



**To: The International Seabed Authority
14-20 Port Royal Street
Kingston, Jamaica**

By email: consultation@isa.org.jm

From: The Advisory Committee on Protection of the Sea (ACOPS)

Re: Report (March 2015) to Members of the Authority and all stakeholders: Developing a Regulatory Framework for Mineral Exploitation in the Area (the Report)

Your reference: Report to Stakeholders (ISBA/Cons/2015/1)

To whom it may concern:

Attached please find the comments by the Advisory Committee on Protection of the Sea on the Report. Thank you for the opportunity to contribute to the work of the Authority.

**Sincerely yours,
Prof. Julian Hunt**

A handwritten signature in blue ink that reads 'Julian Hunt'.

President, Advisory Committee on Protection of the Sea



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To: The International Seabed Authority

From: The Advisory Committee on Protection of the Sea (ACOPS)

Re: Report (March 2015) to Members of the Authority and all stakeholders: Developing a Regulatory Framework for Mineral Exploitation in the Area (the Report)

Your reference: Report to Stakeholders (ISBA/Cons/2015/1)

Comments by the Advisory Committee on Protection of the Sea on the Report

I. Introduction

The Advisory Committee on Protection of the Sea (ACOPS) was established in 1952 by Lord Callaghan as one of the world's first environmental non-governmental organizations. ACOPS originally concentrated on encouraging international agreements to reduce marine oil pollution. Since then, ACOPS has expanded its interests to include other vessel-based and land-based sources of marine pollution, marine mining, marine geo-engineering, as well as other aspects of degradation of the coastal and marine environment. The mission of ACOPS is to promote strategies for sustainable global development relating to the coastal and marine environment through scientific, legal and policy research and advisory and public awareness activities. Studying our seas and oceans both as indicators of pollution and as a threatened resource in their own right, ACOPS strives to identify cost-effective, long-term environmental solutions that can be effectively implemented across the world. ACOPS has consultative observer status with numerous intergovernmental bodies, including the Arctic Council, the Economic and Social Council of the United Nations, the International Maritime Organization, and the London Convention and Protocol. The President of ACOPS is **Lord Hunt of Chesterton**, CB FRS, Emeritus Professor, University College London; Malaysian Commonwealth Studies Centre, University of Cambridge. The Chairman of ACOPS is **Professor David Johnson**, Global Ocean Biodiversity Initiative (GOBI) Programme Coordinator, Seascope Consultants Ltd. See <http://www.acops.org.uk>.

II. Section Two of the Report: Draft Framework for the Exploitation Regulations

A. Overall draft structure for the exploitation regulations set out on pp 6-7: ACOPS has no comments.

B. Comments on Annotated Draft Structure

Part I: Introduction - Use of Terms and Scope

Actions: Comments: The definitions and interpretations must - not 'should' - reflect internationally and scientifically accepted standards.

1. Part II: Applications for approval of plans of work for exploitation in the form of contracts - Form of applications for plan of work

a) **ISA Commentary / suggested content: Comment:** A separate plan of work and a separate feasibility study, EIS and EMP must be required for each type of deposit, i.e., nodules, crusts or sulphides.

b) **Actions: Comment:** Interest by the Authority in “new ways of doing business” is encouraged. However, it is not clear what is meant by “new ways of doing business.” Doc ISBA/20/C/20 refers to monopolization of activities in the Area. Monopolization is not a new way of doing business. Doc ISBA/20/LTC/11 cited in ISBA/20/C/20 does not further explain these “new ways” either. All stakeholders must be included in these discussions.

2. Part II: Applications - Financial and technical capabilities

a) **ISA Commentary: Comment:** These capabilities must indeed be required, but they must be set out in detail, be uniformly applicable to all contractors, and transparently and uniformly enforced for all contractors.

b) **Actions: Comment:** The draft Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the Legal and Technical Commission (LTC) and the Council based on these comments before their finalization and adoption.

3. Part II: Applications - Undertakings

a) **ISA Commentary: Comment:** The language of the Exploration Regulations is suitable for adoption in this context as well. It is also useful to require specific acceptance by contractors of Section 6 (Production Policy) of the Part XI Implementing Agreement (IA) of the 1982 Law of the Sea Convention (LOSC).

b) **Actions: Comment:** No technical working paper is required. It is sufficient that the Undertakings include specific reference to acceptance by contractors of IA Section 6, which was negotiated at great length with great care and in specific response to the problems of the relevant provisions of LOSC Articles 151, 162, 165 and Annex III, Articles 6 and 7. The Authority is advised to eschew involvement in commercial aspects of exploitation, such as production policies, given the unproductive history of such efforts.

4. Part II: Applications - Data and information to be submitted for approval of the plan of work for exploitation

a) **ISA Commentary: Comment:** ACOPS has no comments at present on whether the IBA’s 2011 Model Mine Development Agreement is a suitable model for a *deep sea* mining operation and reserves its position on this. The list of documents proposed appears to be sufficient.

b) Actions: Comment: Please see input by ACOPS on the individual elements in the list above and below.

5. Part II: Applications - Feasibility study

a) ISA Commentary: Comment:

1st bullet: *As a general caveat, ACOPS refers to the cautionary comment above on the Authority's involvement in commercial matters. Bearing this in mind, here it is necessary to first rigorously define "commercial viability." This will not be easy to do. It will then be necessary to define the technical qualifications required for conducting such an assessment and then determine who will conduct this assessment in accordance with those qualifications, and on what procedural terms. For example, the LTC as currently constituted does not possess the requisite qualifications as it consists of lawyers and scientists.*

2nd bullet: *With regard to the report by the "independent expert(s)", it is necessary to specify the qualifications for being considered an expert, which must be of the highest internationally recognized standards, set the criteria for independence, and define the mechanism for the choice of expert(s). It is also recommended that two experts work be chosen, who will submit independent reports.*

3rd bullet: *In line with the overall commercial *caveat* expressed above, ACOPS recommends deletion of this bullet. It is fraught with difficulties of definition and implementation. Mining development and production plans are purely commercial matters. The Authority (including the LTC and the Council) is not qualified to substitute its judgment on these matters for that of the contractor. For example, this bullet refers to "optimization of proceeds". It will be necessary, and not easy at all, to define this concept. Then it will be necessary to decide when an alternative plan is to be requested, by whom, and according to what criteria, and to set out the avenues for recourse available to the Authority and the contractor in the case of disagreement. The International Tribunal on the Law of the Sea (ITLOS), for example, or even its Seabed Disputes Chamber, is unlikely to be the ideal forum, as it has no commercial expertise, at least as currently constituted.*

b) Actions: Comment: *As stated above, there should be two experts, and they must possess the highest, internationally recognized qualifications. Their reports must be publicly available. The draft Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.*

6. Part II: Applications - Environmental impact statement (EIS)

a) ISA Commentary: Comment:

1st bullet (i): *The "independent environmental consulting firm" must have demonstrable recognized expertise in the environmental evaluation of deep (e.g., >2500 m water depth for nodules) sea operations in similar environments to those of the deposits proposed to be mined.*

1st bullet (ii): *It is important to define "non-technical," in light of good practice from other sectors.*

2nd bullet: *ACOPS agrees concur that the draft EIS template found in ISA Technical Study No. 10 requires further development.*

5th bullet: ACOPS supports the careful definition of boundary conditions for mining effects in an Environmental Impact Area, especially with regard to setting the spatial and temporal limits of cumulative effects.

b) Actions: Comment: Before undertaking the review and updating of the EIS template, ACOPS suggests that the Authority circulate a request to all stakeholders for comments on and suggestions for improvement of current template. The expert(s) selected to conduct the review and update must possess the highest, internationally recognized qualifications. ACOPS recommends that the US EIA rating system and especially the CBD and UNEP documents on EIA and SEA referred must be carefully reviewed by these experts with regard to their relevance for deep-sea environments and operations. The draft template and associated Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

7. Part II: Applications - Environmental management plan (EMP)

a) ISA Commentary: Comment:

1st bullet (i): The “independent environmental consulting firm” must have demonstrable recognized expertise in the environmental evaluation of deep (e.g., >2500 m water depth for nodules) sea operations in similar environments to those of the deposits proposed to be mined.

b) Actions: Comment: The expert(s) selected to draft the EMP template and EMP, PRZ and IRZ Guidelines must possess the highest, internationally recognized qualifications. ACOPS does not see the need for workshops *after* development of templates and Guidelines; however, with carefully selected (for relevant qualifications in particular) participants, it would be useful to have a workshop before their development, to better inform their design and content. The draft template and associated Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

8. Part II: Applications - Social impact assessment and action plan (SIA)

a) ISA Commentary: Comment:

2nd bullet: ACOPS agrees.

3rd bullet: It is necessary to define and give examples of these “other users.”

4th bullet: ACOPS agrees. It is important to recognize that relevant research is needed to ensure the improvement of our knowledge of the deep-sea environment and enhancement of the skills and technology to work responsibly. There are also activities that are “carried out for the benefit of mankind” (LOSC Art. 140.1) and are also “financial economic benefits derived from activities in the Area” (LOSC Art. 140.2).

b) Actions: Comment: ACOPS agrees and suggests that the Authority use the bullets provided in the draft and comments received from stakeholders to define this call.

9. Part II: Applications - Financing plan

Comment: This topic is outside the area of ACOPS expertise. ACOPS reiterates its *caveat* re commercial considerations.

10. Part II: Applications - Closure plan

a) ISA Commentary: ACOPS agrees.

b) Actions: Comment: The expert(s) selected to do this must possess the highest, internationally recognized qualifications. The draft template and associated Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

11. Part II: Applications - Size and location of exploitation area(s) covered by the plan of work

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations. Any draft Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

12. Part II: Applications - Fee for applications

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations. Nevertheless, ACOPS is also aware of the financial demands on the Authority, and recommends that the fee be set at a level sufficient to cover the Authority's costs of reviewing the application.

13. Part II: Applications - Public review of EIS, EMP [SIA and Closure plan]

a) ISA Commentary: Comment: The requirements of the LOSC and the Aarhus Convention are to be observed here. Maximum transparency must be the default position.

b) Actions: Comment: The draft paper must - not 'can' - be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

14. Part II: Applications - Consideration by the LTC

a) ISA Commentary: Comment:

2nd bullet: footnote 25: The definition (not "an indication") of "reasonable conditions" and how this will be interpreted must be developed in detail, and not "should be considered".

b) Actions: Comment: The expert(s) selected to draft these Guidelines and Technical Working Papers must possess the highest, internationally recognized qualifications. The draft Guidelines and Papers must be circulated for comments by stakeholders and

then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

15. Part II: Applications - Consideration and approval by the Council of plans of work for exploitation

a) ISA Commentary: Comment: ACOPS strongly recommends that the Council take this additional governance step.

b) Actions: Comment: ACOPS strongly recommends that specific Council procedures and criteria be developed to implement this additional governance step.

16. Part II: Applications - Independent technical expert working groups / sub-committees

a) ISA Commentary: Comment: ACOPS agrees that these will indeed be needed.

b) Actions: Comment: ACOPS agrees that formalization in the Regulations will be necessary, and points out that transparency in the operations of these bodies must be the default position.

1. Part III: Contracts for exploitation - Rights of the contractor

a) ISA Commentary: Comment: It may be useful to provide a list of rights of contract holder under the contract, but this list must be drafted with caution and its use must also be placed in the proper context. For example, the list must be clearly specified as being non-exhaustive, it must be compatible with the LOSC, the IA and with international law, it must be in accordance with best international commercial practices, etc. It is necessary to include a specific right to explore by the contract holder in the exploitation area assigned under the exploitation contract. The contract must also specify that no exploration by others (i.e., third parties, including the Enterprise) for mineral resources is permitted in an assigned exploitation area for the period that the exploitation contract is in force without express permission by both the contract holder and the Authority, and then only under the specific conditions as set out by the contractor and the Authority.

b) Actions: Comment: The Authority's Secretariat could propose suggested language in the draft Exploitation Regulations accordingly and submit this proposal for consideration by stakeholders. Alternatively, one or more of the contractors could propose this language for consideration by the Authority and stakeholders.

2. Part III: Contracts for exploitation - Obligations of the Authority

a) ISA Commentary: Comment: ACOPS considers that this aspect is difficult to comment on in the abstract form given here, without specific examples of such possible perceived gaps and lack of clarity. Given that the obligations of the Authority are set out in detail in the LOSC/IA (see, e.g., LOSC Article 157.2), if certain obligations are now found to have been omitted, it could be argued that the drafters of

the LOSC/IA intentionally have not provided for these obligations to be handled by the Authority. LOSC Art.157.2 provides for the ISA's having implicit and necessary incidental powers consistent with the LOSC, but this does not necessarily imply that the Authority may now legally be assigned these duties in a contract between it and the contractor, even in the form of Regulations adopted by the Assembly. For example, this approach may be challenged as an amendment of the LOSC/IA in a manner not provided for under these instruments. ACOPS expresses a similar concern with matters that are perceived to involve a lack of clarity, but remarks that these matters might be adequately addressed through the adoption of an interpretative resolution by the Assembly, for example. However, in general, ACOPS considers that both issues, once defined, are likely to be more productively addressed in the context of a LOSC Article 154 review conference.

b) Actions: Comment: The Authority's Secretariat is encouraged to provide specific examples of gaps and lack of clarity, with proposals on how these gaps and lacks of clarity are to be remedied, for circulation to all stakeholders.

3. Part III: Contracts for exploitation - Legal title to minerals

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations. However, with regard to the proposed action, ACOPS agrees that “recovery in accordance with the Convention’ requires a technical working paper to be drafted”. The expert(s) selected to draft this paper must possess the highest, internationally recognized qualifications. The paper must be circulated for comments by stakeholders.

4. Part III: Contracts for exploitation - Duration of contracts / renewal

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations. Nevertheless, with regard to the ISA commentary bullets, ACOPS recommends a) that in the interests of transparency, the specific conditions attached to the five-year substantive review must - not ‘should’ - be established in detail at the time of the initial application for a plan of work for exploitation and b) that both the Authority and the contractor be able to “adjust terms”.

5. Part III: Contracts for exploitation - Performance requirements

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations. Nevertheless, with regard to the ISA commentary bullets, ACOPS recommends with regard to a) bullet 7, that this item must - not 'should'- be discussed and agreed and embodied in written form, including defining what is ‘minor’ and what is ‘material’, and b) the last commentary bullet, that subsidization is not only to be clearly prohibited (see also above under **14. Part II: Applications - Consideration by the LTC**, but also that it be clearly defined how subsidization will be defined, its existence identified and its elimination enforced in practice, particularly with the contractors that are state-owned enterprises.

6. Part III: Contracts for exploitation - Conservation of the natural resources of the Area

a) ISA Commentary: Comment: ACOPS considers that this section as currently drafted is unclear and does not appear to be wholly consistent with the LOSC. This is because this section conflates, and apparently confuses, “natural resources of the Area” and “resources of the Area.” These are two different sets of resources, which are defined differently under the LOSC (see, e.g., LOSC Article 77 for a definition of natural resources, which includes living resources, and LOSC Article 133, which defines resources of the Area, which does not include living resources). The “specific element” in the draft text setting out a general obligation to “avoid unnecessary waste”, is required in LOSC Article 150 (b) for resources of the Area, but not for natural resources of the Area. The phrase “unnecessary waste” is found nowhere else in the LOSC. This does not mean that such “unnecessary waste” should not be avoided for natural resources of the Area, but it is not required by LOSC Article 150(b), which is the legal authority cited. Nor is it required by LOSC Article 145 (b), to which all three bullets, including the two waste bullets, are linked in the ISA commentary, but LOSC Article 145(b) does not refer to waste at all. Conservation of resources, natural and otherwise, can, and in the view of ACOPS, certainly must include waste avoidance, but the legal basis for this inclusion as set out in this section for natural resources is incorrect under the LOSC. Furthermore, “unnecessary” in the context of waste, especially with regard to both natural resources and their protection and conservation under Article 145 (b) and LOSC Article 133 resources, for which conservation only is arguably required under Article 150(b), will require careful definition. Finally, “natural resources” will also require definition, as this arguably (cf, e.g., LOSC Article 77) covers a broader range of resources than the resources as defined in LOSC Article 133.

ACOPS agrees with the middle bullet, which does correctly relate to LOSC Article 145(b).

b) Actions: Comment: ACOPS agrees that the proposed action is necessary, but its legal basis and scope requires revision. ACOPS points out that an action to implement the middle bullet is still required.

7. Part III: Contracts for exploitation - Use of sub-contractors

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations.

8. Part III: Contracts for exploitation - Vessels operating in the Area

a) ISA Commentary: Comment: ACOPS agrees, but strongly recommends that the flag-of-convenience issue be addressed. ACOPS suggests that one approach could be to require that contractors use vessels flagged to the sponsoring state.

b) Actions: Comment: ACOPS agrees, but emphasizes the need to cover the flag-of-convenience issue.

9. Part III: Contracts for exploitation - Protection of submarine cables and pipelines

a) ISA Commentary: Comment: ACOPS agrees.

b) Actions: Comment: ACOPS agrees and recommends early engagement of the Authority in discussions with the International Cable Protection Committee (ICPC). See <https://www.iscpc.org/>.

10. Part III: Contracts for exploitation - Health and safety

a) ISA Commentary: Comment: ACOPS agrees and recalls that the standards set by the International Labour Organization (ILO) for maritime work are also relevant <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/>.

b) Actions: Comment: ACOPS agrees.

11. Part III: Contracts for exploitation – Training

This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations.

12. Part III: Contracts for exploitation - Periodic review of the implementation of the plan of work for exploitation

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations. ACOPS also recommends further specification by the Authority of “events” that it considers subject to notification, and a definition of how the Authority sees its regulatory role being implemented in this context. With regard to the proposed actions, ACOPS agrees, and notes that the expert(s) selected to draft these Guidelines must possess the highest, internationally recognized qualifications. The draft Guidelines must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

13. Part III: Contracts for exploitation - Termination of sponsorship

Comment: This topic is outside the area of ACOPS expertise. However, ACOPS reiterates its *caveat* re commercial considerations.

14. Part III: Contracts for exploitation - Responsibility and liability

a) ISA Commentary: Comment:

1st bullet: ACOPS agrees that this is correct.

2nd bullet: Other sources for international environmental liability law must also be consulted here, including, e.g., the LOSC itself, the work of authoritative international legal expert bodies such as the International Law Commission and the International Law Association, the Madrid Protocol to the Antarctic Treaty, the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress on Biosafety. With regard to systems for remedies, the IOPC Fund Conventions in particular offers valuable examples (<http://www.iopcfunds.org>).

b) Actions: Comment: ACOPS agrees.

1. Part IV: Protection and preservation of the marine environment - Protection and preservation of the marine environment

a) **ISA Commentary. Comment:** The extensive experience (since 1972) with disposal of waste and other matter at sea of the London Convention (LC) and Protocol (LP) must be utilized by the Authority. An excellent document to consult initially is the LC/LP waste assessment guideline for the disposal of inert geological matter. See <http://www.imo.org/OurWork/Environment/LCLP/Publications/wag/Pages/default.aspx>.

b) **Actions. Comment:** ACOPS agrees and strongly advises extensive liaison with the Governing Bodies of the London Convention and Protocol, and through them with their dedicated Scientific Groups, both of which meet annually, and have their own own Secretariat.

2. Part IV: Protection and preservation of the marine environment - Environmental management

a) **ISA Commentary. Comment:** ACOPS agrees. ACOPS notes that for bullet two, ISO 14001: 2004 is the latest version and a further revision is due in October 2015. It may also be advantageous to consider a flexible system (i.e., more frequent audits if and when shortcomings are identified, less frequent audits to reward good performance).

b) **Actions. Comment:** ACOPS agrees. The expert(s) selected to draft these Guidelines must possess the highest, internationally recognized qualifications. The draft Guidelines and Papers must be circulated for comments by stakeholders and then resubmitted for further review by the LTC and the Council based on these comments before their finalization and adoption.

3. Part IV: Protection and preservation of the marine environment - Emergency orders

a) **ISA Commentary. Comment:** ACOPS agrees.

b) **Actions. Comment:** ACOPS agrees.

4. Part IV: Protection and preservation of the marine environment - Strategic environmental management plan (SEMP)

a) **ISA Commentary. Comment:** ACOPS agrees.

b) **Actions. Comment:** ACOPS agrees.

5. Part IV: Protection and preservation of the marine environment - Rights of coastal States

a) **ISA Commentary. Comment:** ACOPS agrees.

b) Actions. Comment: ACOPS agrees.

6. Part IV: Protection and preservation of the marine environment - Environmental bonds and performance guarantees

Comment: This topic is outside the area of ACOPS expertise. ACOPS reiterates its *caveat* re commercial considerations. However, ACOPS considers that the proposed action is necessary, and that a list of proposed parameters needs to be developed.

7. Part IV: Protection and preservation of the marine environment - Restoration and rehabilitation of the marine environment

ISA Commentary: Comment:

a) 1st bullet: ACOPS does not agree that a “general restoration obligation” is appropriate, from both a scientific and a legal standpoint. Such an obligation is probably not even feasible. The consensus of the stakeholders is that the focus should be on impact minimization and mitigation. This consensus is currently relegated to a footnote in the Report. It should be placed as the primary general obligation on contractors. Restoration can be a part of environmental impact minimization and mitigation, but as the **3rd bullet** correctly points out, careful scientific and legal definition tailored to the deep-sea environment is required before imposition of any such obligations is considered, let alone implemented.

b) Actions: Comment: It will be necessary to begin work soonest on these definitions, as they relate to closure plans.

8. Part IV: Protection and preservation of the marine environment - Adaptive management approach

a) ISA Commentary. Comment: ACOPS agrees.

b) Actions. Comment: ACOPS agrees.

9. Part IV: Protection and preservation of the marine environment – Seabed sustainability fund

Comment: This topic is outside the area of ACOPS expertise. ACOPS reiterates its *caveat* re commercial considerations. However, as not all contractors will be mining, ACOPS wonders whether the proposal to fund it by means of an ore levy is equitable. If contractors are to fund it, then all of them must contribute, and a basis for funding that applies to them equally must be found. Another source of useful ideas on this topic may be found in the paper by Dr. David Johnson, entitled: ISA Areas of Particular Environmental Interest around the Clarion-Clipperton Zone: Offsetting to Fund Scientific Research, in press; (2015) 30 (2) The International Journal of Marine and Coastal Law; <http://booksandjournals.brillonline.com/content/journals/15718085>.

10. Part IV: Protection and preservation of the marine environment - Environmental liability trust fund

Comment: This topic is outside the area of ACOPS expertise. ACOPS reiterates its *caveat* re commercial considerations. The IOPC Fund system can provide a useful example here (see above **14. Part III: Contracts for exploitation - Responsibility and liability**).

11. Part IV: Protection and preservation of the marine environment - Human remains and objects and sites of an archaeological or historical nature

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions: Comment:** ACOPS agrees.

12. Part IV: Protection and preservation of the marine environment - Confidentiality of data and information & Procedures to ensure confidentiality

a) **ISA Commentary: Comment:**

1st and 3rd bullets: ACOPS agrees.

2nd bullet: This statement is inherently contradictory and inconsistent with the LOSC.

b) **Actions: Comment:** See our comments on this item in Section IV.

1. Part VI: General procedures - Notice and general procedures

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions: Comment:** ACOPS agrees.

2. Part VI: General procedures - Recommendations for the guidance of contractors

a) **ISA Commentary. Comment:** ACOPS agrees.

b) **Actions. Comment:** ACOPS agrees.

3. Part VI: General procedures - Duty to cooperate

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions. Comment:** See our comments on this item in Section IV.

1. Part VII: Enforcement, offences & penalties - Inspection

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Action: Comment:** ACOPS agrees.

2. Part VII: Enforcement, offences & penalties - Offences & penalties

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions: Comment:** ACOPS agrees.

1. Part VIII: Disputes - Settlement of disputes

a) **ISA Commentary. Comment:** ACOPS agrees.

b) **Actions. Comment:** ACOPS agrees.

1. Part XI: Resources other than [mineral category]: ACOPS has no comments.

1. Part X: Review – Review

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions: Comment:** ACOPS agrees.

C. Comments on Annex II Contract for exploitation

1. Annex II Contract for exploitation – “Dealings” or arrangements

Comment: This topic is outside the area of ACOPS expertise. ACOPS reiterates its *caveat* re commercial considerations. See also our comments above under Undertakings.

2. Annex II Contract for exploitation - Annual Reports

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions. Comment:** ACOPS agrees.

3. Annex II Contract for exploitation - Insurance

Comment: This topic is outside the area of ACOPS expertise. ACOPS reiterates its *caveat* re commercial considerations.

4. Annex II Contract for exploitation - Suspension and termination of contract and penalties

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions: Comment:** ACOPS agrees.

5. Annex II Contract for exploitation - Revision

a) **ISA Commentary: Comment:** ACOPS agrees.

b) **Actions. Comment:** ACOPS agrees.

IV. Section Four: Summary of high-level issues

ISA request: “comments are invited as to whether (1) any high-level issue is considered as missing from the list; (2) that the commentary appropriately reflects understanding of the issue and (3) how these issues could be incorporated into the framework.”

ACOPS Comments:

(1) No high-level issue is missing from this list.

(2) (a) The commentary appropriately reflects understanding of the following issues, numbered according to the list in the ISA document here under review:

Issues 1, 2, 3 (ACOPS agrees that it is appropriate to focus on nodules as the first priority), 5, 6, 7, 8 (ACOPS notes that confidentiality is also a legal, not just a policy issue, because some information is legally protected), 9, 10, 11 (ACOPS notes that this issue should be addressed with high priority), 12 (ACOPS notes that “high-grading” would appear to be a purely commercial issue* and although as such it is outside of the ACOPS area of expertise, the ACOPS *caveat* with regard to the Authority’s involvement with commercial issues is reiterated), and 13 (ACOPS reiterates that “new ways of doing business” must be clearly described).

(2) (b) The commentary requires further consideration for issue 4, as follows:

In the absence of concrete examples of overlap or confusion, ACOPS remains to be persuaded that this issue of overlapping competencies exists at a level where it needs to be addressed urgently. However, the commentary does not address one issue of competency that strikes ACOPS as being important. No competency has been assigned to the Authority, or to any other international body under international law, except perhaps by inference to the Parties to the LOSC (insofar as they can be considered a body, in the current absence of a formal secretariat or central implementing mechanism for the LOSC) with regard to the regulation of activities in the Area that do not involve exploration for and exploitation of the resources of the Area as defined in LOSC Article 133(a). Such other resources would include, e.g., living resources and marine genetic resources. It is not clear to whom the contractor or the ISA could complain if an entity initiated such activities (i.e., exploration and/or exploitation) in a contract area, or what the legal basis for such a complaint would be. ACOPS suggests that an advisory opinion

from the Law of the Sea Tribunal be requested by the Authority as a matter of urgency.

(3) Subject to our comments on individual items and issues, overall ACOPS considers that the proposed mechanisms for incorporation of these issues into the framework as set out in Section Two and in the present Section Four, form a constructive basis for further development of the exploitation regulations.

V. Section Five: Draft Action Plan

Comments: ACOPS agrees with the assigned priorities in the draft action plan except for the following, whose priority level we recommend should be adjusted as stated:

Draft Regulation: Confidentiality of data and information and procedures to ensure confidentiality - priority A

High-Level Issues: “High-grading” of mineral deposits – priority C

CONSENT AND CONTACT DETAILS

ACOPS expressly consents to our contact details below and this submission being made publicly available. ACOPS hereby confirms our interest in future contact by the Authority and in being part of a stakeholder group on deep-sea mining.

The contact details for ACOPS are:

Email: acopsadmin@googlemail.com

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By post: Advisory Committee on Protection of the Sea (ACOPS)

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