



Council

Distr.: General
22 March 2019

Original: English

Twenty-fifth session
Council session, part II
Kingston, 15–19 July 2019
Agenda item 11
**Draft regulations for exploitation of mineral resources in
the Area**

Draft regulations on exploitation of mineral resources in the Area

Prepared by the Legal and Technical Commission

Contents

	<i>Page</i>
Preamble	8
Part I	
Introduction	8
1. Use of terms and scope	8
2. Fundamental policies and principles	8
3. Duty to cooperate and exchange of information	10
4. Protection measures in respect of coastal States	11
Part II	
Applications for approval of Plans of Work in the form of contracts	13
Section 1	
Applications	13
5. Qualified applicants	13
6. Certificate of sponsorship	13
7. Form of applications and information to accompany a Plan of Work	14
8. Area covered by an application	15



Section 2	
Processing and review of applications	15
9. Receipt, acknowledgement and safe custody of applications	15
10. Preliminary review of application by the Secretary-General	16
11. Publication and review of the Environmental Plans	16
Section 3	
Consideration of applications by the Commission	17
12. General	17
13. Assessment of applicants	17
14. Amendments to the proposed Plan of Work	19
15. Commission's recommendation for the approval of a Plan of Work	19
Section 4	
Consideration of an application by the Council	20
16. Consideration and approval of Plans of Work	20
Part III	
Rights and obligations of Contractors	21
Section 1	
Exploitation contracts	21
17. The contract	21
18. Rights and exclusivity under an exploitation contract	21
19. Joint arrangements	22
20. Term of exploitation contracts	22
21. Termination of sponsorship	23
22. Use of exploitation contract as security	23
23. Transfer of rights and obligations under an exploitation contract	24
24. Change of control	25
Section 2	
Matters relating to production	26
25. Documents to be submitted prior to production	26
26. Environmental Performance Guarantee	27
27. Commencement of production	28
28. Maintaining Commercial Production	28
29. Reduction or suspension in production due to market conditions	28
Section 3	
Safety of life and property at sea	29
30. Safety, labour and health standards	29
Section 4	
Other users of the Marine Environment	30
31. Reasonable regard for other activities in the Marine Environment	30

Section 5	
Incidents and notifiable events	30
32. Risk of Incidents	30
33. Preventing and responding to Incidents	30
34. Notifiable events	31
35. Human remains and objects and sites of an archaeological or historical nature	31
Section 6	
Insurance obligations	32
36. Insurance	32
Section 7	
Training commitment	32
37. Training Plan	32
Section 8	
Annual reports and record maintenance	33
38. Annual report	33
39. Books, records and samples	34
Section 9	
Miscellaneous	34
40. Prevention of corruption	34
41. Other Resource categories	35
42. Restrictions on advertisements, prospectuses and other notices	35
43. Compliance with other laws and regulations	35
Part IV	
Protection and preservation of the Marine Environment	36
Section 1	
Obligations relating to the Marine Environment	36
44. General obligations	36
45. Development of environmental Standards	36
46. Environmental management system	36
Section 2	
Preparation of the Environmental Impact Statement and the Environmental Management and Monitoring Plan	37
47. Environmental Impact Statement	37
48. Environmental Management and Monitoring Plan	37
Section 3	
Pollution control and management of waste	38
49. Pollution control	38
50. Restriction on Mining Discharges	38

Section 4	
Compliance with Environmental Management and Monitoring Plans and performance assessments	38
51. Compliance with the Environmental Management and Monitoring Plan	38
52. Performance assessments of the Environmental Management and Monitoring Plan	39
53. Emergency Response and Contingency Plan	40
Section 5	
Environmental Compensation Fund	40
54. Establishment of an Environmental Compensation Fund	40
55. Purpose of the Fund	40
56. Funding	41
Part V	
Review and modification of a Plan of Work	42
57. Modification of a Plan of Work by a Contractor	42
58. Review of activities under a Plan of Work	42
Part VI	
Closure plans	44
59. Closure Plan	44
60. Final Closure Plan: cessation of production	44
61. Post-closure monitoring	45
Part VII	
Financial terms of an exploitation contract	46
Section 1	
General	46
62. Equality of treatment	46
63. Incentives	46
Section 2	
Liability for and determination of royalty	46
64. Contractor shall pay royalty	46
65. Secretary-General may issue Guidelines	46
Section 3	
Royalty returns and payment of royalty	47
66. Form of royalty returns	47
67. Royalty return period	47
68. Lodging of royalty returns	47
69. Error or mistake in royalty return	47
70. Payment of royalty shown by royalty return	47
71. Information to be submitted	47
72. Authority may request additional information	48

73. Overpayment of royalty	48
Section 4	
Records, inspection and audit	49
74. Proper books and records to be kept	49
75. Audit and inspection by the Authority	49
76. Assessment by the Authority	50
Section 5	
Anti-avoidance measures	50
77. General anti-avoidance rule	50
78. Arm's-length adjustments	51
Section 6	
Interest and penalties	51
79. Interest on unpaid royalty	51
80. Monetary penalties	51
Section 7	
Review of payment mechanism	52
81. Review of system of payments	52
82. Review of rates of payments	52
Section 8	
Payments to the Authority	52
83. Recording in Seabed Mining Register	52
Part VIII	
Annual, administrative and other applicable fees	53
Section 1	
Annual fees	53
84. Annual reporting fee	53
85. Annual fixed fee	53
Section 2	
Fees other than annual fees	53
86. Application fee for approval of a Plan of Work	53
87. Other applicable fees	54
Section 3	
Miscellaneous	54
88. Review and payment	54
Part IX	
Information-gathering and handling	55
89. Confidentiality of information	55
90. Procedures to ensure confidentiality	56
91. Information to be submitted upon expiration of an exploitation contract	57

92. Seabed Mining Register	57
Part X	
General procedures, Standards and Guidelines	59
93. Notice and general procedures	59
94. Adoption of Standards	59
95. Issue of Guidelines	60
Part XI	
Inspection, compliance and enforcement	61
Section 1	
Inspections	61
96. Inspections: general	61
97. Inspectors: general	62
98. Inspectors' powers	62
99. Inspectors' power to issue instructions	63
100. Inspectors to report	64
101. Complaints	64
Section 2	
Remote monitoring	64
102. Electronic monitoring system	64
Section 3	
Enforcement and penalties	65
103. Compliance notice and termination of exploitation contract	65
104. Power to take remedial action	65
105. Sponsoring States	66
Part XII	
Settlement of disputes	67
106. Settlement of disputes	67
Part XIII	
Review of these regulations	68
107. Review of these regulations	68
Annexes	
I. Application for approval of a Plan of Work to obtain an exploitation contract	69
II. Mining Workplan	72
III. Financing Plan	73
IV. Environmental Impact Statement	74
V. Emergency Response and Contingency Plan	92
VI. Health and Safety Plan and Maritime Security Plan	94
VII. Environmental Management and Monitoring Plan	95

VIII. Closure Plan.....	97
IX. Exploitation contract and schedules.....	98
X. Standard clauses for exploitation contract.....	100
Appendices	
I. Notifiable events.....	108
II. Schedule of annual, administrative and other applicable fees.....	109
III. Monetary penalties.....	110
IV. Determination of a royalty liability.....	111
Schedule	
Use of terms and scope.....	114

Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”),

Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind,

Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”),

Emphasizing the importance of ensuring effective protection for the marine environment from harmful effects which may arise from activities in the Area consistent with article 145 of the Convention,

Considering that the objective of these regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement.

Part I Introduction

Regulation 1

Use of terms and scope

1. Terms used in **the Convention [these regulations]** shall have the same meaning as those in **[the Rules of the Authority] these regulations.**

2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.

3. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule.

4. These regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in article 87 of the Convention.

5. These regulations are supplemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment.

6. The annexes, appendices and schedule to these regulations form an integral part of the regulations and any reference to the regulations includes the annexes, appendixes and schedule thereto.

7. These regulations are subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

Regulation 2

Fundamental policies and principles

Commented [AUS1]: Australia notes that this Preambular text is based on the Preambles of the three Exploration Regulations. Nevertheless, we reiterate our view, as stated in the Australian Government Submission of November 2016, that the objective of the regulations should explicitly reference protection of the marine environment, consistent with Article 145 of UNCLOS.

Commented [AUS2]: Note that the equivalent provision in the three Exploration Regulations is drafted as follows, “Terms used in the Convention shall have the same meaning in these Regulations” (emphasis added).

It is not clear why the terms ‘[Rules of the Authority]’ and ‘Convention’ have been inverted in these DRs. In our view, the way this paragraph is currently drafted appears contradictory to paragraph 3 which then states that ‘terms and phrases used in these regulations are defined in the schedule’. In our view, the approach taken in the Exploration Regulations makes more sense and would avoid this apparent contradiction.

Commented [AUS3]: Australia continues to recommend that the Article 87 high seas freedoms be specifically enumerated in this draft regulation, including the freedom to lay submarine cables and pipelines

In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these regulations are, inter alia, to:

(a) Recognize that the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:

(i) The development of the Resources of the Area;

(ii) Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;

(iii) The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention;

(iv) Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement;

(v) Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;

(vi) The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;

(vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;

(viii) The protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected Mineral or in the volume of exports of that Mineral, to the extent that such reduction is caused by activities in the Area;

(ix) The development of the common heritage for the benefit of mankind as a whole; and

(x) That conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

(c) Ensure that the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice;

(d) Provide for the protection of human life and safety;

(e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles:

- (i) A fundamental consideration for the development of environmental objectives shall be the effective protection of the Marine Environment, including biological diversity and ecological integrity;
- (ii) The application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;
- (iii) The application of an ecosystem approach;
- (iv) The application of “the polluter pays” principle through market-based instruments, mechanisms and other relevant measures;
- (v) Access to data and information relating to the protection and preservation of the Marine Environment;
- (vi) Accountability and transparency in decision-making; **and**
- (vii) Encouragement of effective public participation; **and**
- (viii) Identification of areas of particular environmental interest.**
- (f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline;
- (g) Incorporate the Best Available Scientific Evidence into decision-making processes;
- (h) Ensure the effective management and regulation of the Area and its Resources in a way that promotes the development of the common heritage for the benefit of mankind as a whole; and
- (i) Ensure that these regulations, and any decision-making thereunder, are implemented in conformity with these fundamental policies and principles.

Regulation 3

Duty to cooperate and exchange of information

In matters relating to these regulations:

- (a) Members of the Authority and Contractors shall **use their best endeavours to** cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;
- (b) The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;
- (c) The Authority shall develop, implement and promote effective and transparent communication, public information and public participation procedures;
- (d) The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to:
- (i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and
- (ii) Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards;
- (e) Contractors, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation on the Marine

Commented [AUS4]: This is the only time 'ecosystem approach' is mentioned in the draft regulations. UNGA expressly encouraged the ISA to take an ecosystem approach into their mandates in UNGA Resolution 67/78 para 174. We consider the term 'ecosystem approach' ought to be defined in the draft regulations.

Commented [AUS5]: The polluter pays principle requires the party responsible for the harm to bear the cost. Clarification is required on the market-based instruments, mechanisms and other relevant measures referred to in this provision.

Commented [AUS6]: Areas of particular environmental interest should be a defined term in these regulations.

Commented [AUS7]: Australia considers the duty to cooperate should not be watered down by the addition of “use their best endeavours to” in this provision.

Environment, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority and Contractors shall **use their best endeavours**, in conjunction with the Authority, ~~to~~ cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:

- (i) Sharing, exchanging and assessing environmental data and information for the Area;
- (ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;
- (iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;
- (iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;
- (v) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; and
- (vi) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation; and

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall **use their best endeavours**, upon the request of the Secretary-General, ~~to~~ provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

Regulation 4 Protection measures in respect of coastal States

1. Nothing in these regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.

~~2.~~ Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. **Such measures shall include consulting with any coastal State in close proximity to a proposed exploitation area prior to submitting an application for approval of a plan of work. Consultations shall be maintained with any coastal State concerned with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.**

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction or

Commented [AUS8]: Australia acknowledges that, as highlighted by the LTC Note, Article 142 of the Convention only requires prior consultation with coastal states where resource deposits straddle national jurisdiction. However, our preference remains for a contractor to be required, or at least encouraged, to consult with coastal states prior to submitting a plan of work to the Commission for assessment, and on an ongoing basis for the life of the activity and proposes text to this effect.

sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the Legal and Technical Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within a reasonable time.

4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention.

5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to a breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) of the Convention and Part XI of these regulations.

Part II

Applications for approval of Plans of Work in the form of contracts

Section 1

Applications

Regulation 5

Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

(a) The Enterprise, on its own behalf or in a joint arrangement; and

(b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of these regulations.

2. Each application shall be submitted:

(a) In the case of a State, by the authority designated for that purpose by it;

(b) In the case of the Enterprise, by its competent authority; and

(c) In the case of any other qualified applicant, by a designated representative, or by the authority designated for that purpose by the sponsoring State or States.

3. Each application by a State enterprise or **one** **another** of the entities referred to in paragraph 1 (b) above shall **be in one of the languages of the Authority and also shall** contain:

(a) **The name of the applicant, and** sufficient information to determine the nationality of the applicant or the identity of the State or States by which, or by whose nationals, the applicant is effectively controlled; and

(b) The principal place of business or domicile and, if applicable, the place of registration of the applicant.

4. Each application submitted by a partnership or consortium of entities shall contain the information required by these regulations in respect of each member of the partnership or consortium.

5. In the case of a consortium or any group, the consortium or group shall specify in its application a lead member of the consortium or group.

Regulation 6

Certificate of sponsorship

1. Each application by a State enterprise or **one** **another** of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

Commented [AUS9]: This section no longer contains the broad point that an application for a plan will not be accepted by persons who have conducted unauthorised activities previously. Suggest reinserting a similar provision.

Commented [AUS10]: Australia suggests the application should contain the name of the applicant and be in one of the languages of the ISA. This would more closely align these Exploitation Regulations with the Exploration Regulations (ie. Regulation 3(4) of the Polymetallic Nodule Regulations).

Commented [AUS11]: This paragraph reads: 'Each application by a State enterprise or one of the entities referred to in regulation 5 (1) (b)...'. As a State enterprise is referred to in Reg 5(1)(b) we suggest that this language be reframed to read: 'Each application by a State enterprise or **another** of the entities referred to in regulation 5 (1) (b)...'

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

- (a) The name, **address and contact details** of the applicant;
 - (b) The name of the sponsoring State;
 - (c) A statement that the applicant is:
 - (i) A national of the sponsoring State; or
 - (ii) Subject to the effective control of the sponsoring State or its nationals;
 - (d) A statement by the sponsoring State that it sponsors the applicant;
 - (e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and
 - (f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.
4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this regulation.

Commented [AUS12]: Australia considers there would be merit in including contact details on the certificates of sponsorship.

Regulation 7
Form of applications and information to accompany a Plan of Work

- 1. Each application for approval of a Plan of Work shall be in the **form prescribed** in annex I to these regulations, shall be addressed to the Secretary-General and shall conform to the requirements of these regulations.
- 2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:
 - (a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, **the Agreement**, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;
 - (b) Accept control by the Authority of activities in the Area, as authorized by the Convention;
 - (c) Provide the Authority with a written assurance that its obligations under its contract will be fulfilled in good faith; and
 - (d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.
- 3. An application shall be prepared in accordance with these regulations and accompanied by the following:
 - (a) The data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts, as annexed to the relevant Exploration Regulations;
 - (b) A Mining Workplan prepared in accordance with annex II to these regulations;
 - (c) A Financing Plan prepared in accordance with annex III to these regulations;

Commented [AUS13]: We have suggested amendments to the form to include a section on submarine cables and guidelines (i) identifying the location of in-service and planned submarine cables and pipelines, and (ii) outlining the agreed measures to mitigate the risk of damage.

(d) An Environmental Impact Statement prepared in accordance with regulation 47 and in the format prescribed in annex IV to these regulations;

(e) An Emergency Response and Contingency Plan prepared in accordance with annex V to these regulations;

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with annex VI to these regulations;

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines;

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations;

(i) A Closure Plan prepared in accordance with regulation 59 of and annex VIII to these regulations; and

(j) An application processing fee in the amount specified in appendix II.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission may require separate documents under paragraphs 3 (d), (h) and (i) above for each Mining Area, unless the applicant demonstrates **to the satisfaction of the Commission** that a single set of documents is appropriate, taking account of the relevant Guidelines.

5. **Where a single set of documents is submitted by the applicant and the Commission considers it is not appropriate, the Commission may reject the application and request separate documents under paragraphs 3 (d), (h) and (i) above for each Mining Area.**

Regulation 8

Area covered by an application

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of coordinates in accordance with the most recent applicable international standard used by the Authority.

2. The areas under application need not be contiguous and shall be defined in the application in the form of blocks comprising one or more cells of a grid, as provided by the Authority.

Section 2

Processing and review of applications

Regulation 9

Receipt, acknowledgement and safe custody of applications

1. The Secretary-General shall:

(a) Acknowledge in writing, within ~~144~~ 30 Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

(b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and

(c) Within 30 Days of receipt of every application for approval of a Plan of Work submitted under this Part:

Commented [AUS14]: The Annex for the Health, Safety and Maritime Security Plan is still blank in this version of the draft regulations. Australia would need to see this document before commenting. We suggest they be two separate Plans, one for Health and Safety, and the other for Maritime Security.

Commented [AUS15]: This section requires separate documentation under paras 3(d), (h) and (i) for multiple mining areas unless the applicant demonstrates that a single set of documents is appropriate according to the Guidelines. Australia suggests this should be demonstrated to the satisfaction of the Commission.

Commented [AUS16]: The Commission should have recourse to reject the consolidated documents if it not appropriate.

Commented [AUS17]: Australia notes that the timeframe for acknowledging receipt of applications under the Exploration Regulations is 30 days (ie. Polymetallic Sulphides Regs, regulation 22) and recommend the same timeframe in the draft exploitation regulations.

(i) Notify the members of the Authority of the receipt of such application and circulate to them information of a general nature which is not confidential regarding the application; and

(ii) Notify the members of the Commission of receipt of such application.

2. The Commission shall, subject to regulation 11 (4), consider such application at its next meeting, provided that the notifications and information under paragraph 1 (c) above have been circulated at least ~~30~~ 90 Days prior to the commencement of that meeting of the Commission. **The Commission may defer consideration of such application to its next meeting if it considers the application to be overly complex.**

Regulation 10

Preliminary review of application by the Secretary-General

1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application is complete for further processing. Should there be more than one application for the same area and same Resource category, the Secretary-General shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention.

2. Where an application is not complete, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, together with a justification in writing as to why the information is necessary and a date by which the application must be completed. Further processing of an application will not begin until the Secretary-General determines that the application is complete, which includes payment of the administrative fee specified in appendix II.

Regulation 11

Publication and review of the Environmental Plans

1. The Secretary-General shall, within seven days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Plans on the Authority's website for a period of 60 Days, and **notify and** invite members of the Authority and Stakeholders to submit comments in writing, taking account of the relevant Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans within the comment period.

2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period.

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans in the light of the comments made under paragraph 2 above, together with any responses by the applicant, and any additional information provided by the Secretary-General.

4. Notwithstanding the provisions of regulation 12 (2), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans have been published and reviewed in accordance with this regulation.

Commented [AUS18]: Australia considers that 30 days before the next Commission meeting is not sufficient for consideration of all of the information set out in DRs 5-7. Suggest this should be a minimum of 90 days. There should also be scope to delay to the next meeting if the application is overly complex.

Commented [AUS19]: This draft regulation provides for the Secretary-General to review an application for approval of a Plan of Work to determine if it is complete. Where the Secretary-General is from the sponsoring state, consideration should be given to some form of provision to avoid a real or perceived conflict of interest.

Commented [AUS20]: Australia is pleased the environmental plans will be published on the website for 60 days to enable stakeholders to submit any comments. However, Australia needs to review the guideline that will be developed that outlines how the comments are to be received. There should also be notification to members when plans are published so that members do not have to continually monitor the website.

5. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as a summary of the comments or responses made under regulation 11 (2). The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

Section 3 Consideration of applications by the Commission

Regulation 12 General

1. The Commission shall examine applications in the order in which they are received by the Secretary-General.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1) (a) and subject to regulation 14 (2).

2bis. If an application is overly complex or incomplete information has been submitted by the applicant, the Commission may delay its reports and recommendations under regulation 12(2) by a further 90 days.

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole.

4. In considering the proposed Plan of Work, the Commission shall take into account:

(a) Any reports from the Secretary-General;

(b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

(c) The previous operating record of responsibility of the applicant; and

(d) Any **further additional information supplied by** from the applicant **sought by the Commission** prior to, and during the period of, the Commission's evaluation **pursuant to regulation 14.**

Regulation 13 Assessment of applicants

1. The Commission shall determine if the applicant:

(a) Is a qualified applicant under regulation 5;

(b) Has prepared the application in conformity with these regulations, the Standards and the applicable Guidelines;

Commented [AUS21]: We suggest there should be provision for the Commission to delay its report under DR 12(2) where the application is overly complex or incomplete information has been submitted i.e. at an initial review the application might appear to be complete but through the course of assessing the application, it becomes evident that the applicant needs to submit additional information.

Commented [AUS22]: This provision should make it clear the applicant can't continually submit new information for assessment (the risk being there would be a never-ending assessment). This could be achieved by requiring new information to be requested by the Commission.

- (c) Has given the undertakings and assurances specified in regulation 7 (2);
- (d) Has satisfactorily discharged its obligations to the Authority;
- (e) Has, or can demonstrate that it will have, the financial and technical capability **and capacity** to carry out the Plan of Work and to meet all obligations under an exploitation contract; ~~and~~

Commented [AUS23]: This provision refers to the financial and technical capability of an applicant. We would recommend including reference to 'capacity' here as well, as an applicant might have the capability, but not the capacity due to other commitments.

- (f) Has demonstrated the economic viability of the mining project;
- (g) **Has demonstrated, in relation to the accommodation of other activities in the Marine Environment, due diligence to:**

Commented [AUS24]: This provision requires the Commission to determine whether the applicant has demonstrated the economic viability of the project. Details need to be provided on the criteria which will be used to determine commerciality before it is possible to comment on this provision.

- (i) **identify in-service and planned submarine cables and pipelines in, or adjacent to, the area under application using the publically-available data and resources as listed in the Guidelines;**

Commented [AUS25]: We suggest the specific procedures for identifying in-service and planned submarine cables and pipelines be set out in Guidelines (including the practical coordination tools identified during the October 2018 joint workshop of the ICPC and the Authority).

- (ii) **where such submarine cables and pipelines are identified, consult with the operators of the cables and pipelines to agree measures the contractor will take to reduce the risk of damage to the in-service and planned submarine cables and pipelines (ie. such as an easement, or a mining exclusion zone within a reasonable radius);**

- (iii) **identify sea lanes in, or adjacent to, the area under application that are essential to international navigation; and**

- (iv) **identify areas of intense fishing activity in, or adjacent to, the area under application.**

- (h) **Has demonstrated a satisfactory record of past performance both within the Area and in other States' jurisdictions.**

Commented [AUS26]: Australia suggests a new provision requiring the Commission to determine if an applicant has a satisfactory record of past performance both within the Area and in other states' jurisdictions.

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether:

- (a) The Financing Plan is compatible with proposed Exploitation activities; and

(b) The applicant will be capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:

- (i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations;

- (ii) **The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan and to restore and remediate the affected Marine Environment in case of a significant incident;**

Commented [AUS27]: Draft regulation 13(2)(b)(ii) requires the Commission to determine whether the applicant can commit or raise sufficient financial resources to cover the estimated costs of the proposed exploitation activities, including implementation of environmental plans. Australia recommends this include the financial capability to restore and remediate the environment in case of a significant incident. We would welcome further information as to what guidance will be provided to the Commission to help it determine costs.

- (iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan; and

- (iv) Necessary access to insurance products that are appropriate to the financing of exposure to risk in accordance with Good Industry Practice.

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have:

- (a) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel;

(b) The technology and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate;

(c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques and Best Environmental Practices and these regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(d) The capability to respond effectively to Incidents, in accordance with the Emergency Response and Contingency Plan; and

(e) The capability **and capacity** to utilize and apply Best Available Techniques.

4. The Commission shall determine if the proposed Plan of Work:

(a) Is technically achievable and economically viable;

(b) Reflects the economic life of the project;

(c) Provides for the effective protection of human health and safety of individuals engaged in Exploitation activities;

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, **as referred to in articles 87 and 147 of the Convention**, including *inter alia* navigation, the laying of submarine cables and pipelines, **the right to maintain and repair existing submarine cables and pipelines**, fishing and marine scientific research, **as referred to in article 87 of the Convention**; and

(e) Provides, under the Environmental Plans, for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2.

Regulation 14

Amendments to the proposed Plan of Work

1. At any time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may:

(a) Request the applicant to provide additional information on any aspect of the application **[within 30 Days of the date when the application is first considered] prior to making a recommendation**; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations.

2. Where the Commission **[proposes any amendment to the Plan of Work] makes a request** under paragraph 1 (a) or (b) above, the Commission shall provide to the applicant a brief justification and rationale for such **[proposed amendment] a request**. The applicant must respond within 90 Days following receipt of such **[proposal] request** from the Commission by agreeing to the **[proposal] request**, rejecting the **[proposal] request** or making an alternative **[proposal] request** for the Commission's consideration. The Commission shall then, in the light of the applicant's response, make its recommendations to the Council.

Commented [AUS28]: This provision refers to the financial and technical capability of an applicant. We would recommend including reference to 'capacity' here as well, as an applicant might have the capability, but not the capacity due to other commitments.

Commented [AUS29]: Insofar as this provision relates to submarine cables and pipelines, it does not sufficiently give effect to the 'reasonable regard' requirement of UNCLOS Article 147(1). It does not make reference to existing cables and pipelines and the right of States to maintain and repair them, nor does it operationalise or provide content to how Exploitation activities are to be carried out with reasonable regard for other activities in the Marine Environment.

Commented [AUS30]: This provision seeks to restrict the Commission from requesting additional information from the applicant outside of the 30 day timeframe from when the application is first considered. The Commission should be able to request information at any time prior to making its recommendation to Council in order to make an informed decision.

Commented [AUS31]: As a general point, there needs to be further consideration on what a request for additional information means for assessment timeframes. While the applicant has 90 days to respond to a requested modification, there is no similar timeframe for a response for requests for additional information. Preferred approach would be for the consideration period to recommence in both circumstances, including the period for requesting additional information.

Regulation 15**Commission's recommendation for the approval of a Plan of Work**

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it shall recommend approval of the Plan of Work to the Council.

2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in:

(a) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;

(b) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(c) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

(d) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area;

(e) An area or areas of particular environmental interest.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work; or

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

(i) 75,000 square kilometres in the case of polymetallic nodules;

(ii) 2,500 square kilometres in the case of polymetallic sulphides; ~~or~~

~~(iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts-~~
or

(c) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work; or

(d) Any area included in a proposed Plan of Work is not covered by a regional environmental management plan.

4. If the Commission determines that the applicant does not meet the criteria set out in regulations 12 (4) and 13, the Commission shall so inform the applicant in writing by providing the reasons why any criterion has not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. **During this period the Commission shall not make a recommendation to the Council on the application.**

5. At its next available meeting, the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been

Commented [AUS32]: Australia considers there may be a general discretion for the Commission to recommend approval of a Plan of Work to the Council.

Commented [AUS33]: Australia proposes a new provision in draft regulation 15 which would require the Commission to not recommend a plan of work to the Council for approval if such approval would pose a reasonable risk of damage to an in-service or planned submarine cable, or cause undue interference with the freedom to lay new submarine cables and pipelines.

Commented [AUS34]: Australia proposes a new provision in draft regulation 15 that would prevent the Commission from recommending that the Council approve a plan of work if the area is not covered by a regional environmental management plan.

Commented [AUS35]: Draft regulation 15 covers the Commission's recommendation for the approval of a plan of work. Australia would be grateful for confirmation that if the Commission determines the application does not meet the criteria, the application does not proceed to the Council for consideration.

Commented [AUS36]: Draft regulation 15(5) requires the Commission to consider representations from applicants providing they are circulated at least 30 days in advance of the next meeting, then consider the application afresh. Further consideration should be given as to if the 30 day time-frame is sufficient.

circulated at least 30 Days in advance of that meeting. The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.

Section 4 Consideration of an application by the Council

Regulation 16 Consideration and approval of Plans of Work

The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

Commented [AUS37]: As per comment above relating to the Secretary-General, consideration should be given as to whether members of the Council who represent the sponsoring states should have to recuse themselves due to a potential conflict of interest.

Part III Rights and obligations of Contractors

Section 1 Exploitation contracts

Regulation 17 The contract

1. Upon the Council's approval of a Plan of Work, the Secretary-General shall prepare an exploitation contract between the Authority and the applicant in the form prescribed in annex IX to these regulations.
2. The exploitation contract shall be signed on behalf of the Authority by the Secretary-General or duly authorized representative. The designated representative or the authority designated under regulation 5 (2) shall sign the exploitation contract on behalf of the applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each exploitation contract.
3. The exploitation contract and its schedules is a public document, and shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

Regulation 18 Rights and exclusivity under an exploitation contract

1. An exploitation contract shall confer on a Contractor the exclusive right to:
 - (a) Explore for the specified Resource category in accordance with paragraph 7 below; and
 - (b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work, provided that production shall only take place in approved Mining Areas.
2. The Authority shall not permit any other entity to exploit or explore for the same Resource category in the Contract Area for the entire duration of an exploitation contract.
3. The Authority, in consultation with a Contractor, shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner which might interfere with the rights granted to the Contractor.
4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in accordance with the terms thereof, and articles 18 and 19 of Annex III of the Convention.
5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources other than those rights expressly granted by the terms of the exploitation contract or these regulations.
6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for and be granted a renewal of its exploitation contract.
7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply as set out in the relevant [Guidelines] Standards. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of

Commented [AUS38]: We note that draft regulation 18(4) has been amended to refer to the exploitation contract. We suggest reference to the exploitation contract be made in addition to Articles 18 and 19 of Annex III of the Convention.

Commented [AUS39]: Draft regulation 18(4) has been amended to refer to the exploitation contract. Suggest reference to the exploitation contract be made in addition to Articles 18 and 19 of Annex III of the Convention, relating to penalties and revision of contract.

Commented [AUS40]: Australia suggests that the circumstances in which the Exploration Regulations continue to apply should be set out in a binding document, rather than 'guidelines'.

such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k).

Regulation 19
Joint arrangements

1. Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.
2. The Council shall enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of the Convention.

Regulation 20
Term of exploitation contracts

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years, taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.
2. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than one year before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.
3. The Contractor shall supply such documentation as may be specified in the Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, the contractor shall submit a revised Plan of Work.
4. The Commission shall consider such application to renew an exploitation contract at its next meeting, provided the documentation required under paragraph 3 has been circulated at least 30 Days prior to the commencement of that meeting of the Commission.
5. In making its recommendations to the Council under paragraph 6 below, including any proposed amendments to the Plan of Work or revised Plan of Work, the Commission shall take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58.
6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract shall be renewed by the Council, provided that:
 - (a) The Resource category is recoverable annually in commercial and profitable quantities from the Contract Area;
 - (b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority, including the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;
 - (c) The exploitation contract has not been terminated earlier; and
 - (d) The Contractor has paid the applicable fee in the amount specified in appendix II.

Commented [AUS41]: Australia welcomes amendments to this provision that provide a greater level of scrutiny for renewal requests. Our preference is that the entire Plan of Work is reviewed at the point of renewal. We would also like consideration of a provision that allows the Authority to review a contractor's decision about whether something constitutes a Material Change.

(e) The Commission has reassessed the Contractor consistent with the requirements of regulation 13(1), 13(2) and 13(3) and is satisfied that the Contractor has the ability to continue exploitation; and.

(f) The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.

7. Each renewal period shall be a maximum of 10 years.

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

9. Sponsorship is deemed to continue throughout the renewal period unless the sponsoring State or States terminates its sponsorship in accordance with regulation 21.

10. An exploitation contract in respect of which an application for renewal has been made shall, despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

Regulation 21

Termination of sponsorship

1. Each Contractor shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6, and to the extent necessary that it complies with regulations 6 (1) and (2).

2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination and the date termination is to take effect taking into account the following timeframes:

- (i) Termination due to a Contractor's non-compliance under its terms of sponsorship, negligence or environmental damage: termination to take effect no later than 6 months after the date of receipt of the notification by the Secretary-General;
- (ii) Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect [of sponsorship takes effect] no later than 12 months after the date of receipt of the notification by the Secretary-General [except for termination due to a Contractor's non-compliance under its terms of sponsorship, in which case termination takes effect no later than 6 months after the date of such notification].

2bis. If the reasons for termination of sponsorship include non-compliance under its terms of sponsorship, negligence or environmental damage, the Contractor must suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.

3. In the event of termination of sponsorship due to reasons other than those listed at subparagraph 2(i) above, the Contractor shall, within the period referred to in subparagraph 2(ii) above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates

Commented [AUS42]: Draft regulation 19(6) would give contractors the exclusive right to apply for a renewal of its exploitation contract. It should not be a given that the renewal will occur. Further assessment should be required, particularly as the initial term may be as long as 30 years, and the renewal for up to 10 years. Renewal of contracts can be supported if a thorough enough assessment of the contractor's ability to continue exploitation has been undertaken, similar to that when obtaining a contract, and so long as the resource is still commercially viable.

Commented [AUS43]: Australia proposes a new subparagraph (f) to clarify that the Sponsoring State should reconfirm their sponsorship as part of the renewal process.

Commented [AUS44]: The reduction in the maximum termination period from 12 to 6 months for periods of non-compliance is a welcome amendment. However, given it is a maximum period (ie 'takes effect no later than...'), it is not clear when the termination of sponsorship will commence. Recommend the text be amended to require the State terminating its sponsorship to include the termination date in the written notice provided to the Secretary-General.

Commented [AUS45]: Termination of sponsorship. If the State terminates its sponsorship on the basis that the Contractor is negligent or not meeting terms of the contract, or has withdrawn because of the environmental damage, the Contractor shouldn't be given the opportunity to find sponsorship elsewhere. Suggest there might need to be further consideration of when it would be appropriate to find alternative sponsorship.

automatically if the Contractor fails to obtain a sponsoring State or States within the required period.

4. A sponsoring State or States is not discharged from any obligations accrued while it was a sponsoring State by reason of the termination of its sponsorship, nor shall such termination affect any legal rights and obligations created during such sponsorship.

5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.

6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend, **or continue the suspension of**, its mining operations until such time as **the Contractor has proved to the satisfaction of the Council that the reasons for the termination of sponsorship have been addressed and** a new certificate of sponsorship is submitted.

Commented [AUS46]: We note that there is no obligation for a Contractor to cease operations following termination of sponsorship (the Council may require suspension based on recommendations of the LTC). Suggest the provision be tightened to ensure that a Contractor is suspended if malfeasance occurred.

Regulation 22

Use of exploitation contract as security

1. The Contractor may, with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract for the purpose of raising financing to effect its obligations under an exploitation contract.

2. In seeking consent under this regulation, a Contractor shall disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the exploitation contract in the event of any default by the Contractor.

3. As a condition to giving consent under this regulation, the Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above shall agree either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the exploitation contract and these regulations, or to transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23.

4. In giving consent under this regulation, the Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

(a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted; and

(b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an exploitation contract, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an exploitation contract.

6. The Authority shall not be obliged to provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an exploitation contract.

Commented [AUS47]: These provisions (reg 22, 23, 24) cover:

- Use of the exploitation contract as security;
- Transfer of rights and obligations;
- Change of control

These draft regulations need to be assessed carefully to ensure they are compatible with developing state preferential access, ie where commercial contractors with licenses obtained via developing states use contracts as collateral, it does not result in effective control passing to a third state, with no benefit accruing to the developing state.

Regulation 23

Transfer of rights and obligations under an exploitation contract

1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission.
2. An application for consent to transfer the rights and obligations under an exploitation contract shall be made to the Secretary-General jointly by the Contractor and transferee.
3. The Commission shall consider the application for consent to transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.
4. The Commission shall consider whether the transferee:
 - (a) Meets the requirements of a qualified applicant as set out in regulation 5;
 - (b) Has submitted a certificate of sponsorship as set out in regulation 6;
 - (c) Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a Material Change to the Plan of Work;
 - (d) Has paid the administrative fee as set out in appendix II;
 - (e) Meets the criteria set out in regulations 12 (4) and 13, and has provided Environmental Plans that comply with regulation 13 (4) (e); and
 - (f) Has deposited an Environmental Performance Guarantee as set out in regulation 26.
5. The Commission shall not recommend approval of the transfer if it would:
 - (a) Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or
 - (b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract.
6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.
7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not unreasonably withhold consent to a transfer if the requirements of this regulation are complied with.
8. A transfer is validly effected only upon:
 - (a) Execution of the assignment and novation agreement between the Authority, the transferor and the transferee;
 - (b) Payment of the prescribed transfer fee pursuant to appendix II; and
 - (c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.
9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the transferee by their duly authorized representatives.

Regulation 24

Change of control

1. For the purposes of this regulation, a “change in control” occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall ~~where practicable,~~ notify the Secretary-General in advance of such change of control, ~~but in any event within 90 Days thereafter~~. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:

(a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect;

(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or

(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.

4. Where the Secretary-General determines that, following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall submit a report of its findings and recommendations to the Council.

Section 2

Matters relating to production

Regulation 25

Documents to be submitted prior to production

1. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines. In the light of the Feasibility Study, the Secretary-General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation 57 (2). If he or she determines that any such Material Change needs to be made, the Contractor shall prepare and submit to the Secretary-General a revised Plan of Work accordingly.

2. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57 (2) shall apply mutatis

Commented [AUS48]: Draft regulation 24 enables contractors to provide notification to the Secretary-General after a change of control. Australia considers the Secretary-General should be notified in advance of the change of control taking place, not after. There should not be circumstances whereby an activity is taking place without the Secretary-General having full confidence that the environmental performance guarantee is being met. The regulations should also cover what happens if the change of control is not deemed acceptable by the Secretary-General, eg whether the contract ceases immediately

mutandis to such Environmental Plans if the modification to the Environmental Plans constitutes a Material Change, and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.

3. Provided that, where applicable, the procedure under regulation 11 has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine the Feasibility Study and any revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 14, continues to meet the requirements of regulation 13, it shall recommend to the Council the approval of the revised Plan of Work.

5. The Council shall consider the report and recommendation of the Commission relating to the approval of the revised Plan of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

6. The Contractor may not commence production in any part of the Area covered by the Plan of Work until either:

(a) The Secretary-General has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2); or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph 5 above; and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26.

Regulation 26 **Environmental Performance Guarantee**

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the Guidelines, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

(aa) The repair of an in-service submarine cable or pipeline in, or adjacent to, the application area that was damaged as a result of the Contractors activities;

(ab) Responding to, and remediating, a significant environmental incident;

(b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

(c) The post-closure monitoring and management of residual Environmental Effects.

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant Guidelines.

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated, where:

(a) The Closure Plan is updated in accordance with these regulations; or

Commented [AUS49]: Documents to be submitted prior to production. The provision sets down another 30 day timeframe ahead of the next Commission meeting for consideration of revised documents. If the Plan of Work has been revised significantly, this may not be sufficient.

Commented [AUS50]: In principle Australia supports the Environmental Performance Guarantee (EPG) but, as highlighted in the Note of the Legal and Technical Commission of 10 July 2018, we endorse the need for the ISA to explore further the objective and purpose of such a guarantee (page 8), together with the rationale and implications of this regulation.

Commented [AUS51]: This provision states the form and amount of the EPG shall reflect the likely costs of: premature closure of exploitation activities; decommissioning and final closure of exploitation activities; and the post closure monitoring and management of residual environmental effects. We recommend that it also include the likely cost of responding to and remediation in the event of a significant environmental incident. Text proposed in subparagraph 2(ab).

Commented [AUS52]: This provision, which deals with reviewing and updating the amount of the EPG, does not currently reflect the need to take into account inflation and other market/economic conditions that can impact on the amount of the guarantee that must be held. Text proposed in subparagraph 4(d).

- (b) As the result of:
- (i) A performance assessment under regulation 52;
 - (ii) A modification of a Plan of Work under regulation 57; or
 - (iii) A review of activities under a Plan of Work under regulation 58; and
- (c) At the time of review by the Commission of a final Closure Plan under regulation 60.

(d) Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

(a) The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee; or

(b) The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform ~~[and non-discriminatory]~~ manner **taking into account relevant factors such as: a Contractor's level of experience, record of past performance (ie environment or safety record), and the location of the activity, including proximity to in service cables or pipelines.**

8. The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee.

Regulation 27

Commencement of production

1. Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, consistent with Good Industry Practice, shall make commercially reasonable efforts to bring the Mining Area into Commercial Production in accordance with the Plan of Work.

2. **Once Commercial Production has begun, the Contractor shall notify the Secretary-General. Upon notification, the Secretary-General shall notify members of the Authority, in particular coastal states in close proximity to the Mining Area, that Commercial Production has begun and the location of the Mining Area.**

Regulation 28

Maintaining Commercial Production

1. The Contractor shall maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.

Commented [AUS53]: This provision provides that the EPG will be applied in a uniform and non-discriminatory manner. Australia considers it might be appropriate to apply in a non-uniform manner. While discrimination on the basis of sponsoring country should not occur, there are other circumstances where it would be appropriate for additional guarantee/security to be given, eg, a new company with less experience, a company with a poor international environmental or safety record, the location of the activity and proximity to sensitive receptors or cables. These factors should be considered at a minimum when determining the EPG.

Commented [AUS54]: Australia suggests this provision include a requirement for the Contractor to notify the Secretary-General, who in turn must notify member states, in particular any neighbouring states, that production has commenced and where. Text proposal in new paragraph 27(2).

Australia notes the current definition of 'Commercial Production' has been taken from the Convention, and acknowledges the footnote to the definition in these draft regulations which states that a clearer definition of Commercial Production will be required.

2. The Contractor shall notify the Secretary-General if it:
 - (a) Fails to comply with the Plan of Work; or
 - (b) Determines that it will not be able to adhere to the Plan of Work in future.
3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than **72** **24** hours after production is reduced or suspended.

3bis. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

Regulation 29 Reduction or suspension in production due to market conditions

1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions but shall notify the Secretary-General thereof as soon as practicable thereafter. Such reduction or suspension may be for a period of up to 12 months.
2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. The Commission shall, upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, consider the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension.
3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60. Where the Contractor suspends all production for more than five years, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan.
4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

Section 3 Safety of life and property at sea

Regulation 30 Safety, labour and health standards

Commented [AUS55]: Australia welcomes the new subparagraph 3 in this iteration of the draft regulations. We suggest the timeframe for notifying the Secretary-General be revised down, as reduction and suspension are generally known events, and cases where it is to protect human life or the marine environment are major events and the Secretary-General should be notified within 24 hours or less.

The Secretary General should also be notified within a set timeframe of when operations re-commence. Text proposal in 28 (3bis) based on Regulation 29(4).

Commented [AUS56]: Australia notes the comment by the LTC (ISBA/25/C/18) that, in reviewing this draft regulation and comments from stakeholders, the Commission noted the possible inadequacy of its content, especially in connection with safety matters, such as the need for a safety management system, monitoring and continuous improvement. The Commission indicated that further discussion with the IMO is required, in particular to gain a better understanding of the supplementary rules, regulations and procedures envisaged under article 146 of the Convention and clarity on the "applicable international rules and standards" to be complied with under draft regulation 30(2). We note that the Commission requested that the secretariat continue to explore these issues and report to the Commission in July 2019.

Australia has previously submitted that the level of safety regulation is insufficient and not commensurate with the risks of the high hazard offshore industry. There does not appear to be any focus on process safety and design safety. Things that need further consideration include:

- Identification of hazards and assessment risks
- Measures to eliminate and control risks
- Monitoring, audit, review and continuous improvement
- Safety management system

There are no regulations that cover off on safety for dive personnel.

1. The Contractor shall ensure at all times that:
 - (a) All vessels and Installations operating and engaged in Exploitation activities are in good repair, in a safe and sound condition and adequately manned, and comply with paragraphs 2 and 3 below; and
 - (b) All vessels and Installations employed in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.
2. The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea and the treatment of crew members, as well as any rules, regulations and procedures and Standards adopted from time to time by the Council relating to these matters.
3. In addition, Contractors shall:
 - (a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their sponsoring State or States in the case of Installations; and
 - (b) Comply with the national laws of its sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker rights for non-crew members and human health and safety that pertains to the mining process rather than to ship operation.
4. The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.
5. The Contractor shall ensure that:
 - (a) All of its personnel, before assuming their duties, have the necessary experience, training and qualifications and are able to conduct their duties safely, competently and in compliance with the Rules of the Authority and the terms of the exploitation contract;
 - (b) An occupational health, safety and environmental awareness plan is put in place to inform all personnel engaged in Exploitation activities as to the occupational and environmental risks which may result from their work and the manner in which such risks are to be dealt with; and
 - (c) Records of the experience, training and qualifications of all of its personnel are kept and made available to the Secretary-General upon request.
6. A Contractor shall implement and maintain a safety management system, taking account of the relevant Guidelines.

Section 4 Other users of the Marine Environment

Regulation 31 Reasonable regard for other activities in the Marine Environment

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international

Commented [AUS57]: Australia notes the ongoing work between the Authority and the International Maritime Organisation regarding jurisdictional competence and areas of cooperation, and the development of a matrix of duties and responsibilities of regulatory actors, including sponsoring states, flag states and port states. We note that this provision is one which will benefit from the clarification of these roles and with which laws the contractors are obliged to comply.

Commented [AUS58]: Australia notes that subparagraph 1 essentially restates Article 147 of UNCLOS with some additions. The first sentence refers to the obligation on Contractors to comply with 'any applicable international rules and standards established by competent international organizations'. However, it does not make reference to national laws and regulations which is critical given that there is no competent international organization with responsibility for the protection and regulation of submarine cables. However, Article 113 of UNCLOS makes clear that it is up to 'Every State' to adopt laws and regulations necessary to punish the breaking of or damage to submarine cables. Australia suggests that a reference to 'relevant national laws and regulations of contracting states and flag states' be included in the first sentence for this reason.

organizations, and relevant national laws and regulations of sponsoring States and flag States. [In particular, e]

Ibis. Each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area. In particular, the Contractor shall:

(a) comply with the measures it agreed with the operators of the submarine cables and pipelines to reduce the risk of damage to any in-service cables and pipelines (such as an easement, or a mining exclusion zone within a reasonable radius); and

(b) ensure that any actions it takes will not interfere with the route of a planned submarine cable or pipeline.

2. The Authority, in conjunction with member States, shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area.

Section 5 Incidents and notifiable events

Regulation 32 Risk of Incidents

A Contractor shall reduce the risk of Incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction, taking into account the relevant Guidelines. The reasonable practicability of risk reduction measures shall be kept under review in the light of new knowledge and technology developments and Good Industry Practice, Best Available Techniques and Best Environmental Practices. In assessing whether the time, cost and effort would be grossly disproportionate to the benefits of further reducing the risk, consideration shall be given to best practice risk levels compatible with the operations being conducted.

Regulation 33 Preventing and responding to Incidents

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, or prevent the effective management of such Incident.

2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the incident occurring;

(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be;

(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and

(e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation 34.

3. The Secretary-General shall report any Contractor that fails to comply with this regulation to its sponsoring State or States and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

4. The Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting.

Regulation 34
Notifiable events

1. A Contractor shall immediately notify its sponsoring State or States and the Secretary-General of the happening of any of the events listed in appendix I to these regulations.

2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such event, provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken.

3. The Secretary-General shall consult with the sponsoring State or States and other regulatory authorities as necessary.

4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate.

5. Where a complaint is made to a Contractor concerning a matter covered by these regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within seven Days of the complaint being received.

Regulation 35
Human remains and objects and sites of an archaeological or historical nature

The Contractor shall **immediately** notify the Secretary-General in writing **within 24 hours** of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information, **within 7 Days of receiving it**, to the sponsoring State, to the State from which the remains, **object or site** originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. Following the finding of any such human remains, object or site in the Contract Area, and in order to avoid disturbing such human remains, object or site, no further Exploration or Exploitation shall take place, within a reasonable radius, **to be determined by the Authority**, until such time as the Council decides otherwise, after taking into account the views of the State from which the remains originated, the Director General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization.

Commented [AUS59]: At present, the requirement is for the contractor to notify the Secretary General in writing immediately. Australia considers this provision should have more parameters i.e. the find should be reported within a specified time period, to be followed by a written report within a specified time period. It also states that no further exploration or exploitation should happen within a "reasonable radius" of the site – this needs to be defined by the ISA at the time and may differ depending on the scale of the find. We support the council having scope to suspend operations.

Section 6 Insurance obligations

Regulation 36 Insurance

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant Guidelines.
2. Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.
3. The obligation under an exploitation contract to maintain insurance as specified in the Guidelines is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these regulations, the Secretary-General shall issue a compliance order under regulation 103. The Secretary-General shall notify the Council at its next available meeting of such failure, and the corrective measures taken by the Contractor.
4. A Contractor shall not make any **mMaterial eChange** to or terminate any insurance policy without the prior consent of the Secretary-General.
5. A Contractor shall notify the Secretary-General immediately if the insurer terminates the policy or modifies the terms of insurance.
6. A Contractor shall notify the Secretary-General immediately upon receipt of claims made under its insurance.
- 7.** A Contractor shall provide the Secretary-General at least annually with evidence of the existence of such insurance in accordance with regulation 38 (2) (i).

Commented [AUS60]: Australia notes the Commission's advice in ISBA/25/C/18 that, while some changes have been made to the text, no further changes can be made until the Secretariat's review of insurance requirements is complete.

Commented [AUS61]: Australia notes that new paragraph (7) is a replication of the obligation under DR38(2)(i).

Section 7 Training commitment

Regulation 37 Training Plan

1. The Contractor shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under schedule 8 to the exploitation contract, these regulations and any training Guidelines.
2. The Contractor, the Authority and the sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training Guidelines.
3. Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to the exploitation contract.

Section 8 Annual reports and record maintenance

Regulation 38 Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, in such format as may be prescribed from time to time in the relevant Guidelines, covering its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.
2. Such annual reports shall include:
 - (a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against the approved Plan of Work;
 - (b) The quantity and quality of the Resources recovered during the period and the volume of Minerals and metals produced, marketed and sold during the Calendar Year, reported against the Mining Workplan;
 - (c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period;
 - (d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable to the Authority, reported against the Financing Plan;
 - (e) Health and safety information, including details of any accidents or Incidents arising during the period and actions taken in respect of the Contractor's health and safety procedures;
 - (f) Details of training carried out in accordance with the Training Plan;
 - (g) The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria, technical Standards and indicators pursuant to the Environmental Management and Monitoring Plan, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;
 - (h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons;
 - (i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;
 - (j) Details of any changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;
 - (k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves;

Commented [AUS62]: This draft regulation sets out the requirement for an annual report within 90 days of the end of each calendar year. It is positive this draft regulation now sets out in detail the contents of the report. Notwithstanding the addition of draft regulation 38(3), there also needs to be an assessment process, to ensure the annual report's contents are accurate and that the contractor is meeting its obligations, with consequences, i.e. failure may result in termination of the contract.

(l) A statement that the Contractor's Financing Plan is adequate for the following period; and

(m) Details of any proposed modification to the Plan of Work and the reasons for such modifications.

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

Regulation 39

Books, records and samples

1. A Contractor shall keep a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses actual and direct expenditures for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.

2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals, environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with the Authority's data and information management policy.

3. ~~To the extent practical, a~~ A Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

4. Upon request of the Secretary-General, the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.

5. A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General to the data, information and samples.

Section 9

Miscellaneous

Regulation 40

Prevention of corruption

1. A Contractor shall not make any gift or reward to any officials, agents or employees or contractors or subcontractors of the Authority or other individuals operating under the auspices of the Authority to induce or reward such persons for any acts undertaken in accordance with their duties under these regulations.

2. The Contractor acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled or of the jurisdiction in which the Contractor is organized or conducts business, and shall conduct its activities under the exploitation contract in accordance with its obligations under such anti-bribery and anti-corruption laws.

Commented [AUS63]: Australia notes the watering down of the requirement for Contractors to keep samples though the addition of 'to the extent practical'. The requirement to keep samples is consistent with similar provisions in the Exploration regulations (i.e. Polymetallic Nodule Exploration Regulations, Section 10.4). We prefer the original provision that such samples are required, unless we receive advice that such samples are not necessary.

Regulation 41**Other Resource categories**

1. The Contractor shall notify the Secretary-General if it finds Resources in the Area other than the Resource category to which the exploitation contract relates within 30 Days of its find.
2. The Exploration for and Exploitation of such finds must be the subject of a separate application to the Authority, in accordance with the relevant Rules of the Authority.

Regulation 42**Restrictions on advertisements, prospectuses and other notices**

No statement shall be made in any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor, or to the knowledge of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of Exploitation in the Contract Area.

Regulation 43**Compliance with other laws and regulations**

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a sponsoring State and flag State.
2. Contractors shall maintain the currency of all permits, licences, approvals, certificates and clearances not issued by the Authority and that may be required to lawfully conduct Exploitation activities in the Area.
3. Contractors shall notify the Secretary-General promptly when a permit, licence, approval, certificate or clearance connected with its activities in the Area is withdrawn or suspended.

Part IV Protection and preservation of the Marine Environment

Section 1 Obligations relating to the Marine Environment

Regulation 44

General obligations

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects **under article 145 of the Convention** in accordance with the rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall:

- (a) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;
- (b) Apply the Best Available Techniques and Best Environmental Practices in carrying out such measures;
- (c) 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) Promote accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through the timely release of and access to relevant environmental data and information and opportunities for stakeholder participation.

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) **Environmental Management and** Monitoring procedures;
- (c) **Environmental Risk Assessment and** Mitigation measures;
- (d) **Baseline data collection;**
- (e) **Scope and content of environmental impact assessments and statements;**
- (f) **Application for a plan of work;**
- (g) **Environmental management systems;**
- (h) **Environmental performance guarantees.**

Regulation 46

Environmental management system

1. A Contractor shall implement and maintain an environmental management system, taking account of the relevant Guidelines.

Commented [AUS64]: Australia recommends reinserting the reference to Article 145 of the Convention that was included in the 9 July 2018 iteration of the draft regulations.

Commented [AUS65]: Australia notes that this provision was included as a placeholder pending discussion at the workshop in Pretoria in May 2019. This draft regulation should be updated to reflect outcomes of the standards and guidelines recommendations by the LTC and further amendments to those recommendations agreed by the Council at the second part of its 26th session. Australia considers that all environmental protections should be contained in legally binding standards which should be concluded together with the Exploitation Regulations.

Commented [AUS66]: Australia notes that a standard or guideline will be developed for the preparation of environmental management and monitoring plans. We consider that the term 'environmental management system' should be a defined term in the regulations.

In the earlier draft Environmental Regulations (before they were merged) this term was defined as "that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance".

2. An environmental management system shall:
- (a) Be capable of delivering site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;
 - (b) Be 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.
 - (d) Be in accordance with Good Industry Practice and internationally recognised standards.**

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 is to document and report the results of the environmental impact assessment. **The An** environmental impact assessment **is mandatory.**

Ibis. The environmental impact assessment shall:

(aa) Be informed by relevant baseline data that captures temporal and seasonal variation;

- (a) Identify[ies], predict[s], evaluate[s] and mitigate[s] the biophysical, social and other relevant effects of the proposed mining operation;
- (b) Include[s] at the outset a screening and scoping process, which identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment;
- (c) Include[s] an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and
- (d) Identify[ies] **avoidance and mitigation** measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan

(e) Include evidence of consultation with relevant coastal States in close proximity to the proposed Mining Area

(f) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed.

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) Inclusive of a prior environmental risk assessment;
 - (b) Based on the results of the environmental impact assessment;
 - (c) In accordance with the objectives and measures of the relevant regional environmental management plan; and

Commented [AUS67]: Australia welcomes the increased detail in the March 2019 iteration of the draft regulations regarding Environmental Impact Statements (EIS). We also support the Commission's accompanying comment that the detailed requirements for the scoping stage, including the associated process of environmental impact assessments (EIA) should be detailed under the exploitation regime (ISBA/25/C/18).

Noting that the LTC recommends the priority development of guidelines and standards for EIAs and the preparation of an EIS, Australia proposes that the exploitation regulations and/or legally binding standards should, at a minimum:

- a) clearly identify the stages of EIA in the regulations, particularly the screening stage, the assessment (or scoping) stage and the approval stage;
- b) articulate the roles of the applicant or Contractor, the Authority and the Sponsoring State in the EIA preparation, assessment and approvals process;
- c) provide for public consultation on draft EIAs as part of the approval process and for EIAs to be made publicly available once approved (rather than just rely on the public consultation of the EIS in draft regulation 11);
- d) require consultation with relevant coastal states in the EIA process;
- e) include an explicit provision enabling the LTC to require that certain conditions relating to mitigation of environmental impacts are included in EMMPs; and
- f) specify the minimum requirements for baseline data, including collecting data over multiple years to capture temporal and seasonal variation.

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

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 meet the environmental quality objectives and standards for the mining operation. The plan will set out commitments and procedures on how the mitigation measures 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 and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

Section 3
Pollution control and management of waste

Regulation 49
Pollution control

A Contractor shall take **all** necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan and the applicable Standards and Guidelines.

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; 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

Commented [AUS68]: Australia proposes that this should provision be amended to read '*all* necessary measures' (emphasis added) to be consistent with Article 194 UNCLLOS.

the likelihood of Serious Harm to the Marine Environment, and such disposal, dumping or discharge shall be reported forthwith to the Authority.

2bis. The disposal, dump 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 Appendix 1.

Commented [AUS69]: Australia proposed that there should be further guidance and clarification on the definition of unauthorised discharge to avoid unnecessary disposal. Furthermore, any mining discharge in such circumstances should be considered an 'Unauthorised Mining Discharge' and constitute a Notifiable Event under Appendix 1 (and thus need to comply with the associated timeframes).

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.

Regulation 52 Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan 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.

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.

Commented [AUS70]: Australia considers it is more appropriate that regular, annual environmental performance review be mandated due to the high levels of uncertainty of the potential environmental impacts of exploitation in the Area.

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 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 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.

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 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.

Section 5

Environmental Compensation Fund

Regulation 54

Commented [AUS71]: Australia's view is that Emergency Response and Contingency Plans should be tested on a regular basis, annually at a minimum, to ensure adequacy and relevance of the contents.

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 be established by the Council on the recommendation of the Finance Committee.
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.

Regulation 55 Purpose of the Fund

The main purposes of the Fund will include:

- (a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, 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.

Regulation 56 Funding

The Fund will consist of the following monies:

- (a) The prescribed percentage or amount of fees paid to the Authority by sponsoring states and contractors;
- (b) The prescribed percentage of any penalties paid 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.

Commented [AUS72]: Australia considers that the purpose of the Environmental Compensation Fund should be limited to DR 55(a) to address the gap in liability identified by the Seabed Disputes Chamber and that proposed purposes that do not address the gap (such as funding research and training programs) should be financed through other means.

As drafted, draft regulation 55(e) provides that the liability fund will also be used for restoration and rehabilitation of the Area when technically and economically feasible. Australia considers that this should be considered on a project basis and form part of decommissioning/ rehabilitation and closure report, and not be for the fund to pay for.

Commented [AUS73]: Australia considers that funds for the Environmental Compensation Fund should come from Sponsoring States and contractors. ISA members not involved in activities in the Area should not be required to contribute. This should be reflected in the provisions.

Part V

Review and modification of a Plan of Work

Regulation 57

Modification of a Plan of Work by a Contractor

1. A Contractor shall not modify the Plan of Work annexed to an exploitation contract, except in accordance with this regulation.
2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.
3. Where the proposed modification under paragraph 2 above relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.
4. The Secretary-General may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission at its next meeting.

Regulation 58

Review of activities under a Plan of Work

1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance:
 - (a) A proposed Material Change in the implementation of the Plan of Work;
 - (aa) Identification of a new environmental risk, or a significant change to existing risk calculations;
 - (b) Any Incident;
 - (c) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;
 - (d) A performance assessment which requires action under regulation 52 (8);
 - (e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;
 - (f) Changes in Best Available Techniques;
 - (g) Changes in Best Available Scientific Evidence; or
 - (h) Operational management changes, including changes to subcontractors, the Secretary-General may review with the Contractor the Contractor's activities under the Plan of Work, and shall discuss whether any modifications to the Plan of Work are necessary or desirable.

Commented [AUS74]: Australia endorses the clarification in subparagraph 4 of what constitutes a non-material change that may be proposed by the Secretary-General, ie 'to correct minor omissions, errors, or other such defects' and note that further guidance on what constitutes a 'material change' will be provided in the Material Change Guidelines. We consider the disallowance mechanism provided for in draft regulation 95 is sufficient should the Council consider the Guidelines adopted are inconsistent with the intent or purpose of the rules of the Authority.

Commented [AUS75]: Australia recommends that identification of a new environmental risk, or significant change to existing risk calculations should be included in the changes of circumstance that trigger a review of activities under a Plan of Work.

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States to participate in the review of activities.
3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).
4. For the purpose of the review, the Contractor shall provide all information required by the Secretary-General in the manner and at the times the Secretary-General requests.
5. Nothing in this regulation shall preclude the Secretary-General or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, exploitation contract or the activities under the exploitation contract in cases other than those listed in paragraph 1 above.
6. The Secretary-General shall make publicly available the findings and recommendations resulting from a review of activities under this regulation.

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;

(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, 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

(ff) 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 and the relevant Guidelines.

5. The Closure Plan shall be 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).

Regulation 60 Final Closure Plan: cessation of production

1. A Contractor shall, at least 12 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, taking into account the results of monitoring and data and information gathered during the exploitation phase.

2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

Commented [AUS76]: Australia considers that Closure Plans should include an obligation to remove all equipment and remediate the environment.

Commented [AUS77]: Australia suggests including a timeframe for notification of updates to Closure Plans.

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~~ the **Commission** 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.

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, 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.
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.

Commented [AUS78]: This provision uses the "30 days in advance of the next meeting" timeframe which Australia does not consider is necessarily adequate time to consider new information ahead of meetings.

Clarification is also required in draft regulation 60(6) of which meeting the 30 day timeframe refers to – the Commission or the Council.

Part VII

Financial terms of an exploitation contract

Section 1

General

Regulation 62

Equality of treatment

The Council shall, based on the recommendations of the Commission, apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

Regulation 63

Incentives

1. The Council may, taking into account the recommendations of the Commission, provide for incentives, including financial incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention.

2. Furthermore, the Council may provide incentives, including financial incentives, to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

Section 2

Liability for and determination of royalty

Regulation 64

Contractor shall pay royalty

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations.

Regulation 65

Secretary-General may issue Guidelines

1. The Secretary-General may, from time to time, issue Guidelines in accordance with regulation 95 in respect of the administration and management of royalties prescribed in this Part.

2. The Secretary-General shall consider all requests for the clarification of any Guidelines issued under paragraph 1 above, or on any other matter connected with the administration and management of a royalty and its payment.

Commented [AUS79]: Australia notes that the royalty regime needs to be developed and agreed as this will have direct bearing on the financial elements of the regulations. Australia considers that a fixed rate ad valorem model can best operationalise the overarching policy objectives set out in the Convention and the Implementing Agreement which require that a system of payments:

- (a) shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor;
- (b) shall be within the range of rates prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;
- (c) should not be complicated and not impose major administrative costs on the Authority or on a contractor;
- (d) shall require payment of an annual fixed fee, determined by the Council, from the date of commencement of commercial production – may be credited against other payments due under the payment system;
- (e) may be revised periodically in the light of changing circumstances, with changes applied in non-discriminatory manner, and applying to existing contracts only at the election of the contractor;
- (f) shall be subject to dispute settlement procedures set out in the Convention.

Commented [AUS80]: This draft regulation provides that the Council may provide financial incentives to those Contractors entering into joint arrangements with the Enterprise under article 11 of Annex III to the Convention, and developing states or their nationals, to stimulate the transfer or technology thereto and to train the personnel of the Authority and of developing states. We would welcome clarity as to what this will consist of and what would be the obligations on other states such as Australia.

Section 3

Royalty returns and payment of royalty

Regulation 66

Form of royalty returns

A royalty return lodged with the Secretary-General shall be in the form prescribed by the Guidelines and signed by the Contractor's designated official.

Regulation 67

Royalty return period

A royalty return period for the purposes of this Part is a half-year return period, from:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

Regulation 68

Lodging of royalty returns

1. A Contractor shall lodge with the Secretary-General a royalty return for each Mining Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the exploitation contract.
2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted by the joint venture or consortium.
3. A royalty return may be lodged electronically.

Regulation 69

Error or mistake in royalty return

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

Regulation 70

Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged.
2. Payments to the Authority may be made in United States dollars or other foreign currency which is freely convertible.
3. All payments made to the Authority shall be made gross and shall be free of any deductions, transmission fees, levies or other charges.
4. The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment.

Regulation 71

Information to be submitted

1. A royalty return shall include the following information for each royalty return period:

- (a) The quantity in wet metric tons of mineral-bearing ore recovered from each Mining Area;
 - (b) The quantity and value by Mineral in wet metric tons of the mineral-bearing ore shipped from the Mining Area;
 - (c) The value and the basis of the valuation of the mineral-bearing ore sold or removed without sale from the Mining Area, as verified by a suitably qualified person and supported by a representative chemical analysis of the ore by a certified laboratory;
 - (d) Details of all contracts and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area; and
 - (e) A calculation of the royalty payable in accordance with section 3, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.
2. In respect of a final royalty return period ending on the date of expiry, surrender or termination of the exploitation contract, the Contractor shall provide:
- (a) A final calculation of the royalty payable;
 - (b) Details of any refund or overpayment of royalty claimed; and
 - (c) The quantity and value of all closing stocks of the mineral-bearing ore.
3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:
- (a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
 - (b) Complies with these regulations and is accurate and correct.

Regulation 72

Authority may request additional information

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, information to support the matters stated in the royalty return.

Regulation 73

Overpayment of royalty

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment.
2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part.
3. Any request to reduce a royalty-related amount payable by a Contractor must be made within five years after the Day the relevant royalty return was lodged with the Authority.
4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide,

such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

Section 4

Records, inspection and audit

Regulation 74

Proper books and records to be kept

1. A Contractor shall keep and maintain, at a place agreed by the Contractor and the Secretary-General, complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles that verify, in connection with each Mining Area, inter alia:

(a) Details of the quantity and grade of the Minerals recovered from each Mining Area;

(b) Details of sales, shipments, transfers, exchanges and other disposals of the Minerals from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;

(c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability incurred in each Mining Area; and

(d) Details of all revenues and operating costs.

3. A Contractor shall supply and file such records at such times as may be required by the Authority under these regulations and within 60 Days of the receipt of any such request from the Secretary-General.

4. A Contractor shall maintain all records and make such records available for inspection and audit under regulation 75.

Regulation 75

Audit and inspection by the Authority

1. The Secretary-General may audit the Contractor's records.

2. Any such audit shall be undertaken at the Authority's sole cost and shall be performed by an Inspector in accordance with Part XI of these regulations.

3. An Inspector may, in connection with a liability for a royalty payment:

(a) Inspect the mining and on-board processing facility with a view to verifying the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area;

(b) Inspect, audit and examine any documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;

(c) Require any duly authorized representative of the Contractor to answer any questions in connection with the inspection; and

(d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection and provide a Contractor with a list of such copies or extracts.

4. The Contractor shall make available to an Inspector such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.

5. Members of the Authority, in particular a sponsoring State or States, shall, to the best of their abilities, cooperate with and assist the Secretary-General and any Inspector in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an Inspector and assist in the exchange of information relevant to a Contractor's obligations under this Part.

Regulation 76
Assessment by the Authority

1. Where the Secretary-General determines, following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4.

6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of 6 years from the date on which the relevant royalty return is lodged.

Section 5
Anti-avoidance measures

Regulation 77
General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;

(b) Have not been carried out for bona fide commercial purposes; or

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty; then the Secretary-General shall determine the liability for a royalty as if the avoidance, postponement or

reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount.

3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

Regulation 78 Arm's-length adjustments

1. For the purposes of this regulation:

(a) "Arm's length", in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and

(b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree is fair under the circumstances.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General may adjust the value of such costs, prices and revenues to reflect an arm's-length value in accordance with internationally accepted principles.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice.

Section 6 Interest and penalties

Regulation 79 Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

Regulation 80 Monetary penalties and suspension or termination of exploitation contract

Subject to regulation 103 ~~[(6)],~~ **and depending on the seriousness of the breach,** the Council may impose a monetary penalty, **or suspend or terminate the exploitation contract** in respect of a violation under this Part.

Commented [AUS81]: Australia suggests that both monetary penalties and cancellation of exploitation contract be possible consequences of failure to pay royalties. Text proposal in regulation 80.

Section 7 **Review of payment mechanism**

Regulation 81 **Review of system of payments**

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.
2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, save that any revision shall only apply to existing exploitation contracts by agreement between the Authority and the Contractor.

Regulation 82 **Review of rates of payments**

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.
2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations.
3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty.

Section 8 **Payments to the Authority**

Regulation 83 **Recording in Seabed Mining Register**

1. All payments made by the Contractor to the Authority under this Part are non-confidential.
2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.

Commented [AUS82]: Australia considers that the review of the system of payments by the Council should be at regular intervals (eg 5 years) rather than based on other events. It should be clear what the Council is to review, including whether the financial model is achieving the purpose it is intended for, including the objectives set out in the Convention and Implementing Agreement.

Part VIII

Annual, administrative and other applicable fees

Section 1

Annual fees

Regulation 84

Annual reporting fee

1. A Contractor shall pay to the Authority, from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof, an annual reporting fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee.
2. The annual reporting fee is due and payable to the Authority at the time of submission of the Contractor's annual report under regulation 38.
3. Where the effective date is part way through a Calendar Year, the first payment shall be prorated and made within 30 Days after the effective date of an exploitation contract.

Regulation 85

Annual fixed fee

1. A Contractor shall pay an annual fixed fee from the date of commencement of Commercial Production in a Contract Area. The amount of the fee shall be established by the Council as required under paragraph (1) (d) of section 8 of the annex to the Agreement.
2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year at the rate prescribed by the Council under paragraph 2 above. Where an annual fixed fee remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.
3. Where the date of commencement of Commercial Production occurs part way through a Calendar Year, a prorated annual fixed fee shall become due and payable to the Authority within 30 Days of such commencement date.
4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations.

Section 2

Fees other than annual fees

Regulation 86

Application fee for approval of a Plan of Work

1. An applicant for the approval of a Plan of Work shall pay an application fee in the amount specified in appendix II.
2. If the administrative costs incurred by the Authority in processing an application are less than the fixed amount in appendix II, the Authority shall refund the difference to the applicant. If the administrative costs incurred by the Authority in processing an application are more than the fixed amount, the applicant or Contractor shall pay the

difference to the Authority, provided that any additional amount to be paid by the applicant or Contractor shall not exceed 10 per cent of the fixed fee specified in appendix II.

3. Taking into account any criteria established for this purpose by the Finance Committee, the Secretary-General shall determine the amount of such differences as indicated in paragraph 2 above, and notify the applicant or Contractor of its amount. The notification shall include a statement of the expenditure incurred by the Authority. The amount due must be paid by the applicant or reimbursed by the Authority within 90 Days of the effective date of the exploitation contract.

Regulation 87

Other applicable fees

A Contractor shall pay other prescribed fees in respect of any matter specified in appendix II, and in accordance with the applicable regulation.

Section 3

Miscellaneous

Regulation 88

Review and payment

1. The Council shall review and determine on a regular basis the amount of each of the annual, processing and other applicable administrative fees specified in appendix II in order to ensure that they cover the Authority's expected administrative costs for the service provided.

2. Except as provided for in this Part, fees will be a fixed amount expressed in United States dollars or its equivalent in a freely convertible currency, and are to be paid in full at the time of the submission of the relevant application, request, document or other event as specified in appendix II.

3. The Secretary-General shall not process any application until the applicable fee under appendix II has been paid.

4. Fees paid under this Part are not refundable upon the withdrawal, rejection or refusal of an application.

Part IX Information-gathering and handling

Regulation 89 Confidentiality of information

1. There shall be a presumption that any data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract are public, other than Confidential Information.

2. “Confidential Information” means:

(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the Secretary-General on the basis that there would be substantial risk of serious or unfair economic prejudice if the data and information were to be released;

3. “Confidential Information” does not mean or include data and information that:

(a) Are generally known or publicly available from other sources;

(b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;

(c) Are already in the possession of the Authority with no obligation concerning its confidentiality;

(d) Are required to be disclosed under the Rules of the Authority to protect the Marine Environment or human health and safety;

(e) Are necessary for the formulation by the Authority of rules, regulations and procedures concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;

(f) Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release; or

(g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);

or where:

(h) The Contractor to which the data and information relates has given prior written consent to its disclosure; or

(i) The area to which the data and information relates is no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years

Commented [AUS83]: Australia endorses the addition of the new category of confidential information following stakeholder support, namely the category of ‘data and information which have been categorised as Confidential Information by the Council’. We note that the process to develop the list and the timing is yet to be addressed.

after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the Secretary-General, and save any data and information relating to personnel matters under paragraph 2 (b) above.

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with in accordance with Part XII of these regulations.

6. Nothing in these regulations shall affect the rights of a holder of intellectual property.

Regulation 90
Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information and shall not, except with the prior written consent of a Contractor, release such information to any person external to the Authority. To ensure the confidentiality of such information, the Secretary-General shall establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information by members of the Secretariat, members of the Commission and any other person participating in any activity or programme of the Authority. Such procedures shall include:

(a) The maintenance of Confidential Information in secure facilities and the development of security procedures to prevent unauthorized access to or removal of such information; and

(b) The development and maintenance of a classification, log and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition.

2. A person who is authorized pursuant to these regulations to access Confidential Information shall not disclose such information except as permitted under the Convention and these regulations. The Secretary-General shall require any person who is authorized to access Confidential Information to make a written declaration witnessed by the Secretary-General or duly authorized representative to the effect that the person so authorized:

(a) Acknowledges his or her legal obligation under the Convention and these regulations with respect to the non-disclosure of Confidential Information; and

(b) Agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such information.

3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these regulations or a contract issued under these regulations. In accordance with the provisions of article 163 (8), of the Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose or use, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their employment with the Authority.

5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who is in breach of the obligations relating to confidentiality contained the Rules of the Authority.

Regulation 91

Information to be submitted upon expiration of an exploitation contract

1. **Upon expiration of an exploitation contract,** The Contractor shall transfer to the Authority **within 90 days** all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and the Guidelines.

2. Upon termination of an exploitation contract, the Contractor and the Secretary-General shall consult together and, taking into account the Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority **within 90 days**.

Regulation 92

Seabed Mining Register

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and Guidelines. Such register shall contain:

- (a) The names of the Contractors and the names and addresses of their designated representatives;
- (b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7;
- (c) The terms of the various exploitation contracts in accordance with regulation 17;
- (d) The geographical extent of Contract Areas and Mining Areas to which each relate;
- (e) The category of Mineral Resources to which each relate;
- (f) All payments made by Contractors to the Authority under these regulations;
- (g) Any encumbrances regarding the exploitation contract made in accordance with regulation 22;

Commented [AUS84]: Australia considers that this draft regulation should provide a specified timeframe for submission upon termination.

- (h) Any instruments of transfer; and
 - (i) Any other details which the Secretary-General considers appropriate (save Confidential Information).
2. The Seabed Mining Register shall be publicly available on the Authority's website.

Part X

General procedures, Standards and Guidelines

Regulation 93

Notice and general procedures

1. For the purpose of this regulation:
 - (a) “Communication” means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these regulations; and
 - (b) “Designated representative” means the person so named on behalf of a Contractor on the Seabed Mining Register.
2. Any communication shall be made by the Secretary-General or by the designated representative of the applicant or Contractor, as the case may be, in writing.
3. Service of any communication must be made:
 - (a) By hand, fax, registered mail or email containing an authorized electronic signature; and
 - (b) To the Secretary-General at the headquarters of the Authority or to the designated representative at the address stated on the Seabed Mining Register, as the case may be.
4. The requirement to provide any information in writing under these regulations is satisfied by the provision of the information in an electronic document containing a digital signature.
5. Delivery by hand is deemed to be effective when made. Delivery by fax is deemed to be effective when the “transmit confirmation report” confirming the transmission to the recipient’s published fax number is received by the transmitter. Delivery by registered airmail is deemed to be effective 21 Days after posting. Delivery by email is deemed to be effective when the email enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and is capable of being retrieved and processed by the addressee.
6. Notice to the designated representative of the applicant or Contractor constitutes effective notice to the applicant or Contractor for all purposes under these regulations, and the designated representative is the agent of the applicant or Contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.
7. Notice to the Secretary-General constitutes effective notice to the Authority for all purposes under these regulations, and the Secretary-General is the Authority’s agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

Regulation 94

Adoption of Standards

1. The Commission shall, taking into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to:
 - (a) Operational safety;

(b) The conservation of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

2. The Council shall consider and approve, upon the recommendation of the Commission, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, process or technology required to implement the Standards.

4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology.

Commented [AUS85]: Draft regulation 94(4) provides that standards shall be legally binding on Contractors. We suggest that these obligations should also be reflected in Contracts.

Regulation 95
Issue of Guidelines

1. The Commission, or **where there is no conflict of interest**, the Secretary-General **[shall] may**, from time to time, issue Guidelines of a technical or administrative nature, taking into account the views of relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

Commented [AUS86]: We suggest it is not appropriate for the Secretary-General to be able to issue guidelines, especially where s/he is then responsible for providing advice on the implementation of them (such as the Material Change guidelines under draft regulation 55) and there is a delay between the issue of the guidelines and the reporting of those guidelines to the Council.

2. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn.

3. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information.

Part XI Inspection, compliance and enforcement

Section 1 Inspections

Regulation 96

Inspections: general

1. The Council shall establish appropriate mechanisms for ~~inspection~~ **directing and supervising a staff of inspectors**, as provided for in article 162 (2) (z) of the Convention.

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned, ~~in accordance with article 165 (3) of the Convention,~~ aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification.

4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.

5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;

(b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to this regulation;

(c) Provide access to all relevant areas, items and personnel in offices or on vessels and Installations at all reasonable times;

(d) Provide access to monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent to verify the expenditures referred to in the Plan of Work or necessary to determine compliance with the financial payments due under the exploitation contract and these regulations;

(e) Answer fully and truthfully any questions put to them;

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, where required by the Secretary-General, and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties.

Commented [AUS87]: Australia acknowledges the note by the Commission (ISBA/25/C/18) that, owing to time constraints, the Commission did not have an opportunity to consider the matter of inspections in detail (and in light of document ISBA/25/C/5) and will do so at its subsequent meetings. We support further consideration of these provisions by the Commission.

As a general comment on these provisions, consideration should be given as to whether there should be responsibility on the sponsoring states to also inspect and manage for compliance, given their obligations and liabilities.

Australia would like to reiterate the comment from its earlier submission regarding the following issues: (1) we recommend the Authority draw on similar schemes ie from oil and gas industries, regional fisheries management organisations, (2) it might be helpful to set out a risk assessment process to provide guidance on how the authority would determine which activities are to be inspected; (3) suggest exploring whether sponsoring states can provide their own observers; and (4) explicitly addressing the role of flag state consent for the inspection of vessels.

The power to undertake inspections should extend to the offices of subcontractors and other providers who are mentioned in the plan of work or supporting document, such as third parties who may be contracted to provide emergency services, emergency performance guarantees etc.

Australia considers this provision should set out the trigger points for inspections or a regular inspection schedule.

Commented [AUS88]: Australia notes the insertion of new subparagraph (1) making reference to Article 162(2)(z) of the Convention. We suggest using the exact wording from the Convention, namely 'the Council shall establish appropriate mechanisms for *directing and supervising a staff of inspectors*' (emphasis added) rather than 'for inspection'.

Australia emphasises the need to ensure the independence of the Inspectorate. We also suggest a roster of vetted and trained inspectors could be a useful mechanism to avoid the costs associated with maintaining a fulltime, standing staff of inspectors.

Commented [AUS89]: Australia endorses the new requirement in subparagraph (2) for the Contractor to permit the Inspector to be accompanied by a representative of its State or other party concerned. However, as Article 165(3) only refers to accompanying members of the Commission 'when carrying out their function of supervision and inspection', we suggest deleting the reference to Article 165(3).

6. Inspectors shall:

(a) Follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor, the captain of the vessel or other relevant safety officers aboard vessels and Installations; and

(b) To the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

Regulation 97**Inspectors: general**

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part.

2. The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96 (1).

3. The Secretary-General shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

Regulation 98**Inspectors' powers**

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant document, whether in electronic form or in hard copy, including a plan, book or record, to produce that document to the Inspector immediately or at any other time and place that the Inspector requires;

(c) Require from any person referred to in subparagraph (b) above an explanation of any entry or non-entry in any document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities [~~unless such inspection or testing will unreasonably interfere with the Contractor's operations~~];

(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;

(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed

Commented [AUS90]: Australia emphasises the need to avoid conflicts of interest, or political interference among inspectors. Further, Australia considers that the qualification of an applicant should take precedence over geographical diversity when recruiting inspectors.

Commented [AUS91]: Australia notes the watering down of the Inspectors' powers to inspect or test machinery or equipment under draft regulation 98(1)(e) and requiring the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities in draft regulation 98(1)(h). Given the requirement in draft regulation 96(6)(b) that Inspectors shall "to the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contract and of vessels and of Installations", we suggest these amendments are not necessary.

necessary by the Inspector~~[, unless such procedures will unreasonably interfere with the Contractor's operations]~~; and

(i) Upon written authorization from the Council, perform any other prescribed function of the Authority as its representative.

2. An Inspector may instruct any Contractor, its employees or any other person who performs an activity in connection with an exploitation contract to appear before the Inspector to be questioned on any matter to which the Rules of the Authority relate.

3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.

4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.

5. An Inspector may document any site visit or inspection activity using any reasonable means including video, audio, photograph or other form of recording.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

Regulation 99 Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has evidence that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector may give any instruction he or she considers reasonably necessary to remedy the situation, including:

(a) A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;

(b) A written instruction placing conditions on the continuation of mining activities to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances;

(c) A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; **and**

(ca) A written instruction prohibiting the Contractor from continuing or undertaking certain activities; and

(d) A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.

2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued.

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103.

Commented [AUS92]: This draft regulation sets out the Inspectors' power to issue instructions, including the ability to issue written instructions to suspend mining activities. We consider this provision should also explicitly include the ability to issue instructions to prohibit certain activities.

Commented [AUS93]: The provision currently only allows the instructions to last for 7 days, after which it lapses. In our view, this is insufficient, especially if it is an instruction to suspend activities, which would imply that a serious breach has occurred. Seven days is not sufficient time for it to be rectified or for the Authority to consider and take appropriate action. We would suggest the timeframe should be outlined in the instruction.

Regulation 100
Inspectors to report

1. At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspector shall send the report to the Secretary-General, and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.
2. The Secretary-General shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract.
3. The Secretary-General shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96 to the sponsoring State or States and the flag State of any vessel or Installation concerned for consideration of the institution of proceedings under national law.

Regulation 101
Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the Secretary-General, who shall consider the complaint as soon as practicable.
2. The Secretary-General may take such reasonable action as is necessary in response to the complaint.

Section 2
Remote monitoring

Regulation 102
Electronic monitoring system

1. A Contractor shall restrict its mining operations to the Mining Area.
2. All mining vessels and mining collectors shall be fitted with an electronic monitoring system. Such system shall record, inter alia, the date, time and position of all mining activities. The detail and frequency of reporting shall be in accordance with the Guidelines.
3. The Secretary-General shall issue a compliance notice under regulation 103, where he or she determines from the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.
4. All data transmitted to the Authority under this regulation shall be transmitted to the sponsoring State or States.

Section 3 Enforcement and penalties

Regulation 103

Compliance notice and termination of exploitation contract

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, **or if requested by the Council to do so**, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

2. A compliance notice shall:

(a) Describe the alleged breach and the factual basis for it; and

(b) Require the Contractor to take remedial action or other such steps as the Secretary-General considers appropriate to ensure compliance within a specified time period.

3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity to make representations in writing to the Secretary-General concerning any aspect of the compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of warnings by the Authority, fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention, **the Agreement**, and the rules, regulations and procedures of the Authority, the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

6. In the case of any violation of an exploitation contract, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation.

7. Save for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

Regulation 104

Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.

2. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.

Commented [AUS94]: Australia considers there should be a role for the Council in issuing compliance notices.

Commented [AUS95]: Australia suggests this regulation requires clarification of the remedial works or measures that are available to the Authority. Note the similarity of this provision to provisions in the Exploration Regulations (see Nodules, Reg 33(7); Sulphides, Reg 35(7), and Crusts Reg 35(7)). Such a provision allows for the ISA to promptly respond to pollution emergencies, whilst upholding the polluter-pays principle. We support this power to take remedial action applying to circumstances beyond an emergency order in these regulations.

Regulation 105
Sponsoring States

Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors shall, in particular, take all necessary and appropriate measures to secure effective compliance by Contractors whom they have sponsored in accordance with Part XI of the Convention, the Agreement, the rules, regulations and procedures of the Authority and the terms and conditions of the exploitation contract.

Part XII

Settlement of disputes

Regulation 106

Settlement of disputes

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI of the Convention.
2. In accordance with article 21 (2) of annex III to the Convention, any final decision rendered by a court or tribunal having jurisdiction under the Convention relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention affected thereby.

Part XIII

Review of these regulations

Regulation 107

Review of these regulations

1. Five years following the approval of these regulations by the Assembly, or at any time thereafter, the Council shall undertake a review of the manner in which the regulations have operated in practice.
2. If, in the light of improved knowledge or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission or any Contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these regulations.
3. The Council shall establish a process that gives relevant Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.
4. In the light of that review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these regulations, taking into account the recommendations of the Commission or other subordinate organs.

Annex I**Application for approval of a Plan of Work to obtain an exploitation contract****Section I
Information concerning the applicant**

1. Name of applicant.
2. Street address of applicant.
3. Postal address (if different from above).
4. Telephone number.
5. Fax number.
6. Email address.
7. Name of applicant's designated representative.
8. Street address of applicant's designated representative (if different from above).
9. Postal address (if different from above).
10. Telephone number.
11. Fax number.
12. Email address.
13. If the applicant is a juridical person:
 - (a) Identify applicant's place of registration;
 - (b) Identify applicant's principal place of business/domicile; and
 - (c) Attach a copy of applicant's certificate of registration.
14. Identify the sponsoring State or States.
15. In respect of each sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.
16. Attach a certificate of sponsorship issued by the sponsoring State.

**Section II
Information relating to the area under application**

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the World Geodetic System 84).

**Section III
Technical information**

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.

19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards.

20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities.

20bis. Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines.

Section IV Financial information

21. Attach such information, in accordance with the Guidelines, to enable the Council to determine whether the applicant has or will have access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:

(a) If the application is made by the Enterprise, attach certification by its competent authority that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed Plan of Work;

(b) If the application is made by a State or a State enterprise, attach a statement by the State or the sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed Plan of Work; and

(c) If the application is made by an entity, attach copies of the applicant's audited financial statements, including balance sheets and income statements and cash flow statements for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, noting that:

(i) If the applicant is a newly organized entity and a certified balance sheet is not available, attach a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) If the applicant is a subsidiary of another entity, attach copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the Plan of Work; and

(iii) If the applicant is controlled by a State or a State enterprise, attach a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the Plan of Work.

22. If, subject to regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing.

23. Provide details of any Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with regulation 26.

Section V Undertakings

24. Attach a written undertaking that the applicant will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;

(b) Accept control by the Authority of activities in the Area as authorized by the Convention; and

(c) Provide the Authority with a written assurance that its obligations under the exploitation contract will be fulfilled in good faith.

Section VI Previous contracts with the Authority

25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:

(a) The date of the previous contract or contracts;

(b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contracts; and

(c) The date of termination of the contract or contracts, if applicable.

Section VII Attachments

26. List all the attachments and annexes to this application (all data and information should be submitted in hard copy and in a digital format specified by the Authority).

Annex II

Mining Workplan

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

(a) A comprehensive statement of the Mineral Resource delineated in the relevant Mining Area(s), including details, or estimates thereof, of all known Mineral reserves reported in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves (see [ISBA/21/LTC/15](#), annex V), together with a comprehensive report of a suitably qualified and experienced person that includes details of and validation of the grade and quality of the possible, proven and probable ore reserves, as supported by a pre-feasibility study or a Feasibility Study, as the case may be;

(b) A chart of the boundaries of the proposed Mining Area(s) (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the World Geodetic System 84);

(c) A proposed programme of mining operations and sequential mining plans, including applicable time frames, schedules of the various implementation phases of the Exploitation activities and expected recovery rates;

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of tests conducted and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, together with details of any certification from a conformity assessment body;

(e) A technically and economically justified estimate of the period required for the Exploitation of the Resource category to which the application relates;

(f) A detailed production plan, showing, in respect of each Mining Area, an anticipated production schedule that includes the estimated maximum amounts of Minerals that would be produced each year under the Plan of Work;

(g) An economic evaluation and financial analysis of the project;

(h) The estimated date of commencement of Commercial Production; and

(i) Details of subcontractors to be used for Exploitation activities.

Annex III**Financing Plan**

A Financing Plan should include:

- (a) Details and costing of the mining technique, technology and production rates applicable to the proposed mining activities;
- (b) Details and costing of the technological process applicable to the extraction and on-board processing of the Mineral ore;
- (c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed mining activities;
- (d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;
- (e) Details regarding other relevant costing, including capital expenditure requirements;
- (f) Details of expected revenue applicable to the proposed mining activities;
- (g) A detailed cash-flow forecast and valuation, excluding financing of the proposed mining activities, clearly indicating applicable regulatory costs; and
- (h) Details of the applicant's resources or proposed mechanisms to finance the proposed mining activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast.

Annex IV

Environmental Impact Statement

1. Preparation of an Environmental Impact Statement

The Environmental Impact Statement prepared under these regulations and the present annex shall:

(a) Be prepared in plain language and in an official language of the Authority together with an official English-language version, where applicable;

(b) Provide information, in accordance with the relevant regulations, Standards and Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely Environmental Effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant considers an effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted; and

(c) Include a non-technical summary of the main conclusions and information provided to facilitate understanding of the nature of the activity by Stakeholders.

2. Template for Environmental Impact Statement

The recommended format for an Environmental Impact Statement is outlined below. It is intended to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects on which the Authority can base its assessment, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

The document is a template only, and is not intended to be prescriptive but rather to guide the format and general content of an Environmental Impact Statement. It does not provide details of methodology or thresholds that may be resource- and site-specific. These methodologies and thresholds may be developed as Standards and Guidelines to support the regulations.

Contents

	<i>Page</i>
Executive summary	76
1. Introduction	76
2. Policy, legal and administrative context	77
3. Description of the proposed development	77
4. Description of the existing physicochemical environment	80
5. Description of the existing biological environment	81
6. Description of the existing socioeconomic environment	82
7. Assessment of impacts on the physicochemical environment and proposed Mitigation	83
8. Assessment of impacts on the biological environment and proposed Mitigation	86
9. Assessment of impacts on the socioeconomic environment and proposed Mitigation	87
10. Accidental events and natural hazards	89
11. Environmental management, monitoring and reporting	89
12. Product stewardship	90
13. Consultation	91
14. Glossary and abbreviations	91
15. Study team	91
16. References	91
17. Appendices	91

Executive summary

One of the main objectives of the executive summary is to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers. Information provided in the executive summary should include:

- (a) A description of the proposed development and its objectives;
- (b) Economic, financial and other benefits to be derived from the project;
- (c) Anticipated impacts of the activity (physicochemical, biological, socioeconomic);
- (d) Mitigation measures to minimize environmental impacts;
- (e) Linkages with the development of the Environmental Monitoring and Management Plan; and
- (f) Consultation undertaken with other parties.

1. Introduction

1.1 Background

Summarize briefly the project being proposed, including all main activities and locations.

1.2 Project viability

Provide information on the viability of the proposed development, its economic context and why the project is needed, and include a description of the benefits to mankind.

1.3 Project history

Summarize briefly the work undertaken up to the date the Environmental Impact Statement was finalized and ready to be submitted to the International Seabed Authority. This should include a brief description of the resource discovery, the exploration undertaken and any component testing conducted to date. For the component testing, provide a brief description of activities here. If applicable, include any report(s) related to component testing in an appendix.

1.4 Project proponent

Summarize the credentials of the proponent, including major shareholders, other contracts or licences held (including in other jurisdictions), previous and existing contracts with the Authority and the proponent's environmental record, etc. The proponent's technological and environmental expertise, capacity and financial resources should be outlined.

1.5 This report

1.5.1 Scope

Provide detail as to what is and is not included, based on earlier assessments or work. Link to other supporting information. A key item that should be included is a previous risk assessment that evaluates activities classified as low risk (and therefore should receive less emphasis), compared with high-risk activities, which should be the focus of this Environmental Impact Statement.

1.5.2 Report structure

Where the Environmental Impact Statement spans multiple volumes, this section should provide additional details not listed in the table of contents.

2. Policy, legal and administrative context

Provide information on the relevant policies, legislation, agreements, standards and guidelines that are applicable to the proposed mining operation.

2.1 Applicable mining and environmental legislation, policy and agreements

Outline the national and international legislation, regulation or guidelines that apply to the management or regulation of Exploitation in the Area, including how the proposed operation will comply with them.

2.2 Other applicable legislation, policies and regulations

Outline any other legislation, policies or regulations that do not necessarily apply specifically to seabed mining or the environment, but may be relevant to the proposal (e.g., shipping regulations, maritime declarations, marine scientific research, climate change policies, Sustainable Development Goals). This section should also refer to national regulations and laws that relate to the effects of Exploitation activities on coastal States, or other places where components of Exploitation (e.g., processing) could occur.

2.3 Applicable international and regional agreements

List the international agreements applicable to the operation, such as the United Nations Convention on the Law of the Sea and the International Maritime Organization suite of environmental and safety conventions, which includes the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), and applicable regional agreements.

2.4 Other applicable standards, principles and guidelines

Discuss applicable standards and guidelines that will be adhered to or aligned with throughout the operation, such as the Standards and Guidelines of the International Seabed Authority, the Equator Principles, the Environmental Management Standards of the International Organization for Standardization, the Code for Environmental Management of Marine Mining of the International Marine Minerals Society, the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation and the standards of the Extractive Industries Transparency Initiative.

3. Description of the proposed development

Provide details of the proposed development activity, including relevant diagrams and drawings. It is understood that most projects will likely involve the recovery of minerals from the Area, with the concentrating process(es) occurring on land within a national jurisdiction (outside the jurisdiction of the Authority). While it is expected that this section would provide a brief description of the entire project, including offshore and land-based components, the Environmental Impact Statement should focus on those activities occurring within the Authority's jurisdiction (e.g.,

activities related to the recovery of the minerals from the Area up to the point of trans-shipment).

Details to be provided under this section should include the headings listed below.

3.1 Project area definition

3.1.1 Location

Include coordinates of the project area, detailed location maps (drawn to scale), a layout of the site and the locations of impact reference zones and preservation reference zones.

3.1.2 Associated activities

Describe the supporting activities and infrastructure required (e.g., transportation corridors) that are outside the direct mining site.

3.2 Mineral resource

Provide details of the type of resource proposed for extraction (e.g. sea floor massive sulphides, polymetallic nodules, ferromanganese crusts), the type of commodity and its grade and volume. Estimates of the inferred and indicated resource should be provided, along with visual models of the resource.

3.3 Project components

Provide background information on the proposal and the technologies and equipment to be employed, and include the subsections set out below.

3.3.1 Project scale

Provide an overview of the spatial and temporal scales of the mining operation, including volumes of material to be recovered, processed and deposited or discharged into the water column or back to the seabed. This should include an account of the area to be physically mined, as well as the likely extent of any secondary impacts (e.g., sediment plumes), which will be discussed in greater detail later.

3.3.2 Mining

Provide details of the technologies to be employed, including relevant diagrams and drawings, that address: the Mining Workplan, timelines and the general mining sequence, the technologies to be employed to recover the resource from the seabed, the depth of penetration into the seabed and other details of the mining activities.

3.3.3 Transport/materials handling

Provide a description of all methods to be used to transport the mineral-bearing ore, including from the sea floor to the surface, and any methods related to the trans-shipment of the mineral-bearing ore, including transfers at sea.

3.3.4 On-site processing

Provide a description of the processing of the mineralized material that will occur within or above the Area, including shipboard processing. Include a description of any methods to be used on the sea floor to separate the mineralized material from surrounding sediment and/or rock, as well as any dewatering of the mineralized material at the surface. This section should also cover any disposal of seawater/fines.

Include a description of the disposal and discharge of sediment, wastes or other effluents into the Marine Environment and the disposal of waste from general ship operations. The handling and management of hazardous materials should also be described, together with a description of the nature of such material and its transportation, storage and disposal.

3.3.5 Support equipment

Describe any equipment expected for mining and support operations (e.g., mining vessels/platforms, supply vessels, barges). Describe the anticipated frequency of vessel movements for these activities.

3.4 Commissioning

Describe the pre-production activities that will take place with regard to the establishment and set-up of the site for mining operations. The management of this process (such as the establishment of safety zones around vessels) should also be described.

3.5 Construction and operating standards

Outline the design codes to which the equipment will be or has been built, as well as the operating standards that will be applied to mining operations. This section should include subsections such as those set out below.

3.5.1 Design codes

3.5.2 Health and safety

3.5.3 Workforce description

This section should also outline capacity-building objectives and commitments.

3.6 Decommissioning and closure

Describe the steps that will occur when the mining operation is completed, including the decommissioning of offshore infrastructure, under a Closure Plan.

3.7 Other alternatives considered

Provide an account of alternative options that were considered and rejected in favour of the current proposal. Aspects should include the selection of the mine site, mine production scenarios, transport and materials handling and shipboard processing.

3.8 Development timetable (detailed schedule)

Provide a description of the overall timetable, from the implementation of the mining programme to the decommissioning and closure of operations. The description should include the major phases of the operation as well as the milestone dates on which relevant tasks are expected to be completed. Information on the development timetable provided under this section should clearly communicate the different phases in the development proposal. For reasons of clarity, a flow chart or a Gantt or PERT (Programme Evaluation and Review Technique) chart should be used where appropriate. Information provided in this section should include the following:

(a) The funding arrangement for the proposed activity, or whether the availability of funds is subject to this or other approvals being granted;

(b) Pre-construction activities;

- (c) A construction schedule and staging timetable;
- (d) An infrastructure development schedule;
- (e) A monitoring schedule (during and after operations); and
- (f) A closure schedule.

4. Description of the existing physicochemical environment

Give a detailed account of knowledge of the environmental conditions at the mine site, which should include information from a thorough literature review as well as from on-site studies. The account will provide the baseline description of the geological and oceanographic conditions against which impacts will be measured and assessed. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

4.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

4.2 Regional overview

Describe the general environmental conditions of the site, including the geological and oceanographic setting within a broader regional context. This should be brief section that includes a map. A more detailed site-specific description will be provided in accordance with the sections below.

4.3 Studies completed

Describe any prior research/Exploration (including methods used for completing the studies based on Best Available Techniques) that could provide relevant information for this Environmental Impact Statement and future activities. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.

4.4 Meteorology and air quality

Provide a general overview of climatology (e.g., wind directions and speeds, seasonal patterns). This section may be most relevant to surface operations.

4.5 Geological setting

Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the general geological landscape and topographic features of the site, including bathymetric maps.

4.6 Physical oceanographic setting

Provide a description of oceanographic aspects such as currents, sedimentation rates and waves. Seasonal variability is an important element. Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field).

Commented [AUS96]: Australia considers that it is critical to establish sufficient baseline data to understand fully what impacts the proposed mining will have on the site, and how these impacts can be minimized and managed. Consideration is required as to whether the baseline data collected for the Authority, as per the requirements in the Exploration Regulations, is sufficient to achieve this purpose.

In the "Studies completed" paragraphs for physicochemical (4.3) and biological (5.3), we recommend that a description of the methods used for completing the studies be included and that those methods reflect best practice. For example: Describe prior research/Exploration (including methods reflecting best scientific practice) that could provide relevant information for this Environmental Impact Statement and future activity.

4.7 Chemical oceanographic setting

Provide a description of water mass characteristics at the site and at various depths of the water column, in particular near the sea floor, that includes nutrients, particle loads, temperature and dissolved gas profiles, vent-fluid characteristics if applicable, turbidity and geochemistry, etc.

4.8 Seabed substrate characteristics

Provide a description of substrate composition, including physical and chemical properties (e.g., sediment composition, pore-water profiles, grain size, sediment mechanics).

4.9 Natural hazards

Provide a description of applicable potential natural hazards for the site, including volcanism, seismic activity, cyclone/hurricane trends, tsunamis, etc.

4.10 Noise and light

Provide a description of ambient noise and light, and the influence of existing Exploration and maritime activity.

4.11 Greenhouse gas emissions and climate change

Provide a description of the level of gas and chemical emissions from both natural and anthropogenic activities in the Area, as well as those affecting sea floor and water-column chemistry.

4.12 Summary of the existing physicochemical environment

Summarize key findings and include notes on special considerations for hydrothermal vents, seeps, seamounts and oceanographic fronts or eddies. It is anticipated that this summary will be up to one page, and be more extensive than the key messages section.

5. Description of the existing biological environment

The description of the site should be divided by depth regime (surface, midwater and benthic, where appropriate), and provide a description of the various biological components and communities that are present in or utilize the area. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

5.1 Key messages

Provide an overview of the key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

5.2 Regional overview

Provide general regional context, and include site-specific issues and characteristics, existing areas of particular environmental interest and national areas of adjacent countries, if any. References to relevant technical data and previous studies should also be included. This section should be brief, but provide broader context for the more detailed site-specific description below.

5.3 Studies completed

Describe any prior research/Exploration **(including methods used for completing the studies based on Best Available Techniques)** that could provide relevant information for this Environmental Impact Statement and future activity. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.

5.4 Biological environment

Address diversity, abundance, biomass, community-level analyses, connectivity, trophic relationships, resilience, ecosystem function and temporal variability. Any work on ecosystem models and appropriate ecosystem indicators, etc., should also be presented here. This section should span the size range from megafauna to microbial communities.

The description of the fauna is structured by depth range, as this enables a direct linkage to the source and location of an impact. For each depth zone, there should be a description of the main taxonomic/ecological groups (e.g., plankton, fish, marine mammals, benthic invertebrates, demersal scavengers), using the Authority's Guidelines.

5.4.1 Surface

Describe the biological environment from the surface to a depth of 200 metres, including plankton (phytoplankton and zooplankton), surface/near-surface fish such as tuna, and seabirds and marine mammals.

5.4.2 Midwater

Describe the biological environment in the open water from a depth of 200 metres down to 50 metres above the sea floor, and include zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals.

5.4.3 Benthic

Describe the benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor. This should include considerations of species richness, biodiversity, faunal densities, community structures and connectivity, etc. Bioturbation should also be covered in this section.

5.4.4 Ecosystem/community-level description

Summarize existing community or ecosystem studies that integrate elements of the above sections. The summary should consider early life-history stages, recruitment and behavioural information.

5.5 Summary of the existing biological environment

Summarize the key findings with respect to the biological environment, including regional distributions, special faunal characteristics, etc. It is envisaged that this summary will be up to one page in length.

6. Description of the existing socioeconomic environment

This section should describe the socioeconomic aspects of the project.

Commented [AUS97]: In the "Studies completed" paragraphs for physicochemical (4.3) and biological (5.3), we recommend that a description of the methods used for completing the studies be included and that those methods reflect best practice. For example: Describe prior research/Exploration (including methods reflecting best scientific practice) that could provide relevant information for this Environmental Impact Statement and future activity.

6.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

6.2 Existing uses**6.2.1 Fisheries**

If the project area occurs within an area used by fisheries, then this needs to be described here. This should include description of areas of significance for fish stocks, such as spawning grounds, nursery areas or feeding sites.

6.2.2 Marine traffic

This section describes the non-project-related marine traffic occurring within the project area.

6.2.3 Tourism

Describe areas used by cruise liners and for game fishing, sightseeing, marine mammal watching and other relevant tourism activities.

6.2.4 Marine scientific research

Outline the current scientific research programmes taking place in the area.

6.2.5 Area-based management tools

Describe any relevant area-based management established under subregional, regional or global processes and the scope, geographical coverage and objectives of such tools. Also describe any relevant area-based management in adjacent areas under national jurisdiction.

6.2.6 Other

List other uses of the project area that are not related to the above (e.g., submarine cables, other mineral exploration, exploitation projects).

6.3 Sites of an archaeological or historical nature

List any sites of archaeological or historical significance that are known to occur within the potential area of impact.

6.4 Summary of existing sociocultural environment

Summarize key findings regarding the sociocultural environment. It is envisaged that this section will be up to a page in length, and more extensive than the key messages.

7. Assessment of impacts on the physicochemical environment and proposed Mitigation

Provide a detailed description and evaluation of potential impacts of the operation to components of the physical environment identified in section 4. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the

Commented [AUS98]: We recommend that the assessment of impacts sections (sections 7, 8 & 9) also require a description of the methods used for determining impacts, in particular the assumptions used for impact modelling.

potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;

(aa) The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

It is important that these sections make clear the expected longevity of unavoidable effects. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

7.1 Key messages

Provide an overview of the key content covered in section 7.

7.2 Description of potential impact categories

Provide an overview and description of the categories of general impacts caused by the mining operation. This should introduce the major types of effect, such as habitat removal, the creation of sediment plumes, noise and light, etc.

Key elements that need to be included are:

(a) Descriptions of impact studies carried out during exploration (e.g., component testing);

(b) Descriptions of the results of any environmental risk assessments, which should be included as separate reports or appendices where appropriate; and

(c) Descriptions of the methods applied to describe and quantify impact categories and assessment.

7.3 Meteorology and air quality

Provide a description of potential effects on air quality from the surface or subsurface operations.

7.3.1 Potential impacts and issues to be addressed

7.3.2 Environmental management measures to mitigate impacts

7.3.3 Residual impacts

7.4 Geological setting

Provide a description of impacts the mining operation may have on the topography of the site or its geological/geophysical composition.

7.4.1 Potential impacts and issues to be addressed

7.4.2 Environmental management measures to mitigate impacts

7.4.3 Residual impacts

7.5 Physical oceanographic setting

Provide a description of the effects on the current speed/direction and sedimentation rates, etc. A regional oceanographic model will be relevant to this section.

7.5.1 Potential impacts and issues to be addressed

7.5.2 Environmental management measures to mitigate impacts

7.5.3 Residual impacts

7.6 Chemical oceanographic setting

Provide a description of the effects such as sediment plume generation (frequency, spatial extent, composition and concentration) and the clarity of water, particulate loading, water temperature, dissolved gas and nutrient levels etc., in all relevant levels of the water column. A regional oceanographic model will be relevant to this section. For a sea floor massive sulphide project, the modification of vent-fluid discharges, if present, should be addressed.

7.7 Seabed substrate characteristics

For example: changes in the sediment composition, grain size, density and pore-water profiles.

7.8 Natural hazards

Discuss any impacts of the operation on natural hazards and plans to deal with these hazards.

7.9 Noise and light

Noise and light above existing levels.

7.10 Greenhouse gas emissions and climate change

Assessment of gas and chemical emissions from both natural and anthropogenic activities, as well as those affecting sea floor and water-column chemistry. Subsections should include estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate.

7.11 Maritime safety and interactions with shipping

Include project safety and interactions with other vessels.

7.12 Waste management

Vessel waste management, with reference to compliance with relevant conventions, legislation and principles, and methods of cleaner production and energy balance.

7.13 Cumulative impacts

The nature and extent of any interactions between various impacts, where they may have cumulative effects, must be considered on both spatial and temporal scales over the lifetime of the mining operation.

7.13.1 Proposed operations impacts

Cumulative within the scope of the mining proposed herein.

7.13.2 Regional operation impacts

Cumulative between activities, where known in the region.

7.14 Other issues

Outline here other, more general issues, as applicable.

7.15 Summary of residual effects

A table may be a useful summary format to pull together the above elements in a simple visual mode.

8. Assessment of impacts on the biological environment and proposed Mitigation

Provide a detailed description and evaluation of potential impacts of the operation to the biological environment components identified in section 5. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;

(aa) The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

It is important that these sections make clear the expected longevity of unavoidable (residual) impacts and whether or not the biological environment is expected to recover, and in what time frame, following disturbance. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

8.1 Key messages

This section should provide an overview of the key content covered in section 8.

8.2 Description of potential impact categories

This section is an overview and description of the categories of general impacts caused by the mining operation. This is not expected to be detailed, but rather to introduce the major types of effects, such as habitat removal, the crushing of animals, the creation of sediment plumes, noise and light, etc. A description should be included of any lessons learned from activities during the exploratory phase of the programme (e.g., mining system component tests).

8.3 Surface

Description of potential effects on the biological environment from the surface down to a depth of 200 metres, including any impacts on plankton (phytoplankton and zooplankton), nekton, surface/near-surface fish such as tuna, and seabirds and marine mammals.

8.3.1 Potential impacts and issues to be addressed**8.3.2 Environmental management measures to mitigate impacts****8.3.3 Residual impacts****8.4 Midwater**

Description of the potential effects on the biological environment from a depth of 200 metres down to 50 metres above the sea floor, including zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals.

8.4.1 Potential impacts and issues to be addressed**8.4.2 Environmental management measures to mitigate impacts****8.4.3 Residual impacts****8.5 Benthic**

Description of the potential effect on benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor.

8.5.1 Potential impacts and issues to be addressed**8.5.2 Environmental management measures to mitigate impacts****8.5.3 Residual impacts****8.6 Ecosystem/community level**

Describe estimated effects on the ecosystem or where linkages between the various components above are known.

8.6.1 Potential impacts and issues to be addressed**8.6.2 Environmental management measures to mitigate impacts****8.6.3 Residual impacts****8.7 Cumulative impacts**

The nature and extent of any interactions between various impacts where they may have cumulative effects must be considered. This should include an evaluation of the spatial and temporal intensity of mining and its effects on other impacts.

8.7.1 Proposed operations impacts

Cumulative within the scope of the mining proposed herein.

8.7.2 Regional operation impacts

Cumulative between activities, where known in the region.

8.8 Summary of residual effects

A table may be a useful summary format.

9. Assessment of impacts on the socioeconomic environment and proposed Mitigation

As in the preceding sections, provide a detailed description and evaluation of potential impacts of the operation to the socioeconomic components identified in

section 6. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational (including maintenance) and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;

(aa) The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

9.1 Key messages

This section should provide an overview of the key content covered in section 9.

9.2 Impact identification

9.2.1 Existing uses

9.2.1.1 Fisheries

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.1.1 Potential impacts and issues to be addressed

9.2.1.1.2 Environmental management measures to mitigate impacts

9.2.1.1.3 Residual impacts

9.2.1.2 Marine traffic

A description of potential impacts on non-project-related marine traffic occurring within the project area, along with proposed management measures and a description of residual impacts.

9.2.1.3 Tourism

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.4 Marine scientific research

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.5 Area-based management tools

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.6 Other

List other potential impacts that are not related to the above (e.g., submarine cables, other mineral Exploration or Exploitation projects).

9.3 Sites of an archaeological or historical nature

Describe, as applicable, potential impacts to sites of archaeological or historical significance that are known to occur within the potential area of impact, along with proposed management measures and a description of residual impacts.

9.4 Socioeconomic and sociocultural issues

This section will provide a description of economic benefits or impacts, including any applicable social initiatives.

9.5 Summary of existing sociocultural environment

A table may be a useful summary format. Potential cumulative effects should also be included.

10. Accidental events and natural hazards

Environmentally hazardous discharges resulting from accidental and extreme natural events are fundamentally different from normal operational discharges of wastes and wastewaters. This section should outline the possibility/probability of accidental events occurring, the impact they may have, the measures taken to prevent or respond to such an event and the residual impact should an event occur.

For each component include:

- (a) The nature and extent of any impact;
 - (b) Measures that will be taken to avoid, mitigate or minimize such impact;
- and
- (c) Residual impacts.

10.1 Extreme weather

For example: hurricanes/cyclones.

10.2 Natural hazards

For example: volcanic eruptions, seismic events.

10.3 Accidental events

For example: leakage or spillage of hazardous material, fires and explosions, and collisions, including potential loss of equipment.

11. Environmental management, monitoring and reporting

Provide sufficient information to enable the Authority to anticipate possible environmental management, monitoring and reporting requirements for an environmental approval. Information listed should reflect the proponent's environmental policy and the translation of that policy to meet the requirements of this section and previous sections during different stages of the project life (i.e., from construction to decommissioning and closure).

The Environmental Management and Monitoring Plan is a separate report from the Environmental Impact Statement, but this could be a useful opportunity to highlight some of the key issues from the Statement that will be addressed in the full Environmental Management and Monitoring Plan. Information detailed in this section should include the headings set out below.

11.1 Organizational structure and responsibilities

This section should show how the Contractor's environmental team fits into its overall organizational structure. Responsibilities of key personnel should be outlined.

11.2 Environmental management system

Although a full environmental management system may not exist at the time the Environmental Impact Statement is submitted, outline the standards that will be considered and/or aligned with when developing the system for the project.

11.3 Environmental Management and Monitoring Plan

An Environmental Management and Monitoring Plan will be submitted as a separate document for the Authority's approval prior to the commencement of mining operations. This section should provide an overview of what the Plan would entail. This section should include, at a minimum, the headings set out below.

11.3.1 Mitigation and management

Summarize the actions and commitments that have arisen from the impact minimization and mitigation strategies.

11.3.2 Monitoring plan

Summarize the monitoring plan approach and programme.

11.3.2.1 Approach

11.3.2.2 Programme

Provide an overview of the envisaged monitoring programme (further detail will be provided in the Environmental Management and Monitoring Plan).

11.3.3 Closure Plan

A Closure Plan will be submitted as a separate document for the Authority's approval. However, this section should provide an overview of what the Closure Plan will entail, including decommissioning, continued monitoring and rehabilitation measures, if applicable.

11.4 Reporting

11.4.1 Monitoring

Outline how the results of monitoring studies will be reported to the Authority.

11.4.2 Incident reporting

Outline how Incidents will be reported and managed.

12. Product stewardship

Provide a brief description of the intended use of the mineral-bearing ore once it leaves the Area. The description should also address the meeting of standards for environmental management. The intention is not to provide a full and highly detailed account, but, where information is known about environmental impacts, these impacts should be described briefly here.

Commented [AUS99]: Australia recommends reinserting the definition of 'environmental management system'. This term is currently undefined in this version of the regulations. However, we note that the previous version of the draft Environmental Regulations (before they were merged) included a definition of the term and a draft regulation (Regulation 28) which outlined the requirements for an Environmental Management System.

The environmental management system was defined as, "that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance"

13. Consultation

Describe the nature and extent of consultation(s) that have taken place with parties identified who have existing interests in the proposed project area and with other relevant stakeholders.

13.1 Consultation methods

Describe the mechanism(s) used to consult with different groups and how this aligns with any relevant consultation obligations.

13.2 Stakeholders

List any relevant stakeholders that have been consulted, ~~and~~ explain the process by which stakeholders were identified **and summarise any matters raised by stakeholders and how these will be addressed.**

Commented [AUS100]: Australia recommends amendments to this provision to increase transparency in relation to stakeholder consultation.

13.3 Public consultation and disclosure

Provide a description of the goals and consultation workshops/meetings that occurred prior to the preparation of the report. Include a description of key concerns and comments identified by stakeholders and whether or not the applicant intends to address these concerns, and, if not, describe the reasons for that decision.

13.4 Continuing consultation and disclosure

Outline any further consultation with stakeholders that has been deemed necessary and is being planned.

14. Glossary and abbreviations

Explain the relevant terms used in the Environmental Impact Statement (e.g., terms under different legislation, technical terms) and provide a list of acronyms and their definitions.

15. Study team

Outline the people involved in carrying out the environmental impact assessment studies and in writing the Environmental Impact Statement. If independent scientists or other experts were involved in any of the work, they should be listed. The names, occupational qualifications and their role in the generation of the Environmental Impact Statement of such people should also be included.

16. References

Provide details of reference materials used in sourcing information or data used in the Environmental Impact Statement.

17. Appendices

The appendices should include all the technical reports carried out for parts of the environmental impact assessment and the Environmental Impact Statement.

Annex V

Emergency Response and Contingency Plan

An Emergency Response and Contingency Plan must:

- (a) Be prepared in accordance with Good Industry Practice and the relevant regulations, Standards and Guidelines;
- (b) Provide an effective plan of action for the applicant's efficient response to Incidents and events, including processes by which the applicant will work in close cooperation with the Authority, coastal States, other competent international organizations and, where applicable, emergency response organizations; and
- (c) Include:
 - (i) The overall aims and objectives and arrangements for controlling the risk of Incidents;
 - (ii) Relevant codes, standards and protocols;
 - (iii) Organizational structure and personnel roles and responsibilities;
 - (iv) Details of individuals authorized to initiate response mechanism(s);
 - (v) Details of control mechanisms in place during the course of normal operations;
 - (vi) Details of the emergency response equipment;
 - (vii) Details of the safety management system;
 - (viii) Details of the environmental management system;
 - (ix) A description of the mining operations and equipment, including emergency response equipment;
 - (x) A description of all foreseeable Incidents, an assessment of their likelihood and consequences and associated control measures;
 - (xi) The number of persons that can be present on the mining vessel(s) at any time;
 - (xii) A description of the arrangements to protect persons on the mining vessel(s), and to ensure their safe escape, evacuation and rescue;
 - (xiii) Details of arrangements for the maintenance of control systems to monitor the Marine Environment in the event of an Incident;
 - (xiv) Details of the emergency response plan;
 - (xv) Details of the known natural marine environmental conditions that may influence the efficiency of response equipment or the effectiveness of a response effort;
 - (xvi) Information and measures relating to the prevention of Incidents which could result in Serious Harm to the Marine Environment;
 - (xvii) An assessment of pollution hazards and the measures to prevent or reduce such hazards;
 - (xviii) An assessment of Mining Discharges and measures to control such discharges;
 - (xix) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning;

- (xx) Details of arrangements for coordinating any emergency response;
- (xxi) Details of training programmes for personnel;
- (xxii) A description of the monitoring of performance under the plan;
- (xxiii) Details of audit and review processes;
- (xxiv) Details of the presence of other hazards/harmful substances; and
- (xxv) An assessment of the likelihood of oil spills, leaks, etc., due to the normal operation of the mining vessel.

Note: This plan is to be developed further under these regulations and in conjunction with other international organizations, flag States, coastal States and sponsoring States and other entities that have relevant jurisdictional competence with regard to specific components of the plan.

Annex VI

Health and Safety Plan and Maritime Security Plan

[To be populated following discussion with the International Maritime Organization secretariat, members of the Authority and Stakeholders]

Commented [AUS101]: We re-iterate our previous comments that we consider health and safety should be addressed in a separate plan from maritime security.

Annex VII

Environmental Management and Monitoring Plan

1. The Environmental Management and Monitoring Plan prepared under these regulations and this annex VII shall be:

(a) Prepared in plain language and in an official language of the Authority, together with, where applicable, an official English-language version; and

(b) Verified by the report of independent competent persons.

2. An Environmental Management and Monitoring Plan shall contain:

(a) A non-technical summary of the main conclusions and information provided to facilitate understanding by members of the Authority and Stakeholders;

(b) A description of the area likely to be affected by the proposed activities;

(c) The environmental objectives and standards to be met;

(d) Details of the Environmental Management System and the applicant's environmental policy;

(e) An assessment of the potential Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result;

(f) An assessment of the significance of the potential Environmental Effects, and proposed mitigation measures and management control procedures and responses to minimize the harm from Environmental Effects consistent with the environmental impact assessment and the Environmental Impact Statement;

(g) A description of the planned monitoring programme and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Management and Monitoring Plan, including the necessary risk assessment and management techniques, including adaptive management techniques (process, procedure, response), if appropriate, needed to achieve the desired outcomes;

(h) Details of the proposed monitoring stations across the project area, including the frequency of monitoring and data collection, the spatial and temporal arrangements for such monitoring and the justification for such arrangements;

(i) The location and planned monitoring and management of preservation reference zones and impact reference zones, or other spatial management planning tools;

(j) A description of relevant environmental performance Standards and indicators (trigger and threshold points), including decision rules based on the results of the monitoring of these indicators;

(k) A description of a system for ensuring that the plan shall adhere to Good Industry Practice, Best Available Techniques and Best Available Scientific Evidence, and a description of how such practices are reflected in the proposed Exploitation activities;

(l) Details of the quality control and management standards, including the frequency of the review of the performance of the Environmental Management and Monitoring Plan;

(m) A description of the technology to be deployed, in accordance with Good Industry Practice and Best Available Techniques;

Commented [AUS102]: This provision provides that the Environmental Management and Monitoring Plan shall contain an assessment of the potential Environmental effects of the proposed activities on the Marine Environment and any significant changes likely to result. We consider there needs to be better linkages between these elements, for example setting out what are the impacts and risks, and what are the proposed control and mitigation measures, how will this reduce the risk to the environment, and whether the residual risk is acceptable.

A prerequisite to determine the potential environmental effects of the proposed Exploitation activities on the marine environment is the establishment of an environmental baseline against which to assess the impacts of mining on the marine environment. Consideration should be given as to whether this requirement has been met in the draft regulations.

(n) Details of the training programme for all persons engaged or to be engaged in activities in the project area;

~~(o)~~ Details of Mining Discharges, including a waste assessment and prevention audit;

(p) Details of ongoing consultation with other users of the Marine Environment;

(q) Details of any practicable restoration of the project area;

(r) A plan for further research and studies; and

(s) Details of reporting requirements and timing.

Commented [AUS103]: This provision states that the plan will contain details of Mining Discharges, including a waste assessment and prevention audit. Further information is required on how these discharges will be managed to an acceptable level, and what incentives the contractor will have to continually improve these.

Annex VIII

Closure Plan

1. The Closure Plan shall be prepared and implemented in accordance with the Guidelines and the relevant regional environmental management plan and shall include the following information:

(a) A description of the closure objectives and how these relate to the mining activity and its environmental and social setting;

(b) The period during which the plan will be required, which shall be determined by reference to a specified duration, achievement of a specified event or target indicator or compliance with specified terms agreed with the Authority;

(c) A plan with coordinates showing the area(s) subject to the closure objectives;

(d) A summary of the relevant regulatory requirements, including conditions previously documented;

(e) Details of the closure implementation and timetable, including descriptions of the arrangements for the temporary suspension of mining activities or for permanent closure decommissioning arrangements for vessels, Installations, plant and **removal of all** equipment (where applicable);

(f) Data and information relating to baseline conditions for monitoring measures;

(g) An updated environmental impact assessment for the activities that will be undertaken during closure, if any, together with details of the identifiable residual Environmental Effects, including any relevant technical documents or reports;

(h) Details of monitoring to be undertaken during and after closure that specify the sampling design (spatial and temporal sampling), the methods to be used and the duration of the post-closure activities;

(i) Details of the management measures to Mitigate the residual Environmental Effects;

(j) Details of ~~any~~ **the** restoration **and remediation** objectives and activities, ~~where applicable~~;

(k) Information on reporting and management of data and information post-closure;

(l) Details of the persons or entity (subcontractor, consultant(s)) that will carry out the monitoring and management measures under the Closure Plan, including their qualification(s) and experience, together with details of the budget, project management plan and the protocols for reporting to the Authority under the Closure Plan;

(m) Details of the amount of the Environmental Performance Guarantee provided under these regulations;

(n) Details of any compensatory measures agreed or proposed to achieve the agreed closure objectives; and

(o) Details of consultations with Stakeholders in respect of the plan.

2. The level of detail in the Closure Plan is expected to differ between cases involving a temporary suspension of mining operations and cases involving final mine closure. The content of the Closure Plan is to be commensurate with the nature, extent and duration of activities associated with the level of closure and maturity of the project.

Commented [AUS104]: This provision states that the Closure Plan shall include, amongst other things, details of the closure implementation and timetable, including descriptions of the decommissioning arrangements for vessels, plants and equipment. We consider the obligation for contractors to remove all equipment and remediate the environment should be explicitly included here.

Annex IX

Exploitation contract and schedules

THIS CONTRACT made the ... day of ... between the INTERNATIONAL SEABED AUTHORITY represented by its SECRETARY-GENERAL (hereinafter referred to as "the Authority") and ... represented by ... (hereinafter referred to as "the Contractor") WITNESSETH as follows:

A. Incorporation of clauses

The standard clauses set out in annex X to the regulations on exploitation of mineral resources in the Area shall be incorporated herein and shall have effect as if herein set out at length.

B. Contract Area

For the purposes of this Contract, the "Contract Area" means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

C. Grant of rights

In consideration of (a) their mutual interest in the conduct of Exploitation in the Contract Area pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the Convention, (b) the rights and responsibility of the Authority to organize and control activities in the Area, particularly with a view to administering the resources of the Area, in accordance with the legal regime established in Part XI of the Convention and the Agreement and Part XII of the Convention, respectively, and (c) the interest and financial commitment of the Contractor in conducting activities in the Contract Area and the mutual covenants made herein, the Authority hereby grants to the Contractor the exclusive right to Explore for and Exploit [specified Resource category] in the Contract Area in accordance with the terms and conditions of this contract.

D. Entry into force and Contract term

This Contract shall enter into force on signature by both parties and, subject to the standard clauses, shall remain in force for an initial period of [x] years thereafter unless the Contract is sooner terminated, provided that this Contract may be renewed in accordance with the regulations.

E. Entire agreement

This Contract expresses the entire agreement between the parties, and no oral understanding or prior writing shall modify the terms hereof.

F. Languages

This Contract will be provided and executed in the [... and] English language[s] [and both texts are valid].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed this Contract at ..., this ... day of

The Schedules**Schedule 1**

Coordinates and illustrative chart of the Contract Area and proposed Mining Area(s).

Schedule 2

The Mining Workplan.

Schedule 3

The Financing Plan.

Schedule 4

The Emergency Response and Contingency Plan.

Schedule 5

The Health and Safety Plan and the Maritime Security Plan.

Schedule 6

The Environmental Management and Monitoring Plan.

Schedule 7

The Closure Plan.

Schedule 8

The Training Plan.

Schedule 9

Conditions, amendments and modifications agreed between the Commission and the Contractor, and approved by the Council, during the application approval process.

Schedule 10

Where applicable under regulation 26, the form of any Environmental Performance Guarantee, and its related terms and conditions.

Schedule 11

Details of insurance policies taken out or to be taken out under regulation 36.

Schedule 12

Agreed review dates for individual plans, together with any specific terms attaching to a review, where applicable.

Schedule 13

To the extent that any documentation is not available at the point of signing the Contract, and a time frame for submission has been agreed with the Commission, this should be reflected here, together with, where applicable, deadline dates.

Annex X

Standard clauses for exploitation contract

Section 1

Definitions

In the following clauses:

- (a) “Regulations” means the regulations on exploitation of mineral resources in the Area, adopted by the Authority; and
- (b) “Contract Area” means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

Section 2

Interpretation

- 2.1 Terms and phrases defined in the regulations have the same meaning in these standard clauses.
- 2.2 In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Contract and references in this Contract to the Convention are to be interpreted and applied accordingly.

Section 3

Undertakings

- 3.1 The Authority undertakes to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention.
- 3.2 The Contractor shall implement this contract in good faith and shall in particular implement the Plan of Work in accordance with Good Industry Practice. For the avoidance of doubt, the Plan of Work includes:
 - (a) The Mining Workplan;
 - (b) The Financing Plan;
 - (c) The Emergency Response and Contingency Plan;
 - (d) The Training Plan;
 - (e) The Environmental Management and Monitoring Plan;
 - (f) The Closure Plan; and
 - (g) The Health and Safety Plan and Maritime Security Plan,that are appended as schedules to this Contract, as the same may be amended from time to time in accordance with the regulations.
- 3.3 The Contractor shall, in addition:
 - (a) Comply with the regulations, as well as other Rules of the Authority, as amended from time to time, and the decisions of the relevant organs of the Authority;
 - (b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

(c) Pay all fees and royalties required or amounts falling due to the Authority under the regulations, including all payments due to the Authority in accordance with Part VII of the regulations; and

(d) Carry out its obligations under this Contract with due diligence, including compliance with the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment, and exercise reasonable regard for other activities in the Marine Environment.

Section 4 Security of tenure and exclusivity

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein.

4.2 The Authority undertakes not to grant any rights to another person to Explore for or Exploit the same resource category in the Contract Area for the duration of this Contract.

4.3 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than the resource category specified in this Contract but shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation activities of the Contractor.

4.4 If the Authority receives an application for an exploitation contract in an area that overlaps with the Contract Area, the Authority shall notify the Contractor of the existence of that application within 30 Days of receiving that application.

Section 5 Legal title to Minerals

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof, in compliance with this Contract.

5.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

Section 6 Use of subcontractors and third parties

6.1 No Contractor may subcontract any part of its obligations under this Contract unless the subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority.

6.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its subcontractors and any work that is further subcontracted, in accordance with Good Industry Practice.

6.3 Nothing in this section shall relieve the Contractor of any obligation or liability under this Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under this Contract in the event that it subcontracts any aspect of the performance of those obligations.

Section 7

Responsibility and liability

7.1 The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, including the costs of reasonable measures to prevent and limit damage to the Marine Environment, account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage caused by the Contractor regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term.

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.

7.3 The Authority shall be liable to the Contractor for the actual amount of any damage caused to the Contractor arising out of its wrongful acts in the exercise of its powers and functions, including violations under article 168 (2) of the Convention, account being taken of contributory acts or omissions by the Contractor, its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract, or third parties.

7.4 The Authority shall indemnify the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, against all claims and liabilities of any third party arising out of any wrongful acts or omissions in the exercise of its powers and functions hereunder, including violations under article 168 (2) of the Convention.

Section 8

Force majeure

8.1 The Contractor shall not be liable for an unavoidable delay or failure to perform any of its obligations under this Contract due to force majeure, provided the Contractor has taken all reasonable steps to overcome the delay or obstacle to performance. For the purposes of this Contract, force majeure shall mean an event or condition that the Contractor could not reasonably be expected to prevent or control; provided that the event or condition was not caused by Contractor action, negligence or by a failure to observe Good Industry Practice.

8.2 The Contractor shall give written notice to the Authority of the occurrence of an event of force majeure as soon as reasonably possible after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance and if a remedy is possible, the estimated time to cure or overcome the event or circumstance and the obligations that cannot be properly or timely performed on account of the event or circumstance) and similarly give written notice to the Authority of the restoration of normal conditions.

8.3 The Contractor shall, upon request to the Secretary-General, be granted a time extension equal to the period by which performance was delayed hereunder by force majeure and the term of this Contract shall be extended accordingly.

**Section 9
Renewal**

9.1 The Contractor may renew this Contract for periods not more than 10 years each, on the following conditions:

(a) The resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(c) This Contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.

9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.

9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract shall be renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.

**Section 10
Renunciation of rights**

10.1 The Contractor, by prior written notice to the Authority, may renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

**Section 11
Termination of sponsorship**

11.1 If the nationality or control of the Contractor changes or the Contractor's sponsoring State or States, as defined in the regulations, terminates its sponsorship, the Contractor shall promptly notify the Authority, and in any event within 90 Days following such changes or termination.

11.2 In either such event, if the Contractor does not obtain another sponsor meeting the requirements prescribed in the regulations which submits to the Authority a certificate of sponsorship for the Contractor in the prescribed form within the time specified in the regulations, this Contract shall terminate forthwith.

**Section 12
Suspension and termination of Contract and penalties**

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:

(a) If, in spite of written warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful

violations of the fundamental terms of this Contract, Part XI of the Convention, the Agreement and the rules, regulations and procedures of the Authority;

(b) If the Contractor has failed, within a reasonable period, to comply with a final binding decision of the dispute settlement body applicable to it;

(c) If the Contractor knowingly, recklessly or negligently provides the Authority with information that is false or misleading;

(d) If the Contractor or any person standing as surety or financial guarantor to the Contractor pursuant to regulation 26 of the regulations becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction; or

(e) If the Contractor has not made bona fide efforts to achieve or sustain Commercial Production and is not recovering Minerals in commercial quantities at the end of five years from the expected date of Commercial Production, save where the Contractor is able to demonstrate to the Council's satisfaction good cause, which may include force majeure, or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving commercial production.

12.2 The Council may, without prejudice to Section 8, after consultation with the Contractor, suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if the Contractor is prevented from performing its obligations under this Contract by reason of an event or condition of force majeure, as described in Section 8, which has persisted for a continuous period exceeding two years, despite the Contractor having taken all reasonable measures to overcome its inability to perform and comply with the terms and conditions of this Contract with minimum delay.

12.3 Any suspension or termination shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate this Contract in accordance with Part XI, Section 5, of the Convention, in which case this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

12.4 If the Contractor takes such action, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

12.5 If the Council has suspended this Contract, the Council may by written notice require the Contractor to resume its operations and comply with the terms and conditions of this Contract, not later than 60 Days after such written notice.

12.6 In the case of any violation of this Contract not covered under Section 12.1 (a), or in lieu of suspension or termination under Section 12, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation.

12.7 Subject to Section 13, the Contractor shall cease operations upon the termination of this Contract.

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

Section 13
Obligations on Suspension or following Expiration, Surrender or Termination of a Contract

13.1 In the event of termination, expiration or surrender of this Contract, the Contractor shall:

(a) Comply with the final Closure Plan, and continue to perform the required environmental management of the Contract Area as set forth in the final Closure Plan and for the period established in the final Closure Plan;

(b) Continue to comply with relevant provisions of the regulations, including:

(i) Maintaining and keeping in place all insurance required under the regulations;

(ii) Paying any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of suspension or termination; and

(iii) Complying with any obligation to meet any liability under Section 8;

(c) Remove all Installations, plant, equipment and materials in the Contract Area; and

(d) Make the area safe so as not to constitute a danger to persons, shipping or the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any, shall be deducted from the Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

Section 14
Transfer of rights and obligations

14.1 The rights and obligations of the Contractor under this Contract may be transferred in whole or in part only with the consent of the Authority and in accordance with the regulations, including payment of the fee as set out in appendix II to the regulations.

14.2 The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant in accordance with the regulations and assumes all of the obligations of the Contractor, and if the transfer does not confer to the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention.

14.3 The terms, undertakings and conditions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 15

No waiver

No waiver by either party of any rights pursuant to a breach of the terms and conditions of this Contract to be performed by the other party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

Section 16

Modification of terms and conditions of this Contract

16.1 When circumstances have arisen or are likely to arise after this Contract has commenced which, in the opinion of the Authority or the Contractor would render this Contract inequitable or make it impracticable or impossible to achieve the objectives set out in this Contract or in Part XI of the Convention, the parties shall enter into negotiations to revise it accordingly.

16.2 This Contract may be revised by agreement between the Contractor and the Authority.

16.3 This Contract may be revised only:

- (a) With the consent of the Contractor and the Authority; and
- (b) By an appropriate instrument signed by the duly authorized representatives of the parties.

16.4 Subject to the confidentiality requirements of the regulations, the Authority shall publish information about any revision to the terms and conditions of this Contract.

Section 17

Applicable law

17.1 This Contract is governed by the terms of this Contract, the Rules of the Authority and other rules of international law not incompatible with the Convention.

17.2 The Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract shall observe the applicable law referred to in Section 17.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

17.3 Nothing contained in this Contract shall be deemed an exemption from the necessity of applying for and obtaining any permit or authority that may be required for any activities under this Contract.

17.4 The division of this Contract into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 18

Disputes

Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part XII of the regulations.

Section 19
Notice

Any notice provided to or from one party to another pursuant to this Contract shall be provided in accordance with the notice provision set out at regulation 91 of the regulations.

Section 20
Schedules

This Contract includes the schedules to this Contract, which shall be an integral part hereof.

Appendix I

Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 36 include:

1. Fatality of a person.
2. Missing person.
3. Occupational lost time illness.
4. Occupational lost time injury.
5. Medical evacuation.
6. Fire/explosion resulting in an injury or major damage or impairment.
7. Collision resulting in an injury or major damage or impairment.
8. Significant leak of hazardous substance.
9. Unauthorized Mining Discharge.
10. Adverse environmental conditions with likely significant safety and/or environmental consequences.
11. Significant threat or breach of security.
12. Implementation of Emergency Response and Contingency Plan.
13. Major impairment/damage compromising the ongoing integrity or emergency preparedness of an Installation or vessel.
14. Impairment/damage to safety or environmentally critical equipment.
15. Significant contact with fishing gear.
16. Contact with submarine pipelines or cables.

Appendix II
Schedule of annual, administrative and other applicable fees
Prescribed amount (United States dollars)
Annual fees

Submission of annual report (regulation 84) []

Application and other fees

Application for the approval of a Plan of Work (regulation 7 (3) (j)) []

Renewal of an exploitation contract (regulation 20) []

Transfer of an interest in an exploitation contract and approved Plan of Work (regulation 23) []

Use of a contract or approved Plan of Work as security (regulation 22) []

Temporary suspension in Commercial Production (regulation 29) []

Modification to a Plan of Work (regulation 57) []

Approval of a revised/final Closure Plan (regulations 59 (2) and 60) []

Approval of a revised Environmental Management and Monitoring Plan (regulation 52 (8) (b)) []

[Other]

Appendix III

Monetary penalties

This appendix is no longer referenced in these draft regulations. Monetary penalties referenced in regulations 80 and 103 (6) to be imposed by the Council should be set out in a Council decision, which would be subject to review from time to time.

Prescribed amount (United States dollars)

Penalty in respect of any underdeclaration or underpayment in respect of a royalty	[]
Penalty in respect of any failure to deliver or furnish a royalty return	[]
Penalty in respect of false royalty returns and information	[]
Failure to submit an annual report (regulation 38)	[]

Other: to be considered e.g. relating to notifiable events (failure to notify); environmental & other Incidents; not achieving/exceeding environmental thresholds. A desktop study should be performed in connection with monetary penalties under comparable national regimes for extractive industries, including those relating to a broader range of breaches of the environmental provisions and failure to adhere to the Plan of Work annexed to an exploitation contract.

Appendix IV

Determination of a royalty liability

This appendix sets out the methodology for the calculation of a royalty payable under regulation 64 in respect of the categories of resources. It is indicative and presented for discussion only at this time.

In the present appendix:

Applicable Royalty Rate means the royalty rate shown in the tables below for the applicable Resource category or as determined by a decision of the Council following any review under these regulations.

Average Listed Price means the Average Listed Price for a Relevant Metal, which is a price calculated by averaging the daily prices (in United States dollars)¹ per metric ton listed for the metal in an Official Listing during a royalty return period as specified and published by the Authority.

Average Grade means the average metal content of the Relevant Metal obtained from a range of grades in the Mining Area² expressed as the percentage of the metal per ton of the mineral-bearing ore at the Valuation Point and shown under column B in the tables below for the applicable Resource category.

First Period of Commercial Production means a fixed period of [x]³ years following the date of commencement of Commercial Production.

Official Listing means a list of quoted or published prices of metals:

- (a) On a recognized international mineral exchange or market;
- (b) In a publication recognized for quoting or publishing prices of metals in an international market; or
- (c) Where there is no listed price, the Council shall, based on recommendations of the Commission and following consultation with Contractors, determine a formula for the determination of the Average Listed Price for a Relevant Metal.

Relevant Metal means a metal contained in the mineral-bearing ore identified and determined by the Council as relevant for the purposes of calculating the assumed gross value.

Relevant Metal Value(s) means the assumed gross value(s) of a Relevant Metal calculated as the product of its Average Listed Price and Average Grade.

Second Period of Commercial Production means a fixed period of [y]⁴ years following the end of the First Period of Commercial Production.

Valuation Point is the point of first sale or the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore from the Contract Area.

¹ To consider the use of special drawing rights as a unit of account to value the revenue on which a royalty would be based.

² An average grade (content) could be determined from resource assessments provided to the Authority in accordance with its resource classification guidelines. A range of acceptable grade parameters could be included in the regulations, with the actual average grade shown in a royalty return, subject where necessary to assay.

³ To be informed by financial model discussion.

⁴ See footnote 3.

Valuation of mineral-bearing ore⁵

1. The value of the mineral-bearing ore shall be an assumed gross value per metric ton at the Valuation Point.
2. The assumed gross value shall reflect the assumed gross value of each Relevant Metal contained in the mineral-bearing ore, calculated under this appendix.

Royalty rate

1. The Applicable Royalty Rate shall be:
 - (a) For the First Period of Commercial Production, the percentage(s) shown under column C in the tables below for the applicable Resource category; and
 - (b) For the Second Period of Commercial Production, the percentage(s) shown under column D in the tables below for the applicable Resource category.
2. The Applicable Royalty Rate and the manner and basis of its calculation may vary as between a royalty payable in respect of different Relevant Metals and different Resource categories.

Calculation of royalty payable

1. The royalty payable for a royalty return period is the product of the sum of the Relevant Metal Values multiplied by the Applicable Royalty Rate for each Relevant Metal and the quantity (in metric tons) of the mineral-bearing ore sold or transferred at the Valuation Point, thus:

$$RP = ((RMV^1 \times ARR^1) + (RMV^2 \times ARR^2) + (RMV^3 \times ARR^3) + \dots (RMV \times ARR)) \times \text{Total quantity of mineral-bearing ore in metric tons}$$

Where:

RP = Royalty Payable

RMV^1 = the first Relevant Metal Value

ARR^1 = the Applicable Royalty Rate applicable to the first Relevant Metal

RMV^2 = the second Relevant Metal Value

ARR^2 = the Applicable Royalty Rate applicable to the second Relevant Metal, and so on

RMV^3 = the third Relevant Metal Value

ARR^3 = the Applicable Royalty Rate applicable to the third Relevant Metal, and so on

2. Where the Council, under columns C and/or D in the tables below for the applicable Resource category, has determined that a composite royalty rate⁶ shall be applicable to the assumed gross value of the mineral-bearing ore, the

⁵ This approach towards determining a reference value for the metals contained in the ore has been discussed in connection with polymetallic nodules only. Whether this approach is appropriate for other mineral resource categories remains open for discussion. That said, the approach uses international reference prices, and to that extent does not present the Authority with potentially burdensome transfer pricing issues.

⁶ In connection with polymetallic nodules, discussions to date have focused on a single royalty rate to be applied to a metal basket value. Other than simplicity in calculation, no detailed discussion has taken place in terms of applying different royalty rates to different metals contained in the basket.

royalty payable for a royalty return period is the product of the sum of the Relevant Metal Values and the quantity (in tons) of the mineral-bearing ore sold or transferred at the Valuation Point multiplied by the composite royalty rate, thus:

$$RP = (RMV^1 + RMV^2 + RMV^3 + \dots + RMV^n) \times \text{Total quantity of mineral-bearing ore (in tons)} \times \text{composite royalty rate}$$

The following tables shall be adopted progressively, from time to time:

Table 1
Polymetallic nodules

<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second period of commercial production: applicable royalty rate (percentage)</i>
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Table 2
Polymetallic sulphides

<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second Period of Commercial Production: Applicable Royalty Rate (percentage)</i>
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Table 3
Cobalt-rich ferromanganese crusts

<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second Period of Commercial Production: Applicable Royalty Rate (percentage)</i>
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Schedule

Use of terms and scope

“**Agreement**” means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

“**Best Available Scientific Evidence**” means the best scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.

“**Best Available Techniques**” means the latest stage of development, and state-of-the-art processes of facilities or of methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Guidelines.

“**Best Environmental Practices**” means the application of the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved knowledge, understanding or technology, taking into account the guidance set out in the applicable Guidelines.

“**Calendar Year**” means a period of 12 months, ending with 31 December.

“**Closure Plan**” means the document referred to in annex VIII.

“**Commercial Production**” shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.¹

“**Commission**” means the Legal and Technical Commission of the Authority.

“**Confidential Information**” shall have the meaning assigned to that term by regulation 89.

“**Contract Area**” means the part or parts of the Area allocated to a Contractor under an exploitation contract and defined by the coordinates listed in schedule 1 to such exploitation contract.

“**Contractor**” means a contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.

“**Convention**” means the United Nations Convention on the Law of the Sea.

“**Council**” means the executive organ of the Authority established under article 158 of the Convention.

“**Day**” means calendar day.

¹ This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

“Emergency Response and Contingency Plan” means the document referred to in annex V.

“Environmental Effect” means any consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, temporary or permanent, or cumulative effect arising over time or in combination with other mining impacts.

“Environmental Management System” means that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance.

“Environmental Performance Guarantee” means a financial guarantee supplied under regulation 26.

“Environmental Plans” means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

“Exploit” and **“Exploitation”** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in the Area, for the production and marketing of metals, as well as the decommissioning and closure of mining operations.

“Exploration Regulations” means the regulations on prospecting and exploration for polymetallic nodules in the Area, the regulations on prospecting and exploration for polymetallic sulphides in the Area and the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

“Explore” and **“Exploration”**, as applicable, mean the searching for Resources in the Area with exclusive rights, the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation.

“Feasibility Study” means a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

“Financing Plan” means the document referred to in annex III.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide.

“Guidelines” means documents that provide guidance on technical and administrative matters, issued by the Authority pursuant to regulation 95.

“Incident” means an event, or sequence of events, where activities in the Area result in:

- (a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);
- (b) Serious Harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious

Commented [AUS105]: Australia proposes that Environmental Management System is defined in the exploitation regulations. This definition is from the previous draft Environmental Regulations (before they were merged).

Harm to the Marine Environment is a reasonably foreseeable consequence of the situation; and/or

- (c) Damage to a submarine cable or pipeline, or any Installation.

“Incidents Register” means a register maintained under regulation 33 (2) (c).

“Inspector” means a person acting under Part XI of these regulations.

“Installations” includes, insofar as they are used for carrying out activities in the Area, structures and platforms, whether stationary or mobile.

“Marine Environment” includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof.

“Material Change” means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.

“Metal” means any metal contained in a Mineral.

“Minerals” means Resources that have been recovered from the Area.

“Mining Area” means the part or parts within the Contract Area, described in a Plan of Work, as may be modified from time to time in accordance with these regulations.

“Mining Discharge” means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site.

“Mining Workplan” means the document referred to in annex II.

“Mitigate” and **“Mitigation”** includes:

- (a) Avoiding an effect altogether by undertaking or not undertaking a certain activity or parts of an activity;
- (b) Minimizing effects by limiting the degree or magnitude of the activity and its implementation;
- (c) Rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and
- (d) Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity.

“Plan of Work” means a Plan of Work for Exploitation in the Area, defined collectively as all and any plans or other documents setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an exploitation contract.

“Reserved Area” means any part of the Area designated by the Authority as a reserved area in accordance with article 8 of annex III to the Convention.

“Resources” means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including: (a) polymetallic nodules, defined as any deposit or accretion of nodules, on or below the surface of the deep seabed, which contain metals such as manganese, nickel, cobalt and copper; (b) polymetallic sulphides, defined as hydrothermally formed deposits of sulphides and accompanying mineral

resources in the Area which contain concentrations of metals such as copper, lead, zinc, gold and silver; and (c) cobalt crusts, defined as cobalt-rich ferromanganese hydroxide/oxide deposits formed from direct precipitation of Minerals from seawater onto hard substrates containing concentrations of metals such as cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium and other metallic and rare earth elements.

“Rules of the Authority” means the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority **(including Standards)** as may be adopted from time to time.

“Seabed Mining Register” means the registry established and maintained by the Authority in accordance with regulation 92.

“Serious Harm” means any effect from activities in the Area on the Marine Environment which represents a significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Evidence.

“Sponsoring State” means a State party or parties to the Convention which submits a certificate of sponsorship of an applicant in accordance with regulation 6.

“Stakeholder” means a natural or juristic person or an association of persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information or expertise.

“Standards” means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94.
