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The Permanent Mission of the Federated States of Micronesia to the United Nations presents its compliments to the Secretariat of the International Seabed Authority and has the honor to submit the national comments of the Government of the Federated States of Micronesia regarding the revised draft Regulations on Exploitation of Mineral Resources in the Area, as issued by the Legal and Technical Commission of the International Seabed Authority on 9 July 2018 in document ISBA/24/LTC/WP.1/Rev.1.

The Permanent Mission of the Federated States of Micronesia to the United Nations avails itself of this opportunity to extend to the International Seabed Authority the assurances of its highest consideration.

New York, 19 October 2018

Secretariat of the International Seabed Authority
KINGSTON, JAMAICA

INTERNATIONAL SEABED AUTHORITY

COMMENTS ON THE DRAFT REGULATIONS OF THE INTERNATIONAL SEABED AUTHORITY ON THE EXPLOITATION OF MINERAL RESOURCES IN THE AREA

THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

19 OCTOBER 2018

I. INTRODUCTION

1. The Government of the Federated States of Micronesia ("FSM") welcomes the opportunity to provide its national comments on the revised draft Regulations on Exploitation of Mineral Resources in the Area, as issued by the Legal and Technical Commission ("LTC") of the International Seabed Authority ("ISA") on 9 July 2018 in document ISBA/24/LTC/WP.1/Rev.1. The following comments focus on the queries posed by the Council of the ISA in the annex to document ISBA/23/C/12. The FSM acknowledges that the Council of the ISA issued a note on 10 July 2018 in document ISBA/24/C/20 that, among other things, highlights key matters requiring further investigation or study by the LTC as well as matters requiring the Council's direction, guidance, or comment; and that that note builds on the responses to, among other things, the queries posed by the Council in the annex to document ISBA/23/C/12. However, as this is the first time that the FSM is submitting written comments on any version of the draft Regulations on Exploitation of Mineral Resources in the Area, and as the period for commentary on the draft Regulations has been extended to 30 September 2018, the FSM wishes to base its comments on the queries posed by the Council in the annex to document ISBA/23/C/12, while taking into account adjustments already made in the revised draft Regulations based on the initial round of comments on the queries in that annex. The FSM reserves the right to comment directly on the matters raised in ISBA/24/C/20 at a later date.

2. As a preliminary matter, the FSM notes that it is a small island developing State Party to the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), inclusive of the 1994 Agreement relating to the implementation of Part XI of UNCLOS. As a small island developing State with long-standing historical and cultural connections to and reliance on the Ocean and its bounty, the FSM is committed to discharging its obligations under the aforementioned major instruments in a manner that protects and preserves the marine environment to the fullest extent possible while ensuring that any exploitation of the Ocean's resources is done in a sustainable manner. The FSM views itself as a steward for the Ocean and its resources, a caretaker for present and future generations, just as our ancestors were for us.

3. As another preliminary matter, the FSM stresses that the comments contained herein are initial and may be supplemented by additional comments at a later stage. The comments address matters of major significance for the FSM while leaving detailed comments for a future opportunity, in line with the request from the Council in document ISBA/23/C/12 for stakeholders to refrain from a "regulation-by-regulation analysis or a redrafting of regulatory language."

II. COMMENTS ON REVISED DRAFT EXPLOITATION REGULATIONS, PURSUANT TO ISBA/23/C/12

General questions

Do the [revised] draft regulations follow a logical structure and flow?

4. In the FSM's view, generally speaking, yes. However, the revised draft regulations ("DRs") could benefit from having the major terms defined in the first Part rather than relegated to an appendix or schedule (as is the case in the current DRs). Placing and defining the major terms at the outset enhances the readability of the DRs as well as ensures that the definitions of the major terms have equivalent normative status as the rest of the DRs.

5. Additionally, given the complexity of the application and approval process explicated in the DRs, it is the FSM's view that it will be beneficial for the ISA to produce a flow-chart or a similar document—perhaps as an appendix or a supplemental note to the DRs—that presents in visual/graphic form the steps involved in the application and approval process.

6. Furthermore, it is the FSM's view that Part IV of the DRs, on the protection and preservation of the marine environment, needs to be integrated better into the overall body of DRs. While it is laudable that the ISA emphasizes the importance of protecting and preserving the marine environment and promulgates regulations that operationalize that core international law obligation, the provisions in the current Part IV need to be cross-referenced sufficiently by other Parts, particularly the provisions in Part IV on environmental impact statements ("EISes") and environmental management and monitoring plans ("EMMPs"). In particular, the status of EISes under the DRs is unclear at this stage, with almost all references to EISes outside of Part IV relegated to annex IV of the DRs rather than repeatedly referenced in the main DRs. It is the FSM's view that EISes and EMMPs need to form a core component of the ISA's efforts to protect and preserve the marine environment in connection with the exploitation of mineral resources in the Area. A clear explanation of the hierarchy (if any) between the various major components of the application and approval process (e.g., the Plan of Work, the Scoping Report, the EIS, the EMMP, the Closure Plan) can be beneficial, at least for the sake of clarity.

Are the intended purpose and requirements of the regulatory provisions presented in a clear, concise and unambiguous manner?

7. It is the FSM's view that the preamble to the DRs must contain language that highlights the major objectives of the DRs and guides the content and operationalization of the DRs. To that end, while the current preamble appropriately highlights that the Area and its mineral resources are the common heritage of mankind, it is the FSM's view that the

preamble must also highlight the obligation of the contractors, sponsoring States, other States Parties to UNCLOS, and the ISA to protect and preserve the marine environment in connection with activities in the Area. While this obligation is arguably implicit in the principle of common heritage of mankind, it is the FSM's view that the preamble must state this obligation clearly and at the outset, lest the DRs give the impression that there is an imbalance between exploitation on the one hand and the protection and preservation of the marine environment on the other hand with respect to activities in the Area.

8. Additionally, in light of the above, it is the FSM's view that the DRs must identify and/or mandate specific criteria and standards that form the basis of EISes, including clear environmental thresholds for harm to the marine environment; as well as specifically allow for EMMPs to call for the establishment of protected areas in the Area in order to protect and preserve vulnerable/fragile/sensitive seafloor ecosystems, where necessary, including in connection with regional environmental management plans. Providing such language on EISes and EMMPs will be a strong signal that the DRs aim to ensure that the exploitation of mineral resources in the Area will be done in a manner that does not undermine the core international law obligation to protect and preserve the marine environment, particularly in connection to activities in the Area.

Is the content and terminology used and adopted in the [revised] draft regulations consistent and compatible with the provisions of the United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI of the Convention?

9. The FSM notes that the DRs employ a large number of major terms, as currently defined in Schedule 1, that are not explicitly defined in UNCLOS, inclusive of its Part XI Implementing Agreement. The FSM acknowledges that the terms in Schedule 1 are indicative at this stage, pending further discussion on the regulatory content. However, it is the FSM's view that it is necessary for the ISA to produce, as soon as possible, a primer or some other explanatory note that discusses why each major term is defined the way it is defined in Schedule 1, particularly those terms relating to environmental management (as opposed to prosaic terms with commonly understood definitions, e.g., "Calendar Year," "Exploration Regulations"). The note would cite, among other things, relevant provisions from international instruments and international case law and principles from customary international law; as well as relevant practices of major intergovernmental organizations and other intergovernmental processes. The FSM is particularly interested in explanations for the definitions of "Best Environmental Practices," "Environmental Effect," "Good Industry Practice," "Marine Environment," "Mitigate"/"Mitigation," and "Serious Harm." The FSM also suggests that the DRs define "precautionary approach" as a major term, as the approach undergirds much of the approach of the DRs to the protection and preservation of the marine environment. In defining "precautionary approach," the DRs must opt for a definition that is no less stringent than that in Principle 15 of the Rio Declaration on Environment and

Development—in other words, rather than merely referencing Principle 15, the DRs could enhance Principle 15 in a manner that gives the precautionary approach more regulatory teeth as well as clarity.

10. Additionally, it is the FSM's view that the DRs should include "Preservation" as a major term, as well as discuss whether the obligation in article 145 of UNCLOS to "ensure effective protection for the marine environment from harmful effects which may arise" from activities in the Area is part and parcel of the general obligation in article 192 of UNCLOS to "protect and preserve the marine environment" or is in any way distinct. The FSM notes that the DRs emphasize the *protection* of the marine environment but reference the *preservation* of the marine environment less often (i.e., there are more than twice as many references to the former as to the latter in the DRs). Clarity is needed in this regard.

11. Furthermore, it is the FSM's view that there is some ambiguity with respect to the usage of the terms "guidelines," "standards," and "recommendations" in the DRs, especially in connection with materials and provisions yet to be developed by the ISA. Are there any substantive and/or normative distinctions between the three terms, at least in the context of the DRs? There might be a need to indicate whether there are such distinctions, especially if the terms imply any sort of hierarchy between them (as well as in relation to the main body of DRs). In the FSM's view, the current definitions for "guidelines" and "standards" in Schedule 1 of the DRs do not sufficiently address these issues of normativity and hierarchy.

Do the [revised] draft regulations provide for a stable, coherent and time-bound framework to facilitate regulatory certainty for contractors to make the necessary commercial decisions in relation to exploitation activities?

12. It is the FSM's view that the framework contained in the DRs must provide sufficient regulatory certainty not just for contractors but also for the ISA, the States Parties (including those that are sponsoring States), and relevant entities tasked with ensuring compliance with the DRs (including judicial bodies). Toward that end, whenever the DRs refer to the "Authority" as taking certain decisions or receiving certain pieces of information in the application and approval process, the DRs should clarify what organ of the "Authority" will take the lead (if not have the sole responsibility) in that respect, if applicable.

13. Additionally, it is the FSM's view that a key element to achieving a "stable, coherent, and time-bound framework to facilitate regulatory certainty" is transparency throughout the entire application and approval process. While acknowledging the need to preserve the confidentiality of relevant information—particularly that of a proprietary nature as well as legitimate trade secrets—it is the FSM's view that the work of the LTC, in particular,

must be as open and inclusive as possible, including in terms of public participation in the LTC's meetings and decision-making process as well as in terms of the full disclosure of the identities of contractors that fall short of complying with existing rules and principles of international environmental law as well as the final version of the ISA's exploitation regulations. The work of the LTC is too vital to the application and approval process for it to be shrouded in secrecy, especially when the protection and preservation of the marine environment is at stake. It should be well within the capabilities of the LTC and the relevant secretariat to produce public transcripts (if not audio-video recordings) of the LTC's deliberations in the application and approval process, with redactions where necessary to preserve the confidentiality of proprietary information and legitimate trade secrets. This will enhance transparency, provide reassurances to those stakeholders who are concerned about the protection and preservation of the marine environment, and aid other potential contractors and their sponsoring States in ascertaining the most environmentally sound approaches to the exploitation of mineral resources in the Area.

Is an appropriate balance achieved between the content of the regulations and that of the contract?

14. It is the FSM's view that the model exploitation contract contained in annex X of the DRs must explicitly state that the ISA and the contractor agree to treat the exploitation of the mineral resources of the Area as being in line with the principle of common heritage of mankind, as well as attest that such exploitation must be in accordance with the general international law obligation to protect and preserve the marine environment. These two understandings and objectives are, in the FSM's view, central to the DRs, and the exploitation contract must explicitly reference them in order to reflect the balance that must be struck in the DRs between commercial exploitation on the one hand and the protection and preservation of the marine environment on the other hand.

Exploration regulations and regime: are there any specific observations or comments that the Council or other stakeholders wish to make in connection with their experiences, or best practices under the exploration regulations and process that would be helpful for the Authority to consider in advancing the exploitation framework?

15. The FSM reserves the right to submit national comments at a later date with respect to the exploration regulations and regime of the ISA.

Specific questions

Role of sponsoring States: [revised] draft regulation [103] provides for a number of instances in which such States are required to secure the compliance of a contractor. What additional obligations, if any, should be placed on sponsoring States to secure compliance by contractors that they have sponsored?

16. It is the FSM's view that, with respect to obligations on sponsoring States to secure compliance by contractors that they have sponsored, the DRs must, at a minimum, reflect the obligations set out in UNCLOS, inclusive of its Part XI Implementing Agreement; as well as those identified by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea in its advisory opinion in Case No. 17 (2011). While an obligation of due diligence appears to be the general international law principle with respect to sponsoring States and their management of the contractors they sponsor, it is the FSM's view that the ISA is not prohibited by international law from adopting a more stringent standard, building on the current due diligence obligation and requiring sponsoring States to go beyond due diligence and take a more proactive role in ensuring compliance by the contractors they sponsor.

17. Additionally, it is the FSM's view that the DRs must take into consideration the domestic laws and regulations of sponsoring States with respect to securing compliance by the contractors they sponsor. If such domestic laws and regulations go beyond the current due diligence obligation in international law and require sponsoring States to take a more proactive role in ensuring compliance by the contractors they sponsor, then the DRs must allow for such an approach. By the same token, however, States wishing to sponsor activities in the Area must ensure that their domestic laws and regulations do not conflict with the finalized exploitation regulations, including with respect to securing the compliance of contractors they sponsor.

Contract area: for areas within a contract area not identified as mining areas, what due diligence obligations should be placed on a contractor as regards continued exploration activities? Such obligations could include a programme of activities covering environmental, technical, economic studies or reporting obligations (that is, activities and undertakings similar to those under an exploration contract). Are the concepts and definitions of "contract area" and "mining area(s)" clearly presented in the [revised] draft regulations?

18. It is the FSM's view that contractors must be obligated to create and/or implement programmes that monitor and report on environmental impacts in areas within a contract area not identified as mining areas, especially impacts from exploitation activities in the mining areas of the contract area. It is the FSM's view that non-mining areas in a contract area could be set aside as so-called "impact areas," with attendant heightened environmental protection obligations and requirements compared to areas outside of the contract area. Such non-mining areas in a contract area can also have heightened management obligations and requirements with respect to emergency and contingency plans for the contract area.

Plan of work: there appears to be confusion over the nature of a "plan of work" and its relevant content. To some degree, this is the result of the use of terminology from the 1970s and 1980s in

the Convention. Some guidance is needed as to what information should be contained in the plan of work, what should be considered supplementary plans and what should be annexed to an exploitation contract, as opposed to what documentation should be treated as informational only for the purposes of an application for a plan of work.

Similarly, the application for the approval of a plan of work anticipates the delivery of a pre-feasibility study: have contractors planned for this? Is there a clear understanding of the transition from pre-feasibility to feasibility?

19. The FSM reserves the right to submit national comments at a later date with respect to this set of queries.

Confidential information: this has been defined under [revised] draft regulation [87]. There continue to be diverging views among stakeholders as to the nature of "confidential information", with some stakeholders considering the provisions too broad, and others too narrow. It is proposed that a list that is as exhaustive as possible be drawn up identifying non-confidential information. Do the Council and other stakeholders have any other observations or comments in connection with confidential information or confidentiality under the regulations?

20. It is the FSM's view that while a list of non-confidential information can be useful as guidance, such a list must be subject to amendment in the future, especially with respect to information that is vital to the protection and preservation of the marine environment. Contractors, sponsoring States, and other States Parties to UNCLOS—not to mention the ISA—must not use the tool of confidentiality to tip the scales in favor of commercial exploitation and to the detriment of the protection and preservation of the marine environment. The FSM is particularly concerned about the broad leeway given in DR 87(2)(e) to sponsoring States to label any data and information they wish as confidential in accordance with their domestic laws. This is ripe for abuse, in part because it introduces the possibility of "sponsor shopping" (similar to "forum shopping"), i.e., contractors seeking sponsorship by States with domestic laws that label as confidential the broadest range of data and information possible. This also raises the specter of uneven enforcement of the DRs with respect to confidentiality; how can the ISA—particularly the Secretary-General—maintain the confidentiality of information in as effective and coherent a manner as possible when such information is subject to a patchwork of domestic laws on confidentiality that contradict each other? And, DR 87(2)(e) can potentially lead to the invalidation of any efforts by the ISA to create a list of non-confidential information, as sponsoring States can simply enact domestic laws that label the information in such a list as confidential. It is the FSM's view that DR 87(2)(e) must either be significantly revised or deleted in its entirety. A State that wishes to sponsor a contractor for exploitation of mineral resources in the Area must have in place laws on confidentiality that comport with regulations on confidentiality promulgated by

the ISA with respect to such exploitation, or else such a State cannot sponsor a contractor for such exploitation.

Administrative review mechanism: as highlighted in Authority discussion paper No. 1, there may be circumstances in which, in the interests of cost and speed, an administrative review mechanism could be preferable before proceeding to dispute settlement under Part XI, section 5, of the Convention. This could be of particular relevance for technical disputes and determination by an expert or panel of experts. What categories of disputes (in terms of subject matter) should be subject to such a mechanism? How should experts be appointed? Should any expert determination be final and binding? Should any expert determination be subject to review by, for example, the Seabed Disputes Chamber?

21. It is the FSM's view that when there is a dispute with respect to the interpretation and/or application of the finalized regulations and/or an exploitation contract, such a dispute must be resolved in accordance with the dispute settlement mechanism under Part XI, section 5, of UNCLOS. The FSM is concerned that an administrative review mechanism or a similar entity could be abused to delay or prevent the full and proper litigation of legitimate disputes concerning the interpretation and/or application of the finalized regulations and/or an exploitation contract. It is not clear to the FSM what "technical disputes" are, as opposed to normal disputes. The interpretation and/or application of the finalized regulations and/or an exploitation contract is, to a certain extent, likely to contain technical considerations—will those considerations be reviewed separately from the UNCLOS dispute settlement mechanism if an administrative review mechanism were to be implemented? Also, if an administrative review mechanism were to be implemented, will there be legal experts on the mechanism (in addition, presumably, to technical experts and other types of experts)? And, will such a mechanism allocate seats to experts in a geographically representative manner?

22. In lieu of a dispute-settlement function, the administrative review mechanism could act as a screening layer, reviewing "disputes" to ensure that they actually involve disputes regarding the interpretation and/or application of the finalized regulations and/or exploitation contract, so as to be suitable for adjudication by the dispute settlement mechanism under UNCLOS. However, such a filtering will require, among other things, the expertise of lawyers and other legal practitioners well-versed in the dispute settlement jurisprudence of the dispute settlement mechanism under UNCLOS. As the UNCLOS dispute settlement mechanism already features prominent legal experts—e.g., the judges that sit in the Seabed Disputes Chamber—the administrative review mechanism will likely be duplicative.

23. Rather than employing an administrative review mechanism tasked with reviewing "technical" disputes, the ISA could create/empower a standing body of technical, legal, and scientific experts that the Seabed Disputes Chamber can call on to do an initial

screening of a potential dispute to determine whether it is of a purely technical nature that does not require adjudication by the Seabed Disputes Chamber or some other legal tribunal.

Use of exploitation contract as security: [revised] draft regulation [23] provides that an interest under an exploitation contract may be pledged or mortgaged for the purpose of obtaining financing for exploitation activities with the prior written consent of the Secretary-General. While this regulation has generally been welcomed by investors, what additional safeguards or issues, if any, should the Commission consider?

24. It is the FSM's view that, while an interest under an exploitation contract could be pledged or mortgaged for the purpose of obtaining financing for exploitation activities in the Area, such an effort must not result in the imposition of rules, requirements, and obligations on a contractor, a sponsoring State, and/or the ISA in a manner that conflicts with the rules, requirements, and obligations that apply to contractors, sponsoring States, and the ISA, especially those arising under the finalized exploitation regulations. Toward that end, DR 23(3) could be strengthened to say that, as a condition to consenting to the placement of an encumbrance on an interest under an exploitation contract, the ISA shall *require* (rather than "request") evidence and/or assurances that the beneficiary of such an encumbrance shall comply with all relevant rules, requirements, and obligations under the exploitation regulations as well as refrain from imposing demands on contractors, sponsoring States, and/or the ISA that contradict those rules, requirements, and obligations. Given the speculative nature of exploitation in the Area as well as the potentially lucrative outcomes of such exploitation, the potential for predatory schemes carried out by beneficiaries of such encumbrances is significant.

Interested persons and public comment: for the purposes of any public comment process under the [revised] draft regulations, the definition of "interested persons" has been questioned as being too narrow. How should the Authority interpret the term "interested persons"? What is the role and responsibility of sponsoring States in relation to public involvement? To what degree and extent should the Authority be engaged in a public consultation process?

25. It is the FSM's view that a more appropriate term for "interested persons" is "stakeholders" (as reflected in the current DRs), as the latter is the common nomenclature in existing relevant multilateral instruments and processes.

26. In terms of substance, it is the FSM's view that full public involvement in the application and approval process with respect to activities in the Area is central to operationalizing the principle of common heritage of mankind and ensuring the protection and preservation of the marine environment, which (in the FSM's view) are the core guiding objectives of such an application and approval process. Such public involvement requires, among other things, that the widest possible range of stakeholders be consulted

in the process, especially before critical decision-making points in the ISA. For the FSM, stakeholders must include, at a minimum (and in addition to the relevant contractors, sponsoring States, and other States Parties to UNCLOS), coastal States that are adjacent to contract areas identified in plans of work; as well as indigenous peoples and local communities with relevant traditional knowledge about marine species and/or marine ecosystems that could be impacted by activities in the Area.

27. With respect to adjacent coastal States, the FSM acknowledges that DR 4 discusses the rights of "coastal States," particularly with respect to the potential of an activity in the Area causing serious harm to the marine environment of a coastal State. The FSM appreciates the opportunity afforded by DR 4 to such a coastal State to raise concerns about such potential harm, as well as the obligation imposed by DR 4 on a contractor to take "all measures necessary" to not cause such harm. However, it is the FSM's view that DR 4 can be strengthened to clarify that a coastal State adjacent to a contract area is particularly vulnerable to the environmental harms from exploitation activities in the contract area and must always be allowed to raise such a concern with the ISA. This might entail the enshrinement of a rebuttable presumption that exploitation activities in a contract area adjacent to the maritime zone(s) of a coastal State could cause serious harm to the marine environment of that adjacent coastal State, in which case, the views of that adjacent coastal State must always be sought in the application and approval process. All other coastal States will still be entitled to submit their views about potential serious harms to their marine environments, but as some of those coastal States might not necessarily be adjacent to contract areas, their views need not be automatically sought by the ISA during the application and approval process, as opposed to the views of adjacent coastal States. Language regarding mandatory consultations with adjacent coastal States should be integrated throughout the DRs wherever there are mentions about consultations with relevant stakeholders, and the views of such adjacent coastal States must be given serious consideration.

28. With respect to indigenous peoples and local communities ("IPLCs") with relevant traditional knowledge, the FSM notes that the views of such IPLCs are routinely sought in other relevant multilateral instruments and processes, including with respect to the use of traditional knowledge of such IPLCs to identify Ecologically or Biologically Significant Areas ("EBSAs") in the Ocean under the Convention on Biological Diversity (with a number of such EBSAs stretching into areas beyond national jurisdiction); as well as with respect to the Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, as promulgated by the Conference of Parties to the Convention on Biological Diversity (with a recognition that such "sacred sites" and "waters" could include areas beyond national jurisdiction, as long as the IPLCs have traditionally used them for sacred, cultural, and/or

other purposes). It is the FSM's view that IPLCs have relevant traditional knowledge with respect to the behaviors and characteristics of marine species (e.g., the migratory paths, breeding patterns, and grouping behaviors of turtles, sharks, whales, salmon, eels, and tuna) that migrate between the coastal waters of the IPLCs and areas beyond national jurisdiction (including the Area and the water columns above the Area); as well as with respect to marine ecosystems, features, and creatures in areas beyond national jurisdiction (e.g., spawning sites, fish aggregation sites, migratory paths, Ocean current patterns in the water columns above the Area) derived from open-Ocean, traditional, instrument-free navigation that can inform EMMPs and EISes (among other measures and efforts) in connection with activities in the Area. And, it is the FSM's view that the long-standing cultural and spiritual connections between IPLCs and the Ocean—inclusive of marine species that range between the coastal waters of the IPLCs and areas beyond national jurisdiction, as well as of marine ecosystems and features of importance to such IPLCs—must be respected by contractors, sponsoring States, and the ISA when discharging the general international law obligation to protect and preserve the marine environment. At a minimum, such IPLCs must be consulted at relevant points in the application and approval process for exploitation activities in the Area, and their views must be given serious consideration.

29. In further consideration of the involvement of IPLCs, it is the FSM's view that, in accordance with DR 33 and article 147 of UNCLOS, contractors that carry out activities in the Area must have reasonable regard for other activities in the marine environment, including traditional, instrument-free navigation by IPLCs on the open Ocean, which is highly dependent on the consistency of wave patterns as well as food sources of the Ocean that could be impacted by activities in the Area. And, it is the FSM's view that, in accordance with DR 37, when a contractor encounters an object or site of an archaeological or historical nature in its contract area and notifies the Secretary-General of the ISA of such an encounter, the Secretary-General must in turn determine, to the extent possible, whether to notify constituencies of IPLCs that might have interests in the object or site. After centuries of traditional, instrument-free navigation by IPLCs on the open Ocean—a practice that continues to the present day—it is highly likely that relics of such navigational voyages are located in the Area, including large stone discs transported by IPLCs from the FSM across the open Ocean.