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Item 11 of the provisional agenda*
Draft regulations on exploitation of mineral resources in the Area

Draft regulations on exploitation of mineral resources in the Area

Parts IV: Regulations 44 to 56, Regulations 59 to 61

Drafting proposals submitted by delegations as compiled on 25 March 2022

Part IV

Protection and preservation of the Marine Environment

Section 1

Obligations relating to the Marine Environment

Regulation 44

General obligations

1. The Authority, sponsoring States, the Enterprise and Contractors shall each, as appropriate—within their respective competence, adopt, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects which may arise from Exploitation in the Area or from shipboard processing immediately above a mine site of minerals derived from that mine site, in accordance with the Convention, the Agreement, the rules, regulations and procedures adopted by the Authority—in respect of activities in the Area, as well as the Standards referred to in regulation 45. To this end, ~~they shall:~~

(a) In establishing and keeping under periodic review environmental rules, regulations and procedures, in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, and the ecosystem approach to the assessment and management of risk ~~of harm~~ to the Marine Environment from Exploitation in the Area;

(ii) Apply the Best Available Techniques and Best Environmental Practices ~~in carrying out such measures;~~

(e)iii) Integrate Best Available Scientific Evidence in environmental decision- making, including all risk assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with Best Environmental Practices; and

(d)iv) ~~Promote—Require~~ accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through stakeholder engagement and the timely release of and access to relevant environmental data and information and opportunities for stakeholder participation.

(b) In taking all necessary measures to ensure that the Contractor carries out Exploitation in the Area in conformity with the terms of its contract and its obligations under the Convention and the rules, regulations and procedures adopted by the Authority related to the protection for the Marine Environment from harmful effects , the Sponsoring State shall implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iv) above.

(c) In taking necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from Exploitation in the Area, the Enterprise and Contractors shall implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iii) above and demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through stakeholder engagement and the timely release

of and access to relevant environmental data and information.

2. In adopting laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the marine environment from Exploitation in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be, States shall implement, mutatis mutandis, the measures set out under paragraph 1(a)(i) to (iv) above.

3. The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 and 2 above.

Explanation / comment

- Draft regulation 44 was the object of a number of comments, in particular the need to clearly differentiate and set out the responsibilities of the various actors with regard to the general obligations. The proposed revisions and restructuring aim to respond to those comments by specifying the respective responsibilities of each actor.
- The reference to the precautionary approach in paragraph 1 was kept as originally drafted, for consistency with the current text of the Exploration Regulations. It is noted that this is the term used in the Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks and the General Assembly resolutions on oceans and the law of the sea. Further information on the implementation of the precautionary approach is available in a note prepared by the Secretariat for the twenty-fifth session of the Authority (ISBA/25/C/8).
- It is noted that a proposal was made to specify, in the paragraph related to Rio Principle 15 that “where information is uncertain or inadequate, the Authority shall favour caution and environmental protection”. The proponent is invited to clarify if this is aimed at elaborating on the concrete application of Rio Principle 15 or if this is an additional requirement. Rio Principle 15 reads as follows:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

- In light of the proposal to include a reference to the “ecosystem approach” in paragraph 1, further consideration of the practical implications of this proposal may be needed, including the possibility of providing a definition for the term in the Schedule.

- It is proposed that a reference to “shipboard processing immediately above a mine site of minerals derived from that mine site” be added to paragraph 1 for completeness and consistency with Annex III, para 17(2)(f).
- It is also proposed that a new paragraph 2 be added to reflect a concomitant obligation on flag States, when adopting laws and regulations pursuant to article 209 of the Convention, to also implement the pertinent measures required of the Authority, sponsoring States and contractors under paragraph 1, including in light of the requirement in article 209 that the requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures established in accordance with Part XI of the Convention.

I – Members of the International Seabed Authority

Costa Rica

General obligations 1.

The Authority, sponsoring States, the Enterprise and Contractors shall each, as appropriate within their respective competence, adopt, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects which may arise from Exploitation in the Area, [in line with article 145 of the Convention](#) or from shipboard processing immediately above a mine site of minerals derived from that mine site, in accordance with the Convention, the Agreement, the rules, regulations and procedures adopted by the Authority in respect of activities in the Area, as well as the Standards referred to in regulation 45 [and the applicable Regional Management Environmental Plan](#).

Rationale

1- It is pertinent to include a specific mentioning of article 145 of the Convention so it is understood that the effective protection should be guided by all the dispositions included in art 145.

2- The pertinent REMP should also be taken in consideration to ensure the effective protection of the marine environment **since it is the toll that can allow for a holistic evaluation of the region.**

Regulation 44bis
Regional Environmental Management Plans

Placeholder

- A proposal was made for a new provision 44bis addressing Regional Environmental Management Plans (see ISBA/26/C/CRP.1).
- In light of the process subsequently decided upon by the Council concerning a standardized approach for the development, approval and review of Regional Environmental Management Plans in the Area (ISBA/26/C/10), it is suggested that delegations focus their discussion on paragraph 3 of the proposal, which is most directly related to these draft regulations. The paragraph reads:

“3. An application for a Plan of Work shall not be considered by the Commission until and unless a Regional Environmental Management Plan has been adopted by the Council for the particular area concerned. In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Implementing Agreement.”

- Discussions could also consider the possible placement of such a provision in Part II, sections 3 and 4, or to Regulation 94, if kept in the draft regulations.

Regulation 45
Development of environmental Standards

Environmental Standards shall be developed in accordance with regulation 94 and shall include the following subject matters:

- (a) Environmental quality objectives, including on biodiversity status, plume density and extent, and sedimentation rates;
- (b) Monitoring procedures; and
- (c) Mitigation measures.

Explanation / comment

- The Legal and Technical Commission have commenced their preparation of environmental Standards pursuant to Regulation 45 , including, for instance, the Standard for environmental impact assessments. Regulation 45 serves as an explicit regulatory basis for the preparation of those environmental Standards. In view that the Commission has prepared also related draft guidelines, consideration should be given as to whether the chapeau and title of Regulation 45 should also make explicit reference to “Guidelines”.
- A proposed new paragraph 2 (see ISBA/26/C/CRP.1), which reads:
2. The Authority shall not approve any Exploitation activities unless the necessary environmental Standards have been adopted.
would require further discussion, including concerning its possible placement in Part II, sections 3 and 4, or to Regulation 94, if kept in the draft regulations.

I – Members

Costa Rica

Regulation 45

Environmental Standards shall be developed in accordance with regulation 94 and shall include, inter alia, the following subject matters:

- (a) Environmental quality objectives, including, but not limited to, on biodiversity status, plume density and extent, and sedimentation rates; 6
- (b) Monitoring procedures; and
- (c) Mitigation measures

Rationale

1- This should be an indicative list which allow the Authority for further development of Marine Environmental obligations that contractors must comply to guarantee effective protection. The same goes for (a).

Regulation 46
Environmental management system

1. A Contractor shall develop, implement and maintain an environmental management system, in conformity with the applicable Standard and taking account of the relevant Guidelines.
2. An environmental management system shall:
 - (a) ~~Be capable of~~ Delivering site specific the Authority's environmental objectives at the mine site and Standards as reflected in the Environmental Management and Monitoring Plan;
 - (b) Be audited by an ~~capable of cost effective~~, independent auditing ~~by~~ recognized and accredited international or national organizations; and
 - (c) Permit effective reporting to the Authority in connection with environmental performance.

Explanation / comment

- The revisions to this draft regulation, building on proposals from various delegations, aim at clarifying the original wording including in terms of who should develop the environmental management system and who should audit it.
- The reference to environmental objectives was also further clarified to make it clear that the environmental objectives to be achieved at the mine site are to be set by the Authority.
- In light of queries from some delegations, attention is drawn to the ISA publication “A Discussion Paper on the development and drafting of Regulations on Exploitation for Mineral Resources in the Area (Environmental Matters)”, which provides information on the concepts of environmental management systems, environmental management and monitoring plans and environmental impact assessment (available at <https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/documents/EN/Regs/DraftExpl/DP-EnvRegsDraft25117.pdf>).
- It is noted that one delegation preferred keeping the original wording of Regulation 46, while another suggested that paragraph 2 was not necessary as the elements could be incorporated in the relevant guideline.

I – Members

Costa Rica

Environmental management system.

1. The Commission will develop a document that will set the binding minimum Standards for an Environmental Management Plan System.

1. bis A: A Contractor shall develop, implement and maintain an environmental

management system, in ~~conformity~~ compliance with the ~~applicable~~ Standards mentioned in paragraph 1 and taking account of the relevant Guidelines.

2. An environmental management system shall:

(a) ~~Be capable of delivering~~ Deliver site-specific the Authority's environmental objectives at the mine site and Standards as reflected in the Environmental Management and Monitoring Plan;

(b) Be audited annually by a capable of cost-effective, independent auditing by recognized and accredited international or national organizations; and

(c) Permit effective reporting to the Authority in connection with environmental performance.

Rationale

- 1- The LTC is the pertinent body to develop and set for the Contractors the minimum bidding standards for Environmental Management Systems to ensure they conduct the exploitation activities guaranteeing an effective protection of the marine environment.
- 2- Contractor must be periodically audited to ensure the effective surveillance and compliance with Environmental Management System during the exploitation activities.

Regulation 46bis

Environmental impact assessment

1. An applicant or Contractor, as the case may be, shall carry out an environmental impact assessment of the potential effects on the marine environment of the proposed mining operation in accordance with these regulations, the applicable Standard and Guidelines, as well as Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.
2. The environmental impact assessment shall include:
 - (a) Scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Statement on the key environmental issues;
 - (b) Impact assessment and evaluation to describe and predict the nature and extent of the Environmental Effects of the mining operation, including cumulative impacts and residual effects, using Best Available Scientific Evidence;
 - (c) Identification of measures to prevent, mitigate and manage harmful effects to as low as practicable, including through the development and preparation of an Environmental Management and Monitoring Plan; and
 - (d) Preparation of the Environmental Impact Statement in accordance with Regulation 47 and the relevant Guidelines.
3. Screening shall also be part of an environmental impact assessment when, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, in order to determine whether a revised Environmental Impact Statement is required.
4. The environmental impact assessment shall:
 - (a) Be based on relevant baseline data that captures temporal and seasonal variation;
 - (b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan;
 - (c) Provide for stakeholder consultation; and
 - (d) Be subject to an independent scientific assessment prior to the submission of the Environmental Impact Statement to the Authority.
5. A Contractor shall review impact assessments, including for cumulative impacts of activities covered by the assessment, periodically and revise them thereafter whenever a change in the mining operation has occurred or there is relevant new information.
6. An environmental impact assessment and Environmental Impact Statement shall be considered in accordance with Part II or regulation 57, as the case may be.
7. In the conduct of the environmental impact assessment, the

Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Explanation / comment

- The proposed new regulation 46bis aims to respond to concerns expressed by delegations that a requirement for an environmental impact assessment should be clearly set out in the draft regulations. While this new regulation provides for the general obligation to undertake an EIA, the document to be prepared following the EIA and submitted to the Authority, namely the Environmental Impact Statement, is set out in Regulation 47.
- The current draft regulation 46bis is based on the elements formerly included in Regulation 47(1), as adjusted and complemented with proposals by delegations which I did not hear opposition.
- Paragraph 2 aims at identifying the key elements of an EIA. In light of the fact that undertaking an EIA is always a requirement prior to the approval of a Plan of Work, and therefore not subject to the outcome of a screening phase, paragraph 3 aims at specifying the circumstances under which screening may be part of an EIA.
- Some delegations made proposals setting out in detail the specific steps of an EIA. It is noted that the Legal and Technical Commission developed a draft Standard concerning the EIA process, including details of the required steps, and draft Guidelines on the EIA and EIS. I, therefore, consider it is not necessary to specify more details in this Regulation.
- Paragraph 4 aims to set out some framing elements for the conduct of the EIA. The proposal by a delegation which suggested that the EIA shall “be based on the prior testing of equipment and operations in the Mining Area under application” can be revisited in light of the outcome of the discussions on “test mining”.
- Paragraph 6 clarifies that the decision concerning whether an activity should proceed or not, based on the information provided through the environmental impact assessment and as reflected in the Environmental Impact Statement, is made by the Authority.
- Paragraph 7, the wording of which is based on article 142 of the Convention, aims at accommodating different views concerning involvement of coastal States in the EIA process.

I – Members

Costa Rica

1. An applicant or Contractor, as the case may be, shall carry out an environmental impact assessment of the potential effects on the marine environment of the proposed mining operation in accordance with these regulations, the applicable Standard and Guidelines, as well as Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.
2. The environmental impact assessment shall include:
 - (a) Scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Statement on the key environmental issues;
 - (b) Impact assessment and evaluation to describe and predict the nature and extent of the Environmental Effects of the mining operation, including cumulative impacts and residual effects, using Best Available Scientific Evidence;
 - (c) Identification of measures to prevent, mitigate and manage harmful effects to as low as practicable, including through the development and preparation of an Environmental Management and Monitoring Plan; and as well as residual risk assessment
 - (d) Preparation of the Environmental Impact Statement in accordance with Regulation 47 and the relevant Guidelines.
3. Screening shall also be part of an environmental impact assessment when, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, whenever a material change occurs, in order to determine whether a revised Environmental Impact Statement is required.
4. The environmental impact assessment shall:
 - (a) Be based on relevant baseline data that captures temporal and seasonal variation;
 - (b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan;
 - (c) Provide for stakeholder consultation; and
 - (d) Be subject to an independent scientific assessment prior to the submission of the Environmental Impact Statement to the Authority.
5. A Contractor shall review impact assessments, including for cumulative impacts of activities covered by the assessment, periodically and revise them thereafter whenever a change in the mining operation has occurred or there is relevant new information. The review should take place every two years during the mining operation, and five years after the operation concludes.
6. An environmental impact assessment and Environmental Impact Statement shall be considered in accordance with Part II or regulation 57, as the case may be. In the conduct of the environmental impact assessment, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Rationale

- 1- Residual risk is the degree of potential hazard that remains even after the hazard is identified. Measures should be identified to address the residual risk, and for this reason they should be assessed.
- 2- Whenever material change occurs a new EIS must be required; it should not be an option.
- 3- Periodicity must be specifically established in the Regulations. Impact assessments shall continue after the end of the mining process since the effects will linger and they need to be measured and addressed, when needed.

Italy

1. 1. An applicant or Contractor, as the case may be, shall carry out an environmental impact assessment of the potential effects on the marine environment of the proposed mining operation in accordance with these regulations, the applicable Standard and Guidelines, as well as Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

1.2. In the conduct of the environmental impact assessment, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

2. The environmental impact assessment shall include:

(a) Scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Statement on the key environmental issues;

(b) Impact assessment and evaluation to describe and predict the nature and extent of the Environmental Effects of the mining operation, including cumulative impacts and residual effects, using Best Available Scientific Evidence;

(c) Identification of measures envisaged to avoid, to prevent, reduce mitigate or if possible, offset any possible significant adverse effect on the environment and manage those effects harmful effects to as low as practicable, including through the development and preparation of an Environmental Management and Monitoring Plan; and

(d) Preparation of the Environmental Impact Statement in accordance with Regulation 47 and the relevant Guidelines.

3. Environmental Screening shall also be undertaken part of an environmental impact assessment when, following the approval of a Plan of Work, in case the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, in order to determine whether an update of the Environmental Impact assessment process is required as part of a revised Environmental Impact Statement is required.

4. The environmental impact assessment shall:

- (a) Be based on relevant baseline data that captures temporal and seasonal variation;
 - (b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan;
 - (c) Provide for stakeholder public consultation; and
 - (d) Be subject to an independent scientific assessment prior to the submission of the Environmental Impact Statement to the Authority.
5. A Contractor shall review impact assessments every five years , including for cumulative impacts of activities covered by the assessment, periodically and revise them thereafter whenever a change in the mining operation has occurred or there is relevant new information.
6. An environmental impact assessment and Environmental Impact Statement shall be considered in accordance with Part II or regulation 57, as the case may be.
7. In the conduct of the environmental impact assessment, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Rationale

The EIA is relevant as it is a process allowing for timely and continuous stakeholder and public engagement. In this respect, a revised public engagement strategy is greatly needed. This means that para 4 (c) has to be clearly operationalized. Further details on how the public consultation should proceed is needed.

As it relates to obligations already expressed elsewhere, we do not see a need for para 6.

Para 7 is useful and balanced, but cooperative approach with costal states relate not only to EIA/EIS, but the whole phase. It is therefore appropriate to include it in the general principles.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

[We propose the addition of the following text in place of draft regulation 46bis]

Section 1bis: Environmental Impact Assessment

Regulation 46bis alt1

Purpose and General Requirements

1. The purpose of an environmental impact assessment under these regulations is to predict environmental impacts anticipated from the any proposed activities, to enable the Authority to assess the potential adverse Environmental Effects, with the aim to:

- (a) ensure the effective protection of the Marine Environment,
- (b) ensure that activities in the Area are carried out with reasonable regard for other activities in the Marine Environment, and

- (c) prevent Serious Harm to the Marine Environment arising out of the proposed activities.
2. The applicant or Contractor shall ensure that the environmental impact assessment:
- (a) Includes each of the stages described in DR46ter.
 - (b) Is conducted in accordance with the terms of reference developed during the scoping process pursuant to DR46quin.
 - (c) Is informed by relevant baseline data on the condition of the Marine Environment, collected in accordance with Standards and the relevant Regional Environmental Management Plan, and taking into account Guidelines, that captures temporal (seasonal and interannual) and spatial (horizontal and vertical) variation;
 - (d) Identifies, predicts, and evaluates the physical, chemical, biological, geological, oceanographic and socio-economic and other relevant effects of the proposed mining operation comparative to other alternatives considered.
 - (e) Is carried out by a suitable combination of qualified and competent environmental impact assessment practitioners and scientific experts experienced in the relevant issues for the particular project and its location.
 - (f) Describes and predicts, among others, the spatial and temporal nature and extent of the Environmental Effects, risks and impact of the mining operation, including cumulative impacts;
 - (g) Enables identification of measures to Mitigate and manage Environmental Effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan;
 - (h) Includes an assessment of data integrity, gaps or deficiencies in knowledge, and any other uncertainties regarding anticipated impacts and identified Mitigation measures, and analysis of methods to address those gaps, deficiencies or uncertainties
 - (i) Includes evidence of consultation with coastal States in accordance with regulation 4;
 - (j) Identifies comments received through public consultations in accordance with regulation 46sexies. and how they have been addressed.
 - (k) Is conducted in accordance with these regulations, the applicable Standards, taking into account Guidelines, and in accordance with Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

Regulation 46ter

Screening

1. In addition to the Environmental Impact Statement required for an application for a plan of work pursuant to

Regulation 7(3)(d), a Contractor must conduct a new Environmental Impact Assessment and submit a new or revised Environmental Impact Statement when:

- (a) A Material Change to an existing Plan of Work is proposed which is likely to increase the adverse Environmental Effects caused by the activities, or
- (b) An activity described in the Plan of Work is predicted to exceed the impact thresholds set out in the [Commission's Recommendations for the Guidance of Contractors ISBA/25/LTC/6/Rev.1 or a Standard that sets screening thresholds for environmental impact assessment], and this activity and predicted impact has not already been addressed by an Environmental Impact Statement.

2. The Commission shall determine whether an Environmental Impact Assessment and Environmental Impact Statement are required under paragraph 1 when:

- (a) Any change to an existing Plan of Work is proposed other than the type described under sub-paragraph (1)(a),
- (b) The Commission requests an applicant to change its proposed Plan of Work during the application stage under Regulation 14.

Regulation 46quater

Stages of Environmental Impact Assessment

1. An environmental impact assessment for the purposes of these Regulations shall include the following steps:
 - a. A scoping process undertaken in accordance with regulation 46quin;
 - b. An environmental impact assessment process that satisfies the requirements of regulation 46bis(alt1)
 - c. Consultation and Stakeholder engagement, in accordance with DR46sexies;
 - d. Preparation and submission to the Authority of an Environmental Impact Statement, in accordance with DR47;
 - e. Publication, and review by the Commission of the Environmental Impact Statement, and report and recommendation by the Commission to the Council pursuant to regulations 11 to 15;
 - f. A decision by the Council to approve, or not approve, the proposed activities or proposed change to the plan of work, recorded and published in accordance with regulation 16.

Regulation 46quin

Scoping

1. An environmental impact assessment scoping process shall identify key environmental and other relevant issues associated with the proposed activities and their impacts, including potential cumulative impacts, to prioritize and focus the environmental impact assessment process.
2. In undertaking the environmental impact assessment scoping process, the applicant or Contractor shall:
 - (a) Review available data and knowledge, and propose additional data to be collected and studies needed to complete an environmental impact statement in accordance with these regulations;
 - (b) Undertake a preliminary impact analysis and environmental risk assessment which may be updated as the environmental impact assessment proceeds; and
 - (c) Proactively identify Stakeholders in accordance with the relevant Standards and taking into account Guidelines.
 - (d) Identify and evaluate feasible alternative means of carrying out the project that will be examined in detail in the environmental impact assessment
3. The applicant or Contractor shall prepare and submit to the Secretary-General a scoping report in the form prescribed by the Authority in annex III bis.
4. Upon receipt of a scoping report from an applicant or Contractor, the Secretary-General shall:
 - (a) Make the report available on the Authority's website for a period of at least 60 days, with an invitation for members of the Authority and Stakeholders to submit comments in writing;
 - (b) Following the close of the comment period under sub-paragraph (4)(a), provide any comments received to the Contractor with a specified timeframe for response;
 - (c) At the expiry of the timeframe specified in sub-paragraph (4)(b), provide the Commission with the scoping report, any stakeholder comments received, and any responses to those comments from the applicant or Contractor.
5. The Commission shall consider the Scoping Report and any comments and responses

received, in accordance with any relevant Standards and taking into account Guidelines. Based on this review, the Commission shall make recommendations to the applicant or Contractor regarding the proposed environmental impact assessment, accompanied by a detailed rationale.

6. The Commission's recommendations under paragraph (5) may include:

- (a) Recommendation of the proposed terms of reference for the environmental impact assessment;
- (b) Revising the environmental risk assessment or other aspects of the scoping report based on different methodology or inputs;
- (c) Amendment to the proposed terms of reference for the environmental impact assessment; or
- (d) Re-submission of a revised scoping report for further Stakeholder consultation and Commission review, in the case where uptake of any of the Commission's recommendations are likely to lead to a Material Change in the Scoping Report.

7. The applicant or Contractor must take into account the Commission's recommendations under this regulation, before proceeding with the environmental impact assessment process.

Regulation 46 sexies.

Stakeholder consultation during environmental impact assessment

1. In conducting an environmental impact assessment for the purposes of these regulations, an applicant or Contractor shall proactively consult with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guidelines.

2. In the course of such consultations, the applicant or Contractor shall:

- (a) Provide Stakeholders with access to up-to-date and comprehensive information to about the proposed Exploitation activities and environmental data and impacts;
- (b) Solicit and use best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.
- (c) Provide a reasonable opportunity for those consulted to raise enquiries and to make known their views;
- (d) Make Stakeholder comments received during a consultation process publicly available, including on the applicant or Contractor's website;
- (e) Record and address in the scoping report and environmental impact statement any comments received (in accordance with Annexes III bis. and IV)

Rationale

We welcome the improvements made to the EIA process through 46bis; however, we believe this regulation and regulation 47 could benefit from further reorganization to reflect a step-by-step approach through a series of regulations under a specific section on EIA and EIS, as proposed above.

See [Fifth Report of the Code Project - Part 1](#) for additional rationale.

Regulation 46ter

Environmental monitoring

1. The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 48, shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution and other hazards to the marine environment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to have harmful effects on the marine environment.
2. The Contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of monitoring programmes.
3. The Contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit data and information, in accordance with the relevant Standards, and taking into account the relevant Guidelines and recommendations issued by the Commission. The Secretary- General shall transmit such reports to the Commission for its consideration pursuantto article 165 of the Convention.
4. In implementing paragraph 1, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Explanation / comment

- New regulation 46ter aims at providing for the obligation to continuously monitor the effects of the mining operation on the marine environment. The preparation of the document setting out the manner in which this is done and which is to be submitted to the Authority, the Environmental Management and Monitoring Plan, is provided for in Regulation 48.
- The proposed text is based on similar provisions in the Exploration Regulations and on articles 205 and 145 of the Convention.
- Paragraph 5, the wording of which is based on article 142 of the Convention, aims at accommodating different views concerning involvement of coastal States.

I – Members

Costa Rica

1. The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 48, shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects ~~of pollution and other hazards~~ to the marine environment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to have harmful effects on the marine environment.
2. The Contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of monitoring programmes.
3. The Contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit data and information, in accordance with the relevant Standards, and taking into account the relevant Guidelines and recommendations issued by the Commission. The SecretaryGeneral shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention.
4. In implementing paragraph 1, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and legitimate interests, in accordance with Regulation 4.

Rationale

- 1- The legal instruments of the regulations such as the Environmental Management Plan and Monitoring Plan, must aim to protect any kind of risks or effects to the marine environment.
- 2- To be consistent with UNCLOS, article 142 paragraph 1, which states that activities in the area “shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such deposits lie”

Italy

1. The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 46 bis and 48 shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution and other hazards to the marine environment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to have **unforeseen harmful** effects on the marine environment.
2. The Contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of monitoring programmes.

3. The Contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit data and information, in accordance with the relevant Standards, and taking into account the relevant Guidelines and recommendations issued by the Commission. The Secretary- General shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention.

4. In implementing paragraph 1, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Rationale

The aim of environmental monitoring includes the prompt detection of any adverse effect on the environment due to either novel impacts that had not been considered in the EIA or expected impacts being more severe than anticipated. The use of the word “unforeseen” instead of “harmful” reflects the need to use an objective approach since “harmful” is necessarily based on a subjective judgment.

Section 2 Preparation of the Environmental Impact Statement and the Environmental Management and Monitoring Plan

Regulation 47 Environmental Impact Statement

1. The purpose of the Environmental Impact Statement, which shall accompany an application for approval of a Plan of Work in accordance with regulation 7, is to document and report the results of the environmental impact assessment carried out in accordance with Regulation 46bis.
2. An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation.
3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall ~~be~~:
 - (a) Be ~~Inclusive~~ inclusive of a prior environmental risk assessment;
 - (b) Be ~~Based~~ based on the results of the environmental impact assessment; (c) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed;
 - ~~(ed)~~ Be ~~In~~ in accordance with the objectives and measures of the relevant regional environmental management plan; and
 - ~~(de)~~ Be ~~Prepared~~ prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.
4. The Environmental Impact Statement shall demonstrate that the proposed mining operation is in accordance with all relevant environmental Standards and with the requirements of the relevant Regional Environmental Management Plan.

Explanation / comment

- The elements concerning environmental impact assessments formerly contained in draft regulation 47(1) were removed and included in the new regulation 46bis setting out the requirements for an environmental impact assessment.
- Wording was introduced in paragraph 1 to clarify that the EIS was part of the application process and to be considered in that context.

I – Members of the International Seabed Authority

Chile

3 b) Be Based based on the results of the environmental impact assessment; **including a description of the main elements of the methodology used for the identification and evaluation of the identified environmental impacts.**

Rationale

La descripción y justificación de la metodología es necesaria para entender los resultados presentados. Las metodologías deben estar estandarizadas para que sean comparables y los resultados puedan interoperar con la estimación posterior de los impactos acumulativos y sinérgicos.

Costa Rica

1. The purpose of the Environmental Impact Statement, which shall accompany an application for approval of a Plan of Work in accordance with regulation 7, is to document and report the results of the environmental impact assessment carried out in accordance with Regulation 46bis.
2. An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation.
3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall:
 - (a) Be Inclusive inclusive of a prior environmental risk assessment;
 - (b) Be based on the results of the environmental impact assessment;
 - (c) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed;
 - (d) Be In in accordance with the objectives and measures of the relevant regional environmental management plan; and
 - (e) Be prepared in accordance with the applicable [Standards and Guidelines](#), Good Industry Practice, Best Available Scientific Evidence, ~~Best Environmental Practices~~ [Best environmental practices, including the collection in adequate quality and quantity baseline data](#) and Best Available Techniques.
4. The Environmental Impact Statement shall demonstrate that the proposed mining operation is in accordance with all relevant environmental Standards and with the requirements of the relevant Regional Environmental Management Plan.

Rationale

- 1- This is important because baseline data forms the basis for long term monitoring of the environmental impacts to make sure such impacts are in line with Environmental Impact Assessment and the Environmental Monitoring and Management plan when mining starts. Also, because sampling is the cornerstone of environmental surveys and monitoring.

Italy

1. The purpose of the Environmental Impact Statement, which shall accompany an application for approval of a Plan of Work in accordance with regulation 7, is to document and report the results of the environmental impact assessment carried out in accordance with Regulation 46bis.
2. An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation.
3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall be: (a) Be Inclusive inclusive of a prior environmental risk assessment;
(b) Be Based based on the results of the environmental impact assessment;

Consider and incorporate as appropriate comments received through public consultations within the EIS Identify comments received through public consultation on the environmental impact assessment and how they have been addressed; (c)

(cd) Be In in accordance with the objectives and measures of the relevant regional environmental management plan; and

(de) Be Prepared prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

4. The Environmental Impact Statement shall demonstrate that the proposed mining operation is in accordance with the environmental conditions eventually resulting from the Environmental Impact Assessment process and with all relevant environmental Standards and with the requirements of the relevant Regional Environmental Management Plan.

Rationale

Para. 3 c) seems confusing. Italy suggests to slightly redraft it as indicated. Integrations to this new draft by NZ are also acceptable to Italy.

The wording proposed in para. 4 strengthens the importance of the EIS capturing the results of public consultation process as well as embracing any operational conditions that might be established during the EIA in order to properly manage the environmental impacts associated with mining operations

Finally, while this issue will be dealt later, Italy would like to recommend that ABMT be considered within Annex IV.

Regulation 48
Environmental Management and Monitoring Plan

1. The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental ~~Effects~~impacts meet the environmental quality objectives and standards for the mining operation. The plan will contain any conditions included in the Environmental Impact Statement and will set out commitments and procedures on how the environmental impacts of the mining operation will be monitored, how the mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.

2. An applicant or Contractor, as the case may be, shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation.

3. The Environmental Management and Monitoring Plan shall cover the main aspects prescribed by the Authority in annex VII to these regulations and shall be:

(a) Based on the environmental impact assessment and the Environmental Impact Statement;

(b) In accordance with the relevant regional environmental management plan; and

(c) Prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

4. The Contractor shall provide information in its annual report on the implementation of the Environmental Management and Monitoring Plan in accordance with regulations 38, paragraph 2(g), and 46ter, paragraph 3, for evaluation by the Legal and Technical Commission.

Explanation / comment

- Should the change proposed by a delegation from environmental “effects” to “impacts” be agreed upon by delegations in paragraph 1, this change would need to be considered throughout the Draft regulations, bearing in mind that article 145 of the Convention uses the term “effects”. The attention of delegations is drawn to the ISA publication “A Discussion Paper on the development and drafting of Regulations on Exploitation for Mineral Resources in the Area (Environmental Matters)”, which provides information on the use of the terms “Impact”, “Effect” and “Change” (available at <https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/documents/EN/Regs/DraftExpl/DP-EnvRegsDraft25117.pdf>, paragraphs 7.2-7.4).
- The new paragraph 4 echoes paragraph 3 of the new draft regulation 46ter and draft regulation 38(2)(g). Consideration could be given to including the reporting requirement in only one of these provisions.

I - Members

Chile

1. The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental **effects impacts** meet the environmental quality objectives and standards for the mining operation, **contained in the mining work plan**. The plan will contain any conditions included in the Environmental Impact Statement and will set out commitments and procedures on how the environmental impacts of the mining operation will be monitored, how the mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.

Rationale

This suggestion aims to ensure consistency between the work plan and the environmental management and monitoring plans.

Costa Rica

1. The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental effects meet the environmental quality objectives and standards for the mining operation. The plan will contain any conditions included in the Environmental Impact Statement and will set out commitments and procedures on how the environmental impacts of the mining operation will be monitored, how the mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.
2. An applicant or Contractor, as the case may be, shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation.
3. The Environmental Management and Monitoring Plan shall cover the ~~main~~ all aspects prescribed by the Authority in annex VII to these regulations and shall be:
 - (a) Based on the environmental impact assessment and the Environmental Impact Statement;
 - (b) In accordance with the relevant regional environmental management plan; and
 - (c) Prepared in accordance with the applicable Standards and Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.
4. The Contractor shall provide information in its annual report on the implementation of the Environmental Management and Monitoring Plan in accordance with regulations 38, paragraph 2(g), and 46ter, paragraph 3, for evaluation by the Legal and Technical Commission.

Rationale

- 1- Costa Rica supports the use of the word “effects” as it is not a synonym of impact.
- 2- The Environmental Management and Monitoring plan should cover all the aspects cover by the Authority and not only the main aspects.
- 3- Such instruments must be prepared using the legally binding Standards.

[Regulation 48bis-Test mining]

Placeholder

- A proposal was made for a new provision 48bis addressing test mining (see ISBA/26/C/CRP.1).
- Several delegations sought clarification on the concept of “test mining”, including what it encompassed and its purpose. Attention is drawn to the revised Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area issued by the Legal and Technical Commission (ISBA/25/LTC/6/Rev.1 and Corr.1), which provide definitions for “test mining” and “testing of mining components”.
- While a number of delegations expressed support for the inclusion of a provision concerning “test mining”, different views were expressed on whether there should be a mandatory requirement, whether it should take place both when applying for approval of a Plan of Work and before commercial production, for every project or only the first one, whether it should be subject to an EIA, and how this related to the tests carried out during exploration.
- A delegation suggested that a provision on “test mining” may be better placed in Regulation 7 rather than in Part IV.

- The Facilitator suggests that further discussions take place on these issues.

I – Members of the International Seabed Authority

India

Test mining before the commercial mining should be mandatory. But if the exploratory mining was already conducted in the same area by the same contractor and if the equipment proposed for commercial mining is technically similar to that of the one used for the exploratory mining, then the contractor may be exempted from conducting the test mining. However in case it is warranted it may be conducted prior to the commencement of commercial production but not before the submission of plan of work.

Rationale

Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area issued by the Legal and Technical Commission (ISBA/25/LTC/6/Rev.1 and Corr.1), which provide definitions for “test mining” and “testing of mining components” are elaborate enough. If the test mining is conducted in the same area for which the plan of work is submitted and if the equipment and technology used are similar to that of the one employed in the exploratory mining then further testing is redundant. It may be noted that is intended to be ‘test mining’ not the ‘pilot production’.

Section 3

Pollution control and management of waste

Regulation 49

Pollution control

A Contractor shall take all necessary measures to protect and preserve the Marine Environment, including by preventing, ~~reduce~~ reducing and controlling pollution and other hazards, including marine litter and underwater noise, to the Marine Environment from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan, the relevant Regional Environmental Management Plan and the applicable Standards and Guidelines.

Explanation / comment

- The revisions proposed by some delegations for draft regulation 49 include a combination of articles 192, 194 and 145 of the Convention, which seems to broaden the obligation originally focused on pollution control. It is noted that the general obligation of the Contractor with regard to the protection of the marine environment from harmful effects is included in draft regulation 44.
- The inclusion of various pollution sources and types, such as marine litter and underwater noise, may need to be further discussed.

Regulation 50
Restriction on Mining Discharges

1. A Contractor shall not dispose, dump or discharge into the Marine Environment any Mining Discharge, except where such disposal, dumping or discharge is permitted in accordance with:

(a) The assessment framework for Mining Discharges as set out in the [Guidelines Standard](#); and

(b) The Environmental Management and Monitoring Plan.

2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is carried out for the safety of the vessel or Installation or the safety of human life, provided that all reasonable measures are taken to minimize the likelihood of damage to human life and of ~~Serious~~ Harm to the Marine Environment and, if such harm has occurred, to monitor and mitigate its impacts, and such disposal, dumping or discharge shall be reported forthwith to the Authority.

3. The disposal, dumping or discharge into the Marine Environment of any Mining Discharge that is not in accordance with regulation 50(1) or 50(2) is considered an Unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.

4. This Regulation shall be interpreted and applied in a manner that is consistent with the obligations of the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 and the 1996 Protocol thereto.

Explanation / comment

- The revisions to paragraph 2 aim at reflecting suggestions by a number of delegations that accidental or emergency dumping should be consistent with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972, and the 1996 Protocol thereto, in particular article 8 of the Protocol.
- The revised wording of paragraph 4 aims to address concerns expressed regarding a proposal suggesting a formulation of “not undermining”.

I – Members of the International Seabed Authority

Costa Rica

1. A Contractor shall not dispose, dump or discharge into the Marine Environment any Mining Discharge, except where such disposal, dumping or discharge is permitted in accordance with:
 - (a) The assessment framework for Mining Discharges as set out in the Standards; and
 - (b) The Environmental Management and Monitoring Plan.
2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is ~~carried-out~~ necessary for the safety of the vessel or Installation or the safety of human life, provided that all reasonable measures are taken to minimize the likelihood of damage to human life and of Serious Harm to the Marine Environment and, if such harm has occurred, to monitor and mitigate its impacts, and such disposal, dumping or discharge shall be reported forthwith to the Authority.
3. The disposal, dumping or discharge into the Marine Environment of any Mining Discharge that is not in accordance with regulation 50(1) or 50(2) is considered an Unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.
4. This Regulation shall be interpreted and applied in a manner that is consistent with the obligations of the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 and the 1996 Protocol thereto.

Rationale

- 1- The disposal must be done only under certain circumstances where is strictly necessary to ensure the safety of the vessel or installations or human life.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

- 1 (b) ~~The Environmental Management and Monitoring Plan.~~
2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is ~~necessary~~~~carried-out~~ for the safety of the vessel or ~~other man-made structures at sea~~ ~~Installation~~ or the safety of human life, provided that such disposal, dumping or discharge is conducted so as ~~all reasonable measures are taken~~ to minimize the likelihood ~~of damage to human life and~~ of ~~Serious~~ Harm to the Marine Environment ~~and, if such harm has occurred, to monitor and mitigate its impacts, and such disposal, dumping or discharge shall be reported forthwith to the Authority.~~
3. The disposal, dumping or discharge into the Marine Environment of any Mining Discharge ~~that is not in accordance with~~ permitted under ~~regulation 50(1) or 50(2)~~ is

[considered an Unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.](#)

Rationale

With regards DR 50 paragraph 1, Pew believes that the rules for disposal, dumping or discharges should be uniform across all Contractors and ISA-led. They should not be negotiable on a contract-by-contract basis.

We therefore support the amendment in sub-paragraph (a) to require a Standard on this subject, which is legally binding on all contractors. On that basis, we would question whether sub-paragraph (b), which refers to including additional permissions about pollution in the EMMP, is necessary.

On para 2, we agree with Costa Rica's proposal to strike "carried out" and insert "necessary". This proposal would set a higher threshold ('necessary') in which otherwise-unlawful dumping may be permitted.

We appreciate and agree with the deletion of the word 'serious' before 'harm'. The ISA and its contractors should at all times strive not only to avoid serious harm, but to minimise all environmental harm.

See: [Fifth Report of the Code Project - Part 2 \(Pew, 2019\)](#)

Section 4 Compliance with Environmental Management and Monitoring Plans and performance assessments

Regulation 51 Compliance with the Environmental Management and Monitoring Plan

A Contractor shall, in accordance with ~~the terms and conditions of~~ its Environmental Management and Monitoring Plan and these regulations:

(a) Monitor and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards referred to in regulation 45;

(b) Implement all applicable Mitigation and management measures to protect the Marine Environment, as set out in the Standards referred to in regulation 45; and

(c) Maintain the currency and adequacy of the Environmental Management and Monitoring Plan during the term of its exploitation contract in accordance with Best Available Techniques and Best Environmental Practices and taking account of the relevant Guidelines.

I – Members of the International Seabed Authority

Costa Rica

A Contractor shall, in accordance with its Environmental Management and Monitoring Plan and these regulations:

- (a) Monitor and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards referred to in regulation 45;
- (b) Implement all applicable Mitigation and management measures to ensure the effective protection of the marine environment from harmful effects, ~~protect the Marine Environment~~, as set out in the Standards referred to in regulation 45; and
- (c) Maintain the currency and adequacy of the Environmental Management and Monitoring Plan during the term of its exploitation contract in accordance with Best available science, Best Available Techniques and Best Environmental Practices, as well as the relevant Standards, and taking account of the relevant Guidelines.

Rationale

- 1- The text must be in line with article 145 of the Convention that states “Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities”.

- 2- The Environmental Management and Monitoring plan must use and be adequate to, during the exploitation activities and term of the contract, the Best available science to include newest methods and information regarding protection of the marine environment, as well as the Standards, which is a legally binding instrument of the authority that must be use for such purposes.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

A Contractor shall, ~~in accordance with the terms and conditions of implement and adhere to~~ its Environmental Management and Monitoring Plan and these regulations, ~~and shall~~:

- (a) ~~In addition to data collection and reporting requirements under regulation 39bis, m~~Monitor and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards referred to in regulation 45;
- (b) ~~Apply best endeavours to improve~~ ~~Implement all applicable~~ Mitigation and management measures to protect the Marine Environment ~~on an ongoing basis~~, as set out in the Standards referred to in regulation 45; and
- (c) ~~Monitor compliance with, and assess and m~~Maintain the currency and adequacy of the Environmental Management and Monitoring Plan ~~and Environmental Management System~~ during the term of its exploitation contract ~~including through management review under regulation 46(2)(e) and performance assessment under regulation 52 and modification to the Plan of Work under regulation 57 where required~~, in accordance with ~~Best Available Scientific Evidence~~, Best Available Techniques and Best Environmental Practices ~~and the relevant Standards and any revisions made by the Authority to the relevant Regional Environmental Management Plan~~, and taking account of the relevant Guidelines.

Rationale

Regarding the first paragraph, we agree with the deletion of the phrase “ the terms and conditions”, as this terminology seems more suited to a legal contract, than to an environmental management plan.

For subparagraph b, we recommend striking “implement all applicable” as this seems redundant. The ‘applicable measures’ referred to here are those measures found in instruments which already bind a Contractor, e.g. the Regulations, Plan of Work, Standards. So this general requirement, that reiterates a Contractor should comply with the Regulations, Standards, and its Plan of Work does not seem to add anything.

Instead, we recommend that this should be an opportunity to reinforce the need to integrate adaptive and continuous-improvement measures into a Contractor’s management programme.

On sub-paragraph (c), the different EMMP review processes may be quite confusing in the Regulations, so we believe cross-referencing here to the relevant Regulations that deal with

review of an EMMP, can be helpful to aid collective understanding and ensure alignment. We will submit a textual proposal to this effect.

We also agree with Costa Rica's insertion after "Best Environmental Practices".

Regulation 52

Review of the Performance-performance assessments of the Environmental Management and Monitoring Plan

1. ~~A Contractor~~The Authority shall ~~conduct~~review the performance assessments of the Environmental Management and Monitoring Plan undertaken by the Contractor in accordance with the relevant Standards and Guidelines to assess:

(a) The compliance of the mining operation with the plan; ~~and~~

(b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; and

(c) The conformity of the plan with the relevant Regional Environmental Management Plan.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least annually;

2bis. An ad hoc performance assessment may be requested by the Council following:(a) an Incident or Notifiable Event;

(b) receipt of an unsatisfactory annual

report; or (c) issuance of a compliance

notice.

3. A Contractor shall compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines.

4. The Commission shall review a performance assessment report at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

5. Where the Commission considers the performance assessment undertaken by the Contractor to be unsatisfactory, taking account of the Guidelines ~~or~~and the ~~conditions attaching to the~~ Environmental Management and Monitoring Plan, the Commission may require the Contractor to:

(a) Repeat the whole or relevant parts of the performance assessment, and revise and resubmit the report;

(b) Submit any relevant supporting documentation or information requested by the Commission; or

(c) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.

6. Where a Contractor has previously submitted two successive unsatisfactory reports and the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the

performance assessment and to compile the report.

7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Secretary-General shall:

(a) Issue a compliance notice under regulation 103; or

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.

9. The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration.

Explanation / comment

- The revisions aim to respond to the comments of a number of delegations concerning the need to: reinstate a minimum period at which the performance assessment should be undertaken; clarify the fact that the Authority is carrying out a review of the assessment, while the Contractor provides the report on which the review is based; and include the possibility for ad hoc assessments in case of specific situations as listed in paragraph 2bis.
- The frequency of the assessments in paragraph 2 may need to be further discussed, noting that another delegation suggested that such frequency "shall be no less than 24 months".
- Issues concerning the frequency of and the reporting on the performance assessment in this draft regulation may also need to be reconsidered in light of the overall reporting burden on the Contractor (who would be required to report simultaneously on the implementation of the EMMP and provide a performance assessment of the same EMMP) as well as the burden on the LTC, which would, in the same year, review the implementation of the EMMP in the context of the annual report, and also review the performance assessment of the EMMP and provide recommendations relating to both to the Council at the same time. It may be suggested that annual reporting on implementation is sufficient, with performance assessment triggered by the events specified in paragraph 2bis, or on a periodic basis, which should be long enough to develop a basis of information and experience to be reviewed.

I – Members of the International Seabed Authority

Costa Rica

6. Where a Contractor has previously submitted two successive unsatisfactory reports or the Commission has other reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.

Rationale

- 1- That Commission must have the possibility to procure an independent contractor when either (a) the company has submitted two unsatisfactory reports or (b) have other reasonable grounds to do so besides from the result of the reports.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

United States of America

Review of the ~~Performance~~ performance assessments of the Environmental Management and Monitoring Plan and Review of Environmental Monitoring Data

1. ~~A Contractor~~The Authority shall ~~conduct~~review the performance assessments of the Environmental Management and Monitoring Plan undertaken by the Contractor ~~a competent and independent auditor hired by the Contractor~~ in accordance with the relevant Standards and Guidelines to assess:

- (a) The compliance of the mining operation with the plan; ~~and~~
- (b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; ~~and~~
- (c) The conformity of the plan with the relevant Regional Environmental Management Plan.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least annually;

2bis. An ad hoc performance assessment may be requested by the Council following: (a) an Incident or Notifiable Event;

(b) receipt of an unsatisfactory annual report; or (c) issuance of a compliance notice.

3. A Contractor shall hire a competent and independent auditor to conduct the performance assessment and to compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines.

4. The Commission shall review a performance assessment report at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

5. The Contractor shall release, in a public and accessible format, environmental monitoring data at monthly intervals.

6. The Authority shall review the environmental monitoring data at monthly intervals, including the comparison of data to parameter- and site-specific baseline data in order to trigger the issuance of compliance notices if needed.

5. Where the Commission considers the performance assessment ~~undertaken by the Contractor~~ to be unsatisfactory, taking account of the Guidelines ~~or and~~ the conditions attaching to the Environmental Management and Monitoring Plan, the Commission may require the Contractor to:

~~(a) Repeat the whole or relevant parts of the performance assessment, and revise and resubmit the report;~~

(b) Submit any relevant supporting documentation or information requested by the Commission; or

~~(c) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.~~

~~6. Where a Contractor has previously submitted two successive unsatisfactory reports and the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.~~

~~7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.~~

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Secretary-General shall:

(a) Issue a compliance notice under regulation 103; or

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.

9. The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration.

Rationale

We suggest including further clarification and the likely business practices that Contractors should hire a competent and independent auditor to execute the performance assessments and compile the reports. In addition, and in line with previous textual proposals, the United States suggests this regulation cover the Authority's routine receipt and review of environmental monitoring data from the site on a monthly basis. Review of the monitoring data should include the comparison of data to parameter- and site-specific baseline data in order to trigger the issuance of compliance notices as needed.

The Pew Charitable Trusts

1 (d) The accuracy of the findings of the environmental impact assessment as set out in the Environmental Impact Statement which informed the Environmental Management and Monitoring Plan.

1. bis In conducting a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall:

(a) Take into account changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities,

(b) Take into account the outcomes of management reviews of the environmental management system conducted under regulation 46(2)(e); and

(c) Engage competent independent experts, which may include those listed in regulation 12(4)(quarter.), to review the Environmental Management and Monitoring Plan and the Contractor's compliance with it, where appropriate.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least annually;

2bis. An ad hoc performance assessment may be requested by the Council following:

an Incident or Notifiable Event;

receipt of an unsatisfactory annual report; or

issuance of a compliance notice.

3bis. The Secretary-General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholders' comments to the Commission for review.

4. The Commission shall review a performance assessment report and any Stakeholder comments received in relation to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

5. Where the Commission upon review of the report and any stakeholder comments received considers the performance assessment undertaken by the Contractor to be unsatisfactory, taking account of the Guidelines ~~or~~ and the ~~conditions attaching to the~~ Environmental Management and Monitoring Plan, the Commission may require the Contractor to:

7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 3 bis. and 4 above shall apply to the revised assessment.

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan ~~or that the plan is determined to be inadequate in any material respect,~~ the Secretary-General shall inform the sponsoring State and shall:

8 bis Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor's Environmental Management and Monitoring Plan is inadequate in any material respect, the Secretary-General shall inform the sponsoring State and shall:~~require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.~~

Rationale

With regards to para 1, we believe further text is needed to ensure that during the performance assessment the Contractor should take into account external developments and advances in capabilities. We believe taking account of such developments will be important to ensure the Contractor's application of Best Environmental Practices and continuous improvement through adaptive management. We would also propose insertion here to require Contractors to seek external experts to ensure a properly independent and accurate review. We will submit specific textual proposals to this effect.

On para 2, we agree with the other delegations commenting on the need to specify the frequency of performance assessments, with 12 months being a minimum reporting period. In this regard we note that more regular assessments may be necessary in an environment

with high levels of uncertainty.

On para 3 bis - We believe that the review of the EMMP performance assessment should include stakeholder consultation. Thus we propose a new paragraph 3 bis reading

On para 8, we note that this provision should address the inadequacy of an EMMP separately from non-compliance by a Contractor with its EMMP. These are separate issues which may require different enquiries and lead to different outcomes. Failure to comply with an EMMP should lead to a compliance action as indicated by subparagraph (a), while an inadequate plan should lead to a revised EMMP under subparagraph (b). Proposal on 8bis reflects this.

**Regulation 53
Emergency Response and Contingency Plan**

1. A Contractor shall maintain:

(a) The currency and adequacy of its Emergency Response and Contingency Plans based on the identification of potential Incidents and in accordance with Good Industry Practice, Best Available Techniques, Best Environmental Practices and the applicable ~~standards~~ Standards and Guidelines and shall be tested at least annually; and

(b) Such resources and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority.

2. Contractors, the Authority and sponsoring States shall consult together, as well as with other States and organizations which appear to have an interest, in relation to the exchange of knowledge, information and experience relating to Incidents, using such knowledge and information to prepare and revise standards and operating guidelines to control hazards throughout the mining life cycle, and shall cooperate with and draw on the advice of other relevant international organizations.

3. Following an Incident, a Contractor must submit a detailed report on how the plan was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.

Explanation / comment

- Consideration could be given to moving draft regulation 53 up to section 3 as it seems more appropriately placed there.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

1 (b) Such resources, training, and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority including on-vessel presence at all times of personnel authorised and trained to implement the Plan.

2. ~~Contractors, the Authority and sponsoring States shall consult together, as well as with other States and organizations which appear to have an interest, in relation to~~ shall facilitate the exchange of knowledge, information and experience relating to Incidents, between Contractors, and with States, and shall using such knowledge and information to prepare and revise standards and operating guidelines to control hazards throughout the mining life cycle, and shall cooperate with and draw on the advice of other relevant international organizations so that such knowledge and information can be used:

(a) by Contractors to meet the requirements of regulation 53(1), and by the

Authority to prepare and revise Standards and Guidelines

3. Following an Incident, a Contractor must submit a detailed report on how the plan worked well or did not work well, and how it was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.

Rationale

Paragraph 2 of DR 53 seems to conflate the different roles and responsibilities between contractors, states, other international organizations, and the ISA.

For paragraph 3, we suggest that an amendment be made to reflect that there are two separate issues here, namely: (i) was the emergency response and contingency plan adequate, and (ii) was the plan complied with, as these two issues will likely require different responses from the ISA.

Section 5 Environmental Compensation Fund

Regulation 54 Establishment of an Environmental Compensation Fund

1. The Authority hereby establishes the Environmental Compensation Fund (“the Fund”).
2. The rules and procedures of the Fund ~~will~~ shall be established by the Council on the recommendation of the Finance Committee before the commencement of commercial activities.
3. The Secretary-General shall, within 90 Days of the end of a Calendar Year, prepare an audited statement of the income and expenditure of the Fund for circulation to the members of the Authority.

Explanation / comment

- It is noted that the term “commercial activities”, proposed in paragraph 2, is not defined in the draft regulations. The proponent is invited to clarify if this is meant to refer to “commercial production” instead.

I - Members

Costa Rica

1. The Authority hereby establishes the Environmental Compensation Fund (“the Fund”).
2. The rules and procedures of the Fund shall be established by the Council on the recommendation of the Finance Committee before any exploitation contract is granted ~~the commencement of commercial activities~~.
3. The Secretary-General shall, within 90 Days of the end of a Calendar Year, prepare an audited statement of the income and expenditure of the Fund for circulation to the members of the Authority.

Rationale

- 1- It must be established before exploitation contract is granted.

France

2. The rules and procedures of the Fund will ~~shall~~ be established by the Council on the recommendation of the Finance Committee before the ~~commencement of commercial activities~~ approval of a first plan of work for exploitation

Rationale

Provides for a clear timeline, the reference to “commercial activities” is not clear.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

Regulation 54

Establishment of an Environmental Compensation Fund

1. The Authority hereby establishes the Environmental Compensation Fund (“the Fund”).

2. The rules and procedures of the Fund ~~will~~ shall be established by the Council on the recommendation of the Finance Committee before any grant of an exploitation contract under these regulations ~~the commencement of commercial activities.~~
 - (a) the promotion of the participation of vulnerable communities and ~~relevant~~ Stakeholders in decisions about disbursement of funds;
 - (b) a mechanism for financing the funds in accordance with regulation 56, including replenishment upon disbursement;
 - (c) a description of how the funds and any interest generated will be managed and by whom;
 - (d) the process for accessing the funds;
 - (e) the type of damages and purposes eligible for claims against the funds;
 - (f) the standard of proof required for claims against the funds;
 - (g) a policy on refunds of Contractor payments into the funds; and,
 - (h) a process for determining disbursements or refunds from the funds

Rationale

We note that some useful examples of minimum requirements for the Rules and procedures, are listed in the facilitator’s document in the text-box after draft regulation 56.

These would include rules and procedures for:

- financing of the fund,
- management of the fund,
- claims made by injured parties against the fund,
- disbursements or refunds from the fund, as well as
- replenishment of the fund after payments out.

Our proposal would therefore be that these points should be expressly listed in draft Regulation 54 as items that must be included in the rules and procedures of the Fund that are to be established.

Source: [Fifth Report of the Code Project - Part 1](#) and [Part 2 \(Pew, 2019\)](#) and [June 2019 submission on legal liability made by the Africa Group](#) [ISBA/25/C/25]

Regulation 55

Purpose of the Environmental Compensation Fund

The ~~main~~ purposes of the Fund ~~will include:~~
~~—(a) is the~~ The funding of or compensation for the implementation of any necessary measures designed to prevent, limit or remediate any damage ~~to the Area~~ arising from activities in the Area and the restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be.;

~~(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;~~

~~(c) Education and training programmes in relation to the protection of the Marine Environment;~~

~~(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and~~

~~—(e) The restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence.~~

I - Members

Costa Rica

The purposes of the Fund Is the funding of any measure to mitigate or compensate or compensation for the implementation of any necessary measures designed to prevent, limit or remediate any damage arising from activities in the Area and the restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be.

Rationale

1- Compensation should address the damages, not the measures, as it was stated previously.

Regulation 56
Funding of the Environmental Compensation Fund

The Fund will consist of the following monies:

- (a) The prescribed percentage or amount of fees paid by Contractors to the Authority;
- (b) The prescribed percentage of any penalties paid by Contractors to the Authority;
- (c) The prescribed percentage of any amounts recovered by the Authority by negotiation or as a result of legal proceedings in respect of a violation of the terms of an exploitation contract;
- (d) Any monies paid into the Fund at the direction of the Council, based on recommendations of the Finance Committee; and
- (e) Any income received by the Fund from the investment of monies belonging to the fund.

Explanation / comment

- The revisions to Section 5 aim to implement the wish of delegations to make the Environmental Compensation Fund established under this Part limited to the issues identified in the ITLOS Seabed Disputes Chamber Advisory Opinion.
- The suggestion by a number of delegations that the Fund be financed by monies paid by Contractors was implemented for clarity in the appropriate sub-paragraphs.
- A proposal was made for restoration and rehabilitation of the Area to form part of decommissioning and the closure plan instead of being included in either Fund. It is noted that restoration and rehabilitation are already included in draft regulation 59, paragraph 2(f).
- Questions were raised and suggestions made concerning the modalities of operation of the Fund, including:
 - (a) participation of vulnerable communities and stakeholders in decisions about disbursement of funds;
 - (b) how the funds and any interests generated will be managed and by whom;
 - (c) when and how disbursements, reimbursements and refunds can be made;
 - (d) what the process for accessing the fund would be;
 - (e) the standard of proof that would be required;
 - (f) the types of damages and purposes for which access to the fund is eligible;
 - (g) what happens if there is damage to the environment before the money is paid;
 - (h) the basis for assessing the amount to be paid by contractors;

(i) whether affected coastal States would be involved in the decisions on how to use the funds to implement the activities.

- Such issues could be addressed in the rules and procedures to be established pursuant to draft regulation 54(2).
- The provisions addressing environmental research and training are now captured in Enclosure II to the present document, without prejudice to their future placement in the regulations. Whilst these provisions may be discussed by the informal working group, it may be noted that similar issues are also being discussed in the Finance Committee in the context of the discussions on benefit-sharing.

Part VI

Closure plans

Regulation 59

Closure Plan

1. A Closure Plan shall set out the responsibilities and actions of a Contractor for the decommissioning and closure of activities in a Mining Area, including the post-closure management and monitoring of residual ~~and natural~~ Environmental Effects. Closure also includes a temporary suspension of mining activities.

2. The objectives of a Closure Plan are to ensure that:

(a) The closure of mining activities is a process that is incorporated into the mining life cycle and is conducted in accordance with Good Industry Practice, Best Environmental Practices, ~~and~~ Best Available Techniques and Best Available Scientific Evidence;

(b) At the date of cessation or suspension of mining activities, a management and monitoring plan is in place for the period prescribed in a Closure Plan;

(c) The risks relating to Environmental Effects are quantified, assessed and managed, which includes the gathering of information relevant to closure or suspension;

(d) The necessary health and safety requirements are complied with;

(e) Any residual ~~negative~~ Environmental Effects are identified and quantified, and management responses are considered/implemented, including plans for further Mitigation or remediation where appropriate;

(f) Any restoration or rehabilitation commitments will be fulfilled in accordance with predetermined criteria or standards; ~~and~~

(f)bis Requirements regarding the removal of all Installations and equipment from the Mining Area are addressed; and

(g) The mining activities are closed or suspended efficiently and cost-effectively.

3. The Closure Plan shall cover the ~~main~~ aspects prescribed by the Authority in annex VIII to these regulations.

4. A Contractor shall maintain the currency and adequacy of its Closure Plan in accordance with Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Evidence and the relevant Guidelines.

5. The Closure Plan shall be reviewed annually and updated each time there is a Material Change in a Plan of Work, ~~or, in cases where no such change has occurred, every five years,~~ and be finalized in accordance with regulation 60 (1).

Explanation / comment

- While a proposal was made to delete the reference to “post-closure” management and monitoring in paragraph 1 (see ISBA/26/C/CRP.1) in light of the fact that a Closure Plan should involve both pre- and post-decommissioning works, it is noted that the current wording is consistent with the current wording of draft regulation 26(2)(c). Should a change be made here, regulation 26(2)(c) would also need to be amended.

- The references to residual environmental effects in paragraphs 1 and 2(e) were harmonized with other such references in the draft regulations in particular draft regulation 26(2)(c) and for consistency with the definition of “Environmental Effects” in the Schedule, by deleting “natural” and “negative”.
- It is noted that some delegations raised concerns with the reference to mining activities being closed or suspended “cost-effectively” in paragraph 2(g). This may need further consideration.

I - Members

China

5. The Closure Plan shall be ~~reviewed annually and~~ updated each time there is a Material Change in a Plan of Work, ~~or, in cases where no such change has occurred, every five years,~~ and be finalized in accordance with regulation 60 (1).

Rationale

There is no need for an annual review of the Closure Plan, which will significantly increase the financial burden on the contractors and the Commission, and there seems to be no precedent in actual mining operations. It is recommended to delete “reviewed annually and” and restore the original text.

Costa Rica

2. The objectives of a Closure Plan are to ensure that:

- (a) The closure of mining activities is a process that is incorporated into the mining life cycle and is conducted in accordance with Good Industry Practice, Best Environmental Practices, Best Available Techniques and Best Available Scientific Evidence;
- (b) At the date of cessation or suspension of mining activities, a management and monitoring plan is in place for the period prescribed in a Closure Plan, in accordance with the relevant standards;
- (c) The risks relating to Environmental Effects are quantified, assessed and managed, which includes the gathering of information relevant to closure or suspension;
- (d) ~~The necessary health and safety requirements are complied with~~ Any health and safety requirements related to closure activities;

(e) ~~Any residual negative~~ Environmental Effects continue to be monitored, identified, quantified and reported to the Authority ~~are identified and quantified,~~ and management responses are implemented, including plans for further Mitigation or remediation where appropriate;

(f) Any restoration or rehabilitation commitments will be fulfilled in accordance with predetermined criteria or standards by the Contractor;

(f)bis Requirements regarding the removal of all Installations and equipment from the Mining Area are addressed; and

(g) The mining activities are closed or suspended efficiently and ~~cost effectively~~ safely.

3. The Closure Plan shall cover the aspects prescribed by the Authority in annex VIII to these regulations and in accordance with the relevant Standards.

Rationale

1- Costa Rica believes we need specific Standards for the Closure Plan, hence the proposal to include them in several parts of this regulation, but we would also support for a mentioning in the chapeau.

2- Costa Rica believes the monitoring should cover all environmental effects, not just the residual negative effects., and that the information should be reported to the Authority.

3- Costa Rica does not believe that the concern should be the cost efficiency of the suspension, but its safety.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

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The objectives of a Closure Plan are to ensure that:

2. (a) The closure of mining activities is a process that is incorporated into the mining life cycle, including by scheduling studies to inform Closure throughout the period of Exploitation, and is conducted in accordance with Good Industry Practice, Best Environmental Practices, ~~and~~ Best Available Techniques and Best Available Scientific Evidence;

(b) At the date of cessation or suspension of mining activities, a management and monitoring plan is in place for the period prescribed in a Closure Plan in accordance with the relevant Standard; —

~~(d) The necessary~~ Any new health and safety issues arising from Closure activities are identified and managed ~~requirements are complied with~~;

~~(e) Any residual negative~~ Environmental Effects ~~are continue to be~~ identified and quantified ~~and reported to the Authority~~, and management responses are ~~considered implemented~~, including plans for further Mitigation or remediation where appropriate;

(f) The Contractor makes and is required to fulfil ~~Any~~ restoration or rehabilitation commitments ~~will be fulfilled in accordance with predetermined criteria or standards; and~~

(g) The mining activities are closed or suspended efficiently and cost- effectively; ~~and.~~

(h) The Contractor monitors the Contract Area and collects data that informs the Authority about recovery, or lack thereof, of the Contract Area over the period of time required by the Closure Plan and as provided by the relevant Standard, taking account of any Guidelines.

3. The Closure Plan shall cover the ~~main~~ aspects prescribed by the Authority in annex VIII to these regulations, ~~and shall adhere to the relevant Standard.~~

4. A Contractor shall maintain the currency and adequacy of its Closure Plan in accordance with Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Evidence and the relevant Standards, taking account of Guidelines.

Rationale

To ensure shared understanding and consistency of application, Pew would like to suggest the introduction of ‘Closure’ and ‘Decommissioning’ as defined terms in the Regulations e.g. which could read as follows:

- “**Closure**” means activities undertaken at a particular site once commercial production has ceased, and includes: Decommissioning, post-mining monitoring and reporting, and any rehabilitation and restoration or compensatory measures that may be agreed.
- “**Decommissioning**” means measures taken, whether onshore or offshore, to permanently cease the operations, remove, or dispose of structures, facilities, Installations, and other equipment erected or used for the purposes of activities undertaken pursuant to an exploitation contract, in connection with the abandonment or cessation or partial cessation of those activities in a Contract area or part of a Contract area.

Regarding para 2, subparagraph f - here the provision states that the objective of a closure plan is to ensure that ‘any restoration or rehabilitation commitments will be fulfilled’. We believe this drafting is confusing. Our understanding is that the Closure Plan is the place where restoration or rehabilitation commitments would be set, if these in fact are feasible, scientifically supported options [as previously mentioned by DOSI]. It is also unclear in this subparagraph what the wording: 'predetermined criteria or standards' refers to.

We believe that a Standard on Closure Plan is needed.

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Regulation 60

Final Closure Plan: cessation of production

1. A Contractor shall, at least ~~12-24~~ months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation requires a Material Change to the Closure Plan, determined in accordance with the procedures established in Regulation 57, taking into account the results of monitoring and data and information gathered during the exploitation phase and the applicable Regional Environmental Management Plan.
2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least ~~30-60~~ Days in advance of the meeting, bearing in mind article 165, paragraph 2(e), of the Convention.
3. If the Commission determines that the final Closure Plan meets the requirements of regulation 59, it shall recommend approval of the final Closure Plan to the Council.
4. If the Commission determines that the final Closure Plan does not meet the requirements of regulation 59, the Commission shall require amendments to the final Closure Plan as a condition for approval of the plan.
5. The Commission shall give the Contractor written notice of its decision under paragraph 4 above and provide the Contractor with the opportunity to make representations or to submit a revised final Closure Plan for the Commission's consideration, within 90 Days of the date of notification to the Contractor.
6. At its next available meeting, the Commission shall consider any such representations made or revised final Closure Plan submitted by the Contractor when preparing its report and recommendation to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting.
7. The Commission shall review the amount of the Environmental Performance Guarantee provided under regulation 26.
8. The Council shall consider the report and recommendation of the Commission relating to the approval of the final Closure plan.

Explanation / comment

- The time period in paragraph 1 was extended, as proposed by a delegation, to make clear that the process (including public consultation) may take considerable time.
- The reference to the “applicable” Regional Environmental Management Plan in paragraph 1 will need to be harmonized with other similar references throughout the draft as it is noted that such references

sometimes refer to the “relevant” Regional Environmental Management Plan.

I - Members

China

2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least 30-60 Days in advance of the meeting. ~~bearing in mind article 165, paragraph 2(e), of the Convention.~~

Rationale

The reference to “bearing in mind article 165, paragraph 2(e), of the Convention” implies that when the Commission examine the final Closure Plan, it needs to take into account the views of recognized experts. From the format aspect, since many Parts of the draft Exploitation Regulations involve the examination by the Commission of relevant documents submitted by the contractors, if such references are included in all the relevant regulations, the text of the Exploitation Regulations will be too lengthy and redundant. From the essence aspect, as stated by the Commission in document ISBA/25/C/18, “[t]he Commission recognized the merit of engaging with external experts in supplementing its work and expertise, but considered that such engagements should be discretionary and not mandatory...”. Therefore, it is recommended to delete it.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

1 bis The Secretary-General shall make the Closure Plan submitted pursuant to paragraph (1) available on the Authority's website for a period of at least 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing.

1ter. The Secretary-General shall, within seven Days following the close of the comment period under paragraph (1bis), provide the comments submitted by members of the Authority and Stakeholders, to the Contractor for its consideration and to the Commission. The Contractor shall consider the comments and shall revise the Closure Plan or provide responses to the comments and shall submit any revised plans or responses to the Commission.

2. The Commission shall examine the final Closure Plan and any comments received pursuant to paragraph (1 bis.) and revision or responses made pursuant to paragraph (1 ter.) at its next meeting, provided that it has been circulated at least ~~30~~ 60 Days in advance of the meeting, bearing in mind article 165, paragraph 2(e), of the Convention. If the Commission lacks sufficient technical expertise to evaluate the final Closure Plan it shall consult competent independent experts [identified in accordance with Annex XI].

4. If the Commission determines that the final Closure Plan does not meet the requirements of regulation 59, the Commission shall require the Contractor to make amendments to the final Closure Plan as a condition for approval of the plan.

7. The Commission and Finance Committee shall review the amount of the Environmental Performance Guarantee provided under regulation 26 and include the results of that review and any relevant recommendations in its report to the Council on the final Closure Plan. -

8. The Council shall consider the report and recommendation of the Commission and take a decision relating to the approval of the final Closure plan and the amount of the Environmental Performance Guarantee Plan

9. Any reports and recommendations submitted to the Council and decisions made by the Council under this regulation shall be published on the Authority's Website by the Secretary-General within 7 days of a submission or decision being made.

Rationale

Public review should be explicitly required for all key ISA regulatory decisions, including the approval of a final Closure Plan. We therefore recommend adding an explicit provision to this effect (see 1bis and 1ter).

Regarding para 7, we recommend that the Finance Committee might also be required to review the amount of the Environmental Performance Guarantee, and that the results of both the Finance Committee and the LTC's reviews and any relevant recommendations are provided in the report to the Council on the final Closure Plan.

On para 8, we agree that it is clear that the Council will take a decision on the approval of the Closure Plan and the amount of the EPG.

For the purposes of transparency and accountability, Pew recommends the inclusion of an additional provision, sub-paragraph 9, that provides that reports and recommendations submitted to the Council and decisions made by the Council under this regulation be published on the Authority's website by the Secretary-General within 7 days of a submission or decision being made.

Regulation 61
Post-closure monitoring

1. A Contractor shall implement the final Closure Plan in accordance with the conditions of its implementation and shall report to the Secretary-General on the progress of such implementation on an annual basis, including the results of monitoring under paragraph 2 below, as set out in the final Closure Plan.
2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant Guidelines.
3. The Contractor shall conduct a final performance assessment and submit a final performance assessment report in accordance with the Guidelines to the Secretary - General to ensure that the closure objectives as described in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

Explanation / comment

- A suggested frequency for the report to be provided on the progress in implementation of the Closure Plan was added in paragraph 1 as proposed by a delegation.