it in the ISA timeline

- LTC
- Council
- Assembly
- Peer review
- Public participation

1 session
1 year

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1. Introduction

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“Excellent! So that’s all agreed, then! All we need do now is draft the consultation document.”
3. PUBLIC PARTICIPATION

Legal Grounds

ISBA/17/LTC/7, section C, par. 13 (f) : Environmental Management Plan for the CCZ

The Authority shall enable public participation in environmental decision-making procedures in accordance with the Aarhus Convention and its own rules and procedures.

ISBA/18/C/22 Decision of the Council relating to an environmental management plan for the Clarion-Clipperton Zone.

1. Approves the environmental management plan for the Clarion-Clipperton Zone as recommended by the Legal and Technical Commission, to be implemented over an initial three-year period. [...]

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3. PUBLIC PARTICIPATION

A matter of priority

Report March 2015 p. 47

- A working paper needs to be drafted setting out the public participation options and procedures available, including independent expert review(s), based on stakeholder submissions and best practice regimes. The paper can then be circulated to stakeholders for comment.

Examples of good practice:

- Principle 10 of Rio declaration
- EU Regulation No 1367/2006 of 6 September 2006 on the application of the Aarhus Convention
- National legislations (ie EU MS, Canada, New Zealand...)
- IFC performance standards and EITI principles and other standards.
- tbc...
3. PUBLIC PARTICIPATION

Key aspects

→ Transparency: Public availability of all necessary docs (EIS & EMP, peer review report, LTC report, any expert/EIA office report...)


→ Targeting the public? Stakeholders engaged, role of sponsoring state in announcing it at national level...

→ Review of the submissions: time limit and milestones

→ Deliverable? i.e. LTC declaration, responses to all submissions....?
3. PUBLIC PARTICIPATION

2 options inspired by 2 extremes...

Canadian Environmental Assessment Act 2012, art. 15 et seq.  
EEZ and Continental Shelf Act 2012, art. 38 et seq. (NZ)

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3. PUBLIC PARTICIPATION

...And 1 compromise

Submission of application with EIS & EMP

Independent Expert Review
Advice*

LTC
Revisions document*

Public Participation*

Modifications

Modifications

LTC
Re-evaluates*

Recommendation

Council
Approval

Procedural requirement to ensure that public review (incl. Peers/expert) was taken into account.
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“Well he certainly does a very thorough risk analysis.”
4. EIA OFFICE

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<th>Composition of LTC Members</th>
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<tbody>
<tr>
<td>Geologists or related*</td>
</tr>
<tr>
<td>International Lawyers</td>
</tr>
<tr>
<td>Biologists</td>
</tr>
<tr>
<td>Economist</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

→ Unequal representation

→ Participation to sessions not mandatory

- Engineers?
- Tax/finance lawyers?
- Environmental management experts?
- Other?...

*1 geophysian, 1 geo-engineer, 1 geochemist, 1 earth sciences

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4. EIA OFFICE

Report March 2015 (p.19)

*Given the pressures that applications for plans of work for exploitation will place on the existing assessment and decision-making structure, additional expert working groups or sub-committees may be required.*

→ *Should this be formalised under the regulatory framework?*

Good question... Not provided by the UNCLOS.
4. EIA OFFICE

LTC

- More LTC members
  - 163(2)

- New attribution of competence by the Assembly
  - 160(2)(n)

- Sub-committee
  - 163(10)

- Functions of Secretariat
  - art. 21 RRP

- OREM / Other
  - art. 167 (1)
4. EIA OFFICE

➔ Peer review + LTC + public + EIA office... + inspectorate + national mechanisms...

➔ Role of sponsoring States?

➔ Substantial aspects – evaluation criteria?

➔ Applicability of such a procedure – or similar – to the prior EIA review?
Thank you!

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