

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

Open Ended Working Group on the Financial Terms of Contracts

2. Name(s) of Delegation(s) making the proposal:

Canada

3. Please indicate the relevant provision to which the textual proposal refers.

DR 27

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

Regulation 27 Commencement of Commercial 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.

1-2. The commencement of Commercial Production shall be based on the maintenance of a certain level of production capacity for a specified number of days in accordance with the relevant Standard.

Once the Contractor determines that it is engaging in sustained large-scale recovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards.

2. The Secretary General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor’s proposed date.]

- ~~3. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production under Regulation 27(2).~~
- ~~4. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the Mining Area, that Commercial Production has commenced and the location of the Mining Area.~~
- ~~5. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according paragraph 5 above.]~~
4. Any failure on the part of the Contractor to comply with this regulation and the relevant Standard may be considered under the General anti-avoidance rule established pursuant to Regulation 77 and other applicable Rules, Regulations, and Procedures.

5. Please indicate the rationale for the proposal. [150-word limit]

The commencement of commercial production is a key determinant of when Contractors must begin to calculate royalties payable to the Authority. The term needs to be defined as a point in time that is both measurable and verifiable by the Authority, while also taking into account the specific characteristics of seabed mining. In particular, this includes the considerable distances between the site of mineral collection and any onshore processing facility. The need to ensure a steady flow of product is common to both seabed and land-based mining operations. In both instances, there is normally a ramping up of production prior to reaching commercial production.

Proposed text included under DR 27 in the *Chair's further revised draft text on Part VII, Appendix IV and draft Standard and Guidelines* was modified and move to the proposed Standard included in Appendix I of this submission.

Draft Text for Relevant Standards

1. The commencement of Commercial Production shall be defined as the point in time when the recovery, for commercial purposes, of Minerals from the Mining Area has reached at least [60%] of the design capacity outlined in initial production phase of the Mining Work Plan for [90] consecutive days.
2. The term 'recovery' shall be defined as the point at which Minerals from the Mining Area are transferred to the vessel hold directly following collection or removal from the Area.
3. [Once ~~the Contractor determines that it is engaging in sustained large-scale recovery operations~~ meet the definition of commencement of Commercial Production as established in paragraph 1 ~~which yield a quantity of materials in excess of the thresholds specified in the Standards~~, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards.
- 3.4. -The Secretary-General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor's proposed date.]
- 4.5. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production ~~under Regulation 27(2)~~.
- 5.6. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the Mining Area, that Commercial Production has commenced~~begun~~ and the location of the Mining Area.
- 6.7. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according paragraph 5 above ~~to Regulation 27(3)~~.]
- 7.8. If the Authority [or Inspectorate] has reasonable grounds to believe that the Contractor's recovery rate does not achieve level defined in their Plan of Work within [6 months] of the start of recovery operations, the Contractor shall be required to Modify its Plan of Work in accordance with Regulation 57.
- 8.9. The Contractor shall submit any additional information requested by the Authority [or Inspectorate] within [30] days of any such request by the Authority in accordance.

As a rule of thumb, Canada uses a 60% / 90 days combination for the purpose of determining the date of the commencement of production in reasonable commercial quantities.

The rationale for the proposed definition is based on a general mining practice whereby mill/processing facility is set to run at a lower feed rate during the start-up phase of production. Given each section or circuit of the mill/processing facility has been tested separately, the processing team can only observe potential and/or unexpected issues once the entire system is up and running. During the start-up phase (i.e. ramping-up of production), production may need to shut off and turned back on again multiple times as a result of differences between the expected and actual processing performance.

Considering the proposed definition includes quantitative thresholds (i.e.. X % of design capacity for X number of consecutive days), there may be instances when there are discrepancies between actual recovery rates and those outlined in the Plan of Work. As a result, the draft Standards seeks to account for this by allowing the Authority to request additional information to justify such discrepancies and require, as appropriate the Contractor to modify the Plan of Work in accordance with DR 57.