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International Seabed Authority

14-20 Port Royal Street

Kingston,

Jamaica, W.I.

Potsdam, 15 October 2019

To: consultation@isa.org.jm

IASS Comments on
DRAFT REGULATIONS ON EXPLOITATION OF MINERAL RESOURCES IN THE AREA

Dear Madam/Sir

The Institute for Advanced Sustainability Studies, Observer Member at the Authority since 2017, is pleased to provide the following comments on the "Draft regulations on exploitation of mineral resources in the Area" (ISBA/25/C/WP.1) published for comment by stakeholders via the ISA website.

We provide express consent for this document to be uploaded on the Authority's website and for wider dissemination. We do not object to the Authority referencing our comments against specific Sections and parts of the framework for ease of reading by all stakeholders. We are interested in future contact by the Authority and / or being part of a stakeholder group.

For your information, the following personnel at the IASS have contributed to this document: Pradeep Singh, Sabine Christiansen, Maila Guilhon.

If you have any questions, kindly contact us through the contact point (sebastian.unger@iass-potsdam.de). We thank you for your kind attention.

Yours sincerely

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Project lead

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Institute for Advanced Sustainable Studies (IASS)

Commentary on the

'Draft regulations on exploitation of mineral resources in the Area' (ISBA/25/C/WP.1)

The IASS wishes to express its gratitude to the Authority for enabling all stakeholders to provide public comments and feed into the development of the Draft Regulations on Exploitation of Mineral Resources of the Area. As an Observer Member at the Authority that actively participates in assisting the Authority in its work, the IASS maintains a keen interest in ensuring that a robust regime is designed, in particular one that fully reflects the following values: common heritage of mankind, benefit to mankind as a whole, and the effective protection and preservation of the marine environment. As such, this opportunity to present our comments to the Authority is greatly appreciated. We trust that the Authority and its member States will find our comments useful. Our comments are divided into two sections. Section A incorporates our General Observations on the Draft Regulations; whereas Section B comprises of our Specific Comments in relation to the same.

SECTION A: GENERAL OBSERVATIONS

1. Without prejudice to the specific comments on document ISBA/25/C/WP.1 that will be presented in Section B, we would like to begin by expressing our concern that the Authority is proceeding to finalize the Draft Regulations, with a view for adoption by the Council, in haste and without thorough deliberations. There are numerous themes and topics that are closely tied to the exploitation of mineral resources in the Area which remain unanswered, and in some instances, yet to be addressed. We recommend that the Authority first channels its attention towards resolving these unanswered or unaddressed themes before proceeding further with the document in question (ISBA/25/C/WP.1). These themes include, but are not limited to, the following:

a. **Financial terms**: Efforts to consider this theme are currently ongoing through the 'Open-ended informal working group of the Council in respect of the development and negotiation of the financial terms of a contract' (OEWG). We recommend that the Draft Regulations should not be finalized until a determination is made on critical matter. Closely related to this is the need to first identify if there is actually a demand for seabed minerals based on contemporary market trends which does not only replace the minerals from land mining. Exploitation of the mineral resources of the Area should only take place if an equitable return is made available to mankind, premised on the common heritage of mankind, and this includes the essential consideration of fair compensation for the ensuing loss that is caused to mankind as a result of such exploitation.

b. **Benefit for mankind as a whole**: There is yet to be a clear determination on the actual significance of the Area, being the common heritage of mankind, and how this translated into developing the resources of the Area for the benefit of mankind as a whole. We recommend that the Council addresses this question in a candid and transparent manner before deciding whether or not to proceed with the finalization of the Draft Regulations. We affirm our position that the exploitation of the resources of the Area should not take place unless there is a clear net benefit to mankind.

c. **Equitable sharing of benefits**: The Authority is required under the Convention to design an appropriate mechanism for the equitable sharing of benefits that result from activities in the Area. At

present, there is not much progress in this department. Finalizing the Draft Regulations without first agreeing on an appropriate benefit-sharing mechanism seems to be a premature step; one that is akin to 'putting the cart before the horse'.

d. **Fair compensation to land-based producing developing States**: The Authority is also required under the Convention to ensure that the economies of land-based producing developing States, who rely on terrestrial mining as a major source of income, are not adversely affected by the conduct of exploitation activities in the Area. As the Authority has only very recently announced a call for a study on this theme, we recommend that this process be completed first before the Draft Regulations are adopted. Exploitation of the mineral resources in the Area should not take place until there is sufficient, demonstrable evidence that the adverse impacts caused to land-based producing developing States can be effectively compensated.

e. **Operationalization of the Enterprise**: In this respect, we recommend that the Authority considers the views of numerous member States, in particular the views made by the African Group, that the full operationalization of the Enterprise is critical before any exploitation activity takes place.

f. Ongoing progress of the Intergovernmental Negotiations on the Conservation and Sustainable Use of **Marine Biodiversity in Areas Beyond National Jurisdiction**: Due to the implications that the outcome of this negotiations might have in relation to the conduct of activities in the Area (or more precisely, to certain parts of the Area), we recommend that the finalization of the Draft Regulations be postponed until key matters under the forthcoming internationally legally binding instrument under the Convention is agreed upon.

g. Development of **Environmental Standards and Guidelines**: While the Draft Regulations does anticipate the adoption of environmental 'Standards and Guidelines', there is not much clarity on what are these 'Standards and Guidelines'. Further, at the recent second part of the 25th Annual Session of the Authority, a list of such potential 'Standards and Guidelines' as identified by the Legal and Technical Commission were solely in the form of 'Guidelines', which are of a non-binding nature. We recommend that Authority addresses this question in a clear manner before proceeding with the finalization of the Draft Regulations. We reiterate our position, as firmly made via interventions at the second part of the 25th Annual Session of the Authority, that we do not wish to see a situation where the Draft Regulations are finalized before the necessary environmental Standards are agreed upon, only to have these Standards to be designed as non-binding Guidelines, or even worse, to not be addressed at all.

h. Development of **Regional Environmental Management Plans**: Here, we urge the Authority to consider the resounding view of many member States that exploitation activities shall not commence in areas for which no REMP exists. Further, we also recommend that the Authority postpones the finalization of the Draft Regulations until a common understanding has been achieved on the legal ramifications that REMPs bring about. More clarity on this is needed, as some suggestions will be explored below in Section B. We also believe that the finalization of the Draft Regulations should postponed until a standardized approach to the process that all REMPs should undergo, in particularly with respect to the design, content, adoption, implementation and reviews of all REMPs, have been agreed upon. This should include overall agreed strategic objectives for the protection and preservation of the marine environment in line with the international commitments of all member States, as well as an appropriate monitoring, assessment and review framework. There is a real likelihood of significant inconsistencies in the development processes of REMPs if this has not already been agreed upon when the Draft Regulations are adopted.

i. **Test mining**: We recommend that Contractors be obligated to successfully demonstrate through test mining activities that they have a certain level of technical capacity to manage the potentially ensuing environmental harm both at the stage of applying for an exploitation contract (lower threshold) and at the stage prior to the commencement of commercial production (higher

threshold). It is essential for this topic to be discussed first, and considered in the context of incorporating any such requirements into legal instruments (e.g. rules, regulations and procedures of the Authority), before the present Draft Regulations are adopted.

j. **Carbon footprint**: We urge the Authority to consider regulating the energy usage of mining operations. In the first place, Contractors should be required to quantify (estimation) the carbon footprint associated with the Plan of Work when it submits its application. Measures that will be adopted to reduce energy consumption should be highlighted, including any efforts to use renewable sources of energy. As a second step, the Authority could consider designing regulations that would effectively (albeit indirectly) require a reduction in energy use (e.g. operational standards) with respect to mining operational activities as well as shipboard processing of minerals. Apart from that, the Authority should also require Contractors to estimate and report the greenhouse gas emissions associated with respect to the transportation of ores from the mining site to shore, as well as from onshore processing. We note that this is covered in Annex IV, paragraph 3. We urge the Authority to come up with inventive and innovative ways in which the emission reductions from such activities can be achieved. Given that the Authority has barely considered the carbon footprint aspect of a mining operation (from exploration to exploitation/extraction to transportation and finally to processing), we recommend that the finalization of the Draft Regulations be postponed until this topic is thoroughly explored.

k. **Institutional design**: At the heart of developing the mineral resources of the Area and enabling its exploitation is the institutional ability to govern those resources and the capacity to make informed decisions. Since the adoption of the Draft Regulations will theoretically enable exploitation activities to take place in the near future, the present institutional setting of the Authority and its ability to facilitate the conduct of such activities is, therefore, a valid question to ask. In this context, we make the following observations:

i. First, there exist some serious doubts as to whether the Authority is in possession of sufficient information (e.g. environmental baseline data), particularly with respect to the type and extent of potential harm that could be inflicted to the marine environment, in order to make an informed decision when granting exploitation contracts. We recommend that the Authority postpones the adoption of the Draft Regulations until more knowledge is gained in this respect, in particular from exploration contracts (whereby environmental data is disclosed to the Authority and shared in a transparent manner) and through marine scientific research.

ii. Second, while the Authority has taken some steps to build a knowledge database (i.e. the Authority's Data Management Strategy and the creation of DeepData), there is little evidence at this stage to show that the knowledge database is capable of serving as an effective informational tool. Further, there appears to be no real drive or zeal on the part of the Authority to collate and actively synthesize the data in its possession in order to transform this information into knowledge. We recommend that the Authority enhances its ability to curate information and strategically identify existing knowledge gaps and determine how to overcome them. Improvements on the manner in which knowledge is generated and maintained should ideally be done before the Draft Regulations are adopted. Only then would the Authority be able to make informed decisions with respect to exploitation activities.

iii. Third, as the Legal and Technical Commission (LTC) plays an important role in determining whether or not to approve a plan of work, we recommend that its composition of members be re-evaluated. Based on its current composition, there appears to be an overwhelming lack of capacity from the environmental perspective. We recommend that the Council undertakes a candid assessment of this reality before finalizing the Draft Regulations.

iv. Fourth, in addition to the potential lack of environmental expertise of the LTC, given its heavy workload and endless list of responsibilities, we recommend the establishment of an

Environment and Scientific Committee as a subsidiary body within the Authority's set-up, in order to facilitate informed, science-based decision-making at the Authority. This could take form as a sub-set to the LTC at the very least, as a semi-detached body alongside the LTC whereby both bodies have shared responsibilities with clear demarcations of tasks, or as an independent subsidiary body to the Council or Assembly at its very best. We recommend that such institutional reforms be considered by the Authority before the Draft Regulations are adopted, in order to ensure that the Authority can effectively control and manage such activities.

v. Fifth, it will be pointless to have a robust set of regulations to govern exploitation activities if there are no mechanisms of ensuing compliance. Here, we recommend that the Authority develop clear rules with specific obligations on sponsoring States to ensure that they are actively engaged in scrutinizing the activities of entities operating under their sponsorship.

vi. Finally, we recommend that two additional subsidiary bodies be created. One, a Data Committee to consider all matters relating to information gathering and handling; and two, a Compliance Committee, which exercises oversight over the Inspectorate body (which should also be already in existence prior to the finalization of the Regulations) as well as issue compliance notices and other related tasks. These institutional changes must be made before the Draft Regulations are finalized.

2. Further, we are of the view that although the Draft Regulations makes a distinction between 'Contract Area' and 'Mining Area' in the 'Plan of Work', thereby clearly indicating that only certain parts of the 'Contract Area' will actually be mined, we strongly feel that this matter should be regulated more stringently and comprehensively. From the definitions of 'Plan of Work' and 'Contract Area', we gather that an exploitation contract may involve one or more parts of the Area; while DR 8 provides a little more information on this regard, stating that "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." We pause to note that we are not certain on what "as provided by the Authority" means here. Moving on, the term "Mining Area" is defined to mean "the part or parts within the Contract Area, described in a Plan of Work." In this regard, it appears to us that the Draft Regulations do not provide for any restrictions with respect to size and numbers of "Mining Areas". All DR 15(3)(b) tells us is the maximum size limits of a 'Plan of Work' (depending on the type of mineral). The need to restrict the size and number of "Mining Areas" is, in our view, something that has not been properly discussed and considered. Thus, we recommend that the finalization of the Draft Regulations be postponed until this has topic has been properly ventilated at the Council or Assembly. We recommend that the Authority considers this topic in greater detail, in particular, to restrict (or at least stagger) the size and number of 'Mining Areas', so as to enable sufficient flexibility for adaptive management and avoidance of conflict and cumulative impacts with several operations.

3. Directly related to the point above, we suggest that test mining and performance requirements can be introduced here with respect to "Mining Areas". For example, a Contractor should be required to first successfully demonstrate its ability to conduct exploitation activities in one particular "Mining Area" within the environmental constraints imposed on it by the exploitation contract, the rules, regulations and procedures of the Authority, applicable Regional Environmental Management Plans, relevant Standards and Guidelines, and requirements imposed on it by the sponsoring State, before it can proceed to the other "Mining Areas". We reiterate our view that test mining should be made a mandatory requirement, and a concept such as a "Test Mining Area" could be explored here.

4. Finally, we would like to point out the fact that the finalization of the Draft Regulations, as well as the adoption of regional environmental management plans and the necessary Standards and Guidelines, should not be seen as means to an end for the enabling of exploitation activities. It should be made clear that the Authority can, and will, continue to develop rules, regulations and procedures

to control the conduct of activities in the Area. We note that some provisions in the Draft Regulations make reference to 'Rules of the Authority', e.g. DR12(3), DR30(5), DR 41(2), DR 89(3)(d), DR 90(5), DR 94(2), DR 95(2), DR 96(2), DR 98(1) and (2), and Annex X (sections 3.3 and 9.1(b)), which is defined to mean: "the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time". We are especially pleased to see section 3.3 in Annex X (Standard clauses for exploitation contract) prescribing that the Contractor shall "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". We are of the view that the Draft Regulations in its current form is incomplete without an 'applicability clause', and thereby requires the addition of a provision that is along the following lines: "The regulation of exploitation activities, while primarily governed by the present regulations as well as all Standards and Guidelines adopted pursuant to regulations 94 and 95 thereto, is also subject to the applicability and operation of all other Rules of the Authority, as adopted and amended from time to time, and the decisions of the relevant organs of the Authority, including all regional environmental management plans adopted thereto, insofar as they may concern the conduct of such activities."

5. Without prejudice to the above general observations that advocate for the postponement of the finalization of the Draft Regulations, we now turn to providing specific comments with respect to document ISBA/25/C/WP.1.

SECTION B: SPECIFIC COMMENTS

We propose to address the following Parts of the Draft Regulations in the sequence in which they appear.

Preamble

1. We recommend an additional provision after the third paragraph therein, stating as follows: "Recognizing the application of Part XII of the Convention on the 'Protection and Preservation of the Marine Environment' as applicable to Part XI where relevant, as well as Article 145 of the Convention, in that the Authority shall, in developing the resources of the Area, ensure the effective protection of the marine environment from harmful effects which may arise from activities in the Area".

2. The reason for this inclusion is to ensure that the preeminence of the protection of the marine environment is given due recognition from the outset. In fact, the 1994 Implementing Agreement recognizes the significance of this in its Preamble and stipulates that State Parties to the Agreement are "Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment".

3. We note further that Annex IX of the Draft Regulations (on the Exploitation Contract) makes explicit reference to Part XII of the Convention.

Part I: Introduction

4. While we are pleased to see some matters in DR 2, we suggest that a clear distinction be drawn between principles and policies. DR 2 should only encompass 'Fundamental principles'. In this regard, given the matters stated therein are purely matters of policy, DR2 (b) and (c) should be deleted.

5. Our suggestion is premised on the Convention, whereby Section 2 of Part XI enunciates the 'Principles governing the Area', whereas Article 150 (entitled 'Policies relating to activities in the Area') clearly falls outside of Section 2.

6. We further recommend that the words "as reflected in principle 15 of the Rio Declaration on Environment and Development" in DR 2(e)(ii) be deleted. The reason behind this is that there is no logic in restricting the treatment of the precautionary approach to the understanding that was attached to it in 1992.

7. With respect to DR 3(a), we recommend the deletion of the words "use their best endeavours to" and "reasonably". Therefore, DR 3(a) should read: "Members of the Authority and Contractors shall cooperate with the Authority to provide such data and information as is necessary for the Authority to discharge its duties and responsibilities". In this respect, DR 3(f) and (g) should also be amended accordingly to delete the words "use their best endeavours" (DR 3(f) and (g) and "reasonably" (DR 3(g)).

8. In reference to DR 4(2), we are concerned about the use to the term "Serious Harm". Some guidance can be gained from references to customary international law on transboundary harm (and the 'no harm rule'), as well as to Article 194(2) of the Convention which does not use the term "serious harm" or anything similar. Accordingly, there is no need to set such a high threshold of harm with respect to transboundary harm. We suggest using the term "harmful effects to the Marine Environment" instead. The rest of DR 4(2) and (3) should be amended accordingly.

9. While DR 4(4) and (5) can maintain the term "Serious Harm", since it involves emergency orders and compliance notices, we would recommend including the phrase "Notwithstanding paragraph (3), if the Commission determines […]" at the beginning of both DR 4(4) and (5). This is to make clear that the Authority can take immediate action by issuing an emergency order or a compliance notice if the actual harm or threat of harm is of a "Serious Harm" nature, thereby circumventing the "reasonable opportunity" and "reasonable time" requirements under DR 4(3) for the time being due to the urgency of the matter at hand.

10. Concerning DR 4, we recommend that more concrete action be taken, in particular to develop a system of consultation and cooperation with adjacent coastal States in cases where activities in the Area are proposed to be conducted within an area that is in close proximity with areas under the jurisdiction of the adjacent coastal States. Guidelines shall be developed to determine an appropriate distance for 'close proximity'. In addition, buffer zones along the borders should be created on the side of the Area, wherein activities in the Area shall be subjected to greater constraints and may only take place after necessary measures to protect the rights and interests of the adjacent coastal State(s) have been agreed upon with the adjacent coastal State(s). In this regard, REMPs that potentially cover a part of the Area which is adjacent to one or several coastal State(s) shall be designed with the particular involvement of those State(s).

Part II: Applications for approval of Plans of Work in the form of contracts

11. We recommend that more attention be paid towards the sponsoring State in this Part, in particular, whether the State in question has taken any steps to enact domestic legislation pertaining to activities in the Area. As observed by the Seabed Disputes Chamber in the Advisory Opinion of 2011, this is an important step to ensure that operators in the Area are subjected to, and answerable for, any consequences that arise as a result of conduct of their activities under the relevant national laws. Furthermore, the Advisory Opinion also opined that there should be no 'sponsoring States of convenience' in relation to activities in the Area. Thus, information on the steps taken by sponsoring States, in particular whether it has adopted national legislation to this effect and the content of such legislation (as to whether it provides a forum to adjudicate a cause of action), as well as evidence that

the prospective sponsored entity is actually under the effective control of the sponsoring State, must be provided in this Part, i.e.:

a. DR 5(3) should make the provision of such information a requirement;

b. DR 6(3) should also include reference to this in the certificate of sponsorship; and

c. DR 7(1) and the form prescribed in Annex I should include this information.

12. With respect to DR 6(1) and (2), we wish to point out that while there may be two or more sponsoring States that are sponsoring an entity, including in cases where there is a partnership of consortium or entities, it is not clear how responsibilities will be shared between these States. One particular question is how liability will be apportioned in the event of a dispute. We request that the Authority conducts an in-depth study on this matter.

13. Concerning DR 7(3), we suggest to include a link to the respective Regional Environmental Management Plan, as well as to applicable Standards and Guidelines. Thus, DR 7(3) should read as follows: "An application shall be prepared in accordance with these regulations, as well as the respective Regional Environmental Management Plan and the applicable Standards and Guidelines, and accompanied by the following: [...]".

14. Concerning DR 7(4), we query as to why an 'Emergency Response and Contingency Plan' is not among the documents that the Commission may require separate presentations of in cases where two or more non-contiguous Mining Areas are involved.

15. Pertaining to DR 8, we recommend the insertion of a new paragraph (c) which states that "The areas covered by the application shall be one that has either been subjected to prior exploration, or an area in which adequate and satisfactory environmental baseline data is in existence and is publically available". The rationale for this is that exploitation contracts should not be granted over areas that has not been previously explored or especially where inadequate or substandard environmental baseline data exists. This also ensures transparency in the exploration stage, whereby it is in the interest of contractors to commit to full disclosure of environmental data which they obtain from their exploration activities and test mining exercises conducted during that phase.

16. With respect to DR 11, we refer back to our General Observations above, whereby we recommend that the task of reviewing Environmental Plans be tasked to a newly established subsidiary body, an Environment and Scientific Committee. We are of the view that such a review should be a transparent process, which should benefit from the optimum involvement of external expertise, in order to ensure accountability to mankind. The LTC is evidently not suited for this task due to its non-transparent process, its heavy workload and limited time, and most notably, the lack of environmental expertise among its members.

17. Concerning DR 12(3), we recommend making reference to the Preamble and Part I of the Draft Regulations. As such, it should read: "The Commission shall, in considering a proposed Plan of Work, […] and in the Agreement, as well as the Preamble and Part I of this Regulations, and in particular […]". This is a necessary safeguard to ensure that the LTC applies its mind to the rudiments of the matter at hand.

18. Without prejudice to our comment above, we seek clarification on DR 12(4)(b), which refers to advice or reports sought by the LTC or the Secretary-General from independent competent persons. Here are our specific concerns:

a. There is no explanation on who such 'independent competent persons' are or could encompass.

b. While we welcome the possibility for the LTC to request for such advice or reports, we wish to see a provision in the Draft Regulations that elaborates on this process, e.g. that a procedure be created for the LTC to request for such advice or report – in a transparent manner – and for all

environmental related matters covered by such advice or report to be disseminated through the Authority's website.

c. We question the need to empower the Secretary-General to request for such advice or report, unless it is limited to verifying information of an administrative nature, given that the functions of the Secretariat is merely to provide administrative assistance to the Authority. We also recommend that a process for this be developed and embedded with full transparency, and the results of such information, in particular that of an administrative nature or environmental related matters, be disseminated on the Authority's website.

19. Concerning DR 13, we recommend a new provision, i.e. DR 13(3 bis) to require the LTC to consider the performance during the exploration stage of the applicant that is applying for an exploitation contract. This include a consideration of the annual reports submitted during the exploration stage, as well as the environmental baseline data submitted by Contractors. It is noteworthy to mention here that this assessment should be primarily based on publically available environment related information, of which contractors are obligated to submit at the exploration stage. It should also include the consideration of any results of test mining activities that may have been carried out over the exploration period, with a view of considering the technical ability of the Contractor from an environmental perspective.

20. Concerning DR 13, we recommend the addition of a new provision before the current DR13(4)(a) requiring the Commission to determine if a proposed Plan of Work "foreseeably contributes to realizing the benefits for mankind as a whole". This is in line with DR 12(3), which incorporates this terminology, and it necessary to give effect to the said provision.

21. We suggest to make DR 13(4)(e) more concrete by adding a reference to the relevant REMP, and suggest as follows: " (e) Provides, under the Environmental Plans, for the effective protection for the Marine Environment, including from cumulative effects of all relevant human activities and climate change, in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2, as well as the objectives and measures under the applicable regional environmental management plan."

22. Also in relation to DR 13, we recommend the insertion of a new provision, e.g. a new paragraph 5, to say that "The Commission shall determine whether the sponsoring State has enacted domestic legislation covering activities in the Area, whether such legislation is already in force and applicable, whether it provides adequate avenues for recourse through the domestic legal system, and whether there are provisions within the legislation that appear to exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area. The Commission shall also determine if the prospective sponsored entity is, in effect, under the effective control of the sponsoring State. Guidelines shall be developed for these purposes". Prospective applicants shall be required to provide such information through DR5 and DR6, as mentioned above. We recommend that Guidelines for this be developed, in order to achieve consistency throughout the domestic legislations of sponsoring State(s).

23. With respect to DR 15, we recommend that the title be amended to: "Commission's recommendation for the approval or disapproval of a Plan of Work". This is because there are more provisions that describe circumstances for the disapproval of Plan of Works than there are for the approval of the same.

24. Concerning 15(1), we recommend to delete the word "shall" and replace it with "may". The LTC should retain the discretion to recommend the disapproval of any application based on the information in its possession. Further, instead of making specific reference to "regulations 12(4) and 13", we recommend that this be deleted and replaced with "… the criteria set out in regulations 12 and 13 …". Similarly, DR 15(4) should be amended accordingly. Further, since it is closely connected

to DR 15(1), and not related to DR 15(2) or (3), DR 15(4) and (5) should be moved to DR 15(1 bis) and (1 ter) in order to avoid any confusion.

25. In reference to DR 15(2), there should be a paragraph DR 15(2)(c bis) that states "An area that is covered by an existing spatial or temporal measure under an applicable REMP". Further, there should be a new paragraph (e) which says: "A buffer area that has been created to protected the rights and interests of an adjacent coastal State(s) area(s), unless an agreement with the adjacent coastal State(s) is in place".

26. Concerning DR 15(3), there should be several new paragraphs:

a. New DR 15(3)(c): "The area covered by the proposed Plan of Work or part of it involves an area in which no REMP is in existence as of the date of the application."

b. New DR 15(3)(c): "Such approval would undermine or contradict the region-specific objectives, criteria or prescribed measures as determined in the applicable REMP".

c. New DR 15(3)(e): "The area covered by the proposed Plan of Work or part of it involves an area that has not been subjected to prior exploration activities."

d. New DR 15(3)(f): "There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work or part of it."

27. In relation to DR 16, we recommend to include the possibility of the creation of one or more advisory bodies within the Authority's set-up in future, such as an Environment and Scientific Committee. Thus, it should read: "The Council shall consider the reports and recommendations of the Commission, and any other subsidiary body that it creates in future in accordance with the Convention and the Agreement, relating to approval of Plans of Work […]." This is essential, because the Council will not be in possession of the primary documents that were considered by the LTC and will only have the reports and recommendations that were prepared by the LTC to rely on. Given that the LTC's current composition (where environmental expertise are seriously lacking) calls into question its capability to actually make an informed recommendation to the Council.

Part III: Rights and obligations of Contractors

28. In reference to DR 17(3), we welcome the fact that exploitation contracts and its schedules will be made public; however, we will make our comments on 'Confidential Information' when we arrive at Part XI of the Draft Regulations. We also recommend the insertion of the word "forthwith" in DR 17(3), to wit, "[…] and shall be published forthwith in the […]" to ensure that this process is not delayed. In addition, we would like to pose the question as to why a copy of the exploitation contract in a draft format is not made public at an early stage, prior to the actual conclusion of the contract, in order to enable for sufficient scrutiny.

29. With respect to DR 18(1)(b), we recommend making it clear that commercial production may only take place after a determination that no 'Material Change' to the Plan of Work is necessary. As such, DR 18(1)(b) should read: "Exploit the specific Resource […], provide that production shall only take place in approved Mining Areas and subject to prerequisite prescribed under DR 25(6)".

30. Concerning DR 18(6), we are troubled by the possibility of an exploitation contract being renewed indefinitely. Since reference is made here to DR 20, we will address this concern via DR 20(6). Although there are several conditions listed herein, DR 20(6) leaves no discretion to the LTC and to the Council because of the use of the word "shall" on two occasions. We suggest that this word be replaced with the word "may" on both occasions. There may be instances, such as an indication that land-based producing developing States cannot be adequately compensated for the adverse

impacts caused to their economies, or non-conformity with the anti-monopolization constrains, among others, that justify the refusal of an application for renewal.

31. We also recommend a clear provision, e.g. a new DR 20(4 bis), that stipulates a process whereby the LTC may require the Contractor to submit a revised Plan of Work, and that the Contractor shall do so accordingly. At the moment, only the Contractor has the option of doing so on its own accord pursuant to DR 20(3). Although DR 20(5) mentions that the LTC may propose amendments or revisions to the Council, this is not reflected again in DR 20(6). Accordingly, there should be an explicit power for the Council to only approve a renewal application if the Plan of Work is revised by the Contractor to satisfaction of the LTC and/or the Council.

32. Further, we suggest that the a new provision be added under DR 20(6)(b bis) to stipulate the following: "The cumulative environmental impacts do not exceed the thresholds set by pertinent regional environmental management plans as a result of the renewal, and that such renewal does not hinder the achievement of the strategic and regional environmental goals and objectives."

33. Some clarification is requested for DR 21(2), in particular on the time period mentioned therein. The time periods mentioned therein are "no later than 12 months" from the date of receipt, and "no later than 6 months" in the case of non-compliance of the sponsorship terms. This gives rise to the question if a sponsoring State is entitled to determine a date of which the sponsorship is terminated, so long as it is within the applicable time period. Thus, can a sponsoring State terminate its sponsorship with immediate effect? Or does the time period here actually mean "no sooner than", thereby giving the Contractor in question some time to source for another sponsoring State? This has big implications, as provided for in DR 21(3), including automatic termination of the contract. As such, we suggest the use of clear wordings to avoid any confusion.

34. Furthermore, with respect to DR 21(6), we recommend that this provision be clarified to state clearly that under no circumstances shall a Contractor carry out mining operations without a subsisting certificate of sponsorship. At present, this is not clearly stated and may even lead to a perverse result whereby a Contractor may still carry out mining operations without it being answerable under any domestic court system and without any member State being answerable under international law.

35. With respect to DR 22(3), we are concerned with the fact that the beneficiary of any encumbrance will, upon foreclosure, be able to undertake exploitation activities despite not having to meet the requirements under DR 5 (which deals with qualified applicants), DR 6 (which deals with certificate of sponsorships), DR 13 (which deals with the assessment of applicants), and DR 15 (which deals with the LTC's recommendations for the approval or disapproval of a Plan of Work). This has quite serious implications, as it is unknown if such a beneficiary is in possession of the necessary technical ability to conduct such activities (in particular to manage the environmental effects arising therefrom).

36. As for DR 22(6), we recommend deleting the words "be obliged to".

37. Concerning DR 23(4)(e), we recommend replacing the words "in regulations 12(4) and 13" with "in regulations 12 and 13", consistent with an earlier recommendation above.

38. With respect to DR 23(5), we recommend a new paragraph (c) which states "If any circumstances under DR 15(2) or (3) are applicable". Note that this insertion should also address the suggestions we made above in relation to DR 15.

39. In reference to DR 24(2), we suggest that this information be disclosed to member States and disseminated on the Authority's website for general scrutiny.

40. DR 24(3)(a) should not only be restricted to financial capability, but also extended to include technical capability. Further, there is a need for a new paragraph (d) here to include a determination

that the sponsoring State that has issued the initial certificate of sponsorship still maintains effective control over the sponsored entity following the change of control.

41. We are concerned with DR 24(3), in which the Secretary-General is given decision-making powers to make the determinations stated therein. We reiterate our view that the Secretariat should only perform administrative functions. Hence, the "Secretary-General" should be replaced with the "Commission" and DR 24(4) should be amended accordingly. If this suggestion is not accepted, we recommend that DR 24(4) should also make reference to an outcome where the Secretary-General makes a finding that the Contractor still has the financial (and technical) capacity to meet its obligation under the exploitation contract, whereby it is more critical for this finding to be subjected to the scrutiny of the Commission and the Council as opposed to the reverse finding. In simple words, there needs to be check and balance mechanisms in place whenever the Secretary-General is given decision-making powers that are not of a pure administrative nature.

42. In relation to DR 25, we are gravely concerned with the wide and discretionary decision-making powers that this provision confers upon the Secretary-General. Once again, we reiterate our view that the Secretariat is established under the Convention as the administrative arm of the Authority. We consider the determination of whether any 'Material Change' needs to be made to the Plan of Work prior to the commencement of commercial production to be beyond the scope of an administrative function, and is in fact a substantive function. We recommend that the "Secretary-General" be replaced with the "Commission" in DR 25(1). Further, where the LTC finds that no 'Material Change' is needed, we suggest that this finding needs to be endorsed by the Council. If this suggestion is not accepted, we recommend that a finding by the Secretary-General that no 'Material Change' is needed is then forwarded to the LTC (and preferably then to the Council) for endorsement. We reiterate our view that ample check and balance mechanisms are necessary whenever the Secretary-General exercises decision-making powers. Otherwise, such discretion may be considered as unfettered.

43. Similarly, DR 25(6)(a) should be amended accordingly to replace "Secretary-General" with "Commission", and should read as follows: "The Commission has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57(2), and this determination has been endorsed by the Council; or […]".

44. Pertaining to DR 25, we wish to put forward a recommendation that a Contractor shall not be permitted to commence actual production until it has successfully demonstrated, via a full-scale test mining activity, that it has the capability to manage the harmful effects to the marine environment that would potentially arise from such actual commercial production. In this regard, a Contractor shall be required to submit a 'Test Mining Report' at least 12 months prior to the proposed commencement of production in a Mining Area. This Test Mining Report shall be considered by the LTC, which in turn shall make recommendations to the Council. If the Council is satisfied that the Contractor has successfully demonstrated its capability to manage the potentially ensuing environmental harm, it shall allow the commencement of production. We recommend the insertion of a new provision under DR 25 (6 bis) to give effect to this recommendation, as well as the creation of a new Annex III bis to particularize what a Contractor would need to successfully demonstrate. We suggest that a study or workshop be convened to consider this topic.

45. With respect to DR 26(2), we recommend the inclusion of situations where the Authority orders the suspension of mining operations or issues an emergency order for on the ground of environmental harm. Further, we consider the Guidelines pursuant to DR 26 to be essential and that it should be developed prior to the adoption of the Draft Regulations.

46. Concerning DR 28(3), we recommend that the word "temporarily" be replaced with "immediately". Further, a Contractor shall also be required to bring operations to a halt as soon as it discovers that any unforeseen adverse environmental impacts are occurring or are imminently likely to

occur as a result of its production (as opposed to the expected extent of the potential harm that has already been anticipated and identified in the Plan of Work through the EIS and EMMP). Guidelines should be developed to provide more guidance on what Contractors should do in such instances. We note that this is distinct from an 'Incident', which is covered under DR 32-33, and encompasses instances of 'Serious Harm'.

47. With respect to DR 29, as mining operations shall be carried out for the benefit of mankind as a whole, this requires that mankind receive a fair amount of return from the conduct of such activities, including a fair compensation for the losses (not just the depletion of non-renewable minerals, but also, inter alia, the loss of biodiversity, degradation of ecosystems and deprivation in the functional provision of ecosystem services) suffered by mankind as a result of such activities. Although the 1994 Implementing Agreement altered the power of the Authority to control commercial production by significantly modifying Article 151 of the Convention, the Authority can still encourage Contractors to reduce or suspend production due to unfavourable market conditions. Given that unfavourable market conditions would likely result in less income for distribution pursuant to an adequate mechanism for equitable benefit sharing, the Authority could consider the availability of any means within its disposal to persuade Contractors to reduce or suspend production under this scenario, such as the provision of exemptions or non-monetary incentives.

48. Pertaining to DR 31, we reiterate our view in the General Observations section above that the finalization of the Draft Regulations should be postponed until the ongoing intergovernmental negotiations on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction is completed and key outcomes are reached.

49. Notwithstanding this, DR 31(1) should make reference to the applicable regional environmental management plans. It should also not interfere with scientific research sites and established fishing areas. As such, we propose DR 31(1) to be amended as follows: "Contractors shall, […] in accordance with article 147 of the Convention, the applicable Regional Environmental Management Plan, and the approved […]. In particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area, and does not interfere with long-standing scientific research sites and established fishing areas.

50. We further recommend that a new DR 31(1 bis) be added to firmly declare that the Authority shall ensure coherence between activities in the Area and any future regime governing marine biodiversity in areas beyond national jurisdiction. The said provision could read as follows: "The Authority shall ensure coherence between the conduct of activities in the Area and all measures adopted pursuant to any forthcoming internationally legally binding instrument pertaining to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction."

51. Without prejudice to the above, we question the manner in which DR 31(2) is drafted, insofar as it suggests that the Authority has the jurisdiction or mandate to "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". The Authority clearly does not have mandate over the conduct of other activities in the Area. This should be amended accordingly, perhaps rephrased as the following: "Member States, in conjunction with the Authority, shall take […]".

52. Finally, DR 31 is also a suitable opportunity to insert a provision to state that the Authority shall promote the conduct of marine scientific research in the Area. Such activities are congruous with the development of the resources of the Area as it fosters the advancement of scientific understanding, which in turn provides useful knowledge for the purposes of Authority's mandate.

53. DR 33, DR 34, and DR 36 involves certain matters that are of a compliance nature. Please see our comments pertaining to Part XI of these regulations below on compliance. In an upshot, the functions given to the Secretary-General here should be replaced and performed by a dedicated body established for the purpose of ensuring compliance and conformity with the Rules of the Authority.

54. Concerning DR 37, we recommend that training programmes give special consideration to the special needs of developing States, in particular geographically disadvantaged States and landlocked States, in order to facilitate their participation in activities in the Area as stipulated under Article 148 of the Convention. Furthermore, greater focus should be paid on topics relating to the protection of the marine environment, as opposed to shortage of skills and requirements of the industry. In this regard, we suggest that DR 37 be revised accordingly.

55. With respect to DR 38(2)(g), we recommend the deletion of the words "where applicable", and suggest the inclusion of REMPs as a reference point for reporting obligations. Thus, DR 38(2)(g) should read: "The actual results […] reported against any criteria, technical and environmental Standards as well as indicators pursuant to the applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan […]."

56. Also concerning DR 38, we recommend the inclusion of a new provision DR 38(2)(g bis), which states: "The actual result obtained from any test mining activities, in particular information related to the extent of the environmental implications therefrom and how this was managed or proposals on how it could be effectively managed".

57. Further, we recommend a new provision of DR 38(2 bis), which states that: "All environmental related information shall promptly be uploaded onto the Authority's website and database (DeepData)."

Part IV: Protection and preservation of the Marine Environment

58. We would like to start with expressing our general concern on the contents and detail of this part. In our view, it does not match the needs as formulated by the Council President in ISBA/24/C/8/Add.1, which is to:

> "5(b) Strengthen provisions relating to environmental protection, monitoring, evaluation and the closure plan to provide a robust environmental framework in the body of the text rather than in annexes, with inputs from all stakeholders;
>
> 5(c) Consider making regional environmental management plans mandatory and include those plans in the overarching environmental policy and framework of the Authority and the environmental obligations of the contractors, and consider taking into account broader regulatory frameworks in the development of regional environmental management plans;
>
> 5(d) Factor regional environmental management plans into environmental reports, such as environmental impact assessments, environmental impact statements and environmental management and monitoring plans, and into applications;".

59. We recommend the introduction of a new DR 44bis to prescribe the requirement that REMPs should be in place to ensure that region-specific considerations and measures are taken into account. A new Annex III ter should be created to provide some more information on the standardized process of REMP development and adoption, including the provision of a 'template' for each specific REMP. The legal implications that REMPs would have on the process of approval or disapproval of Plan of Works, as well as other matters, should be clarified in this provision.

60. With respect to DR 45, we are of the view that the development of Environmental Standards are essential and should be adopted prior to the finalization of the Draft Regulations. Otherwise, there is a risk that this process may be compromised or undermined. Further, there needs to be clear wording to ensure that the list in DR 45 is not exhaustive. It should read: "[…] and shall include, inter alia, the following […]".

61. Further, DR 45(a) should clarify what is meant by 'biodiversity status', and make specific reference to 'ecosystem functioning'.

62. Similarly, the Guidelines mentioned in DR 46 are also essential and must be in place before the Draft Regulations are finalized. Further, we recommend that "Guidelines" here be replaced with "Standards".

63. We are confused and concerned by DR 47 in its entirety. DR 47 requires the Applicant to prepare an Environmental Impact Statement (EIS), but nowhere in the Draft Regulations is it stipulated that the Authority needs to get involved in order to complete the Environmental Impact Assessment (EIA) process. While we acknowledge that the LTC is required under DR 11 to review Environmental Plans (which include the EIS) and prepare a report for the Council, we consider this as grossly insufficient, particularly because this function falls way short of having a separate EIS approval mechanism. We are of the view that LTC, or even better the Environment and Scientific Committee or an independent external expert (see General Observations in Section A), must evaluate and either determine, based on an assessment of the EIS in accordance with a predetermined assessment framework, whether to endorse or refuse the EIS. In the case of an endorsement, the Authority shall put the EIS and its assessment report on the website for public consultation, in accordance with DR 11(1). In the case of a refusal, the applicant will have to resubmit another EIS in accordance with the feedback it has received from the Authority. This will be subjected again to the same assessment process. Accordingly, we recommend a new provision in the form of DR 47 bis, requiring the Authority to play an active role in assessing the EIS, i.e. to review the EIS in accordance with a predetermined assessment framework, and to make a determination as described earlier.

64. Further, there should be a new DR 47(1)(c bis), which states: "Identifies and evaluates the potential environmental impacts that could occur outside the contract area, in particular, the potential transboundary impacts that could be inflicted on adjacent coastal states

65. DR 47(d) refers to the words "acceptable levels", however, there is no indication of what this entails.

66. The Standards and Guidelines referred to in DR 49, alongside all references to Standards and Guidelines in Part IV, are of an essential nature and should be adopted prior to the finalization of the Draft Regulations.

67. With respect to DR 50(1)(a), we recommend that the word "Guidelines" be replaced with "Standards". Further, in relation to DR 50(1)(b), we pose the question if EMMPs should actually permit such disposal, dumping or discharges – we suggest to delete this paragraph in its entirety.

68. In DR 53(1)(a), we believe that "standards" should be spelt with a capital "S". Further, in DR 53(2), we suggest that the words "which appear to have an interest" be replaced with "as well as other persons with the relevant expertise or know-how".

69. Concerning DR 55, while acknowledging the importance of funding research, education and training programmes, we recommend that the purpose of the Environmental Compensation Fund be confined solely to the matters stated in paragraphs (a) and (e) of DR 55.

Part V: Review and modification of a Plan of Work

70. In relation to DR 57(2), we reiterate our earlier concern that the Secretary-General should not be empowered to consider whether a proposed modification to the Plan of Work constitutes a "Material Change". We suggest that "Secretary-General" be replaced with "Commission", and repeat our comments with respect to DR25.

71. We fully agree that the Secretary-General can propose to correct minor omissions, errors and other defects in the Plan of Work, in accordance with DR 57(4), since this falls within the realm of an administrative function.

72. With respect to the process of review under DR 58, we are of the view that this procedure should involve the participation of independent experts and conducted in a transparent manner.

Part VI: Closure plans

73. We suggest deleting the words "if such cessation requires a Material Change to the Closure Plan" in DR 60(1). It should read: "[…] final Closure Plan, taking into account […]". In this way, a final Closure Plan is clearly required under all circumstances.

Part VII: Financial terms of an exploitation contract

74. As this matter is currently being considered by the 'Open-ended informal working group of the Council in respect of the development and negotiation of the financial terms of a contract' (OEWG), we will not provide any specific comments on this Part. We reiterate our view that the Draft Regulations should not be finalized until an outcome is reached through the OEWG process.

Part VIII: Annual, administrative and other applicable fees

75. Concerning DR 87, we recommend that this provision clearly states that the items in appendix II are non-exhaustive and may be amended to include more items if the Council deems that this is necessary from time to time.

76. We also suggest to include a new paragraph in DR 88 to explicitly require the Contractor to undertake any further administrative costs that is reasonably necessary, and that the Contractor undertakes to reimburse the Authority for any costs that it has incurred in order to administer the said Contractor's Plan of Work.

Part IX: Information-gathering and handling

77. With respect to DR 89, while we are happy to see that environmental-related information are not treated as confidential information in DR 89(3)(e) and (f), we are not certain as to how this will be executed in practice. As such, we propose that an indicative list be created that plainly describes which types of information are considered as environmental-related and must be disclosed on the one hand, and which information that, although closely connected to environmental-related matters, will be covered under the cloak of confidentiality and not be disclosed on the other hand.

78. Further, with reference to DR 89(3)(f), we recommend that such information should not be withheld "for a reasonable period where there are bona fide academic reasons for delaying its release". This practice amounts to the privatization of information obtained from a global commons that belongs to all of mankind. We reiterate our view that all environmental data should be immediately made publically available on the Authority's website and database. Thus, concerning DR 89(3)(f), we suggest the following terminology: "[…] regarded as Confidential Information for a limited period, which under no circumstance shall extend for more than a period of four years, where there are bona fide academic reasons for delaying its release".

79. More crucially, we are concerned over the function of the Secretary-General under DR 89, in particular the function of determining and designating certain information as confidential (see e.g. DR

89(2)(a) and(d), as well as 89(5)). We are of the view that this function is not of an administrative nature and should not be left to the Secretary-General. In lieu of the Secretary-General performing this function, we propose the establishment of a Data Committee, mandated specifically for the tasks of information gathering and information handling. This Data Committee can perform two key functions, among others, namely: to oversee the work of the Secretariat in knowledge management and maintaining the new database (DeepData), and to determe and designate the confidentiality of information, and. The Data Committee can comprise of a small number of individuals with the relevant qualifications (thereby being cost-effective). Some of the members of the Data Committee can be directly appointed by the Council through member State nominations, while others can comprise of several members of the LTC and the Secretariat. While we acknowledge that the role of the Secretariat in building and maintaining the database is an important one, we are of the view that the management of the database, in particular the determination of what and how much information (based on reasons of confidentiality) should be fed into the database, should not be left to the sole discretion of the Secretariat.

Part X: General procedures, Standards and Guidelines

80. With respect to DR 94 and DR 95, we reiterate our General Observations in stating that the necessary 'Standards' and 'Guidelines' should be determined beforehand and adopted before the Draft Regulations are finalized. In particular, no exploitation activities should be approved prior to the adoption of a first set of all necessary Standards and Guidelines, especially those mentioned in Part IV of the Regulations. Standards and Guidelines are subject to be reviewed and adapted to new scientific knowledge and experience periodically every 5 years.

81. Further, although both DR 94 and DR 95 refer to the Council has either being the approving body or endorsing body, there should also be mention that the Assembly as the supreme organ of the Authority may, upon the request of any member State, consider the consistency of such 'Standards' or 'Guidelines' with the Rules of the Authority, and if necessary, instruct the Council to consider its opinion on the matter.

82. Both DR 94 and DR 95 refer to 'relevant Stakeholders'. However, no information is provided as to why the word 'relevant' is used here and who is this referring to. In the absence of any rational explanation, we suggest the deletion of the word 'relevant'. Further, we are of the view that the draft of such 'Standards' and 'Guidelines' should be placed on the Authority's website for public comments before these are finalized.

83. In relation to DR94(4), we suggest including that Standards "[…] shall be legally binding on Contractors, sponsoring States, and the Authority […]". We also suggest to replace the word "may be revised" with the words "should be subjected to revision or updating".

84. As concerns DR 95, we suggest that a clear distinction be made between the LTC and the Secretary-General. The LTC shall have the power to issue Guidelines of a technical or administrative nature, whereas the Secretary-General shall only have the power to issue Guidelines of an administrative nature. Thus, DR 95(1) should be amended to spell this out clearly, while DR 95(3) should provide that: "The Commission or the Secretary-General, as the case may be, shall keep under review […]".

Part XI: Inspection, compliance and enforcement

85. We recommend the establishment of a dedicated compliance arm of the Authority. As suggested in Section A above, this Compliance Committee shall exercise oversight over the Inspectorate, to receive reports and disseminate information under DR 100, to address any complaints

pursuant to DR 101, as well as being responsible for the issuance of compliance notices under DR 103 (as opposed to the Secretary-General exercising these powers). The Secretary-General should instead remain within its remit as an administrative and secretarial body.

86. Thus, Part XI of the Draft Regulations should be amended accordingly to accommodate this suggestion of setting up this Compliance Committee, comprising of members appointed by Council. Likewise, the establishment of an inspection mechanism and the appointment of inspectors (i.e. the Inspectorate), answerable to the Compliance Committee at first instance, should also be undertaken by the Council (on the recommendation of the LTC) prior to the adoption of the Draft Regulations.

87. We also recommend that this Part incorporates an express provision requiring the Council to bring instances of non-compliance to the attention of the Assembly, pursuant to Article 162(2)(a) of the Convention.

Part XII: Settlement of disputes

88. We recommend that before providing for the settlement of disputes, DR 106 should be amended to include a new paragraph (1) which first require disputing parties to enter into bona fide negotiations with a view to resolving any dispute or prospective dispute, and provide mechanisms for conciliation and/or mediation. Only if such attempts have been genuinely pursued and yet the dispute remains unresolved, should DR 106 proceed to state the matters that are currently stated therein.

Part XIII: Review of these regulations

89. With respect to DR 107(2), we recommend that Observer members of the Authority also be permitted to request the Council to consider revisions to the Regulations. Unlike Contractors who typically have the support of their sponsoring States, Observer members may not necessarily be subscribed to any member State. As such, it is critical to allow Observer members to raise their concerns about the need for a review of these Regulations.

90. In relation to DR 107(3), we once again recommend the removal of the word 'relevant'. We further suggest that any proposed changes be published on the Authority's website for public comments.

Part XIII bis: Savings clause

91. See our comments above in Section A (General Observations).

The Annexes

92. All Annexes are to be amended accordingly, taking into account the above. Further, a new Annex III bis that is dedicated to the topic of test mining, and a new Annex III ter pertaining to the standardization of REMPs, shall be prepared.

93. Annex I, paragraph 21, should be slightly amended. The words "to enable the Council to determine" should be deleted. In its place, the words "to assist the Authority in determining" should be inserted.

94. Annex II should include a new paragraph as follows: "Details on how many vessels will be involved in the mining operations, including how and to where the collected ores will be transported from the mining site to shore for processing, as well as details relating to onshore processing". Although some of the matters here are arguably beyond the regulatory mandate of the Authority,

such information is necessary for the Authority to consider the commercial, technical and environmental viability of the mining operation, to acknowledge the carbon footprint that is associated with the mining operation, and to finally determine whether it has any realistic prospects of resulting in any 'benefit to mankind as a whole'. We positively note that Annex IV includes reference to these matters in paragraph 3 of the Template thereto. In this regard, the Authority might wish to consider incentivizing the use of renewable energy or low carbon technology in order to reduce greenhouse gas emissions during the operational, transportation and processing phases of the mining operation.

95. In addition, we recommend that Annex II also includes a new paragraph requiring an estimated quantification of the carbon footprint that the Mining Workplan entails. This is also relevant information which the Authority should take note of in determining the viability of a mining operation. Details such as estimated energy consumption that is associated with the mining operation are a component of the mining operation, and from what source (renewable or non-renewable) such energy is obtained, and should also be quantified and disclosed to the Authority.

96. It might be useful to add another item to Annex III, requiring Contractors to detail out how an Emergency Response and Contingency Plan would be financed, in the event an Incident takes place which warrants the implementation of the said plan. As provided under DR 53(1)(b), Contractors are required to "maintain such resources and procedures as are necessary for the prompt execution and implementation of the ERCP and any Emergency Order issued by the Authority".

97. Annex IV, item 3.1.1 of the EIS Template should be extended to include information on any other known spatial measures and other uses of the marine environment in the vicinity. Thus, it should read "Include coordinates of […] and preservation reference zones, as well as information on any other known conservation or spatial measures and other uses of the marine environment (e.g. submarine cables and pipelines, long-standing scientific research sites and established fishing areas) in the vicinity of the project area."

98. With respect to Annex V, we suggest a slight amended to paragraph (b) as follows: "[…] other competent international organizations, as well as other persons with the relevant expertise or know-how, and, where applicable […]".

99. There seems to be a repetition with respect to paragraph (c)(vi) and (ix).

100. Also with respect to Annex V, with reference to paragraph (c)(iv), (xi) and (xiv), we wish to point out that Annex V should specify that a certain (minimal) number of individuals authorized to initiate response mechanism(s) should be present at the mining vessels at each given time. As mentioned, DR 53(1)(b), requires Contractors to "maintain such resources and procedures as are necessary for the prompt execution and implementation of the ERCP and any Emergency Order issued by the Authority". This should be detailed out in Annex V.

101. We recommend a new insertion in Annex VII, namely paragraph 1(a bis), which states: "Prepared in conformity with the application regional environmental management plan". Similarly, paragraph 2(c) should be expanded as follows: "The environmental objectives and standards to be met, with particular attention being paid towards conforming to the applicable regional environmental management plan".

102. With respect to Annex IX, the certificate of sponsorship should also be included in the Schedule to the contract, i.e. as a new Schedule 1 bis.

103. Concerning Annex X, Section 9, we are concerned that the renewal of contracts can continue indefinitely. We recommend that section 9.3 we slightly reworded to remove the second "shall", and thus read as follows: "[…] this Contract may be renewed […]. This provides the Council with some discretion, although it should be used sparingly and specifically to prevent a contract from being one that is 'in perpetuity'.