

**Twenty-eighth session**  
Council session, part III  
Kingston,  
30 October – 8 November 2023

## **Draft regulations on exploitation of mineral resources in the Area**

### **Collation of the texts prepared for the third part of the twenty-eight session**

#### **Explanatory note**

1. Recalling the annex to the Council decision of 21 July 2023 ([ISBA/28/C/24](#)), the Council requested a collation of the current texts of the informal working groups to be provided. This document is a collation of the following texts:
  - (a) The Presidents further revised draft text ([ISBA/28/C/WOW/CRP.2](#))
  - (b) The Chair of the OEWG's third revised draft text ([ISBA/28/C/OEWG/CRP.6](#))
  - (c) The Facilitator of the IWG on ENV fourth revised text ([ISBA/28/C/IWG/ENV/CRP.3/Rev.1](#))
  - (d) The Facilitator of the IWG on ICE fourth revised text ([ISBA/28/C/IWG/ICE/CRP.2](#))
  - (e) The Co-Facilitators of the IWG on IM revised text ([ISBA/28/C/IWG/IM/CRP.2](#))
2. This collation is a “copy/paste” of the texts of the different groups. The table of content includes reference to where the different regulations have been handled in the informal working groups. This collation contains exactly the same elements as the respective texts, that have been released as well in the usual manner.
3. This document is not to be confused with the consolidated negotiating text that will be provided after the third part of the twenty-eight session. The consolidated negotiating text will be a streamlined and clean version without comment boxes.

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## Preamble [President's Text]

### Preamble Alt.

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“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”), the Area and its resources are the common heritage of humankind, and the [Exploration and] Exploitation of the resources of the Area shall be carried out for the benefit of humankind as a whole, on whose behalf the Authority acts.

The objective of these regulations is therefore to [regulate] [] the Exploitation of the resources of the Area consistent with the Convention, including the duty [to take necessary measures in accordance with the Convention] to ensure effective protection for the Marine Environment from harmful effects caused by those activities.

#### Comments/remarks

- I noted that many delegations welcomed the alternative wording of the preamble. Furthermore, many delegations stated their flexibility in terms of what version would be used. I therefore suggest continuing the negotiations based on the alternative wording, and I have attempted to implement the relevant parts of the original wording and ensured better reference to the language of article 145 of UNCLOS.

## Part I Introduction

### Regulation 1 [IWG IM]

#### Use of terms and scope

1. Terms used in the Convention shall have the same meaning in 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. Subject to paragraph 1 and the Schedule, terms used in other rules, regulations and procedures of the Authority shall have the same meaning in these Regulations.
4. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule and the Standards and Guidelines.
5. Nothing in these Regulations shall affect the rights, jurisdiction and duties of States under the Convention, **including the rights and legitimate interests of the**

coastal states pursuant to article 142 of the Convention, the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention, and the exercise by States of the freedom of the high seas, in accordance with article 87 of the Convention.

6. These regulations are complemented 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 [alt 1. including regional environmental management plans, [and conservation and management measures]] [alt 2. (6.bis) These regulations are further complemented by regional environmental management plans.]

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

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

9. These regulations shall be applied in a uniform and non-discriminatory manner. *[One delegate suggests moving paragraph (9) to a new Regulation 2(7)].*

## **Regulation 2 [IWG IM] Principles, approaches and policies**

1. These regulations, and any decision-making thereunder, shall be applied in conformity with the principles governing the Area embodied in Section 2 of the Part XI [and in Part XII] of the Convention.

2. Recognizing that the rights in the Resources of the Area are vested in humankind as a whole, on whose behalf the Authority shall act, Exploitation in the Area shall be carried out for peaceful purposes and for the benefit of humankind as a whole, taking into particular consideration the interests and needs of developing States, [and] while ensuring the effective protection of marine environment from harmful effects which may arise from such activities in the Area [consistent with Article 145 of the Convention] including [biological diversity and ecological integrity] [its flora and fauna]

2 bis. Exploitation in the Area and other activities in the Marine Environment shall be carried out with reasonable regard for each other in accordance with article 147 of the Convention.

~~[3. Exploitation in the Area shall not commence until the legal framework intended for the effective protection and preservation of the Marine Environment is adopted and scientific evidence demonstrates that the Exploitation will be conducted in such a manner as not to cause significant and harmful changes to the Marine Environment and its resources and to effectively protect and preserve the Marine Environment pursuant to article 145 and [article 209 of] Part XII of UNCLOS.]~~

[3 alt 1. Exploitation shall not be authorized in the Area unless, inter alia, phase one and two Standards and Guidelines are adopted, and effective protection of the Marine Environment from harmful effects can be ensured consistent with

Article 145 of the Convention [and including biological diversity and ecosystem integrity][and effective protection of human life in accordance with Article 146 of the Convention].

[3 alt 2. Exploitation in the Area shall not commence until:

(a) the legal framework intended for the effective protection and preservation of the Marine Environment has entered into force [and the Authority has adopted an environmental policy];

(b) the implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework is well on track in the area beyond national jurisdiction; and

(c) scientific evidence demonstrates that Exploitation will be conducted in such a manner so as: not to cause significant and harmful changes to the Marine Environment and its resources, to effectively protect and preserve the Marine Environment pursuant to article 145 and Part XII of UNCLOS [including biological diversity and ecosystem integrity], and not to impede the full implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework in the area beyond national jurisdiction.

~~4. [According to article 145 of the Convention,] the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in [accordance] [line] with the Authority's environmental policy, including regional environmental management plans, is based inter alia on the following principles and approaches:~~

4 alt. The following principles and approaches shall guide the application of these regulations:

(a) Intergenerational equity.

(b) Precautionary principle or approach as appropriate.

(c) Ecosystem [based management] approach.

(d) Polluter pays principle.

(e) Open access to [non-confidential] data, [and] information and knowledge including relating to the protection and preservation of the Marine Environment.

(f) Transparency, inclusivity and accountability in decision-making[;

~~(vii)] including effective stakeholder involvement and public participation;~~

(g) The use of Best Available Scientific Information;

(h) The use of relevant traditional knowledge of Indigenous Peoples and local communities where available.

5. These regulations shall be also applied in conformity with the policies relating to activities in the Area established in article 150 and 151 of the Convention and related principles contained in the Annex of the Agreement; as well as the environmental policy of the Authority.

[6. Members of the Authority, Sponsoring States, Contractors, and the Authority shall ensure public trust and regulatory integrity, and shall not engage on decisions in which they have a conflict of interest.]

### Regulation 3 [IWG IM]

## Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority, the Enterprise, Applicants and Contractors shall cooperate with the Authority to provide such data and information necessary for the Authority to discharge its duties and responsibilities under the Convention;

(b) The Authority ~~and~~ sponsoring States, flag States, and port States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(c) The Authority and sponsoring States shall cooperate to develop, implement and ensure effective and transparent communication, public information and public participation procedures;

(d) The Authority shall consult and, where relevant cooperate, with sponsoring States, [relevant] coastal States [contiguous/adjacent/proximate to the Contract Area], port States, flag States, competent international organizations [and other relevant bodies as appropriate], to develop measures to implement these regulations, including to:

(i) Ensure effective protection of human life and property at sea, and effective protection of the Marine Environment, with respect to activities in the Area;

(ii) Exchange information and data to facilitate compliance with and enforcement of ~~applicable international rules and standards~~ relevant rules, regulations, and procedures of the Authority;

(e) Contractors, the Enterprise, 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 and related activities on the Marine Environment including at the regional scale, 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, sponsoring States, Contractors, and the Enterprise shall, in conjunction with the Authority, 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, including by use of data repositories and open-access databases;

(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 humankind as a whole; and

(vi) Developing incentive ~~structures~~ mechanisms, including market-based instruments, to support transfer of technology and capacity ~~enhancement~~

**building** of developing states, and to enhance the environmental performance of Contractors beyond the legal requirements including through technology development and innovation; ~~and~~

~~(vii) Establishing a community which links the ocean data with data product users such as biogeographers, and ecologists.~~

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors and members of the Authority shall enable access to **[non-confidential]** information, ~~upon the request by the Secretary General [or the Council]~~, to facilitate the Authority's preparation of studies on 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 be in accordance with specific terms of reference and any relevant Standards, and taking account of Guidelines.]** *[Facilitators' note: delegates are invited to consider whether the last sentence of this sub-paragraph (g) may be better located in a standalone provision, as this sub-paragraph's focus is on cooperation duties, and obligations of Contractors and member States (not the obligation on the Authority to produce such studies, to which the latter sentence pertains)]*

(h) The Council shall, taking into account recommendations by the Commission, adopt Standards and Guidelines **[concerning the duties mentioned in paras. (c) to (g)]** which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis **[within three years after the adoption of these regulations or before any Commercial Production commences, whichever takes place first]**.

## **Regulation 4 [IWG IM]**

### **Rights **[and legitimate interests]** of coastal States ~~and duty to notify~~**

*[Facilitators' Note: the outcomes of the intersessional working group focused on coastal states will further inform this DR4 (and other references to 'coastal States' contained in this IWG's portions of the regulations). We have nonetheless reflected some comments received on the topic in this latest draft text. In this regard, the view was expressed that identification / definition of coastal States with relevant interests should not be a function left to the discretion of the Contractors or the Secretary-General. It was also suggested that the Regional Environmental Management Plan could be a relevant tool for making such identification.]*

1. Nothing in these regulations shall affect the rights **[and legitimate interests]** of coastal States in accordance with article 142 and other relevant provisions of the Convention, ~~including its provisions on consultation, prior notification, and the taking of measures.~~

2. The Secretary-General shall inform potentially affected coastal States, as identified in the applicable Regional Environmental Management Plan, upon the submission of an application for Exploitation. Appropriate consultation and notification **[alt 1. protocols] [alt 2. procedures][alt 3. Standards]** shall be developed **within three years after the adoption of these regulations or before any Commercial Production commences, whichever takes place first.**

2 alt. During the consideration of an application for Exploitation the Council shall define the list of potentially affected coastal States and address the issue of the relevant rights of coastal States.

3. Contractors shall take all measures **required and** necessary to ensure that their activities are conducted so as not to cause harmful effects to the Marine Environment, including, but not restricted to, pollution, damage to the flora and fauna, **interference with the ecological balance of the Marine Environment including ecosystem structure, function and resilience** and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that such harmful effects or pollution arising from **Incidents or** activities in its Contract Area do not spread into areas under the jurisdiction or sovereignty of a coastal State.

4. Such measures by Contractors shall include:

(a) consulting with any potentially affected coastal State **in accordance with Article 142 of the Convention, prior to submitting an application for approval of a Plan of Work**]; and

(b) maintaining throughout the term of the contract:

- (i) monitoring of potential transboundary impacts,
- (ii) accurate and precise recording of the operational area, and
- (iii) consultations with any potentially affected coastal State,

with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

5. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor or the Enterprise ~~is likely to~~ **could** cause harm **or a threat of harmful effects** to its coastline or to the Marine Environment under its jurisdiction or sovereignty, **or may result in exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent**, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the [Commission], and the Contractor and its sponsoring State or States or the Enterprise, of such notification. The Contractor and its sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any **provided by the coastal States as the basis for its belief**, and submit their observations thereon to the [Secretary-General] in the shortest possible time. *[Facilitators' note: the references to the Commission and the Secretary-General in this paragraph may be re-visited when the organisational structure for the inspection and compliance function of the Authority has been determined].*

6. Regulation 4(5) shall apply *mutatis mutandi* to any State with grounds for believing that such harm or threat of harm may be caused in any location by an activity under a Plan of Work, **and the procedure established in regulation 4(7) shall also apply.**

7. If the [Commission] determines, in accordance with the relevant Standards and taking into account Guidelines, that there are clear grounds for believing that, as a result of the Contractor's operations:

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to article 165(2)(k) of the Convention and

take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28(3); or

(b) other harmful effects, or threat of harmful effects, to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and the [Commission] shall recommend that the Council 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. *[Facilitators' note: the reference to the Commission in this paragraph may be re-visited when the organisational structure for the inspection and compliance function of the Authority has been determined. It has also previously been proposed that the text contained in this paragraph (7) may be better located in Part XI of the Regulations, pertaining to Inspections, Compliance and Enforcement].*

8. In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be [strictly] liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired[, and the Authority shall require the Contractor to pay compensation, proportionally to the damage caused].

## **Part II**

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

#### **Section 1 Applications**

*Facilitators' Note: It has been agreed in the Institutional Matters informal working group that a discussion on **Effective Control** is pertinent. An intersessional webinar to inform this discussion was held on 1 September 2023.*

*Clarity regarding who may become a sponsoring state and whose sponsorship is required for a contractor's application to be approved by the ISA is crucial to the development of an effective compliance and liability system. Clarity regarding the nationality of a contractor will also assist ensure equitable outcomes from activities in the Area, and to avoid monopolization of the resources of the Area.*

*The Authority's past practice appears to have been to default to a State's own assessment that their sponsorship arrangements constitute a relationship of 'effective control'. This may have led to arrangements in which an ISA contractor operates through a subsidiary company registered in the sponsoring State, but the contractor is majority-owned and managed from outside the sponsoring State.*

*Alternative views have been expressed that to evaluate **Effective Control**, the Authority must go beyond the location of*



*the registration of the Contractor company, analysing also ownership and business management as factors relevant to determine the level of “de facto” control by the State or its nationals.*

*This is a matter for the Council to determine. Article 4(3) of the Annex III to UNCLOS provides that the Authority itself is called to develop criteria and procedures for the implementation of the provisions on sponsorship. For the consequences it can entail, we find the Regulations, and particularly Regulations 5 and 6 are relevant to develop such rules and procedures on sponsorship with a view to ensure that the requirement of effective control is duly met. In this regard, after a more detailed discussion, Member States might decide to include further requirements to demonstrate Effective Control in this Part II, and in other sections of the Regulations e.g. a definition of the term could also be inserted in the Schedule.*

## **Regulation 5 [IWG IM]**

### **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 the Convention and these regulations.

2. Each application shall be submitted:

- (a) In the case of the Enterprise, by its Director-General;
- (b) In the case of a State, by the authority designated for that purpose by it;
- (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 an entity referred to in regulation 5(1)(b) shall also contain, together with the necessary documentation as supporting evidence:

- (a) The name of the applicant, and all information necessary 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;
- (b) The principal place of business or domicile and, if applicable, the place of registration of the applicant;
- (c) All information necessary to demonstrate that the applicant has the necessary financial, technical and operational capability to carry out the proposed Plan of Work in accordance with these Regulations, applicable Standards and Good Industry Practice using appropriately qualified [and adequately supervised] personnel; and

(d) All information necessary to demonstrate the technical capability in environmental management pursuant to regulation 13(3)(c) and Section III of Annex I to be able to comply with the requirements of these Regulations and applicable Standards.

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.

6. The Authority shall not accept the application if the sponsoring State or States has not enacted a ~~mining law~~ **legislation about activities in the Area** that complies with the ~~standards~~ requirements referred to in Regulation 105.

## **Regulation 6 [IWG IM]**

### **Certificate of sponsorship**

1. Each application by an entity 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.

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 or States;

(c) ~~A statement and supporting evidence~~ **such as a passport, citizenship certificate, certificate of incorporation or other evidence of registration or nationality** that the applicant is: *[Facilitators' note: the red text, a new proposal from Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd, may need to be removed or relocated, given other delegates' proposals to delete the preceding wording (with the rationale that the certificate of sponsorship is not the correct place to require such evidence). The point to give examples of relevant evidence may be better located in regulation 7 (form and content of applications). What constitutes such examples may also need to be reconsidered, depending on the definition of Effective Control to be agreed by the Council].*

(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;

(d) *bis*. A copy or description of the necessary and appropriate measures taken by the State to secure effective compliance pursuant to article 139(2) of the Convention, and to ensure legal recourse for compensation in accordance with article 235 (2) of the Convention. *[Facilitators' note: it has been suggested that*

*this regulation 6(3)(d)bis requirement would be better located in regulation 7, relating to the form and content of applications for a Plan of Work].*

**[(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]**

*[Facilitators' note: there are conflicting suggestions to delete sub-paragraphs (e) and (f) on the basis they are unnecessary, and to keep them on the basis of consistency with the Exploration Regulations].*

4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this regulation.

## **Regulation 7 [IWG IM]**

### **Form of applications and information to accompany a Plan of Work**

1. Each application for approval of a Plan of Work shall be

- (a) in the form prescribed in annex I to these regulations;
- (b) addressed to the Secretary-General; and
- (c) prepared in accordance with these regulations and the applicable Standards, and taking account of Guidelines.

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]** ~~during all stages of the process chain~~ and comply with the applicable obligations created by the provisions of Part XI of the Convention, the Agreement, the rules, regulations and procedures, **including the Standards** 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 ~~during all stages of the process chain~~ as authorized by the Convention;
- (c) Provide the Authority with a written ~~substantiated~~ assurance that its obligations under its contract will be fulfilled in good faith; and

**(c bis) Provide the Authority with written undertakings from parent or holding companies of the applicant, if any, to assume joint and several liability for damages to the Authority in the event of liability having been established against the applicant in carrying out of the plan of work.**

~~(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.~~

[alt. proposal to delete (2) and all its sub-paragraphs, on the basis that an applicant should already be subject to the relevant instruments and requirements, and a written statement does not give them new legal force.] *[Facilitators' note: Article 4 of Annex III to the Convention requires the undertakings listed in sub-paragraphs (a)-(c) above to be included in every application].*

3. An application shall be prepared in accordance with these regulations and applicable Standards, taking into account applicable Guidelines, and [alt 1. in accordance with] [alt 2. on the basis of][alt 3. in line with] [alt 4. taking account of] [alt 5. taking into account] [alt 6. consistent with] the respective Regional Environmental Management Plan.

3. bis. An application shall contain sufficient information to demonstrate that the applicant has **or will have** access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be 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 Work Plan prepared in accordance with annex II to these regulations;

(c) A Financing Plan prepared in accordance with annex III to these regulations;

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

**[(d bis) A test mining study prepared in accordance with regulation 48bis;]**

(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 Regulation 30 and annex VI to these regulations;

**[alt. to (f):**

**(f) A Health and Safety Plan prepared in accordance with Regulation 30 and Annex VI to these regulations;**

**(f bis) A Maritime Security Plan prepared in accordance with Regulation 30 and Annex VI to these regulations;]**

*[Facilitators' note: delegations have proposed that these two subjects should be covered by two separate standalone plans. If that proposal is taken forward, this is likely also to require amendment also to the Regulation 30 and Annex VI, and updating of the cross-reference here].*

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines; *[Facilitators' note: one proposal also suggests addition of an Annex setting out format and minimum requirements for the Training Plan, as with other plans].*

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations ~~[which documents that management and monitoring [are in compliance with [take into account] the applicable Regional Environmental Management Plan and based on the result of the Environmental Impact Assessment];~~ **[including information regarding the**

environmental management system that the Contractor will implement in accordance with regulation 46 and the relevant Standards, taking account of Guidelines] *[Facilitators' note: delegates may wish to consider the need to avoid introducing text here, that is also, and more fully, covered in the relevant regulations and Annex that provide the requirements for the EMMP].*

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

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

(k) A copy of the Contractor's code of Conduct or other rules applicable to all staff involved in the execution of a proposed Plan of Work, including policies pertaining to personnel safety, environmental compliance, inclusivity, gender equality and diversity, and sustainability, which shall conform in material respects with the rules applicable to staff of the Enterprise or any other rules proposed by the Authority; and

(l) A copy of documents to evidence the applicant's Environmental Performance Guarantee, in accordance with regulation 26.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission shall require separate documents under paragraphs 3 (b), (d), (h), (i) and (l) 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 proposing a Plan of work for two or more non-contiguous Mining Areas and the Commission considers it is not appropriate, the Commission shall reject the application and request separate documents under paragraphs 3 (b), (d), (h) (i) and (l) for each Mining Area.~~

## **Regulation 8 [IWG IM]**

### **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 geographical coordinates in accordance with [alt 1. Annex 1 to these regulations] [alt 2. the World Geodetic System 84] [alt 3. the most recent applicable international standard used by the Authority].

2. The area 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.

3. The area under application shall be an area previously subject to an exploration contract for which [adequate and satisfactory] environmental baseline data is publicly available.

[4. The area under application must be covered by a relevant Regional Environmental Management Plan pursuant to regulation 44bis.]

[5. In the application, the applicant shall provide an overview of other potential legitimate activities in the marine environment covered by the application, and a statement confirming whether the area under application or any part of it has received attention under any other international organisation or treaty regime.]

5 alt. For any part of the area under application, to the extent practicable after reasonable investigations, the applicant shall indicate in the application, whether it is designated or managed under any international regime or international organization. The applicant will also indicate that it is aware of its obligation of reasonable regard to other activities in the Area in accordance with Article 147.

## Section 2

### Processing and review of applications

#### Regulation 9 [IWG IM]

##### Receipt, acknowledgement and safe custody of applications

The Secretary-General shall:

(a) Acknowledge in writing, within [alt 1. 7][alt 2. 14][alt 3. 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 an application for approval of a Plan of Work submitted under this Part, and upon confirming that it is complete in accordance with regulation 10(1):

(i) Notify the members of the Authority of the receipt of such application and circulate to them the contents of the application save for any Confidential Information contained in the application along with notice of the determination made, if any, pursuant to regulation 10 as to whether the applicant has preference and priority; and

[(i alt) 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 information enabling them to access a non-confidential version of the application; and]

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

*[Facilitators' note: previous paragraph 9(2), relating to the LTC consideration of an application has been moved to regulation 11(1 bis)].*

#### Regulation 10 [IWG IM]

##### Preliminary review of application by the Secretary-General

1. The Secretary-General shall preliminarily review an application for approval of a Plan of Work and determine whether the application contains all the information required by Regulations 5 to 8 7 for further processing.

2. Where **the Secretary-General determines** an application does not contain all the information required by Regulations ~~7~~ 5 to 8, 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~~ **all required information has been submitted by the applicant, including** payment of the administrative fee specified in appendix II. ~~An application will not be processed further if there is another potential applicant who has a preference and priority and an intention to apply in accordance with regulation 10 (1).~~

[3. In case there is a potential applicant who **has claims** preference and priority in the same area and same Resource category under **an Exploration contract in accordance with Article 10 of Annex III to the Convention** the Secretary-General shall, **before progressing the original application further**, confirm the intention of such a potential applicant to apply **for approval of a Plan of Work for Exploitation within 30 days of the original applicant's application. The new applicant shall then lodge their application within a further 60 days; and the Secretary General shall consider the additional application in accordance with Regulation 10(1) and (2).**]

[4. Should there be more than one application for the same area and same Resource category, **[or a potential applicant has confirmed their intention to apply for approval of a Plan of Work pursuant to Regulation 10(2)]** the ~~Commission~~ **[Secretary General]** shall **make recommendations to the Council, and the Council shall** determine which applicant has preference and priority in accordance with article 10 of annex III to the Convention **and section 1, para. 13 of the annex to the Agreement, and taking into account any relevant Guidelines,** ~~and in case of any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision.]~~ ~~The Secretary General shall notify the members of the Authority of the determination made, if any, as to whether the applicant has preference and priority.~~

5. Where an application concerns a Reserved Area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention, **[and section 2 of the annex to the Agreement].**

#### **Regulation 11 [IWG IM]**

**Publication and review of the Environmental Plans [and Environmental Management Systems]**

**[Alt. [Publication, notification, and review of the Application]**

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

(a) **Taking into account the confidentiality of the data**, place [alt 1. the Environmental Plans and any information necessary for their assessment] [alt 2. the application and all non-confidential documentation submitted and associated with it, including any supporting material] [alt 3. the Plan of Work and the accompanying plans and information] ~~[as well as the non-confidential parts of the test mining study]~~ on the Authority's website for a period of ~~60~~ 90 Days, and notify and invite members of the Authority, [relevant] adjacent coastal States, **[and any other States adjacent to the Exploitation Area when they are potentially the most affected States]**, Stakeholders, **[and the general public]** to submit comments in writing **within 90 days, in accordance with the relevant Standards and** taking account of the relevant Guidelines.

*[(b) Request the Commission to provide its comments on the Environmental Plans [and the non-confidential parts of the test mining study] within the 90 Day comment period.] [Facilitator's note: proposals to delete this paragraph (b) noted potential conflict with DRs 11(4) and 12, and queried the rationale for the LTC reviewing the application once in this 90-day period, and then again afterwards]*

**[(c) [Based on the assessment of the Commission, if necessary,] Establish an independent review team, making use of the roster of competent independent experts, if any, to provide comments on the Environmental Plans within the comment period.]**

2. The Secretary-General shall, within seven Days following the closure of the comment period, provide all submissions received, ~~from members of the Authority, relevant adjacent coastal States, Stakeholders, the general public, the Commission,~~ and any comments from [the independent review team and] the Secretary-General to the applicant ~~for its consideration~~ and publish all submissions and comments provided on the website of the Authority.

2 bis. The applicant shall consider the comments provided pursuant to paragraph ~~(2)~~ (1) and ~~may~~ shall, as appropriate, revise the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work and the accompanying plans and information] or provide responses ~~in reply~~ to the **[relevant and][substantive]** comments, **as to how they were taken into account** and ~~[shall][may]~~ submit any ~~revised plans~~ revisions and responses to the [alt 1. Secretary-General] [alt 2. Commission] **...[alt. continuation of 2 bis ...]** [within a period of 30 Days following the close of the comment period ~~unless otherwise decided or such longer period as determined~~ by the Secretary-General ~~after considering~~ [alt 1. following a request by the applicant][alt 2. after consulting with the applicant] ~~before the initial time period [of 30 days] expires~~ for an extension of the period due to the time required ~~[alt. on the basis that it requires more time]~~ to revise the plans or responses. ~~Notice of the extension of the period shall be posted on the Authority's website.]~~

2 ter. The Secretary-General shall provide comments submitted pursuant to paragraph (1), and any revisions and responses to comments submitted pursuant to paragraph (2 bis), to the Commission.



[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 [and the test mining study]~~ in the light of the comments submitted under paragraph (1), together with any **revisions and responses provided** by the applicant under paragraph (2 bis), and any additional information provided by the Secretary-General under paragraph (2).]

4. Notwithstanding the provisions of regulation 12(2), the Commission shall not consider an application for approval of a Plan of Work until the [alt 1. Environmental Plans have] [alt 2. **application has** ] [alt 3. **Plan of Work and the accompanying plans and information have**] been published and if necessary, revised in accordance with this regulation.

5. The Commission shall prepare a report on the [alt 1. Environmental Plans] [alt 2. **application**] [alt 3. **Plan of Work and the accompanying plans and information**], which 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. The report shall include:

(a) details of the Commission's determination under regulation 13(4)(e);

(b) details of the comments and responses submitted under paragraphs (1) and (2bis);

(c) any further information provided by the Secretary-General under paragraph (2);

(d) any **amendments or modifications to the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work] recommended by the Commission under regulation 14 [and changes subsequently made to application documents by the applicant];**

(e) the relevant rationale for the Commission's determination, with specific explanation as to any comments or responses that are disregarded.

[6. In preparing its report under paragraph (5), the Commission shall [alt. **may**] seek advice from competent independent experts as necessary. ~~In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council.~~ The experts shall be selected and appointed in accordance with relevant Guidelines [alt. **Annex [tbc].**]

### **Section 3**

#### **Consideration of applications by the Commission**

##### **Regulation 12 [IWG IM]**

##### **~~General~~ Rules for considering applications**

1. **Subject to Regulation 10 concerning preference and priority among applicants, t**The Commission shall examine applications in the order in which they are received by the Secretary-General **and shall assess applications in accordance with this regulation and against the criteria contained in regulation**

13, in order to make a report and recommendation to the Council whether the Plan of Work under application should be approved, or disapproved, pursuant to regulation 15.

1bis. Subject to paragraph (1 ter) and to regulation 11(4), The Commission shall commence the consideration of an application at its next meeting after receipt of the application [alt. within 30 days of its receipt of the application] [provided that the notifications and information pursuant to regulation 11(1)-(2 ter) have been circulated at least 30 90 Days prior to the commencement of that meeting of the Commission.]*[Facilitator's note: this has been proposed to move here, from DR9. One submission notes in relation to this paragraph (1 bis), that regulation 11(4) (cross-referenced) actually prevents the LTC from considering the application until after the documents have been published for consultation for 90 days in any event – hence the proposal to delete the wording from 'provided...' onwards.]*

[1 ter. The Commission may defer consideration of an application to a subsequent meeting [alt. suspend further consideration of such application and resume consideration at its subsequent meeting] if it considers the application to be overly complex if the complexity of the applications so requires.]

2.The Commission shall consider applications expeditiously and shall endeavour to submit its reports and recommendations to the Council no later than [alt 1. 120] [alt 2. 180][alt 3. 275] Days from whichever date occurs later out of:

- (a) the close of the comment period, in accordance with Regulation 11(1)(a), or
- (b) the date of submission of a revised plan, in accordance with Regulation 11(2 bis), or
- (c) the date the Commission receives additional information or amendments to the Plan of Work requested by the Commission under regulation 14.

~~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 Convention, the Agreement, and the Rules of the Authority in a uniform and non-discriminatory manner, and may not recommend approval of a Plan of Work that does not comply with these requirements.

3 alt. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the Rules of the Authority in a uniform and non-discriminatory manner, and [ensure its compliance with] [shall have regard to] apply the principles, policies and objectives relating to activities in the Area [as provided for in [the Convention,] [the Preamble,][and Part I of these regulations],[and in particular the manner in which the proposed Plan of Work] [contributes to realizing benefits for][is in the interests of] humankind as a whole [in accordance with decisions of the Council and Assembly]] including in ensuring the fair and equitable sharing of benefits] [and ensuring the effective protection of the marine environment], and may not recommend approval of a Plan of Work that does not comply with these requirements

[3 bis. The Commission in considering a proposed Plan of Work may seek advice and reports from competent independent experts on any matters considered to be relevant, as necessary.]

3 bis alt. In the case the Commission evaluates that there are aspects of the proposed Plan of Work that are not covered entirely by its own internal expertise, the Commission shall nominate at least three competent independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector, to review the application and provide comments to the Commission to inform their consideration of the proposed Plan of Work.

*[Facilitators' note: the points raised in paragraphs (3 bis) and (3 bis alt.) may be covered sufficiently by regulation 11(6), if this is retained.]*

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

(a) Any **relevant** reports from the Secretary-General;

(a)bis. Any **relevant [and substantive]** comments ~~received following the publication of the [alt 1. Environmental Plans][alt 2. Application][alt 3. Plan of Work and the accompanying plans and information]~~ or the Commission's report on the ~~[alt 1. Environmental Plans][alt 2. Application][alt 3. Plan of Work and the accompanying plans and information]~~ made by Stakeholders, **together with any revisions and responses provided by the applicant pursuant to regulation 11(3);**

[(a)ter. Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with [alt 1. competence in] **[alt 2. relevance to]** the subject-matter;]

[(a) quat. Any information supplied by the sponsoring State or States **[relating to the financial and technical capabilities of the sponsored applicant]]**.

[(b) Any concern raised by a [relevant] adjacent coastal State **[likely to be affected]** with respect to the application;]

**alt. to (a bis.), (a ter.), (a quat.), and (b):**

**(b) Any further relevant information about the applicant or in respect of the application sought by the Commission or the Secretary-General or supplied by the Sponsoring State(s), Members of the Authority, international organizations, adjacent coastal States, and other States or stakeholders prior to, and during the period of, the Commission's evaluation.**

**(b) bis. Reports from the Finance Committee upon matters within its competence, including:**

**(i) assessment of the economic benefits to be derived from the activities proposed in the application;**

**(ii) advice as to securing optimum revenue for the Authority;**

(iii) the administrative budget required to manage a contract if awarded, and the proposed annual reporting fee to be levied pursuant to regulation 84;

(iv) any recommendation regarding the amount or format of the environmental performance guarantee; and

(v) advice as to whether the applicant would be subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

(b ~~ter.~~) Any advice or reports sought by the Commission ~~or the Secretary General~~ from competent independent ~~persons~~ **experts** in respect of the application ~~[the Environmental Plans] [environmental matters] to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;~~

(c) ~~The~~ **Any** previous operating record ~~of responsibility~~ of the applicant ~~[including in relation to mining activities within other jurisdictions][, as well as the applicant's performance during the exploration stage, including the quality of annual reports and baseline data, and the results of test mining activities];~~

~~[(c) bis. The previous operating record of the Sponsoring State(s), and the Sponsoring State(s)' technical resources and enforcement capabilities to monitor and enforce the applicant's compliance with the Rules of the Authority;]~~

~~(d) any objectives or measures established in the relevant Regional Environmental Management Plan.~~

~~(e) Any relevant Standards and Guidelines developed in accordance with Regulations 94 and 95; and~~

#### **Regulation 12 bis.**

##### **General obligations of contractors**

~~In conducting their activities in the Area, Contractors shall at all times:-~~

~~(a) comply with the applicable obligations created by the provisions of Part XI of the Convention, 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; and~~

~~(b) 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.~~

*[Facilitators' note: in accordance with proposals received, the content of this regulation 12 bis. has now been captured in regulation 18 bis. (President's Text)]*

#### **Regulation 13 [IWG IM]**

##### **Assessment of ~~Applicants and~~ applications**

1. The Commission shall determine ~~[under consideration of]~~ taking into account the **relevant** comments made by members of the Authority and Stakeholders, responses by the applicant and any additional information or comments provided by the Secretary General if **whether** the applicant **proposed Plan of Work and the**

accompanying plans and information: *[Facilitators' note: deleted text is covered in regulation 12 (above), and proposed regulation 13(1 bis) (below).]*

(a) Document that the applicant is a qualified applicant pursuant to regulation 5;

(a bis.) Are accompanied by a certificate of sponsorship;

(b) Are ~~Has prepared the application~~ in conformity with these regulations, the applicable Standards and taking into account ~~[the applicable]~~ Guidelines, and the Regional Environmental Management Plan;

(c) Demonstrate that the applicant ~~h~~Has given the undertakings and assurances specified in regulation 7(2);

(d) Demonstrate that the applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have ~~Has~~ satisfactorily discharged ~~its~~ their obligations to the Authority, including having a satisfactory record of past performance both within the Area ~~[and in other jurisdictions]~~;

(d alt.) *[moved from (h)]* ~~Has d~~Demonstrated a satisfactory record of past performance both within the Area ~~[and in other jurisdictions]~~;

(e) Demonstrate that the applicant ~~h~~Has ~~[or can demonstrate that it will have]~~ the financial and technical capabilities ~~[and capacity]~~ to carry out the Plan of Work, ~~[meet or exceed environmental performance obligations]~~ and to meet all obligations under an exploitation contract ~~[according to criteria defined by the Council]~~; *[Facilitators' note: Annex III, Article 4 of the Convention requires the ISA's RRP's to establish qualification criteria relating to 'financial and technical capabilities of the applicant']*

(e)bis. Fulfil the obligations to protect and preserve the Marine Environment in accordance with the Convention and the Agreement, and as listed out in the Rules of the Authority;

~~[(f) Has d~~Demonstrated the ~~economic~~ [commercial] financial viability of the mining project.]

~~[(g) Has d~~Demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment. *[Facilitators' note: some more detailed original text here has been moved to/ blended with 13(4)(b)].*

1.bis. The Commission shall take into account all information pursuant to Regulation 12(4) and all applicable Standards and Guidelines when making its determinations under this Regulation.

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

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

(b) The applicant is [or 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 **in order to ensure that the project will benefit humankind as a whole**;

(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~~;

(iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan, **and effective response to an Incident**; and

~~(c)(iv) Necessary access to~~ **The applicant demonstrates that it will purchase insurance [products that are appropriate to the financing of exposure to risk] in accordance with [Good Industry Practice] Regulation 36, and applicable Standards, taking into account Guidelines.**

**(d) The applicant has proposed an Environmental Performance Guarantee whose amount and form is assessed by the Commission to be adequate, and in conformity with the requirements of Regulation 26 and the relevant Standard, and taking into account any Finance Committee report or Guidelines.**

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with **Standards and taking into account** Guidelines whether the applicant has provided sufficient information to demonstrate it has [or will have]

(a) Certification to operate under internationally recognised quality control and management standards;

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

(b) The technology, knowledge, and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, **[and taking into account** the applicable Regional Environmental Management Plan], including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to avoid **[the potential for] Serious Harm**];

(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, Best Available Scientific

Information, 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 **and** [**alt 1. promptly**][**alt 2. expeditiously**] to Incidents, in accordance with the Emergency Response and Contingency Plan; and

(e) The capability [**and capacity**] to utilize and apply Best Available Techniques;

(f) **A safety management system that meets the requirements of regulation 30 bis; and**

(g) **An Environmental Management System that meets the requirements of Regulation 46.**

4. The Commission shall determine if the proposed Plan of Work foreseeably contributes to realizing the benefits for humankind as a whole and ~~complies is~~ **consistent** with the fundamental policies and principles contained in regulation 2, and;

~~(a) Is technically achievable and [economically commercially] viable;~~

~~(b) Reflects the economic life of the project;~~

~~(a)~~ Provides for the effective protection of human life, and health and safety of individuals engaged in Exploitation, in accordance with the rules, regulations and procedures adopted by the Authority [**and by any other competent international organizations**].

~~(b)~~ Provides for Exploitation to be carried out with reasonable regard for other activities in the Marine Environment, in line with **regulation 31 and** article 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, in accordance with the relevant Standards and taking account of Guidelines. In making such determination, the Commission shall determine if the proposed Plan of Work has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment, **including** to:

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

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

(iii) identify areas of intense fishing activity **as may be defined in Standards or Guidelines** in, or adjacent to, the area under application; and

**(iv) identify any other activities in or adjacent to the Contract Area in accordance with Regulation 31, including marine scientific research activities, activities relating to marine genetic resources, and environmental protection measures and**

area-based management tools established or proposed by competent international organizations; and

(iv) where other marine users are identified in relation to the area under application **whether listed in the Regional Environmental Management Plan or identified by some other means**, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities ~~(such as an easement, or a mining exclusion zone within a reasonable radius);~~]

~~(c)~~ [alt 1. Demonstrates that the Environmental Plans will secure] [alt 2. Provides under the Environmental Plans to secure] [alt 3. Ensures though the Environmental Plans will secure][alt 4. Demonstrates that the draft Plan of Work and the accompanying plans and information will ensure] **for the effective protection of the Marine Environment in accordance with the Convention and the Rules of the Authority rules, regulations and procedures adopted by the Authority, in particular the fundamental principles and the relevant policies under regulation as well as taking into account the objectives and measures under the applicable Regional Environmental Management Plan[, and taking into account the cumulative effects of all relevant activities, and climate change]. For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that:**

**(i) the draft Plan of Work is based on adequate environmental baseline data, in accordance with applicable Standards and taking into account relevant Guidelines;**

**(ii) the Standards developed pursuant to regulation 45 will be complied with;**

**(iii) the objectives and measures of the applicable Regional Environmental Plan will be fulfilled;**

**(iv) the overarching goals and objectives set by the Authority [in its environmental policy] are complied with;**

**(v) the Plan of Work gives full effect to the precautionary principle [or approach as appropriate];**

~~[(vi) The effective protection referred to in sub paragraph (c) implies that the activity will not cause, *inter alia*:~~

(A) Significant adverse effect on air and water quality;

(B) Significant changes in the atmosphere, the terrestrial environment, or the Marine Environment;

(C) Significant changes in the distribution, abundance or productivity or species of flora and fauna;

(D) Further jeopardy to endangered or threatened species or populations of said species;

(E) Degradation, or risk of degradation to special biological, scientific, archaeological, or historical significance;



(F) Significant adverse effect on climate of weather patterns.]

~~[(vi alt 1. or bis.) The assessment whether the Environmental Plans provide for the effective protection of the Marine Environment from harmful effects that may arise from the proposed activities under sub paragraph (e), shall include by assessing whether the proposed Plan of Work:~~

(A) will not cause Environmental Impacts to any area designated by the Authority [or other relevant authority] as a protected area in terms that prohibit such impact;

(B) gives rise to a non-negligible [alt. serious] risk of pollution, damage to flora and fauna, or other harmful to ecosystem integrity (i.e. ecosystem structure or function) [in a manner that:

(i) impairs the ability of affected populations to replace themselves; or

(ii) degrades the long-term natural productivity of habitats or ecosystems; or

(iii) causes, on more than a temporary basis, significant loss of species richness, habitat or community types.]

(C) gives rise to a non-negligible [alt. serious] risk that it will undermine the protection and conservation of other natural resources of the Area.]

~~(vi alt 2. or ter.) The activities proposed under the Plan of Work will meet the overarching environmental goal of sustaining marine (benthic and pelagic) ecosystem integrity including the physical, chemical, geological and biological environment, and contributing to restoring ecosystem integrity, as well as the following environmental objectives:~~

~~(A) Prevent loss of genetic diversity, species richness, habitat or community types, and structural complexity on a long-term basis;~~

~~(B) Maintain the ability of populations to replace themselves, including ensuring population connectivity and the preservation of suitable habitat;~~

~~(C) Prevent the degradation of ecosystem functions (e.g. the long-term natural productivity of habitats, elemental cycling, trophic relationships);~~

~~(D) Protect ecosystems from contamination by pollutants generated during any phase of the mining process;~~

~~(E) Maintain resilience to prevent regime shift, and to support recovery from cumulative impacts, including mining, that can affect source populations and communities, connectivity corridors, life-history patterns and species distributions; and~~

~~(F) Sustain ecosystem services, including carbon sequestration, recognizing that many are yet to be discovered.~~

5. For the purposes of determining effective protection of the Marine Environment under regulation 13 (4)(c) ~~(e) and (f)~~, the Commission must take into account:

- (a) Any Environmental Effects or impact on other activities of allowing the Exploitation activity;
- (b) All proposed Mitigation and risk management measures;
- (c) An evaluation of harmful effects individually, in combination, as well as cumulatively, including effects from other activities in the area under application.
- (d) The effects on human health that may arise from Environmental Effects;
- (e) The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;
- (f) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;
- (g) Traditional knowledge or cultural interests relevant to the area under application;
- (h) The matters set out at Regulation ~~47(3)(b)~~<sup>46bis(2)(b)</sup>;
- (i) The assessment framework for Mining Discharges as set out in the Guidelines;
- (j) Any relevant Standards and Guidelines developed in accordance with regulations 94 and 95.
- (k) Whether performance of the Plan of Work can be effectively monitored and controlled by the Authority, to minimise Environmental Effects, and ensure compliance with the Rules of the Authority.

5 bis. The Commission shall determine whether the draft plan of work and the accompanying plans and information demonstrate that the proposed activities will not interfere with any cultural rights or interests.

6. When assessing a Plan of Work, the Commission shall apply the principles set out in regulation 44(1)(a)(i)-(vii)~~(e)~~.

[7. In assessing a Plan of Work, the Commission shall determine whether the applicant is under the effective control of the sponsoring State, according to applicable Guidelines, and whether the sponsoring State has enacted domestic legislation covering activities in the Area that:

- (a) is in force and applicable,
- (b) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention, and
- (c) does not contain provisions 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.]

**Regulation 14 [IWG IM]  
Amendments to the proposed Plan of Work**

1. At any **reasonable** 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 makes a request under paragraph (1), the Commission shall provide to the applicant a brief justification and rationale for such a request. The applicant must respond **within the timeframe requested by the Commission, which shall be at least 90 days**, ~~90 Days following receipt of such [proposal a request] from the Commission~~ by agreeing to the request, rejecting the request, or making an alternative proposal for the **Commission's consideration**.

3. The timeframe referred to in regulation 12(2) shall be extended by the timeframe determined by the Commission pursuant to paragraph (1).

4. The [alt 1. Secretary-General] [alt 2. Commission] shall publish any amendment, additional information, or revised application received pursuant to paragraph (2) on the website, and where these are significant, shall provide an opportunity for public consultation in accordance with regulation 11.

5. The Commission shall ~~then in light of~~ **take into account** the applicant's response **under paragraph (1)** and any responses received from public consultation under paragraph (4) into account in ~~makeing~~ **making** its recommendations to the Council.

### **Regulation 15 [IWG IM]**

#### **Commission's recommendation for the approval or disapproval of a Plan of Work**

1. Taking into account regulations ~~12(4)~~ and 13, if the Commission determines that the ~~applicant~~ **application** meets the relevant requirements, it shall [alt. may] recommend approval of the Plan of Work to the Council.

[1 alt 1.] The Commission may recommend approval of a proposed Plan of Work if the Plan of Work complies with all requirements stipulated in Regulation 13.

[1 alt 2.] 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.

1bis. The Commission shall accompany any recommendation for approval made under paragraph (1) with:

(a) a summary of the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as divergences of opinion in the Commission, if any;

(a bis) a summary of any uncertainties inherent in the Plan of Work and how the applicant is proposed to address these;

(b) any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and

(c) a draft Contract.

2. The Commission shall not recommend approval of a proposed Plan of Work if:

(a) the Plan of Work does not comply with all requirements stipulated in Regulation 13;

(a alt 1.) the Plan of Work does not comply with, or the Commission is unable to determine whether the Plan of Work complies with, all requirements stipulated in Regulation 13;

(a alt 2.) The Commission is unable to determine that the Plan of Work either alone or in combination with other activities and impacts ensures effective protection of the marine environment, based on the criteria set out in Regulation 13(4) (c) ~~(e) and (f)~~, on the basis of Best Available Scientific Information, and applying the precautionary approach

(a alt 3.) Pursuant to regulation 13(4)(c) ~~(e) and (f)~~, the Plan of Work fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4)(c) ~~(e) and (f)~~, that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.

(a alt 4.) The Commission determines that the Plan of Work either alone or in combination with other activities and impacts does not ensure effective protection of the marine environment, based on the criteria set out in Regulation 13 (4) (c), on the basis of Best Available Scientific Information.

(b) part or all of the area covered by the proposed Plan of Work is included in:

~~(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant; [Facilitators' Note, This wording had been deleted previously, but two written submissions in September 2023 request its reinsertion].~~

(ii) 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;

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

[(iv) an Area of Particular Environmental Interest or any other site disapproved for exploitation by the Council, [or that sets a spatial or temporal protective measure], as ~~determined~~ indicated in the applicable Regional Environmental Management Plan;]

[(v) any other area designated for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;]

(vi) 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;

[(vii) An area that has not been subject to prior exploration activities;]

[(viii) An area not covered by a Regional Environmental Management Plan.]

[(c) Such approval would undermine or contradict the regional goals, objectives or measures set out in the applicable Regional Environmental Management Plan.]

[(d) 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 is otherwise unable to give reasonable regard to other marine users in the area under application. ]

[(e) There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work, or any part of that area.]

[2 bis. The Commission shall not recommend approval of a proposed Plan of Work if the applicant, its controlling shareholder or shareholders or its predecessor in law previously violated the general obligations of contractors in a non-negligible way.]

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 in accordance with relevant Standards, taking into account relevant Guidelines; 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 permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally; or]

4. If the Commission determines that **it will not recommend approval of the Plan of Work [alt 1. for any reason][alt 2. pursuant to paragraphs (1)-(3)]** ~~the applicant does not meet the [criteria] [requirements] set out in [regulations 12, 13 and 14][the regulations,~~ the Commission shall ~~so~~ inform the applicant in writing, by providing the reasons why ~~any [criterion has]~~ **[any requirements set out in regulation 13 have not been met by the applicant or why the Commission has been unable to make a determination,** and shall 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,] T~~he Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, ~~[alt 1. provided that the representations have been circulated at least 30 days in advance of that meeting] [alt 2. which it shall do within 30 days of its receipt of such representations]. The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.~~

6. The Commission may refuse an application and return it to the applicant. The Commission must provide reasons for refusing an application, **including a summary of the deliberations of the Commission specifying what inputs have been taken into account and how these have been assessed, as well as divergences of opinion within the Commission, if any.**

#### **Section 4**

##### **Consideration of an application by the Council**

##### **Regulation 16 [IWG IM]**

##### **Consideration and approval of Plans of Work**

1. The Council shall consider the reports and recommendations of the Commission ~~[and any other relevant subsidiary body established in accordance with the Convention and the Agreement,]~~ relating to approval of Plans of Work in accordance with paragraph 11 and ~~paragraph 12~~ of section 3 of the annex to the Agreement, after due consideration, and within 60 days unless the Council decides to provide for a longer period, the Council shall approve or disapprove the Plan of Work.

[2. If the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 days or such other time period as has been established by the Council, the Plan of Work shall be deemed to have been approved by the Council at the end of that period.]

3. The Council shall disapprove a plan of work if any requirement of regulation 13 is not fulfilled.

4. The Council shall, when approving a Plan of Work, request the Secretary-General to ensure that the contract to be concluded incorporates all conditions outlined in the draft Plan of Work and the accompanying plans, as well as any additional conditions requested by the Commission or the Council.

16 alt.

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.

## **Part III Rights and Obligations of Contractors**

### **Section 1 Exploitation contracts**

#### **Regulation 17 [President's Text] The exploitation 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 [without delay]/[7 days] in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

#### **Regulation 18 [President's Text] 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 and regulations 18bis and 18ter, provided that [exploitation activities] shall only take place in approved Mining Areas and subject to prerequisites prescribed under regulation 25(6).

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, [and with the cooperation of States Parties to the Convention,] shall ensure, [to the extent possible,] 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 [or operations of] the Contractor.

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended, or terminated except in accordance with [Regulation 18.ter.] [].

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 [or any other part of the Marine Environment,] other than those rights expressly granted by the terms of the exploitation contract or these regulations [nor limit any freedoms of the high seas].

[5.bis. Adverse impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract area.]

6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for a renewal of its exploitation contract.

7. In relation to exploration activities in the Contract Area conducted under an exploitation contract:

[(a) The Contractor may conduct Exploration activities within the Contract Area, in accordance with the proposed Exploration programme included in the Mining Workplan.]

(b) The Contractor shall exercise due diligence in conducting exploration activities in the Contract Area and shall report its the results of its Exploration activities to the Authority in accordance with regulation 38 (2) (k) and relevant Standards, taking account of Guidelines.

(c) The Contractor shall also take into account:

(i) any recommendations issued by the Commission pursuant to the Exploration Regulations, and

(ii) provisions of the Exploration Regulations that relate to the protection and preservation of the marine environment, and environmental baselines and monitoring.

(d) In order to progress from Exploration to Exploitation of a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new environmental impact statement and revised Plan of Work, in accordance with regulation [46.bis.] and which must be approved by the Authority in accordance with regulations [12 to 16].

<b>Comments/remarks</b>
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- I have received a proposal for the insertion of para 5.bis that relates to the mining impact being limited to the Contract area. I invite for discussions of this insertion.
- Based on several proposals, I have updated para 7.

### **[Regulation 18 bis [President's Text]**

#### **Obligations of the Contractors.**

1. Contractors shall comply with these Regulations and the Rules of the Authority, as well as the applicable Regional Environmental Management Plan as amended from time to time, in a manner consistent with the Convention, the Agreement and the Exploitation Contract.

1.bis. A Contractor shall carry out the proposed Plan of Work in accordance with these Regulations, Good Industry Practice, Best Available Scientific Evidence and Best Environmental Practices, using appropriately qualified and adequately supervised personnel.

1.ter. Contractors shall remain current in their implementation of Best Environmental Practices and Good Industry Practices, and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Evidence and Best Available Techniques.

[1.quat. Contractors shall 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.]

2. Contractors, their holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships shall be held liable for the compliance of the Contract. Particularly, they shall be jointly and severally [and strictly] liable for the obligation of compensating damages arising outside of permitted Exploitation Activities [or for unforeseen damage arising from permitted activities].

3. In the event that Contractors fail to comply with their payment obligations under these Regulations, holdings and Ultimate Parent Companies shall be held responsible to effect such payments to the Authority on behalf of Contractors.

#### **Comments/remarks**

- During the July 2023 meeting, the retention of the regulation was discussed, and several delegations and observers supported the inclusion of draft regulation 18 bis. I have thus retained it and updated it according to the proposals for refinement.
- I have deleted para 4, since this regulation relates to sponsoring state liabilities, and not the obligations of the Contractors.

### **Regulation 18 ter [President's Text]**

#### **Termination of a Contract**

1. An exploitation contract can only be terminated:
  - (a) by all parties to the contract by mutual consent;
  - (b) by the termination of State sponsorship, in accordance with regulation 21;
  - (c) by the Contractor in accordance with the terms of the contract, as covered by section 10 of the Annex X to these regulations;
  - (d) by the Authority in accordance with the terms of the contract, as covered by section 12 of the Annex X to these regulations; or
  - (e) by expiry of the term of the contract, without renewal.
2. Any suspension or termination of a contract by the Authority 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 the contract in accordance with Part XI, Section 5, of the Convention, in which case the contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

**Comments/remarks**

- I have received several written proposals for a regulation that collates the circumstances under which a contract may be terminated, and I have thus inserted this new draft regulation 18 ter.

**Regulation 19 [President's Text]  
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.

**Comments/remarks**

- From the discussion in July 2023, I understood that most delegations and observers were in favour of the original wording of draft regulation 19. I thus suggest that we continue the negotiations based on that version.

**Regulation 20 [President's Text]**

**Term and renewal of exploitation contracts**

1. [] The maximum initial term of an exploitation contract is 30 years [from the commencement of Commercial Production]. []
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 Standards and 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 after submission of any revised plans or responses by the Contractor pursuant to regulation 11(2), provided the documentation required under paragraph 3 has been circulated at least [30]/[60] Days prior to the commencement of that meeting of the Commission.
5. In making its recommendations to the Council under paragraph 6 below, the Commission shall examine and assess applications in accordance with regulation 13, against the criteria contained in regulation 12, and take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58, as well as any other relevant information from, inter alia, performance assessments, annual reports, and environmental reports. [].
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;
  - (a)alt. [The term of renewal reflects the expected economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability.]
  - (b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority [];
  - (c) The exploitation contract has not been terminated earlier;
  - (d) The Contractor has paid the applicable fee in the amount specified in appendix II;
  - (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 10/15 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 under regulation 5 (2. 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.

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.

**Comments/remarks**

- I have attempted to streamline the draft regulation and omit elements that are already covered in other draft regulations.

**Regulation 21 [President's Text]**

**Termination of sponsorship**

1. Each Contractor that is not the Enterprise or a State Party 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 article 153(2)(b) of the Convention and regulation 6, and to the extent necessary that it complies with regulations 6 (1) and (2).

[[2.alt. Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship, [as defined in this Regulations, if] a State terminates its sponsorship [of a Contractor, it shall promptly] provide the Secretary-General with a written notice describing the reasons for such termination and the date the termination is to take effect, and no earlier than the following timeframe:

(i) Termination due to a Contractor's material non-compliance under its terms of sponsorship takes effect [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 takes effect 12 months after the date of receipt of the notification by the Secretary-General.]

2.alt.bis. If the reasons for termination of sponsorship include non-compliance under its terms of sponsorship, the Contractor must immediately 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 in subparagraph 2 (i) the Contractor shall, within the period referred to in [sub]paragraph 2 (ii) before the previous State's sponsorship ends, 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 automatically if the Contractor fails to obtain a Sponsoring State or States within the required period unless the Contractor has sought the Council's consent to transfer its rights and obligations under the exploitation contract pursuant to regulations 23.

3.bis. In the event that the Contractor is able, within the relevant period, to obtain another Sponsoring State or States in accordance with sub-paragraph 3, the

Authority shall deal expeditiously with any consents that are required as a result under regulations 23 or 24.

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 [consistent with the requirements of contractors, including as set forth in Annex III, Article 17.2(e) of the Convention].

5. The Secretary-General shall [promptly] 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, especially in the case of termination of contract that also equates to a material breach of compliance with the terms of the exploitation contract [may]/[shall] 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 breach of compliance with the exploitation contract has been addressed and a new certificate of sponsorship is submitted.

7. [Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship.]

8. [If a Sponsoring State terminates its sponsorship of a Contractor, this has no impact on the sponsorship of that Contractor by any other Sponsoring State except in circumstances where the sponsorship termination occurred due to the reason in subparagraph 2(i), any other Sponsoring State or States will also be deemed to have terminated sponsorship of the Contractor that is non-compliant under its terms of sponsorship.]

**Comments/remarks**

- I have proposed to delete para 1.bis. since the obligations to notify the Authority has already been placed on the Sponsoring State in para 2.alt.
- Para 8 has been proposed to contemplate for the situation where only one Sponsoring State terminates its sponsorship.

**Regulation 22 [President's Text]**

**Use of exploitation contract as security**

1. The Contractor may, [solely for the purpose of raising financing to effect its obligations under an exploitation contract and only with the prior consent of the Council [which consent shall not be unreasonably withheld or delayed], based on the recommendations of the Commission], mortgage, pledge, lien,

charge or otherwise encumber all or part of its interest under an exploitation contract.

2. [] The Contractor shall, [in its annual reports submitted in accordance with regulation 38,] 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, in which case the beneficiary must fulfil the requirement of paragraph 4 and 5 of regulation 23 or that such a beneficiary shall transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23 as determined by the Commission.

4. 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 including environmental and social governance standards, with reference to relevant Standards and Guidelines where relevant; or

(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. Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract.

6. The Authority shall 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.

### **Regulation 23 [OEWG]**

#### **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 written consent of the [Sponsoring State], and the Council [(such consent not to be unreasonably withheld)], based on the recommendations of the Commission [and with notification to the Sponsoring State].

2. The Contractor and transferee shall jointly inform the Secretary-General of any application to transfer the rights and obligations under an exploitation contract. The Secretary-General shall transmit that application to the Commission, which shall give its recommendation to the Council.

3. The Commission shall consider and decide whether to recommend to the Council to consent to 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. [Before the Commission can make a recommendation to the Council for approval of a transfer] The Commission shall verify that 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 all relevant fees and levies established by the Council, including the administrative fee as set out in appendix II;  
d bis Accepts to be bound by the Plan of Work and the Environmental Plans, applicable at the time of transfer;  
[d ter Has provided written assurances of the Transferee's holding, subsidiaries, affiliated and ultimate parent companies, agencies and partnerships, as applicable, accepting responsibility as set out in regulation 18bis.]
- e. Meets the criteria set out in regulation s 12 and 13(4); [and]
- f. Has deposited an Environmental Performance Guarantee as set out in regulation 26[; and][.]
- g. has submitted ownership information to the Beneficial Ownership Registry.

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4 ALT: An application to transfer the rights and obligations under an exploitation contract shall be subject to the requirements under regulations 5 to 16.

4. Bis. If at the time of the transfer a Material Change arises this should be addressed in accordance with Regulation 57.

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. Allow the transferee to monopolize the conduct of activities in the Area [with regard to the Resource category covered by the exploitation contract or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally; or]
- c. If any circumstances under regulations 15(2) or (3) are applicable.

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.

[6bis. A Contractor shall pay a Transfer Profit Share, which shall be levied on a pro rata basis by the Authority on gains made from the direct or indirect transfer of rights under an exploitation contract.]

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[6.ter. The Authority shall publish a Standard for the effective operation of the Transfer Profit Share.]

7. Where the Commission determines that the requirements of paragraphs 4, 5 ~~and 6~~ [and 7 of this regulation] ~~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 withhold consent to a transfer if the requirements of this regulation are complied with. Once the Council has received a recommendation from the Commission, the Council will inform the Contractor of the Council's decision within 30 Days.

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.

~~[(d) Payment of the Transfer Profit Share in accordance with paragraph 7 of this regulation and the relevant Standard.]~~

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.

~~10. [The terms and conditions of the transferee's 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 Secretary General or a duly authorized representative executes the assignment and novation agreement.]~~

**Explanation / Comment**

***Paragraph 1***

- Two participants have proposed that the Sponsoring State must consent, rather than only being notified. I propose to accept this drafting.

***Paragraph 2***

- Participants in July agreed to paragraph 2 as drafted.

***Paragraph 3***

- Participants in July agreed to paragraph 3 as drafted.

***Paragraph 4***

- A participant has proposed a new subparagraph (d) ter. I invite comments.
- A participant has proposed an alternative to paragraph 4. I invite comments.

***Paragraph 4 bis***

- Participants in July supported paragraph 4 bis as drafted.

***Paragraph 5***

- Two participants have proposed that “monopolize” should be defined (e.g. a transfer could be prohibited if it provides a transferee with over 75% of the value of production in the Area once at least two permitted areas have already entered production). I welcome proposals.
- One participant has proposed new language in paragraph 6 (new requirements on the Commission) to broaden the circumstances in which a transfer cannot be recommended for approval – such that conduct of activities in the Area cannot be monopolised but also global production of any single mineral or metal cannot be monopolised. This may be a complex assessment. I welcome proposals.
- One participant has proposed deletion of subparagraph b.



***Paragraphs 6 bis and ter***

- Some participants propose amending DR 23 with a view to integrating an obligation for the Authority to levy a Transfer Profit Share on gains over a certain threshold generated from the transfer (direct or indirect) of rights under an exploitation contract. To this end, two new paragraphs have been added after paragraph 6 of DR 23. The specific parameters and elements related to administering the Transfer Profit Share are proposed to be included in a Standard, which will facilitate subsequent reviews and/or adjustments as necessary. The participants contend that the proposal is consistent with Article 13 1(b) of Annex III of the Convention and Section 8 1(b) of the Annex to the Agreement given that the proposed Transfer Profit Share is comparable to Capital Gains Tax (CGT), which is widely implemented in landbased mining jurisdictions

***Paragraph 7***

- Participants in July supported Paragraph 7 as drafted.

***Paragraph 10***

- Participants in July supported the deletion of paragraph 10.

**Regulation 24 [President's Text]**

**Change of control**

[]

1.Alt. [For the purposes of this regulation, a “change in control” occurs where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more 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, as soon as reasonably practicable but no later than 24 hours, notify the Secretary-General and the Sponsoring State in advance of such change of control []. The Contractor shall provide the Secretary-General and the Sponsoring State with such details as he or she shall reasonably request of the change of control [including whether or not the change of control affects the Contractor’s nationality or State of effective control. [] [On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall promptly notify the Commission and the Council.]

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Commission shall :

(a) Determine whether , following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, 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, or

(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.

(d) Confirm with the Sponsoring State, [through the Secretary-General,] whether its sponsorship continues, or require a written notice under regulation 21 bis. where sponsorship has terminated.

[(e) Provide a report on any developments pertaining to this paragraph to the Council at its next meeting.]

4. Where the [Commission] [] determines that, following a change of control, a Contractor may not have the [operational or] financial capability to meet its obligations under its exploitation contract, the [] Commission shall submit a report of its findings and recommendations to the Council. [The Council shall consider the matter at its next meeting with a view to take a decision.]

**Comments/remarks**

- I have received proposals for placing the tasks in paras 2, 3 and 4 with the Commission instead of the Secretary-General. I have done that, but would like to remind delegations that these tasks merely has an administrative nature.

## **Section 2**

### **Matters relating to production**

#### **Regulation 25 [President's Text]**

##### **Documents to be submitted prior to production**

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 applicable Guidelines and the Secretary General shall submit this matter to the Commission. If the Commission considers that any Material Change needs to be made to the Plan of Work, the Contractor shall prepare and submit to the Commission [through the Secretary-General] a revised Plan of Work accordingly.

[[2.alt.Regulation 57 shall apply to a revised Plan of Work submitted by the Contractor under paragraph 1.]

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 and assess the Feasibility Study and any revised Plan of Work supplied by the Contractor under paragraph 1 above [in accordance with regulations 12 and 13

and any relevant Standard,] and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General.

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 57, continues to meet the requirements of regulations 12 and 13, it shall recommend to the Council the approval of the revised Plan of Work. [If the Commission determines that it does not meet said requirements, the procedure established in Regulation 14 (b) will be applied.]

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 Commercial Production in any part of the Area covered by the Plan of Work until either:

(a) The Commission 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 [Authority has confirmed lodgement of] an Environmental Performance Guarantee in accordance with regulation 26.

#### **Comments/remarks**

- In para 1, I have deleted the reference to test mining. Several delegations have stated that this reference is redundant since it already will be contained in the Feasibility Study.
- I have deleted para 3 bis, as this regulation deals with renewal, and is already covered by draft regulation 20.

#### **Regulation 26 [President's Text]**

##### **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 Commercial Production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be [assessed and recommended by the Commission and] determined [by the Council] according to the applicable Standards and take account of the applicable Guideline, and shall reflect the forecasted costs required for:

(a) The premature closure of Exploitation activities;

(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. [In such cases,

commercial production may only commence once the full amount has been provided.]

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated [every five years] :

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

(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;

[(iv) [After consultation with a Contractor,] the Authority considers that the likely cost of the activities outlined in (2) have substantially increased;] 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 submit this calculation to the Secretary General for forwarding to the Commission for their review. [The Commission shall promptly assess and make appropriate recommendations to the Council, which shall determine the revised amount. Within 30 days, the Contractor shall] 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.

8. [The lodging of an Environmental Performance Guarantee does not relieve the Contractor of its obligations that are subject of this regulation. Refusal or reluctance on the part of the Contractor to fulfil such obligations shall be subject to the relevant compliance measures under these Regulations.] 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. [Should the Authority be compelled to make recourse to the Environmental Performance Guarantee due to any non-compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee, the Contractor remains liable to the Authority for any direct, incidental or additional costs incurred by the Authority.]

#### Comments/remarks

- I had received a proposal from a group to rename the Environmental Performance Guarantee to a “Decommissioning Bond” to clarify and highlight its purpose. During the meeting in July 2023 the proposal did not gain much support, and I have therefore refrained from changing the original naming.
- I have suggested to delete para 3.bis, as this content already is covered by the Commissions guidelines on this matter. Furthermore, if more regulation is needed, I would suggest placing it in standard and/or guidelines.

#### Regulation 27 [OEWG]

##### Commencement of Commercial Production ~~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 reasonable efforts to bring ~~the~~ each Mining Area into Commercial Production in accordance with the Plan of Work.

[2.bis.

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. 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][Contract Area], that Commercial Production has begun and the location of the Mining Area(s).

5. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to Regulation 27(3).]

ALT to 2 - 5

[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.

3 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.]

### **Explanation / Comment**

- In July participants supported the text as drafted.
- One participant has now proposed replacing paragraphs 2 – 5 with paragraphs ALT 2 and ALT 3, and moving the deleted paragraphs, with some amendments (including to guard against stockpiling), to the Standards. I invite comments.
- In response to comments from a number of participants regarding the need for specificity with respect to Commercial Production, in February I proposed new text on commencement of Commercial Production here at Regulation 27 that: (i) provides greater specificity and an objective standard of assessment, to be included in Standards, and (ii) allows for verification and confirmation by the Authority. I would welcome further proposals by participants on what the “thresholds” or parameters to be included in the Standards would be, including comments on the proposed thresholds now in the Standard.
- I note that if the definition of Commercial Production in the Schedule to the Regulations is amended, this text may require consequential harmonization amendments.

### **Regulation 28 [President’s Text]**

#### **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, and market conditions. 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.
2. The Contractor shall notify the Secretary-General and the Sponsoring State or States 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 immediately 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 to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety or to protect human remains, objects or sites of archaeological or historical nature. A Contractor shall notify the Secretary-General and the Sponsoring State or States of such a reduction or suspension of production as soon as is practicable and no later than [72] hours after production is reduced or suspended.
4. A Contractor shall notify the Secretary-General as soon as it recommences any [Commercial Production] , 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 [President's Text]**

### **Reduction or suspension in production []**

1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions [or other factors] 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 [in consultation with the Economic Planning Commission], upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, [of for other circumstances beyond the Contractor's control] recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, decide on 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 elects to suspend all production for more than five consecutive years, the Council may [suspend] [] the exploitation contract following consultation with the Contractor, and the Contractor [may] [] 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 commencement, and, where necessary, shall provide to the Secretary-General such non-market 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.

#### **Comments/remarks**

- I did note support for the deletion of draft regulation 29 Alt during the meeting in July 2023, and I have therefore deleted this alternative.
- I have received a proposal for including a new draft regulation on possible contract termination due to extended suspension in production. I would like to recall that termination is already covered several places in the regulations and the exploitation regulation and would like to open for discussion of the need for including of such a regulation.

## Section 3

### Alt. Safety, labour and health at sea

#### Regulation 30 [President's Text]

##### Safety, labour and health standards

1. The Contractor shall ensure at all times that:
  - (a) All vessels and Installations [] engaged in Exploitation activities are in good repair, in a safe and sound condition in accordance with the requirements, specifications and preventive or corrective maintenance plans of the respective manufacturers, and adequately [crewed] [], and comply with paragraphs 2 and 3 below; and
  - (b) All vessels and Installations [engaged in] [] in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.
  - (c) [The Health and Safety Plan and Maritime Security Plan annexed to the Plan of Work are kept up-to-date and effectively implemented.]
2. The Contractor shall ensure compliance with the [relevant] 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, the training of seafarers, maritime labour conditions [] and the treatment of crew members, as well as [the Rules of the Authority.] []
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 safety equipment] 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) [Implementation of the Environmental Plans, and the Health and Safety Plan and Maritime Security Plan shall include awareness-raising programmes for personnel about the duties arising from those plans, and a programme] 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.



**[Regulation 30 bis. [President's Text]**Human health and safety management system

1. When conducting its operations, a Contractor shall develop, implement and maintain a safety management system, taking account of the relevant Guidelines.

2. A Contractor's safety management system shall:

(a) Be capable of delivering site-specific safety objectives and meeting performance requirements specified in the Health and Safety Plan and Maritime Security Plan;

(b) Cover occupational health and safety and process safety, including with regards the selection or design of assets, facilities, equipment and materials;

(c) Permit effective reporting to the Authority in connection with safety performance;

(d) Be independently verified annually by an internationally recognized provider of verification services acceptable to the Authority, in accordance with relevant Standards;

(e) Promote inclusivity and gender equality; and

(f) Be in accordance with Good Industry Practice and internationally recognised standards.

3. A proposed change to a Contractor's safety management system shall be treated the same as a modification of a Plan of Work, pursuant to regulation 57 mutatis mutanda.

4. Compliance with this Regulation is a fundamental term of the contract, for the purposes of Regulation 103.]

**Comments/remarks**

- During the meeting in July 2023, I got the impression that most delegations and observers were in favour of the alternative heading, and I have thus retained it.
- The content of para 6 has been placed in the newly proposed draft regulation 30 bis concerning human health and safety management system.

**Section 4  
Other [activities in] the Marine Environment**

**Regulation 31 [President's Text]**

**Reasonable regard for other activities and infrastructure in the Marine Environment**

1. Contractors shall, consistent with any relevant [Standards and taking into account any relevant] Guidelines, carry out [exploration and] exploitation [activities] under an exploitation contract with reasonable regard for other activities and infrastructure in the Marine Environment, in accordance with articles 87 and 147 of the Convention, [the Plan of Work] and the approved Environmental Management and Monitoring Plan, [Regional Environmental Management Plan] and Closure Plan.

1.bis. Each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines or interfere with other activities in the Contract Area. In particular, the Contractor shall:

(a) comply with the measures it agreed with the operators undertaking other [activities in the Contract Area and of submarine cables and pipelines] to reduce the risk of damage to any in-service cables and pipelines; and

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

2. To further the due and reasonable regard obligations in Articles 87 and 147 of the Convention, the [Secretary-General] [], in conjunction with member States, shall facilitate early-stage coordination between the Contractors and the proponents of the other activities in the marine environment, [including through the identification of other marine users in the relevant Regional Environmental Management Plan, which shall be periodically updated].

#### **Comments/remarks**

- From the negotiations in July 2023, I understood that most delegations supported the original para 1, and I have attempted to further streamline the provision in accordance with proposals received and attempted to bring it more in line with the wording used in article 147 of the Convention.
- Several delegations suggested to delete para 1.bis.alt. and continue the negotiations based on para 1.bis, and I have thus updated the text accordingly.

## **Section 5 Incidents and notifiable events**

### **Regulation 32 [President's Text]**

#### **Risk of Incidents**

1. 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, in accordance with any relevant Standards and taking into account any relevant Guidelines.

2. 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.

3. A Contractor shall maintain the necessary risk assessment and risk management systems in accordance with Good Industry Practice, Best Available Techniques and Best Environmental Practices and shall report annually to the Secretary-General on such systems in accordance with regulation 38(2)(h).

### **Regulation 33 [President's Text]**

#### **Preventing and responding to Incidents**

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable [or likely] 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, [States adjacent to the contract area likely to be affected] and the Secretary-General [at the earliest time possible , but no later than 24 hours from the moment the Contractor becomes aware of the Incident;

(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, [States adjacent to the contract area likely to be affected] [] 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.

(f) Following resolution of an Incident, provide the [Secretary-General and its Sponsoring State or States] [] with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor's response, and lessons learned [and any proposed measures to minimise or reduce the risk of similar incidents occurring in the future].

3. The Secretary-General shall promptly report any Contractor that fails to comply with this regulation to its Sponsoring State or States, [States adjacent to the contract area [likely to be affected] 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.

[4.bis. The Secretary-General shall

(a) before issuing instructions under this regulation, request instruction from the Compliance Committee, and consult with the Sponsoring State or State, and other relevant State or international

organisations, insofar as it is feasible to do so taking account of the urgency in the situation;

(b) follow any relevant Standards and Guidelines on the issue of instructions under this regulations:

(c) report such Incidents and measures taken to the Commission and the Council at their next available meeting.

5. The Secretary-General shall publish copies of Incident reports at the Authority's website, [subject to ensuring that confidential information is protected].

### **Regulation 34 [President's Text]**

#### **Notifiable events**

1. A Contractor shall immediately notify its Sponsoring State or States, [States adjacent to the contract area likely to be affected] and the Secretary-General of the occurrence of any of the Notifiable 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 Notifiable Event,

(a) 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, and

(b) Record the Notifiable Events in the Incidents Register,

3. Upon receipt of notification under paragraph (2), the Secretary-General shall consult with the Sponsoring State or States, States adjacent to the contract area [likely to be affected] and other regulatory authorities as necessary, and shall seek the instructions of the Compliance Committee/Council.

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.

#### **Comments/remarks**

- Several delegations have suggested to delete the reference to "other relevant stakeholders", as this reference is unclear and creates uncertainty.
- The interrelations between draft regulations 33 and 34 needs to be assessed against the regulations handled in the IWG on ICE, I suggest that it is something that is handled in plenary after the consolidated negotiating text has been prepared.

### **Regulation 35 [President's Text]**

#### **Human remains and objects and sites of an archaeological or historical nature**

The Contractor shall 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 and paleontological 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 or 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. Such human remains, object or site in the Contract Area should be disposed of for the benefit of mankind as a whole or preserved, so that no further Exploration or Exploitation shall take place, within a reasonable radius, to be determined by the Authority in consultation with the Contractor, after taking into account the views of the State from which the remains or objects originated. [If the Council decides that exploration or exploitation cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or appropriate waiver of fees.]

**Comments/remarks**

- I have received a proposal to retain the last sentence, since the delegation considers it an appropriate compensation mechanism.

## **Section 6 Insurance obligations**

### **Regulation 36 [President's Text]**

#### **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 the relevant Standards and applicable international maritime practice, consistent with Good Industry Practice.

[1.bis. The insurance required under paragraph 1 shall:

(a) be proposed at the time of applying for approval of a Plan of Work of exploitation to allow the Commission and Council to assess the satisfactoriness of the proposed insurance policy against this Regulation and the relevant Standard and Guidelines;

(b) be in effect from the start date of the Contract, until such time as the Environmental Performance Guarantee has been released back to the Contractor in full by the Authority; and

I cover all potential harms to people, property, natural resources, and environment that may occur, wherever located, or howsoever caused, as a result of the Contractor's activities in the Area].

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 these Regulations and the relevant Standards is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these regulations, the [Compliance Committee] shall issue a compliance notice under regulation 103. [The Contractor must suspend mining operations as soon as it no longer fulfils the obligation to maintain insurance]. The Secretary-General shall notify the Council immediately [] of such failure, and the corrective measures taken by the Contractor.

4. A Contractor shall not make any material change to or terminate any insurance policy related to its Exploitation activities in the Area without the prior consent of the [Council] .

5. A Contractor shall notify the Secretary-General [as soon as practicable possible] if the insurer terminates the policy or modifies the terms of insurance.

6. A Contractor shall notify the Secretary-General [as soon as practicable possible] 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).

#### **Comments/remarks**

- Several delegations suggested to only refer to standards since this is a vital document for the exploitation activities.
- I have received the newly proposed 1.bis from a delegation. Whilst I think the content is valuable, I would suggest for it to be placed in the standards, and I invite for discussions thereof.
- Some delegations asked for the retention of para 2 since it concerns the protection of the Authority. I have therefore refrained from omitting it.

## **Section 7 Training commitment**

### **Regulation 37 [President's Text]**

#### **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 [Standards, taking account of relevant] 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.

#### Comments/remarks

- I have received several suggestions from delegations to delete para 4 since the Convention does not contain any provisions or indirect obligations to train representatives of adjacent coastal states.

## Section 8 Annual reports and record maintenance

### Regulation 38 [OEWG]

#### 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~~ regarding its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.
2. Such annual reports shall be in accordance with relevant Standards and Guidelines and 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 and noting variance from the approved Plan of Work;
  - (b) The quantity and [quality] [dry metal content] of the Resources [recovered] [extracted] during the period and the [volume] [tonnage] [in dry metric tons and wet metric tons] of Minerals and metals [produced] [recovered], marketed and sold during the Calendar Year, reported against the [Plan of Work] [Mining Workplan];
  - (c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, if different from the Plan of Work;
  - (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 by the Contractor to the Authority, governments, state enterprises, and other contractors, as well as payments and other forms of financial benefit received by the Contractor from Sponsoring States, and 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; Information on compliance with health, labour and safety standards;~~
  - (e) bis Details of any accidents or Incidents arising during the period
  - (f) Details of training carried out in accordance with the Training Plan:

- (g) The actual results [and data] obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria [and thresholds included in the applicable Standards, and against the Environmental Management and Monitoring Plan, [and taking into account environmental [goals and] objectives pursuant to [these Regulations,] the Regional Environmental Management Plan where applicable]] ~~[, technical Standards and indicators, including environmental objectives and standards, pursuant to the applicable Regional Environmental Management Plan and 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;

[(g)bis a statement indicating whether and how the results obtained from environmental monitoring programmes help to reduce knowledge gaps, particularly with respect to environmental impacts of activities in the Area;

[(g)ter details of all revenues and operating costs associated with activities in handling and processing, including carbon emissions, to the degree available to support transparent identification of BEP.]

- (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, [appointed or employed by the Contractor];
- (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 [material] changes made in connection with subcontractors engaged by the Contractor during the Calendar Year; ]

[(j)bis Details about any changes made to the Contractor's business structure or collaborations, including but not limited to their subcontractors, holding, subsidiaries, affiliates and ultimate parent companies, agencies and partnerships;]

- (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 [and applicable Standards and Guidelines];
- (l) A statement that the Contractor's Financing Plan is adequate for the following period; and
- (m) Details of any [proposed] [significant] modification to the Plan of Work [and the reasons for such modifications].
- (n) [Details of any changes made to the Contractor's Environmental Management System in accordance with Regulation 46;
- (o) Details of any consultations carried out with coastal States, other marine users, or any other Stakeholders, including pursuant to Regulations 31;
- (p) A summary of any complaints or whistleblowing reports received during the reporting period and details of how these have been dealt with;
- (q) A summary of any performance assessments pursuant to regulation 52, or review of activities pursuant to regulation 58 during the reporting period;



(r) A summary of how the Contractor has dealt with any inspection reports, inspector instructions, compliance notices, monetary penalties or any other regulatory monitoring or enforcement action taken by the ISA or the Sponsoring State in relation to contractor compliance during the reporting period;

(s) Evidence that the Environmental Performance Guarantee has been paid or maintained in accordance with the contract terms.

(t) A summary report of the discharges registered in accordance with regulation 50(5).

(u) The planned date of Closure, and an explanation of any changes to the date, if applicable, in accordance with regulation 59]

[(2)bis. [The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment.][2 bis ALT The Commission shall review annual reports received, and shall prepare and submit to the Council a summary report which shall record any trends or findings from the review, and any related recommendations for the Council’s consideration. The report should include any information relevant to the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety.]

[2(ter). In reviewing annual reports, the Commission shall prepare for the Council a report that summarises trends or findings from the annual reports, including but not limited to any knowledge and information relevant to the continuous improvement of the regulation and management of activities in the Area, with a particular emphasis on information relevant to better understanding marine ecosystems and the impacts of activities in the Area on such ecosystems.]

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. [To this end, Contractors shall structure the annual reports such that any Confidential Information can be clearly identified and extracted.]

**Explanation / Comment**

- Two participants have proposed new subparagraphs in paragraph 2. They include references to reports or documents that are required to be reported by contractors in different parts of the regulations, that are not included in this list of annual reporting requirements. I invite comments.
- One participant previously proposed an additional paragraph between 2 and 3, with the following explanation: Standards and/or Guidelines for the Annual Report and the Annual Financial Report will be needed. Guidelines are likely to be needed for more than just formatting of the Annual report. Standards and Guidelines could, among other areas, incorporate evolving best practices regarding financial disclosure in the extractives sector. These could, for example, specify internationally accepted accounting principles to be used (i.e., Generally Accepted Financial Practices (GAAP) or International Financial Reporting Standards (IFRS)), the definition of what constitutes a “direct Exploitation Expenditure”, and the definition of a “payment and other forms of financial benefit” (e.g., subsidies, deductions, etc.). Contractor payments to contractors (including the Enterprise), State enterprises, States, and Sponsoring States should be disclosed publicly in line with terrestrial mining best practices. This is in line with International standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain

businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad. Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and to enable reviews of the system of payment.

- One participant has proposed alternative drafting to 2 bis (2 bis ALT), which is intended to be a broader formulation. I invite comments.
- Some participants proposed that Regulation (2)bis is out of place in the current section, which otherwise deals exclusively with a Contractor's annual report. They suggest removing this provision and placing it elsewhere in the Regulations. I invite proposals as to placement.
- I invite comments on the new paragraph 2.ter that has been proposed.
- Thresholds for information disclosure requirements may need to be defined. I invite proposals.
- Necessary amendments are needed to DR 89 regarding confidentiality. I invite proposals.
- Necessary amendments may be needed to DR 83 Recording in Seabed Mining Registry. I invite proposals.
- "State enterprises" is referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to Sponsoring States will be important for determining a nodule transfer price in the future. I invite proposals.

### **Regulation 39 [OEWG]**

#### **Books, records and samples**

1. A Contractor shall keep [at a place agreed between the Contractor and the Compliance Committee, and make available for inspection and audit in accordance with these regulations.] a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses [all revenue and] actual and direct expenditures [liabilities] 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.

[1.bis The Contractor shall keep the books, account, and records pursuant to paragraph 1 at a place agreed between the Contractor and the [Compliance Committee], and shall make them available for inspection and audit in accordance with these regulations.]

2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals, [records of port inspections, customs records, processing plant receipt data or records.] environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with [Standards and taking into account Guidelines] [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, from each sample collection period identified in the [relevant] Standard[s] and [Guidelines], together with biological samples, obtained in the

course of Exploitation until the termination of the [exploitation contract] [Closure Plan]. 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,] [Inspectors, or Compliance Committee.] 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,] [Inspectors, or Compliance Committee.] to the data, information and samples.

**Explanation / Comment**

- Accurate samples are integral to the correct calculation of royalties. The collection and storage of samples will be essential to accountability, royalty calculation, and auditing. Removing the words “to the extent practicable” will allow for a stronger obligation, commensurate with the level of obligation ascribed to the keeping of other records (the other record keeping obligations are not qualified by the inclusion of the words “to the extent practicable”).
- One participant suggested that the BBNJ Article 10 will be relevant.
- One participant proposed that these provisions should be merged (and aligned) with DR74 (‘Proper books and records to be kept’) which covers similar matters.
- The Regulation as currently drafted references the Guidelines for the purposes of detailing storage requirements for the samples; however, it should also link to the draft Guidelines in the present Chair’s text for the purposes of how many samples should be collected, how often they should be collected, at what points/times during the loading of a Shipment samples should be collected, and other relevant matters. One participant proposes removing the reference to Guidelines.

**Paragraph 2**

- One participant queried whether the Authority’s data management strategy is about management of the ISA’s data rather than contractor data management, and has proposed a change accordingly.

**Paragraph 3**

- Some participants support “closure plan” as the appropriate end point. These participants proposed the use of “exploitation contract” rather than “Closure Plan”. They also expressed concern that the current text of Regulation 39 may lack clarity, and suggest clarifying the purpose of sample collection in Regulation 39 (i.e. samples retained for knowledge purposes or samples collected for assaying to determine royalty payment). Alternatively, they suggest setting clear guidelines in the

## **Section 9 Miscellaneous**

### **Regulation 40 [President's Text]**

#### **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 and shall conduct its activities under the exploitation contract in accordance with its obligations under such anti-bribery and anti-corruption laws, [including in accordance with the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises].

### **Regulation 41 [President's Text]**

#### **Other Resource categories**

1. The Contractor shall notify the Secretary-General within 30 Days if it finds, within its Contract Area, Resources other than the Resource category to which the exploitation contract relates. The Secretary-General shall inform the Council about such notification during the next regular session of the Council.
- 2.Alt. The exploration for and exploitation of resources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority.

#### **Comments/remarks**

- Alt.2 received most support during the meeting in July 2023, and I have thus retained it and suggest deleting the original para 2.

### **Regulation 42 [President's Text]**

#### **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 with the express or implied permission 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 [President's Text]**

### **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, [insurance policies,] 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, [policy] or clearance connected with its activities in the Area is terminated, [changed] or suspended.

## **Part IV Protection and preservation of the Marine Environment**

### **Section 1 Obligations relating to the Marine Environment**

#### **Regulation 44 [IWG ENV] General obligations**

1. The Authority, Sponsoring States, the Enterprise, Contractors and flag States [and States competent for vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority] shall each within their plan, adopt, implement and update all measures necessary for ensuring effective protection of the Marine Environment, including but not limited to rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species from harmful effects directly or indirectly resulting from Exploitation in the Area. in accordance with the Convention, the Agreement, the Rules of the Authority, Standards and taking into account Guidelines including those referred to in Regulation 45, international law and the applicable Regional Environmental Management Plan. To this end:

(a) In adopting and keeping under periodic review rules, regulations and procedures, as well as the Standards and Guidelines in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach and [] [an] ecosystem-based approach to the assessment, management and prevention of risk of harm to the Marine Environment from Exploitation in the Area,

(ii) Apply the Best Available Techniques and Best Environmental Practices taking into account the applicable guideline,

(iii) [Ensure] Best Available Scientific information, traditional and indigenous knowledge in decision-making, including all risk assessments and management undertaken in connection with environmental assessments, acknowledging knowledge gaps, and uncertainties and the management and response measures taken under or in accordance with Best Environmental Practices; and

(iv) Ensure accountability and transparency in the assessment, evaluation and

management of Environmental Effects and risks from Exploitation in the Area including through Stakeholder participation in accordance with the relevant Standard and the prompt public release of environmental data and information, [as well as] sampling methodologies and associated metadata, at regular intervals and in an accessible format through the Authority's website, including in accordance with Regulations 92 and 92bis.

(iv)bis Take into account the approach that the polluter should bear the cost of pollution, endeavour to promote practices whereby those engaged in exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

[(v) omitted] (b) In taking all necessary measures to ensure that the Contractor carries out Exploitation in the Area in conformity with the terms of its contract and its obligations under the Rules of the Authority related to the effective protection for the Marine Environment from harmful effects, the Sponsoring State shall, assist the Authority to implement, the measures set out under paragraph (a)(i) to (vi) above.

(c) In taking all necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment and its ecosystem structure, function and resilience, including the adjacent coastlines, and of interference with the ecological balance of the Marine Environment which includes ecosystem integrity arising from its Exploitation in the Area, the Enterprise and Contractors shall [implement, *mutatis mutandis*, the measures set out under paragraph (a)(i) to (iii) above and] demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through Stakeholder participation and the prompt public release of environmental data and information on their respective activities at regular intervals and in an accessible format [consistent with best scientific practices]. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, Mitigate, [and if feasible] remediate, and restore harm to the Marine environment and adapt the necessary measures according to [] obtained information and data.

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

The parties shall:

(a) Apply the precautionary approach, and [] [an] ecosystem-based [] approach 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;

(c) Integrate Best Available Scientific information in decision making, including all risk assessments and management undertaken in connection with environmental assessments, acknowledging knowledge gaps and uncertainties and the management and response measures taken under or in accordance with Best Environmental Practices; and

(d) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area, including through Stakeholder participation and the timely public release of relevant environmental data and information at regular intervals and in an accessible format through the Authority's website.

(e) Take into account the [approach] [principle] that the polluter should, [], bear the cost of pollution, endeavour to promote practices whereby those engaged in exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

(f) In implementing the regulations, act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another as stated in article 195 of the Convention. This especially related to the previous reference to avoiding toxic, persistent and bio accumulative substances.

(g) Ensure that Exploitation under an exploitation contract is carried out with reasonable regard for climate mitigation and ecosystems in the area, such as carbon burial and sequestration and nutrients recycling.<sup>3</sup> The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 and 2 above.

4. No regulation in this Part shall be interpreted as preventing Sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with codified and customary based international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the marine environment.

#### **[Regulation 44 Alt**

##### **General Obligations**

1. The Authority, sponsoring States, the Enterprise, Contractors, flag States and the States of registry of or having authority over installations, structures and other devices shall take necessary measures to ensure effective protection of the Marine Environment from harmful effects which may arise directly or indirectly from Exploitation in the Area, in accordance with Regulations and Standards and taking into account Guidelines referred to in regulation 45 and the relevant Regional Environmental Management Plan and to this end shall, as applicable in their respective areas of competence:

(a) Apply the precautionary approach and the ecosystem-based management approach to the assessment management and prevention of risk of harm to the Marine Environment from Exploitation in the Area;

(b) Apply the Best Available Techniques and Best Environmental Practices;

(c) Integrate Best Available Scientific Evidence in decision-making;

(d) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area

(e) Apply the polluter pays principle having due regard to the public interest; and

(f) Ensure that damage or hazards are not transferred to the marine environment and that one type of pollution is not transformed into another one.

This is especially related to avoiding toxic, persistent and bio accumulative substances.

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

3. No regulation in this Part shall be interpreted as preventing sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the marine environment.]

**Explanation / comment**

- After our last meeting, several alternative suggestions have been put forward in respect of draft regulation 44, including suggestions from the Intersessional Working Group on Regulation 44. After going through the different proposals, I suggest continuing the negotiations based on the proposal by the Intersessional Working Group on Regulation 44 (called “option 2” by the intersessional working group), as I believe it represents many of the points and considerations raised by participants during our previous meetings.
- I have retained the original draft regulation 44 and have updated it according to proposals received during the July meeting and incoming proposals. During our last meeting, I noted that there were no clear views on whether point “*vi*” or “*vi alt*” in paragraph 1, *litra a* should be used. I propose deleting both versions of point “*vi*” as I believe “*litra g*” in paragraph 1, to a large extent, covers the same.

**Regulation 44bis [IWG ENV]  
Regional Environmental Management Plans**

1. The Commission shall consider an application for a Plan of Work[] [based on the adopted] Regional Environmental Management Plan [] by the Council for the particular area and type of resource concerned.

2. [In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Agreement.]

**Regulation 45 [IWG ENV]  
Development of environmental Standards and Guidelines**

1. Environmental Standards and Guidelines developed under this regulation shall have the [] [purpose of ensuring] the effective protection of the Marine Environment from harmful effects, in accordance with Article 145 of the Convention.

2. The Council shall, based on the recommendations of the Commission, adopt Environmental Standards in accordance with regulation[s] 94 [and 95], *inter alia* on the following subject matters:



- (a) Baseline investigations;
- (b) Environmental quality objectives;
- (c) Indicators and quantitative environmental thresholds, including but not limited to:
  - (i) biodiversity status and ecosystem structures, functions and services;
  - (ii) sediment plume properties such as [turbidity, depositional footprint and chemical composition], dispersion and dilution, resettlement, temperature [and] toxicity. []
  - (iii) Physico-chemical Characteristics of seawater and sediment, [including]water chemistry and temperature
  - (iv) light emissions;
  - (v) noise and vibrations emissions and
  - (vi) habitat[disturbance] [].
- (d) Monitoring procedures
  - (e) Mitigation measures [, including restoration measures]
  - (f) [Minimum] [t]echnical [and operational] requirements for environment protection with regard to [all] the equipment used for the Exploitation activities
  - (g) Assessment of accidental events and natural hazards leading to environmental emergencies as well as environmentally hazardous discharges and residual effects of such emergencies, including preparation and implementation of emergency response and contingency plans.
  - (h) Procedural and substantive requirements relating to submissions or reports required by these regulations, including but not limited to: Plans of Work, Environmental Management Systems, Environmental Impact Assessments, [,] Environmental Impact Statements, Environmental Management and Monitoring Plans and Closure Plans.

3. The Authority shall not approve any Exploitation []unless the environmental Standards [and Guidelines] have been adopted.

4. In addition to the environmental Standards, Guidelines on environmental matters may be developed, in accordance with regulation 95.

5. [The application of this Regulation shall be without prejudice to the function of the Council to develop other Standards and Guidelines on the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment, taking into account the development of the exploitation activities in the Area]. Environmental Standards and Guidelines shall be regularly reviewed and updated in response to advancements in scientific knowledge and experience [and new contributions from Indigenous Peoples and local communities.]

[Article 45 Alt omitted]

<b>Explanation / comment</b>
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- During our last meeting we reviewed the draft from the intersessional working group on regulation 45. I proposed to use this work as basis going forward and noted consensus among participants during the meeting for this approach. Although I noted a few participants preferring the former provision (Regulation 45.Alt), I propose to delete Regulation 45.Alt going forward to focus on finalizing this regulation on the base of the outcome from the intersessional working group. This deletion has also been suggested in a submission by a participant, which I fully support. I invite for views on this. The following points therefore relate to incoming submissions pertaining to regulation 45 as proposed by the Intersessional Working Group.
- I have received a submission from a participant to insert new paragraph 3 which refers to the Regulation (45) being without prejudice to the function of the Council to develop other Standards and Guidelines. I believe that this proposal can be inserted (merged with) the existing paragraph 5 which I have attempted. I invite for a discussion on this.

**Regulation 46 [IWG ENV]  
Environmental management system**

1.A Contractor shall develop, implement and maintain an Environmental Management System, [with the purpose of preserving and protecting the Marine Environment from the impacts of the activities in the Area] in compliance with the [Convention, the Agreement, and the Rules of the Authority.] Standards and taking account of the Guidelines and in accordance with [] [Best Environmental Practices, and] Good Industry Practice and internationally recognized standards.

2. An Environmental Management System shall, inter alia:

(a) Deliver the Authority’s environmental objectives in the Contract area including those reflected in the applicant’s Environmental Management and Monitoring Plan, and the applicable Regional Environmental Management Plan as well as any additional objectives as set by the Contractor or Sponsoring State.

(b) Be reviewed [to reflect the development of the Rules of the Authority] and undergo [periodical] [annual] audits by an independent recognized and accredited international or national organization, in accordance with applicable Standards and Guideline, the Convention, the Agreement, and other relevant international law; and

(c) Facilitate effective reporting to the Authority in connection with environmental performance, pursuant to Regulations 33, 34, 38, 39, and 52.

[(d) Include the results of the audit, and any in the Contractor’s annual reports and the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52.]

3. All changes made to a Contractor’s Environmental Management System, for example resulting from reviews and audits, [or any development of the Rules of the Authority], shall be reflected in the Contractor’s annual reports and in the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52. A proposed material change to a Contractor’s

Environmental Management System shall be treated the same as a modification of a Plan of Work, pursuant to Regulation 57.

**Explanation / comment**

- Regulation 46 has been amended in accordance with the proposals received.
- In paragraph 2 b), one participant has suggested that the reference to the reoccurring review of the Environmental Management System should be “annual” instead of “periodical”. I have placed both words in square brackets and invite for a discussion on this.
- One participant submitted a new paragraph 2 d) which I support and have inserted. I invite for views on this.

**Regulation 46 bis [IWG ENV]  
Environmental monitoring**

1.A Contractor shall, pursuant to its Environmental Management and Monitoring Plan required under Regulation 48 and in accordance with the Standard on environmental monitoring programmes and other applicable Standards, and taking account of the guidelines observe, , evaluate and analyse, in accordance with Best Available Scientific information, Best Environmental Practices, and Best Available Techniques, the environmental thresholds contained in the Standards, and risks to Environmental Effects on the Marine Environment arising from Exploitation. Surveillance shall be conducted during all stages of the mining operation, to determine whether it is having or likely to have harmful effects on the Marine Environment until satisfactory completion of a Closure Plan.

2.The Contractor shall establish and implement an environmental management and monitoring programme in accordance with the approved [Environmental Management and Monitoring Plan] and in accordance with the Standard on Monitoring Programmes and cooperate with, the Authority and the Sponsoring State or States as well as share findings and results of such programmes with the Authority for [ public access].

[2.Alt. omitted]

3. The Environmental Management and Monitoring Plan shall contain a monitoring programme for at least the first [five] [seven] years of [commercial production] to be conducted in compliance with the applicable Standards and taking account of the guidelines.

[3 .Alt. omitted]

4. The Contractor shall report annually in writing, in accordance with these regulations, to the Secretary-General on the implementation and results of the Environmental Management and Monitoring Plan and the environmental monitoring programme referred to in paragraph 2, in accordance with Regulation 38, paragraph 2(g). The [ Contractor] shall [ submit to the Secretary General] environmental data and information in the required standardized format, in real time or at [monthly intervals] [annually], [ ] consistent with best scientific practices, [ ], and in accordance with the applicable Standards, and taking into

account the applicable Guidelines. The Secretary General shall release the environmental data and information publicly in accordance with regulation 92bis. The Secretary-General shall transmit annual reports to the Commission for its consideration pursuant to article 165 of the Convention and publish them pursuant to Regulation 38(3).

5. In implementing paragraph 1, the Sponsoring State and Contractor shall consult, with any adjacent coastal State [ ] with a view to avoiding infringement of their rights and legitimate interests, in accordance with Regulation 4.

**Explanation / comment**

- I have received several proposals for amending regulation 46 bis which I have tried to incorporate these as appropriate. It should be noted that in paragraph 4 bis that the submission of environmental data and information should be “annually” instead of “monthly”. I have placed these words in square brackets and invite for a discussion on this.
- In general, recalling the fruitful discussion on this regulation during our last meeting, several participants pointed towards the need for streamlining this regulation, including merging some of the paragraphs. Some participants furthermore suggested to merge paragraphs from this regulation (46 bis) with paragraphs from the following regulation (46 ter) and perhaps even merging the two provisions entirely. However, we did not reach a clear consensus on this during the meeting, nor whether the different alternative paragraph proposals (“paragraph 2alt” and “paragraph 3 alt”) should be accepted or deleted as there where different views on this.
- I propose to keep paragraph 2 and 3 (and thus omit paragraphs 2 alt and 3 alt) going forward as they represent the rules which most participants have commented on and made suggestions to alter. I invite for a discussion on this.

**Regulation 46 ter [IWG ENV]**

**Environmental Management and Monitoring Plan**

1. Each applicant or Contractor for Exploitation shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation and Annex VII.

2. The purpose of an Environmental Management and Monitoring Plan is to manage and confirm that observed Environmental Effects meet Standards on environmental quality objectives and environmental performance for the mining operation. The plan shall address any issues that arise from the Environmental Impact Statement and will set out commitments and procedures on how the Environmental Effects of the mining operation will be monitored and mitigated including on pollution control and Mining Discharge in Regulations 49 and 50.

[3. The Environmental Management and Monitoring Plan shall include all elements and matters prescribed by the Authority in Annex VII to these regulations and shall:

(a) Be based on the Environmental Impact Assessment and the Environmental Impact Statement;

(b) Be prepared in accordance and consistent with the applicable Regional Environmental Management Plan,

(c) Be prepared in accordance and consistent with the applicable Standards and taking account of the applicable Guidelines, as well as Good Industry Practice, , Best Environmental Practices ;

(d) Be prepared in accordance and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan;

(e) Incorporate site-specific environmental objectives and environmental performance standards, which are compatible with and designed to achieve the environmental policy and objectives of the Authority and applicable Standards;

(f) Incorporate measurement criteria, in accordance with the applicable Standard and reflect its methodology to determine whether the environmental quality objectives are being met and that the operation is compliant with Rules of the Authority,

(g) Incorporate any recommendations made by the Commission, and approved by the Council, in its consideration of the Environmental Impact Statement, including commitments and procedures on;

(i) how the Environmental Effects of Exploitation will be monitored the Environmental Management and Monitoring Plan Standard and the applicable Monitoring Standard,

(ii) how the Mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented,

(iii) how the effectiveness of such measures will be monitored,

(iv) how Preservation Reference Zones and Impact Reference Zones, designated in accordance with Annex Xter, will be utilised and implemented,

(v) what the management actions and responses will be to the monitoring results and new knowledge

(vi) what management and reporting systems will be adopted and followed, and;

(vii) how continual improvement will be promoted, including by testing assumptions and predictions made in the Environmental Impact Statement, improving environmental knowledge, and reducing residual uncertainties remaining from the environmental impact assessment process.]

3bis . In addition to the environmental monitoring programme performed by the Contractor, the Environmental Management and Monitoring Plan shall contain a supplementary monitoring programme for at least the first seven years of commercial production mining operations, in compliance with the applicable Standards. The Contractor shall conduct monitoring for the entire duration of the mining operation and comply with any post-closure monitoring requirement according to Regulations 59-61 and the applicable Standard.

4. The Contractor shall provide information on the implementation and compliance of the Environmental Management and Monitoring Plan pursuant to Regulations 51 and 52 in its annual report in accordance with regulations

38, paragraph 2(g), and 46bis, paragraph 4, for evaluation by the Legal and Technical Commission, as well as environmental data and information for publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information at a regular basis and where practicable in real-time or on a monthly basis.

5. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of the Environmental Monitoring and Management Plan in relation to the relevant risks and impacts.

**Explanation / comment**

- I have received several proposals for amending regulation 46 ter which I have tried to incorporate these as appropriate.
- One participant has submitted an alternative to this regulation, however consensus of the process and the amount of support and proposed alterations for the current version of regulation 46ter, I have omitted this proposed alternative..
- As stated in my comments to previous regulation 46 bis, several participants also pointed towards the need for streamlining regulation 46 ter during our last meeting. This included general suggestions to merge paragraphs from this regulation (46 ter) with paragraphs from the previous regulation (46 bis) and perhaps even merging the two provisions entirely. However, we also did not reach a clear consensus on this during the meeting.
- I agree that this regulation (and the previous, regulation 46 bis) needs streamlining. After careful considerations I propose that the more detailed paragraphs 3 could perhaps better be placed in the *Draft guidelines for the preparation of Environmental Management and Monitoring Plans* which can be found at [The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](http://The Mining Code: Standards and Guidelines – International Seabed Authority (isa.org.jm)). I have therefore suggested this re-location in the accompanying Matrix which I introduced in my opening statement. I refer to the Matrix for the details on this proposed move and have for now placed paragraph 3 in a square bracket.
- Furthermore, I must stress that this proposal from my side is without any attempt to pre-empt or prejudice the discussions amongst participants on how best to address this. It is merely in my capacity as facilitator of these proceedings that I seek to envision how to resolve the challenge of streamlining regulation 46 ter (and regulation 46 bis). I invite for a discussion on this.

**Section 2**

**The Environmental Impact Assessment Process**

**Regulation 47 [IWG ENV]**

**Environmental Impact Assessment Process**

1. An applicant or Contractor shall carry out an Environmental Impact Assessment Process on the potential effects on the Marine Environment of the proposed operations and activities.
2. The Environmental Impact Assessment shall:

(a) Be based on relevant baseline data that captures temporal, (seasonal and interannual) and spatial variation in accordance with relevant Standards and taking into account relevant Guidelines and the relevant Regional Environmental Management Plan,

(b) Be carried out by competent, independent experts,

(c) Include an environmental risk assessment and a survey of the seabed to identify Underwater Cultural Heritage that takes into consideration the region as a whole taking into account the objectives and measures of the relevant and applicable Regional Environmental Management Plan,

(d) Provide for Stakeholder consultation in accordance with Regulation 93bis, relevant Standards and taking into account the relevant Guidelines,

(e) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority,

(f) Take into account the results from test mining, in accordance with Regulation 48bis,

(g) Be conducted in accordance with the terms of reference developed during the scoping process, and

(h) Identify scientific and other knowledge gaps or data uncertainties, and the degree to which these influence the assessment.

3. The Environmental Impact Assessment must follow certain procedural steps and entail the following elements:

(a) A scoping Stage and scoping report in accordance with Regulation 47ter to identify and risk assess the anticipated activities and potential impacts associated with the proposed mining operation which are relevant to the Environmental Impact Assessment.

(b) An Environmental Impact Assessment, documented and reported by an Environmental Impact Statement to describe the impacts on the Marine Environment [] and predict the nature and extent of the Environmental Effects of the mining operation including residual impacts, also considering other existing and foreseen mining operations. [This description of the impacts mentioned includes assessing:

(i) The intensity or severity of the impact at the specific site being affected;

(ii) The spatial extent of the impact relative to the availability of the habitat type affected;

(iii) The sensitivity/vulnerability of the ecosystem to the impact;

(iv) The ability of an ecosystem to recover from harm, and the rate of such recovery;

(v) The extent to which ecosystem functions may be altered by the impact; and

(vi) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.]

(c) The Identification of measures envisaged to monitor, prevent, minimize control, mitigate [] and manage Environmental Effects and risks to as low as reasonably practicable, while within acceptable levels in accordance

with environmental Standards, including through the development of an Environmental Management and Monitoring Plan,

(d) The Identification of measures envisaged to remediate, restore, rehabilitate (where possible) the Marine Environment, including through the development and preparation of an Environmental Management and Monitoring Plan,

(e) An analysis of reasonable alternatives to the planned activity , including the no-action alternative,

(f) The preparation and submission to the Authority of an Environmental Impact Statement to document and report the results of the Environmental Impact Assessment in accordance with Regulation 47bis, the applicable Standards and taking into account the relevant Guidelines,

(g) Publication and review by the Commission of the Environmental Impact Statement, and publication of the report and recommendation by the Commission to the Council pursuant to Regulations 11 – 15.

(h) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the Environmental Impact Assessment, including any conditions imposed upon an approval, which decision shall be recorded and published in accordance with Regulation 16, and

(i) A proactive consultation by an applicant or Contractor with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guideline [, which includes:

(i) Providing Stakeholders with access to up-to-date and comprehensive information about the proposed activities and environmental data and impacts,

(ii) Using best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.

(iii) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views,

(iv) Make publicly available Stakeholder comments received during the consultation process, including on the applicant or Contractor's own website, and

(v) Record and address, in the scoping report and Environmental Impact Statement respectively, any substantive and relevant Stakeholder comments received.]

#### **Regulation 47 alt. [IWG ENV]**

##### **Environmental Impact Assessment Process**

1. An applicant or Contractor shall carry out an Environmental Impact Assessment on the potential effects on the Marine Environment of the proposed operations and activities.

2. The purpose of an environmental impact assessment under this regulation shall be to predict environmental impacts anticipated from the



proposed activities, to enable the Authority to assess the potential adverse Environmental Effects, with the aim to:

(a) Ensure effective protection for the marine environment from harmful effects which may arise from such proposed activities,

(b) Ensure that activities in the Area are carried out with reasonable regard for other activities in the Marine Environment,

(c) Avoid Serious Harm to the Marine Environment arising out of the proposed activities,

(d) Ensure, in accordance with article 142 of the Convention and Regulation 4, that the Sponsoring State and the Contractor, with respect to resource deposits in the Area which lie across limits of national jurisdiction, conduct the environmental impact assessment with due regard to the rights and legitimate interests and duties of affected coastal States by maintaining consultations and a system of prior notification to avoid infringement of their rights and legitimate interests, and

(e) Ensure that the proposed activities are carried out in accordance with the Rules of the Authority, general International Law, including the Convention and the applicable Standard and taking into account the relevant Guidelines as well as, Best Available Scientific Information, Best Environmental Practices, and Best Available Techniques

3. The Environmental Impact Assessment shall:

(a) Be based on relevant environmental baseline data that captures temporal, (seasonal and interannual) and spatial variation in accordance with relevant Standards and taking into account relevant Guidelines and the objectives and measures of the applicable Regional Environmental Management Plan,

(b) Be carried out by qualified, independent experts,

(b)bis Be based on the best available science and scientific information, and, where available, relevant traditional knowledge of Indigenous Peoples and local communities.

(c) Include an environmental risk assessment and a survey of the seabed to identify Underwater Cultural Heritage, that takes into consideration the region as a whole taking into account the objectives and measures of the relevant and applicable Regional Environmental Management Plan,

(d) Provide for Stakeholder consultation in accordance with Regulation 93bis, relevant Standards and taking into account the relevant Guidelines,

(e) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority,

(f) Take into account the results from test mining, if applicable, in accordance with Regulation 48bis,

(g) Be conducted in accordance with the terms of reference developed during scoping in accordance with Regulation 47ter 4(o), and

(h) Identify scientific and other knowledge gaps or data uncertainties, and the degree to which these influence the assessment.

(i) be an iterative process where specific stages are revisited and may be updated in the light of new information or new activity at a later stage

4. The Environmental Impact Assessment process must follow certain procedural steps and entail the following elements:

(a) A scoping Stage and scoping report in accordance with Regulation 47bis to identify and risk assess the anticipated activities and potential impacts associated with the proposed Exploitation which are relevant to the Environmental Impact Assessment.

(b) A stage for assessment of environmental impacts including:

(i) An update to the environmental risk assessment, as developed during scoping, describing the likely impacts on the marine environment and Underwater Cultural Heritage and predict the nature and extent of the Environmental Effects of the Exploitation including residual impacts, also considering cumulative impacts, including existing and foreseen mining operations, other activities and natural phenomena.

(ii) An evaluation of significant and harmful effects on the environment and ecosystem services, founded on clear and transparent assessment criteria and a robust evidence base, using best available science and scientific information;

(iii) The presentation and evaluation of potential mitigation measures, and subsequent statement of management and monitoring commitments (together with the EMMP), to mitigate, avoid and minimize effects, and monitor residual impacts;

(c) A stage on the preparation and submission to the Authority of the Environmental Impact Statement to document and report the results of the environmental impact assessment in accordance with Regulation 47bis, the applicable Standards and taking into account the relevant Guidelines,

d) The publication and review by the Commission of the Environmental Impact Statement, and publication of the report and recommendation by the Commission to the Council pursuant to Regulations 11 – 15

(e) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the Environmental Impact Assessment, including any conditions imposed upon an approval, which decision shall be recorded and published in accordance with Regulation 16, and

(f) A proactive consultation by an applicant or Contractor with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guideline, which includes:

(i) Providing Stakeholders with access to up-to-date and comprehensive information about the proposed activities and environmental data and impacts,

- (ii) Using best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.
- (iii) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views,
- (iv) Make publicly available Stakeholder comments received during the consultation process, including on the applicant or Contractor’s own website, and
- (v) Record and address, in the scoping report and Environmental Impact Statement respectively, any substantive and relevant Stakeholder comments received

**Explanation / comment**

Overall comments:

- I have received a joint textual proposal for how to revise section 2. I thank the participants for their hard work and appreciate the submission of joint proposals.
- I propose that the joint textual proposal will form the basis for the regulations of this section as they (the regulations) are more streamlined and well-placed, which was something many participants asked for during our last meeting. Furthermore, I encourage participants to familiarize themselves with the joint textual proposal that has submitted as it entails the thoughts and reasoning of the group for their proposed changes as well as suggestions for parts of the regulations to be moved to relevant Standards and Guidelines.
- The joint textual proposal suggest the structure of Section 2 as follows:
  - *“Reg 47: Environmental Impact Assessment Process: outlines EIA purpose, including high-level requirements, and the steps included in the process (from scoping to decision).*
  - *Reg 47bis Scoping Report: outlines requirements for scoping phase and Report, including submission and decision.*
  - *Reg 47ter: Environmental Impact Assessment: outlines requirements for conducting an Environmental Impact Assessment*
  - *Reg 48: Environmental Impact Statement: outlines requirements for content of Environmental Impact Statement*
  - *Reg 48bis: New Environmental Impact Assessment and [Revised] [additional] Environmental Impact Statement: requirements for when a new Environmental Impact Assessment and a [new/revised/additional/supplementary] Environmental Impact Statement is required.”*

Specific comments relating to Regulation 47:

- In relation to this draft regulation (47) I propose that the joint textual proposal will be the base which we work with going forward. I have inserted their proposal as “Regulation 47 alt.”.

- I note that several participants have submitted proposals with changes to regulation 47 which I have attempted to incorporate to the extent possible.
- I noted suggestions to remove the detailed content in Regulation 47.alt paragraph 3 litra b) point i-vi and litra i) point i-v, which I support. Moreover, these points could be moved to the Standard and Guideline on The Environmental Impact Assessment Process, which can be found on the ISA's website ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](http://isa.org.jm)) which I have also suggested in the accompanying Matrix I introduced earlier. I have therefore suggested this re-location in the accompanying Matrix which I introduced in my opening statement. I have for now placed the mentioned provisions (points) in paragraph 3 b) and i) in square brackets. I invite for views on this.
- One participant has suggested the insertion of an alternative litra c in paragraph 3 of Regulation 47 which I have tried to merge with the existing litra c. I invite for views on this.
- One participant submitted a proposal to merge regulations 47 and the following regulation 47.bis. However, I believe the joint proposal covers this and have therefore omitted this incoming proposal.

**Regulation 47 bis [IWG ENV]  
Environmental Impact Assessment**

1. An applicant or Contractor shall carry out an Environmental Impact Assessment of proposed Exploitation in accordance with the Rules of the Authority.
2. The purpose of an Environmental Impact Assessment shall be to predict environmental impacts anticipated from the proposed activities, to enable the Authority to assess the potential adverse Environmental Effects, with the aim to:
  - (a) Ensure effective protection for the marine environment from harmful effects which may arise from such proposed activities,
  - (b) Ensure that activities in the Area are carried out with reasonable regard for other activities in the Marine Environment,
  - (c) Avoid Serious Harm to the Marine Environment
  - (d) Ensure, in accordance with article 142 of the Convention and Regulation 4, that the Sponsoring State and the Contractor, with respect to resource deposits in the Area which lie across limits of national jurisdiction, conduct the environmental impact assessment with due regard to the rights and legitimate interests and duties of affected coastal States by maintaining consultations and a system of prior notification to avoid infringement of their rights and legitimate interests, and
  - (e) Ensure that the proposed activities are carried out in accordance with the Rules of the Authority, the Convention and the applicable Standards and taking into account the applicable Guidelines as well as, Good Industry Practice, Best Available Scientific Information], Best Environmental Practices, and Best Available Techniques

3. A Contractor shall review, and when needed revise, previously performed Environmental Impact Assessments. This include reviewing cumulative effects of activities covered by the assessment whenever a material change in the mining operation has occurred, there is relevant new information or when the review indicates that such changes warrant a revision.

### **Regulation 47 bis alt. (47 ter) [IWG ENV]**

#### **Environmental Impact Assessment**

1. The applicant or Contractor shall, in accordance with the Standards, and taking into

account the Guidelines, undertake an impact assessment, based on the Terms of Reference agreed in the Scoping report, to describe the impacts on the marine environment and Underwater Cultural Heritage and to predict the nature and extent of the Environmental Effects of the mining operation, including residual impacts, on the marine environment and Underwater Cultural Heritage, also considering cumulative impacts, including existing and foreseen mining operations, other activities and natural phenomena. This includes assessing:

- (i) The intensity or severity of the impact at the specific site being affected;
- (ii) The spatial extent of the impact relative to the availability of the habitat type affected;
- (iii) The sensitivity/vulnerability of the ecosystem to the impact;
- (iv) The ability of an ecosystem to recover from harm, and the rate of such recovery;
- (v) The extent to which ecosystem functions may be altered by the impact; and
- (vi) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.

2. Undertaking the impact assessment, the applicant or Contractor shall complete:

(a) An analysis of reasonable alternatives remaining post Scoping to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative,

(b) Identification of measures envisaged to mitigate and manage prevent, minimize, control, Environmental Effects and risks to as low as reasonably practicable, while within acceptable levels in accordance with environmental Standards, including through the development and preparation of an Environmental Management and Monitoring Plan

(c) An environmental risk assessment, which adds to the preliminary environmental risk assessment required during scoping by regulation 47bis (4j).

(d) An analysis of the results of the environmental risk assessment, including identification of high priority risks requiring particular focus, including in the Environmental Management and Monitoring Plan.

(e) A proactive consultation by an applicant or Contractor with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guideline, which includes:

(i) Providing Stakeholders with access to up-to-date and comprehensive information about the proposed activities and environmental data and impacts,

(ii) Using best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.

(iii) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views,

(iv) Make publicly available Stakeholder comments received during the engagement ~~consultation~~ process, including on the applicant or Contractor's own website, and

(v) Record and address, in the scoping report and Environmental Impact Statement respectively, any substantive and relevant Stakeholder comments received.

**Explanation / comment**

- Please see my overall comments stated in the comment box to Regulation 47.

Specific comments relating to the draft regulation on Environmental Impact Assessment;

- In relation to this draft regulation on “Environmental Impact Assessment” I propose that the joint proposal submitted will be the base which we work with going forward. Inserted as “Regulation 47 bis alt (ter)”
- The joint proposal mentioned above contained a proposal for this regulation on “Environmental Impact Assessment” to be inserted as “47 ter” but it has been inserted here (regulation 47 bis) for participants to compare with the previous provision on “Environmental Impact Assessment”, i.e. “Regulation 47.bis”.
- This means that the proposed order is not aligned with the order suggested in the joint textual proposal. (The groups “Regulation 47 bis” on Scoping will be discussed under “Regulation 47 ter”, and the groups “Regulation 47 ter on Environmental Impact Assessment” will be discussed under “Regulation 47 bis” in the following.)
- Again, I support the joint proposal, including the above-mentioned proposed restructuring and re-numbering of the Regulations. Thus, if consensus can be reached during the meeting, the regulations will follow the order as proposed in the joint textual proposal. (See my comments to regulation 47 for more on the proposed layout).
- I note that some participants have submitted proposals with changes to the previous regulation on “Environmental Impact Assessment” which I have attempted to incorporate to the extent possible.

**Regulation 47 ter [IWG ENV]**  
**Environmental Impact Assessment Scoping Report**

1. An applicant or Contractor shall prepare and submit to the Secretary-General a scoping report in accordance with this regulation and in the format prescribed in Annex IV.

2. An application or Contractor shall use Environmental Impact Assessment scoping to identify and prioritize the main activities and potential impacts associated with the proposed Exploitation in order to focus the Environmental Impact Assessment and Environmental Impact Statement on the key environmental issues.

[3. In undertaking the Environmental Impact Assessment scoping process the applicant or Contractor shall:

(a) Review available data and knowledge, and propose additional data to be collected and studies needed to complete an Environmental Impact Statement in accordance with these regulations,

(b) Undertake a preliminary impact analysis and Environmental Risk Assessment which will be updated as the Environmental Impact Assessment proceeds,

(c) Proactively identify Stakeholders in accordance with relevant Standards and taking into account any Guidelines, and

(d) Identify and evaluate feasible alternative means of carrying out the project that will be examined in the environmental impact assessment.]

[4. An Environmental Impact Assessment Scoping Report shall include the following:

(a) A brief description of the proposed Exploitation activities and any ancillary features, including what is known or anticipated about where the mining will occur within a Contract Area and the mining machinery to be used,

(b) A description and overview of tentative timelines and deadlines for the proposed Exploration and any associated activities,

(c) A description of what is known about the environmental setting, including Underwater Cultural Heritage, for the project (Contract Area and regional setting),

(d) A description of information for the project that is not yet known but must be, or should be known, including baseline data, and a plan for gaining that information prior to commencement of the Exploitation ,

(e) A summary of existing environmental baseline studies, and, where available, relevant traditional knowledge of indigenous peoples and local communities including a description of methodology for collecting and analyzing the baseline data,

(f) A summary of gaps in environmental baseline including description of methodology for collecting and analyzing additional baseline data to inform the Environmental Impact Assessment.

(g) A description of the technical, spatial and temporal boundaries for the Environmental Impact Assessment,

(h) A list of any assumptions relied upon and identification and quantification of the uncertainties at this stage of the Environmental Impact Assessment, how they are being addressed, and assessment of their implications to the Environmental Risk Assessment findings,

(i) A preliminary impact analysis which categorizes the important issues into high-risk, medium-risk and low-risk for the Environmental Impact Assessment to address and evaluates the need for further information, taking into account the Environmental Risk Assessment,

(j) An Environmental Risk Assessment, which includes:

(i) The identification of potential hazards,

(ii) The environmental consequence for each identified potential impact(s) (the magnitude of the impact(s), the duration of the impacts, and the receptor characteristics, and the likelihood of the consequence occurring.

(iii) A description of the Cumulative Environmental Effects of the project, combined with other authorized, anticipated, or expected activities, actions, or natural phenomena,

(iv) The likelihood of the consequence occurring,

(v) The confidence levels of experts, in order to account for uncertainty and a precautionary approach,

(vi) A description of the methodology employed in the Environmental Risk Assessment,

(k) A description of the results of the Environmental Risk Assessment, including identification of high priority risks for local and regional ecosystem functioning over short and long term, requiring particular focus in the subsequent impact assessment stage of the Environmental Impact Assessment,

(l) A preliminary Stakeholder list that proactively identifies likely Stakeholders, and an indicative schedule and methodology for engagement with key Stakeholders throughout the Environmental Impact Assessment process, taking into account privacy concerns related to the publication of personal information of identified stakeholders,

(m) A report of consultations undertaken during scoping.

(n) A consideration of reasonable alternative means of carrying out the project that will be examined in detail in the Environmental Impact Assessment, including a no-action alternative, and any others that have been not carried forward for further analysis at this stage, and the reasons for that selection,

(o) A draft Terms of Reference for the Environmental Impact Assessment, which identifies the activities and studies planned for the Environmental Impact Assessment, and any additional baseline data that will be required,

(p) An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and to propose Mitigation and management strategies and monitoring methodology,



(q) A brief description of the socioeconomic and sociocultural aspects of the project, including sociocultural uses of the project area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities),

(r) A note describing and explaining any divergence from relevant ISA Guidelines.]

5. Upon receipt of a scoping report from an applicant or Contractor, the Secretary-General shall:

(a) Make the report available on the Authority's website, with an invitation for members of the Authority and Stakeholders to submit comments in writing within a period of [90 days];

(b) Following the close of the comment period under paragraph (1)(a), provide any comments received to the applicant or Contractor [within 2 weeks] [Russia] for their response within [60 Days];

(c) At the expiry of the timeframe specified in paragraph (1) (b), provide the Commission with the scoping report, any stakeholder comments received, and any responses to those comments from the applicant or Contractor.

6. The Commission shall consider a scoping report submitted in accordance with this regulation, and any comments and responses received, in accordance with any applicable Standards and taking into account Guidelines. Based on this review, the Commission shall, within 60 days following the receipt of the report and any comments or responses under paragraph (5)(c), approve a scoping report, disapprove it or make recommendations to the applicant or Contractor regarding the proposed Environmental Impact Assessment, accompanied by a detailed rationale.

7. The Commission's recommendations under the previous paragraph [paragraph 6] may include recommendation:

(a) To revise the environmental risk assessment or other aspects of the scoping report based on different methodology or inputs,

(b) To amend the proposed terms of reference for the Environmental Impact Assessment, or

(c) To re-submit a revised scoping report for further Stakeholder consultation and Commission review, in the case where uptake of any of the Commission's recommendations are likely to lead to a Material Change in the Scoping Report.

8. The applicant or Contractor shall take into account the Commission's recommendations under this regulation, [or any recommendations or scoping reports concluded prior to the adoption of these Regulations and in accordance with an Exploration Contract], [and agree to the final contents of the Scoping Report with the Commission] before proceeding with an Environmental Impact Assessment process based on an adaptive management criteria to address uncertainty. Furthermore, the applicant or Contractor shall agree the final contents of the Scoping Report with the Commission either under these Regulations or pursuant to other applicable Regulations adopted by the Authority or in accordance with an Exploration Contract.

**Regulation 47 ter (bis) alt. [IWG ENV]**

**Scoping Report**

1. The applicant or Contractor shall prepare and submit to the Secretary-General a scoping report in accordance with this regulation and in the format prescribed in Annex IV.

2. An applicant or Contractor shall use environmental impact assessment scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Assessment and Environmental Impact Statement on the key environmental issues.

3. In undertaking the environmental impact assessment scoping process, the applicant or Contractor shall:

(a) Review available data and knowledge, and propose additional data to be collected and studies needed to complete an Environmental Impact Statement in accordance with these regulations,

(b) Undertake a preliminary impact analysis and environmental risk assessment which will be updated as the environmental impact assessment proceeds,

(c) Proactively identify Stakeholders in accordance with relevant Standards and taking into account any relevant Guidelines,

(d) Identify and evaluate feasible alternative means of carrying out the project that will be examined in the environmental impact assessment. and

(e) Use the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities.

4. An environmental Impact Assessment Scoping Report shall include the following:

(a) A brief description of the proposed Exploitation activities and any ancillary features

(b) A description and overview of tentative timelines and deadlines for the proposed environmental baseline studies and Environmental Impact Assessment [conducted under the Exploration contract and any associated activities,

(c) A description of what is known about the environmental setting, including Underwater Cultural Heritage, for the project (Contract Area and regional setting),

(d) A description of data gaps, potential data gaps or data with a large uncertainty associated with it for the project,

(e) A summary of existing environmental baseline studies, and, where available, relevant traditional knowledge of indigenous peoples and local communities

(f) A description of the technical, spatial and temporal boundaries for the Environmental Impact Assessment,

(g) A brief description of the socioeconomic and sociocultural aspects of the project

(h) Any assumptions and how they are being addressed, and assessment of their implications to the environmental risk assessment findings,

(i) A preliminary impact analysis which categorizes the important issues into high-risk, medium-risk and low-risk for the Environmental Impact Assessment to address and evaluates the need for further information, taking into account the environmental risk assessment,

(j) A preliminary environmental risk assessment,

(k) A description of the results of the environmental risk assessment, including identification of high priority risks for local and regional ecosystem functioning over short and long term, requiring particular focus in the subsequent impact assessment phase of the Environmental Impact Assessment,

(l) A preliminary Stakeholder list that proactively identifies likely Stakeholders, and an indicative schedule and methodology for engagement with key Stakeholders throughout the Environmental Impact Assessment process,

(m) A report of consultations undertaken during scoping.

(n) A consideration of reasonable alternative means of carrying out the project that will be examined in detail in the Environmental Impact Assessment, including a no-action alternative, and any others that have been not carried forward for further analysis at this stage, and the reasons for that selection,

(o) A draft Terms of Reference for the Environmental Impact Assessment, which identifies the activities and studies planned for the Environmental Impact Assessment, and any additional baseline data that will be required,

(p) An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and to propose Mitigation and management strategies and monitoring methodology,

(q) A note describing and explaining any divergence from ISA Guidelines.

5. Upon receipt of a scoping report from an applicant or Contractor, the Secretary General shall:

(a) Make the report available on the Authority's website, with an invitation for members of the Authority and Stakeholders to submit comments in writing within a period of 90 days;

(b) Following the close of the comment period under paragraph (1)(a), provide any comments received to the applicant or Contractor [within 2 weeks] [Russia] for their response within [60 Days];

(c) At the expiry of the timeframe specified in paragraph (1) (b), provide the Commission with the scoping report, any stakeholder comments received, and any responses to those comments from the applicant or Contractor.

6. The Commission shall consider a scoping report submitted in accordance with this regulation, and any comments and responses received, in accordance

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

7. The Commission’s recommendations under the previous paragraph [paragraph 6] may include recommendation:

(a) To revise the environmental risk assessment or other aspects of the scoping report based on different methodology or inputs,

(b) To amend the proposed terms of reference for the environmental impact assessment, or

(c) To re-submit a revised scoping report for further Stakeholder consultation and Commission review, in the case where uptake of any of the Commission’s recommendations are likely to lead to a Material Change in the Scoping Report.

8. The applicant or Contractor shall, before proceeding with an environmental impact assessment process:

(i) take full account of the Commission’s recommendations under this regulation,

(ii) agree the final contents of the proposed terms of reference in the Scoping Report with the Commission.

**Explanation / comment**

- Please see my overall comments in the comment box to Regulation 47.

Specific comments relating to the draft regulation on Scoping Report;

- In relation to this draft regulation on “Scoping Report” I propose to continue the negotiations based on the joint textual proposal that has been submitted. Inserted as “Regulation 47 ter (bis) alt”
- The joint textual proposal contained a suggestion that this regulation on “Scoping report” to be inserted as “47 bis” but it has been inserted here (regulation 47 ter) for participants to compare with the previous provision on “Scoping Report”, i.e. “Regulation 47.ter”.
- If consensus can be reached during the meeting, the regulations will follow the order as proposed by the group. (See my comments to regulation 47 for more on the proposed layout).
- I note that the very detailed regulations in Regulation 47 ter paragraph 3 and 4 could be moved to the Standard and Guideline on “Environmental Impact Assessment Process” (section on “Scoping”) which can be found on the ISA’s website ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](http://isa.org.jm)) which I have also suggested in the accompanying Matrix I introduced earlier. They are placed in square brackets, and I invite for views on this.

## **Environmental Impact Statement**

1. An applicant or Contractor shall prepare an Environmental Impact Statement in accordance with this regulation, the applicable Standards and take account of the applicable Guidelines. Such an Environmental Impact Statement shall be considered by the Authority in accordance with Part II or Regulation 57 and is required for an application for a plan of work pursuant to Regulation 7(3)(d).

2. The purpose of the Environmental Impact Statement is to document and report the results of the Environmental Impact Assessment carried out in accordance with Regulations 47 and 47bis and to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects based on the Best Available Scientific Information, Best Environmental Practices, and Best Available Techniques, and Good Industry Practice on which the Authority can base its decision, and any subsequent approval that may be granted.

3. The Environmental Impact Statement shall be in a form prescribed by the Authority and must:

(a) Include a prior Environmental Risk Assessment prepared during the environmental impact assessment,

(b) Describe the results of the Environmental Impact Assessment including of the methodology used and evaluation of the identified environmental impacts,

(c) Demonstrate that the proposed activities and mining operations are in accordance with all [] environmental Standards and the Authority's environmental objectives and take into account the requirements of the [] Regional Environmental Management Plan, environmental baseline data as well as any additional objectives as set by the Contractor and any results of the performed test mining study, where applicable,

(d) Identify substantive and relevant comments received through public consultation on the Environmental Impact Assessment and explain how each comment has been incorporated or otherwise addressed,

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

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

(g) [Be peer reviewed by competent independent experts, before submission and include a] [D]escription of the experts, their qualifications, and the results of their review.

4. The Environmental Impact Statement should, but not limited to, entail the following elements, described in greater detail in [Annex IV/ Standard]: the Guidelines:

(a) An executive summary to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers, including a description of the proposed project, its objectives, alternatives analysed, anticipated benefits, anticipated impacts and measures to minimize these, consultation efforts and linkage to the Environmental Monitoring and Management Plan and the Closure Plan,

(b) An introductory section containing information on the project background and history, project viability and proponents as well as a description of the report, including its scope and structure and overview of the stakeholder consultation process and consultations,

(c) An outline of applicable national and international legislation, procedures and policies, and other applicable standards, principles and guidelines, for example the Convention including the 1994 Agreement [relating, relevant rules from the International maritime Organization and International Law in general],

(d) A description of the proposed project including information on location, associated activities, required infrastructure, mineral resources (type, size, shape, tonnage, volume, grade), technologies and (mining-)equipment to be used, project scale overview (spatial, temporal, operational depth), transport and handling of materials, on-site processing, commissioning, construction and operating standards, design codes, health and safety aspects, workforce, decommissioning and closure, other considered alternatives and a timetable for the entire operation,

(e) A description of methodologies for describing collecting and analyzing baseline and ‘test mining’ data and assessing the potential environmental impact and Environmental Effects from the proposed operations and alternatives considered. [],

(f) A description of the existing physiochemical and geological oceanography, including information on prior research/Exploration studies, meteorology, seabed and sub-seabed characteristics, natural hazards, noise, light and greenhouse gas emissions,

(g) A description of the existing biological environment, including information on prior research/Exploration studies, on biological properties and communities and ecosystem that could be impacted by proposed activities in the area, also taking into consideration studies and research on this,

(h) A description of the existing human activities socioeconomic and sociocultural environment in the area, containing information on fisheries, marine traffic, submarine cables, tourism, ongoing scientific research, sociocultural use, and sites of cultural or historical significance,

(i) An assessment of environmental impacts and effects on the physical, chemical and geological environment and proposed Mitigation, including description of the impact source, potential impact categories and pathways, receptors and impacts, any potential Cumulative Environmental Effects, unavoidable residual impacts and effects that may remain, and the extent to which any potential impacts and effects may occur in areas under a State’s national jurisdiction,

(j) An assessment of environmental impacts and Environmental Effects on the biological environment and proposed , including description of the impact source, potential impact categories and pathways, receptors and impacts , any potential Cumulative Environmental Effects, unavoidable residual impacts and effects that may remain, and the extent to which any potential impacts and effects may occur in areas under a State’s national jurisdiction,

(k) An assessment of impacts on the socioeconomic and sociocultural environment and proposed Mitigation, including description of potential impact categories and pathways and impact identification of existing use

(fisheries, marine traffic, submarine cables, tourism, ongoing scientific research, sociocultural use, area-based management tools), sites of cultural or historical significance, ecosystem services impact on gender and residual impacts,

(l) A[] description of hazards arising from natural, accidental and discharge events, for example related to extreme weather, natural hazards, accidental events, maritime safety, emergency response, handling waste and ballast water, and the measures taken to prevent or respond to such events and conduct an assessment of residual impacts,

(m) A summary of key issues in the Environmental Impact Statement and how they will be addressed in the Environmental Management, and Monitoring Plan and Closure Plan,

(n) A description of responsible product stewardship related to the intended use of the mineral-bearing ore once it leaves the Area, including how the Contractor will minimize effects on health, safety, environmental as well as socioeconomic and sociocultural impacts,

(o) A summary of consultations that have taken place with Stakeholders, and how their comments have been addressed in the environmental impact assessment,

(p) A description of the study team outlining the people involved in the environmental impact assessment studies and in writing the Environmental Impact Statement,

(q) A list of glossaries, abbreviations, references, and appendices.

5. The Environmental Impact Statement of every Plan of Work, including any revisions, should be available on the official website of the International Seabed Authority in the interests of transparency.

**Regulation 48 alt. [IWG ENV]  
Environmental Impact Statement**

1. An applicant or Contractor shall prepare an Environmental Impact Statement in accordance with this regulation. Such an Environmental Impact Statement shall be considered by the Authority in accordance with Part II or Regulation 57 and is required for an application for a plan of work pursuant to Regulation 7(3)(d).

2. The Environmental Impact Statement shall document and report the results of the Environmental Impact Assessment carried out in accordance with Regulation 47ter and shall provide the International Seabed Authority, its member States and other Stakeholders with unambiguous documentation of the potential Environmental Effects based on the Best Available Scientific Information, Best Environmental Practices, and Best Available Techniques, and Good Industry Practice on which the Authority can base its decision, and any subsequent approval that may be granted.

3. The Environmental Impact Statement shall be in a form prescribed by the Authority in the relevant Standard and in accordance with the relevant Guideline:

(a) Detail the results of the environmental impact assessment including the methodology used, and evaluation of the identified environmental impacts

(b) Demonstrate that the proposed Exploitation is in accordance with all relevant environmental Standards and the Authority's environmental objectives and in accordance with the requirements of the relevant Regional Environmental Management Plan, environmental baseline data as well as any additional objectives as set by the Contractor and any results of the performed test mining study, where applicable,

(c) Identify substantive comments received through public consultation on the environmental impact assessment and explain how each comment has been incorporated or otherwise addressed,

(d) Be prepared in clear and non-technical language and in an official language of the Authority together with an English-language version, where applicable,

(e) Be peer reviewed by competent independent experts, before submission,

4. The Environmental Impact Statement shall, but not limited to, entail the following elements, which are described in greater detail in [Annex IV/ Standard]:

(a) An executive summary to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers,

(b) A description of the proposed project

(c) Methodologies

(d) A description of the existing oceanographic, physiochemical and geological environment,

(e) A description of the existing biological environment,

(f) A description of the socioeconomic and sociocultural environment, including existing human activities.

(g) An assessment of impacts on the physical, chemical and geological environment and proposed Mitigation,

(h) An assessment of impacts and Environmental Effects on the biological environment and proposed Mitigation,

(i) An assessment of impacts on the socioeconomic and sociocultural environment and proposed Mitigation,

(j) An outline of hazards arising from natural, accidental and discharge events, for example related to extreme weather, natural hazards, accidental events, maritime safety, emergency response,

(k) An outline of waste management,

(l) A summary of key issues in the Environmental Impact Statement and how they will be addressed in the Environmental Management, and Monitoring Plan and Closure Plan,

(m) A description of responsible product stewardship related to the intended use of the mineral-bearing ore once it leaves the Area, including how the Contractor will minimize effects on health, safety, environmental as well as socioeconomic and sociocultural impacts,



(n) A summary of consultation and stakeholder engagement and methods,

5. The Environmental Impact Statement of every project, including any revisions, should be available on the official website of the International Seabed Authority in the interests of transparency of the whole process in accordance with regulation 92.

**Explanation / comment**

- Please see my overall comments in the comment box to Regulation 47.

Specific comments relating to the draft regulation on Regulation 48;

- In relation to this draft regulation (48) I propose that the negotiations continue based on the joint textual proposal. This version has been inserted as “Regulation 48 alt.”
- Some participants have submitted proposals with changes to the original regulation 48 which I have attempted to incorporate to the extent possible.
- In paragraph 3 g) of Regulation 48, one participant has proposed to delete the reference to the Environmental Impact Statement being peer reviewed by competent independent experts, before submission. I have placed this in square brackets and invite for views on this.
- In paragraph 4 c, one participant has proposed to delete the reference to rules from the International maritime Organization and International Law in general. It has been placed in square brackets. I propose that these references are retained but invite for a discussion on this.
- It has been proposed to restructure paragraph 4 litra e, which entails the reference to “collection of baseline data” being deleted. This has been placed in square brackets and I invite for a discussion on this.
- One participant submitted a proposal for an alternative paragraph 3. However, I believe the joint textual proposal covers this, and I have therefore omitted this incoming proposal.

**Regulation 48 bis [IWG ENV]  
New Environmental Impact Assessment and Revised Environmental  
Impact Statement**

1. A Contractor shall conduct a new Environmental Impact Assessment and submit a revised Environmental Impact Statement in accordance with regulation 57 when:

(a) A Material Change to an existing Plan of Work is proposed which is likely to cause adverse Environmental Effects that are unable to be

mitigated by the measures identified in the previous Environmental Impact Assessment,

(b) A Material Change in the Marine Environment is detected through monitoring or other data sources which would call for a new or reviewed Environmental Impact Statement,

(c) The Material Change described in the Plan of Work is predicted to exceed the impact thresholds set out in the Standards on environmental thresholds, as well as the impacts identified in the previous Environmental Impact Assessment;

(d) A relevant Standard, activity, or predicted impact has not already been addressed by an Environmental Impact Statement,

(e) Otherwise deemed necessary by the Commission, in accordance with applicable Standards and taking into account Guidelines, e.g. when changes to an existing Plan of Work is proposed other than the type described under sub-paragraph (1)(a) or [when the Commission considers that the Environmental Impact Statement from the Revised Environmental Impact Assessment is not appropriate under Regulation 7 para. (5), or] [if relevant Standards and/or thresholds have been substantially revised, or] when the Commission requests an applicant to amend its proposed Plan of Work during the application stage under Regulation 14, or

(f) When the Material Change of the proposed Plan of Work require changes in the Environmental Management and Monitoring Plan, due to the impacts identified in the revised Environmental Impact Assessment;

**Regulation 48 bis alt. [IWG ENV]**

**New Environmental Impact Assessment and Revised additional Environmental Impact Statement**

1. A Contractor shall conduct a new Environmental Impact Assessment in accordance with regulation 47ter and submit an additional revised Environmental Impact Statement when:

(a) A Material Change to an existing Plan of Work is proposed which is likely to increase the adverse Environmental Effects caused by the activities,

(b) A Material Change in the Marine Environment is detected through monitoring or other data sources which would call for a new or reviewed Environmental Impact Statement,

(c) An activity described in the Plan of Work is predicted to exceed the impact thresholds set out in the Standards on environmental thresholds,

(d) A relevant Standard, activity or-predicted impact has not already been addressed by an Environmental Impact Statement, or

(e) Otherwise deemed necessary by the Commission or Council, in accordance with applicable Standards and taking into account Guidelines.

**Explanation / comment**

- Please see my overall comments to the submitted work in the comment box to Regulation 47.

Specific comments relating to the draft regulation on Regulation 48 bis;

- In relation to draft regulation 48 bis I propose that the joint textual proposal will be the base which we work with going forward. This is listed as “Regulation 48 bis alt.”
- Several participants have submitted proposals with changes to regulation 48 bis” (the original version) which I have attempted to incorporate to the extent possible.
- In litra e, two different proposals suggest listing additional examples relating to when the Commission could find it necessary to require the contractor to produce a new Environmental Impact Assessment and Revised Environmental Impact Statement. Both proposals have been inserted but placed in individual square brackets. I invite for a discussion on this.
- One participant suggested inserting a new litra “d bis” relating to “when the Material Change of the proposed Plan of Work require changes in the Environmental Management and Monitoring Plan, due to the impacts identified in the revised Environmental Impact Assessment”. However, I believe this suggestion should be placed as an individual (i.e. new) litra, wherefore this has been inserted as a new “litra f”. I invite for views on this.

#### **Regulation 48 ter [IWG ENV] Test mining**

1. Subject to this Regulation, an applicant shall conduct “test mining” [prior] to submitting an application for a Plan of Work for Exploitation. Information gathered through “test-mining” shall be compiled in a test mining report in accordance with Annex IV, be in accordance with and take into account the relevant Standard and Guideline and shall inform on the application for a Plan of Work for Exploitation .

[2. “Test mining” means an *in situ* testing of the integrated system of all equipment () and process steps (e.g. collector, raiser and release techniques) for exploitation activities in a contract area under such technical, spatial and temporal conditions which allows the ”test mining” for the provision of evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission in its evaluation of the application to demonstrate that the proposed mining equipment is technically and operationally appropriate, and that assumptions regarding impacts on the Marine Environment is effectively protected from harmful effects, can be validated. Data collected during test mining can be used to validate numerical models and predict cumulative effects, in accordance with Article 145 of the Convention. . “Test mining” should also be undertaken in order to optimize the integrated system with regard to its potential effects on the Marine Environment.]

2.alt. The purpose of test mining is to ensure that effective protection of the marine environment from harmful effects is ensured. Test mining projects shall as a general rule provide evidence that appropriate equipment is available to ensure the effective protection of the Marine Environment in accordance with Article 145.

3. “Test mining” in the Area requires a prior approval by the Authority consistent with the criteria in Regulation 13(1), and shall be carried out with reasonable regard for other activities in the Marine Environment, in accordance with articles 87 and 147 of the Convention, and in accordance with the [] Standard and taking into account the relevant Guideline and Recommendations, in particular to ensure that the Marine Environment is effectively protected from [harmful effects] [serious harm], including the cumulative effects, in accordance with Article 145 of the Convention.

4. Test mining does not have to be undertaken if the evidence pursuant to Paragraph 1 has been provided through other “test-mining” nby the applicant, by other contractors, or in the context of another approved Plan of Work for exploration or exploitation. In such a case, the applicant shall compile in its “test-mining” report the information already available and explain why this is sufficient evidence and the Commission shall assess whether the evidence pursuant to Paragraph 1 has been demonstrated in its review of the application and report to the Council pursuant to Regulations 11-15.

5. After the approval of a Plan of Work, a validation monitoring system shall be established by the contractor, in line with the Environmental Management and Monitoring Plan, in order to monitor whether the requirements of the Plan of Work are complied with. In case of non-compliance, Regulation 52 will apply.

6. The gains from mineral resources which have been collected during ‘test mining’ shall be paid to the Environmental Compensation Fund, as established by Regulation 54.

[6 alt. Prior to the commencement of Commercial Production, the contractor shall provide the Authority with a test mining royalties report containing the information specified in the Standards and Guidelines in respect of any minerals collected during ‘test mining’. Royalties in respect of mineral resources that have been collected during ‘test mining’ shall be paid at the time the contractor makes its first payment of royalties after the date it commences Commercial Production.]

7. If a material change has been determined in accordance with Regulation 25 and 57 (2), the relevant organ of the Authority shall consider and determine whether and on which aspects an additional “test mining” may have to be undertaken in order to provide sufficient information pursuant to paragraph (2). In this case, paragraphs (1) and (3) apply.

**Explanation / comment**

- In paragraph 1, one participant has suggested to delete the word “prior” regarding whether test mining should be done before submitting an application for Plan of Work. I have placed it in square brackets and invite for a discussion on this.
- The Intersessional Working Group on “Underwater Cultural Heritage” has submitted a proposal for an alternative wording of paragraph 2. This has been inserted as “paragraph 2 alt.” I thank the group for its hard work and propose that the groups work will be used as basis for paragraph 2 in regulation 48 ter going forward as it is a clear, streamlined paragraph. However, as I also believe it is important to retain the level of detail in paragraph 2, I propose

to relocate this section to the relevant standard or guideline, e.g. the “draft standard and guidelines for the environmental impact assessment process” which can be found on the ISA’s website ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](http://isa.org.jm)). I have suggested this in the accompanying Matrix. I invite for views on this.

- In paragraph 3 it suggested to change the reference to effectively protecting the Marine Environment against “harmful effects” to protecting it against “serious harm”. I propose to keep the original wording (“harmful effects”) as it covers a broader term, but I have put it in square brackets and invite for a discussion on this.
- An alternative for paragraph 6 has been submitted and is inserted as paragraph 6 alt. However, I believe the current paragraph 6 is adequate clear and precise and I therefore instead propose to move paragraph 6 alt to the relevant guideline, e.g. the “draft standard and guidelines for the environmental impact assessment process” which can be found on the ISA’s website ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](http://isa.org.jm)). I have suggested this in the accompanying Matrix. I invite for views on this.

### **Section 3**

#### **Pollution control and management of waste**

##### **Regulation 49 [IWG ENV]**

###### **Pollution control**

1. A Contractor shall take all measures to protect and preserve the Marine Environment [] from [harmful effects] [Serious Harm], in accordance with Article 145 of the Convention, by preventing, reducing and controlling pollution and other hazards, [including marine litter and underwater noise,] that arise from its activities in the Area. This is to be done in accordance with its Environmental Management and Monitoring Plan and the Convention, the Agreement, and all relevant Rules of the Authority the relevant applicable Regional Environmental Management Plan, and taking account the Environmental Management and Monitoring Plan and the applicable Standards or Guidelines. If a potentially polluting wreck is discovered and it is an object of an archaeological and historical nature, then the duty to protect such heritage must also be considered consistent with Article 149 of the Convention.

###### **Regulation 49 alt**

1. A Contractor shall take all the necessary and appropriate measures to protect and preserve the Marine Environment and coastlines by preventing, reducing and controlling pollution and other hazards, including marine litter and underwater noise, from its activities in the Area. This is to be done in accordance with its Environmental Management and Monitoring Plan and all relevant Rules of the Authority, the relevant applicable Regional Environmental Management Plan, taking account of the applicable Guidelines.

### **Explanation / comment**

Overall comments to Regulation 49-61 and the annexes:

- As I also stated in my introduction, we managed to go through regulations 44 – 48 ter during our last meeting in July, wherefore changes to these regulations submitted before that meeting have been accepted. However, as the following regulations (and annexes) were not discussed in July, the changes proposed to these (submitted before the last meeting) are still visible in track change alongside my comments to these.
- Furthermore, submissions which have been sent by participants before this meeting pertaining to these regulations (49-61 plus annexes) have also been incorporated to the extent possible and I have added comments to these when relevant.

Specific comments to Regulation 49:

- The Intersessional Working Group on “Underwater Cultural Heritage” has submitted a proposal for an alternative wording of the regulation. This has been inserted as “Regulation 49 alt.” I thank the group for its hard work and propose that the groups work will be used as basis for Regulation 49 going forward. Alternatively, the two versions could be attempted merged. I invite for views on this.
- To Regulation 49, I noted during our last meeting that some participants requested the insertion of a reference to Article 145 of the Convention relating to protection of the marine environment, including coastlines. This has been included.
- It has been suggested to change the reference to protecting the Marine Environment against “harmful effects” to protecting it against “serious harm”. I propose to keep the original wording (“harmful effects”) as it covers a broader term, but I have put both words in square brackets and invite for a discussion on this.
- One participant submitted a proposal to include a reference to “coastline” while other participants now have proposed deleting it. It has been placed in square brackets. I note that this is not defined in the Schedule and invite for a discussion on whether this should be included.
- During our last meeting it was also discussed whether the explicit reference to “marine litter” and “underwater noise” should be kept. I noted support for keeping this. However, I also noted that several participants during our meeting requested general language, e.g. by referring to protecting the marine environment from harmful effects according to art. 145. This has therefore not been deleted but placed in square brackets. I invite for a discussion on this matter.
- One participant proposed to delete the reference to polluting wrecks and Article 149 of the Convention. However, I noted support for this wording during our last meeting and have therefore kept it. I invite for a discussion on this.

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 Standard;  
(b) The Environmental Management and Monitoring Plan; and

(c) International [agreed] [] rules, standards and recommended practices and procedures.

2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is necessary for the safety of the vessel or Installation or the safety of human life, provided that such disposal, dumping or discharge is conducted so as to minimize the possibility of harm to the Marine Environment. If Harm to the Marine Environment occurs as a result of disposal, dumping or discharge, the Contractor shall monitor, [] Mitigate [and remediate] the impacts of such harm, and shall report forthwith about such disposal, dumping or [discharge] to the Authority.

[2.Alt. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is necessary for the safety of the vessel or Installation or the safety of human life, provided that such disposal, dumping or discharge is conducted so as to minimize the likelihood of harm to human life and prevent Harm to the Marine Environment.]

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

4. The applicant or contractor must also keep a register of discharges to be updated at least [] [monthly,] where possible, that shall be reported annually to the Authority as part of the mandatory annual report that must be prepared throughout the operation.

**Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- One proposal included a request for referencing relevant international law in para 1. I have attempted to merge that proposal with the existing *litra c* in the paragraph and this by referencing the relevant wording of the Convention.
- One participant has submitted an alternative to paragraph 2. This is inserted as paragraph “2.Alt.”. I invite for comments on this.
- One participant had submitted a request to refer to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 and the 1996 Protocol (the “London Convention”). I propose to not include such a reference. Both the London Convention and the London Protocol explicitly exclude deep seabed mining activities from their scope of application. In particular, the London Protocol, article 1(4)(3) excludes from the definition of “Dumping”, the disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated offshore processing of seabed mineral resources. Furthermore, it should be recalled that UNCLOS

provides a specialised regime for the conduct of activities in the Area and the protection of the marine environment. The overriding provisions of part XI and XII of UNCLOS places the obligation on the Authority to adopt rules, regulations and procedures in this respect, and no other authority or organization is mentioned or tasked in this respect. Finally, one should remember that several delegations to UNCLOS are not contracting parties to the London Convention, so also for that reason it would be doubtful to include such a reference.

- In paragraph 4 (previously para 5), it has been proposed to change the interval on how often the applicant or contractor must update the register of discharges from “weekly” to “monthly”. These suggestions are placed in square brackets. However, after given it careful consideration, I would – in my capacity of Facilitator – suggest deleting the phrase “to be updated at least [weekly] [monthly,] where possible” as the focal point of the provisions is the following reference to reporting annually to the Authority on any discharges. It is placed in double square brackets. Alternatively, I could also propose a reference to the register being updated “immediately” after a discharge event. I invite for a discussion on this.

## **Section 4**

### **Compliance with Environmental Management and Monitoring Plans and performance assessments**

#### **Regulation 51 [IWG ENV]**

##### **Compliance with the Environmental Management and Monitoring Plan**

1.A Contractor shall, in accordance with these regulations, implement and adhere to its Environmental Management and Monitoring Plan and shall:

(a) Monitor continuously in accordance with the applicable Standard, on Environmental Monitoring submit environmental monitoring data [publicly], in accordance with regulation 46bis, paragraph 4 in an accessible format consistent with best scientific practice, where possible or at monthly intervals and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, including a comparison between baseline data and monitoring data, as well as a comparison between baseline data and threshold values, to document the actual effects on the Marine Environment and manage all such effects as an integral part of its Exploitation activities as set out in the relevant Standards and taking into account the relevant Guidelines referred to in regulation 45;

(b) Implement all applicable mitigation and management measures to ensure the effective protection of the Marine Environment from harmful effects, as set out in the [ ] Standards, inter alia those referred to in regulation 45, and taking into account Guidelines ; and

(c) Monitor compliance with, assess, and maintain the currency and adequacy of the Environmental Management and Monitoring Plan and its Environmental Management System during the term of its exploitation contract including through management review under regulation 46, performance



assessment under regulation 52, and with modification to the Plan of Work under regulation 57 where required.

**Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- A submission proposed to delete the reference in point a to publicly submitting the monitoring data. I have placed this in square brackets and invite for views on this.

**Regulation 52 [IWG ENV]**

**Review of the Performance assessments of the Environmental Management and Monitoring Plan**

1. A Contractor shall conduct performance assessments of their Environmental Management and Monitoring Plan. The Commission shall review the performance assessments of the Environmental Management and Monitoring Plan undertaken by a competent and independent auditor hired by a Contractor in accordance with the relevant Standards and taking account of the relevant Guidelines. [In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall assess:

(a) The compliance of the mining operation with the mitigation and management measures included in the Environmental Management and Monitoring Plan, as a part of the approved Plan of Work;

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

(c) The conformity of the plan with the measures included in the Environmental Management and Monitoring Plan and take into consideration the applicable Regional Environmental Management Plan,

(d) The accuracy of the findings of the environmental impact assessment as set out in the Environmental Impact Statement.

(e) The changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities are reflected;

(f) The outcomes of management reviews of the environmental management system are conducted under regulation 46(2)(e); and

(g) Information and data derived from monitoring at the mine site and impact area as well as from any Exploitation by other Contractors is provided.

(g)bis The implementation report of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission in accordance with Regulation 48 above.

(g)ter Any finding of the Inspectors, especially those findings that indicate the non-compliance of the Contractors towards the submitted and approved Environmental Monitoring and Management Plan, as well as the recommendations on measures to be taken as shown in the inspection result.]

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 every twenty-four months

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

- (a) An Incident ;
- (b) Receipt of an unsatisfactory annual report;
- (c) Issuance of a compliance notice or
- (d) When deemed necessary by the Council in response to third-party information submitted to the Council.

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

4. The Secretary-General shall publish the Performance Assessment Report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholder's comments to the Commission [and Compliance Committee / Inspector-General]. The Commission shall in consultation with the [Compliance Committee / Inspector-General] review the performance assessment report and any stakeholder comments received to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Commission should, where necessary and appropriate, consult external experts to review the performance assessment. .

5. Where the Commission upon review of the report and any Stakeholder comments received in relation to it, and upon the advice of the [Compliance Committee / Inspector-General] considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, to the applicable Standards, relevant Guidelines and the Environmental Management and Monitoring Plan, the Commission may require, after providing the Contractor with a reasonable opportunity to address any inadequacies, the Contractor to:

- (a) Submit any relevant supporting documentation or information requested by the Commission including a revised report; or
- (b) 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 consistent with the applicable Standards 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 Commission shall:

- (a) Recommend to the Council to 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. Such report shall be published on the Authority's website.

10. The Secretary-General shall inform the Sponsoring State or States of any action taken pursuant to this regulation.

**Explanation/comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- A submission proposed to insert new litras “g bis” and “g ter” in paragraph 1. I see merit in especially proposed litra “g ter” but invite for a discussion on these.
- One participant proposed to have the reference in paragraph 2 bis to the “Council” deleted and instead refer to the “compliance body”. I have placed this in square brackets invite for views on this.
- Two participants submitted proposals relating to the Secretary-General publishing the Performance Assessment Report and providing opportunity for Stakeholders to comment and submit the report to the Commission. One participant submitted this as an amendment to paragraph 4 while the other proposed to include it as a new paragraph “3bis”. I see merit in the proposals and have therefore included these. The two proposals were, to a large extent, similar in wording and content and I have therefore merged them into one amendment to (the beginning of) paragraph 4.
- During our last meeting, one participant reflected on possibly amend paragraph 1 to separately state/list the different elements of this provision. Another participant suggested to alter the structure of paragraph 1 to better align with the mining process. I propose that the listed elements in paragraph 1 litras a-g ter could be moved to the “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](#)) which I have also suggested in the accompanying Matrix. I invite for comments to these views and also encourage that concrete proposals for re-wording/re-structuring paragraph 1 are submitted to reflect these positions.

**Regulation 53 [50bis] [IWG ENV]  
Emergency Response and Contingency Plan**

1. A Contractor shall develop an Emergency Response and Contingency Plan prior to the development and application of Plan of Work, taking into account

the result of the Environmental Impact Assessment (EIA). Furthermore, 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, as well as the implementation and monitoring results of the Environmental Management and Monitoring Plan, and shall be tested at least annually; and

(b) Such resources, training and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority including on-vessel presence for rapid emergency response.

2. The Authority shall facilitate the exchange of knowledge, information and experience relating to incidents between Contractors and States, and shall draw on the advice of other relevant international organizations, so that such knowledge and information can be used to prevent, reduce and control pollution and other hazards to the Marine Environment, , by:

(a) Contractors to meet their requirements, inter alia under regulation 53(1), and

(b) the Authority to prepare and revise relevant Standards and Guidelines and to develop and disseminate other appropriate materials.

3. Following an Incident, a Contractor must submit a detailed report on whether the Emergency Response and Contingency Plan was adequate and to what extent it was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.

**Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- I believe we have an outstanding/unfulfilled matter from our last meeting relating to the placement of this regulation. Should it continue to be placed as “regulation 53” or should it be moved to “regulation 50bis” in section 3 (on Pollution control and management of waste) after regulation 50 (related to restrictions on discharges from mining activities)? I propose to keep it in this section.
- One participant has submitted a proposal to insert a new paragraph 1. I have tried to merge this proposal into the existing paragraph 1 and invite for a discussion on this.
- One proposal suggested deleting litras a and b in paragraph 2. However, I have not noted any such objections to these provisions during the meeting, wherefore I propose to keep it.
- I have suggested to broaden para 2(b) in order to ensure the exchange of knowledge as this is vital to the ongoing sustainability of the industry and improved management measures.

## Section 5 Environmental Compensation Fund

### Regulation 54 [IWG ENV] Establishment of an Environmental Compensation Fund

1. The Authority hereby establishes the Environmental Compensation Fund. Referred to as “the Fund” in the following.

2. The rules and procedures of the Fund shall be established by the Council on the recommendation of the Finance Committee before the [ beginning of Commercial Production] under these regulations.

[Those rules and procedures shall include, inter alia:

- (a) A mechanism for financing the funds in accordance with Regulation 56, including replenishment upon disbursement;
- (b) A description of how the funds and any interest generated will be managed and by whom;
- (c) The process for accessing the funds;
- (d) The type of damages and purposes eligible for claims against the funds in accordance with regulation 55;
- (e) The standard of proof required for claims against the funds;
- (f) A policy on refunds of Contractor payments into the funds;
- (g) A process for determining disbursements or refunds from the funds; and
- (h) The promotion of the participation of affected persons or other Stakeholders in decisions about disbursement of funds.]

3. The Secretary-General shall, in consultation with the Finance Committee, within 90 Days of the end of a Calendar Year, prepare an independently audited statement of the income and expenditure of the Fund for circulation to the members of the Authority.

#### Explanation/comment

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- It is noted that one submission to this regulation welcomes the additions but recalls that it has yet to be decided whether these rules and procedures for the Fund should be developed within the regulations or as a separate standard. I support this view and propose that such a standard or/ guideline is developed, and the content of paragraph 2 litra a-h is placed there as I have also suggested in the accompanying Matrix. I have placed it in square brackets and invite for a discussion on this.
- When reading this regulation, I see a need for underlining the importance of that the rules and procedures of the Fund shall be established by the Council *before* the approval of a first plan of work is given. Also, it is important that the rules and procedures of the finance committee are clarified to assist in streamlining the

regulations. I invite for views on whether participants share this view and, if so, how this can be stressed.

**Regulation 55 [IWG ENV]**

**Purpose of the Environmental Compensation Fund**

1. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for any [unlawful] loss or damage to the Marine Environment of the Area or coastal states, or damage caused to third parties arising from Exploitation when the costs of such measures cannot be recovered from a Contractor or Sponsoring State. This includes the remediation restoration and rehabilitation of the Marine Environment (when the rehabilitation is technically and economically feasible) in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques . Compensation can be used in cases when the restoration and rehabilitation are impossible. .

1.Alt. The purpose of the Fund is to finance compensation [and mitigation costs], which cannot be borne by the Contractor or Sponsoring State as the case may be, for environmental damage outside of consented activity.

2. Based on the polluter pays principle the Contractor pay for any necessary measure to limit, remedy and compensate any [unlawful] damage to the Area arising from their Exploitation activities.

[2.Alt. Based on the precautionary principle the contractor shall pay for necessary measures to limit, remedy and compensate damage to the Area arising from exploitation, outside of consented activity.]

[3. In cases where the contractor' payment is insufficient to limit, remedy and compensate any damage to the Area arising from] [] [Exploitation,] the compensation fund may be used.]

[4. In cases where situations may arise, where a Contractor does not meet its liability in full while the Sponsoring State is not liable under Article 139 (2) of the Convention, the compensation fund may be used.]

**Regulation 55 Alt. [IWG ENV]**

**Purpose of the Environmental Compensation Fund**

1. The Environmental Compensation Fund has two purposes:
  - (a) In the event that there is environmental damage caused by contractor activities that were not consented, then in accordance with the polluter pays principle the contractor shall bear liability for the financing of any measure to mitigate that environmental damage and shall also be liable for compensation to any person affected by that environmental damage, but if the contractor is unable to meet that liability in full, then, as a last resort, the environmental compensation fund may be called upon; a
  - (b) In the event that there is unforeseen environmental damage caused by contractor activities that were consented activities then the environmental liability fund shall be used to finance any measure to mitigate that environmental damage and compensate any person affected by that environmental damage.

### Explanation / comment

- Several participants have submitted alternative proposals for rewording/restructuring the draft regulation, both ahead of the meeting in July and this meeting. I have inserted one of these alternative proposals as “Regulation 55 Alt.” as it represents a more streamlined and precise version which I support. To the participants who forwarded very detailed proposals, including to the previous alternative to Regulation 55 which has now been omitted in order to focus discussions, this specific information could perhaps best be placed in a standard or guideline which I have proposed drafted in my comment to the previous regulation (54.) I invite for comments to this.
- If the participants favour the original regulation 55 (or this is to merge with “regulation 55 Alt. I”) I would highlight that during our last meeting one participant suggested to delete paragraph 3. I propose to discuss the scope of paragraph 3, which currently states that Fund covers any damages arising from the Exploration (/mining activity) and invite for views on the extent of the Fund’s scope and how this is best addressed in clear language in the Regulation.
- To regulation 55, one participant has submitted an alternative wording to paragraph 1, which is more condensed. This is inserted as “paragraph 1.Alt.” I invite for a discussion on this.
- Proposals have been put forward to paragraphs 1 and 2 to specify that compensation relates to any “unlawful” damage or loss. I propose not to include this as it could limit the scope of the provision, but I have placed it in square brackets and invite for views on this matter.
- Several participants have proposed to refer to the “polluter pays principle” in paragraph 2 instead of the “precautionary principle”. I fully support this suggested change.
- One participant has submitted an alternative wording to paragraph 2. This is inserted as “paragraph 2.Alt.” I note that the original paragraph 2 refers to the “polluter pays principle” while the alternative paragraph (now) refers to the “precautionary principle” In this context I believe that the original wording (referring to the “polluter pays principle”) is correct and this version should be used going forward. I have placed 2 alt. it in square brackets and invite for a discussion.
- Several participants have proposed deleting paragraph 3 relating to cases where the contractor’s payment is insufficient to remedy the damage which has arisen from the exploitation, thus allowing the compensation fund to be used. As this is a principal discussion, I have put the paragraph in square brackets and invite the proponents of this proposal to present their views and all participants to have a discussion on this. I believe that there is merit to these proposals.
- As stated above, I have omitted the previous alternative to Regulation 55 in order to focus discussions. However, ahead of the meeting in July one participant had submitted a suggested paragraph (para 2 in the previous alternative version) which sought to incorporate the principles of the 2011-Advisory Opinion from ITLOS on “Responsibilities and Obligations of States sponsoring persons and entities with respect to liability Sponsoring States for activities in the Area under article 139 of the Convention”. (See para 206 of the

Advisory Opinion). I believe there is great merit to this inclusion and have therefore inserted this paragraph from the previous alternative and placed it (in square brackets) as a new paragraph 4 in Regulation 55. I invite for a discussion on this.

**Regulation 56 [IWG ENV]  
Funding of the Environmental Compensation Fund**

1. In adherence to the polluter-pays principle the Fund will consist of, but not be limited to, the following monies:

(a) The prescribed percentage or amount of fees paid after approval of a plan of work and prior to the commencement of activities (Commercial Production) in the Area under an Exploitation Contract by Contractors or the Enterprise to the Authority;

(a) alt. The requirements and modalities governing contributions to the Fund in accordance with regulation 56, including the establishment of the minimum size of the fund, and the modalities for replenishment of the fund upon disbursement.

(b) The prescribed percentage of any penalties paid by Contractors or the Enterprise 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;

(c) alt. Establishment of rules, guidelines and modalities for determining entities eligible to access the Fund, which may include states and private entities that have suffered damages.

(d) Any monies paid into the Fund at the direction of the Council, based on recommendations of the Finance Committee;

(e) Any income received by the Fund from the investment of monies belonging to the fund;

(f) An annual levy paid by Contractors or the Enterprise to the Fund; and

(g) Any contributions paid by Sponsoring States to the Fund.

**Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- Two participants have submitted almost identical proposals for amending litra a. I have tried to merge these two and invite for comments to this.
- One participant has submitted a proposal to establish that the fees should be paid “after approval of a plan of work” (and prior to the



commencement of mining). I have merged this proposal into the existing litra a and invite for a discussion on this.

- One participant submitted a proposal for an alternative wording of litra a. This proposal has been inserted as “litra a. Alt.” I note that this alternative provision refers to “regulation 56” i.e. this regulation which is being discussed. If this is a mistake the correct regulation should be inserted. If this is not a mistake, I propose to reword this part to e.g., state; “*The requirements and modalities governing contributions to the Fund in accordance with this regulation, (...)*”. I invite for a discussion on utilizing this alternative litra a.
- On litra a, I recall comments, during our previous meeting where this was regulation discussed, on how the fund compensate in the early years of mining? This needs to be clarified, wherefore I invite for a discussion on this.
- One participant noted during our previous meeting where this regulation was discussed that the reference to “prescribed contributions” in litra g needs to be clarified in terms of what the scope is. I invite for views on this.

## Part V

### Review and modification of a Plan of Work

#### Regulation 57 [IWG IM]

#### 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.]

2 alt. If a Contractor wishes to modify a Plan of Work, it shall notify the Secretary-General. The Secretary-General shall [inform the Council and] transfer the [alt 1. request][alt 2. modified Plan of Work] to the Commission, to consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the [applicable] Standards. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor [may submit an appropriate recommendation to the Council] ~~shall seek the prior approval of the Council~~ ~~b~~Based on this recommendation of the Commission, under regulations 12 and 16, [the Council may give its prior approval] ~~and~~ before such Material Change is implemented by the Contractor. The sponsoring State shall also be informed.

3. Where the proposed modification under paragraph 2 [alt 1. relates to a Material Change in] [alt 2. may have a potential impact on] 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.

[3 alt 1. Where the proposed modification under paragraph 2 is determined to constitute a Material Change, the Council, based on the recommendations of the Commission, shall determine whether the Contractor is required to undertake an environmental impact assessment and prepare an environmental impact statement of the proposed modification in accordance with Regulations [46bis] and [47], respectively. The Environmental Impact Statement, and any revisions to the Environmental Management and Monitoring Plan or Closure Plan, shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.]

[3 alt 2. Where the proposed modification constitutes a Material Change, the public participation procedure as outlined in regulation 11 shall be held.]

4. ~~Notwithstanding Paragraph 2, The Secretary-General may propose to and the Contractor may agree to a change to the Plan of Work that is not a Material Change in accordance with the relevant Standards, 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 and the Council at ~~its~~ their next meeting. ~~The Council may decide to apply the procedure as provided in paragraph (2).~~

4. alt 1. ~~The Commission may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. In case of Contractor's agreement the Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary General shall so inform the Council at its next meeting.~~

4 alt 2. ~~The Commission may recommend a change to the Plan of Work that is not a Material Change. The Secretary General will transmit the recommendation to the Contractor, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting. In the instance of correcting minor omissions, errors or other such defects which are not substantive, the ISA Secretariat will be responsible for making the change and informing the Contractor and the Sponsoring State.~~

4 alt 3. ~~The Commission or the Secretary-General may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. The Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting.~~

#### **Regulation 58 [IWG IM]**

##### **Review of ~~activities under~~ a Plan of Work**

1. ~~A Plan of Work shall be reviewed a~~At intervals not exceeding five years from the date of signature of the exploitation contract. ~~[alt 1. The Commission or the Council can initiate additional reviews][alt 2. or by decision of the Council based on the recommendations of the Commission]~~ in accordance with the applicable Standards and taking into account the applicable Guidelines [or] where,

~~according to the relevant organ of the Authority, as appropriate in the opinion of the Secretary General, there have occurred any of the following events or changes of circumstance taking into account:~~

1 alt. Activities under a Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the exploitation contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:

[(a) A proposed Material Change in the implementation of the Plan of Work;]  
*[Facilitators' note: proponents for deletion of this sub-paragraph noted that a material change would be a potential outcome of a review, not a trigger for a review.]*

[(a bis.) Identification of a new **significant** environmental risk, or a significant change to existing risk calculations;]

(a bis alt.) Information has come to light that was not available when the Plan of Work was approved, including changes in Best Available Techniques or Best Available Scientific Information, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;

(a ter.) An indication that the cumulative ~~effects~~ **impacts as a result** of Exploitation activities exceed any environmental thresholds established under the applicable Standards [and objectives established under the applicable Regional Environmental Management Plan;]

(a quat.) New **significant** information relevant to the effective protection of the Marine Environment;

(a quin.) Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved.

(a sexies.) a request by another international body concerning other activities or measure in the Marine Environment pursuant to regulation 31.

(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;]  
*[Facilitators' note: proponents for deletion of this sub-paragraph consider this criteria should trigger a compliance response, not a regular review process that leads to an amended Plan of Work. This point may be relevant to the Intersessional Working Group on Inspections, Compliance and Enforcement.]*

(f) **Significant** ~~C~~changes in Best Available Techniques;

(g) **Significant** ~~C~~changes in Best Available Scientific Information;

(g bis.) **Significant** ~~C~~changes in Best Environmental Practices;

(h) Operational management changes, including changes to subcontractors and suppliers, whereby the Commission, after review with the Contractor of the Contractor's activities under the Plan of Work, shall recommend to the Council whether any modifications to the Plan of Work are necessary.] the relevant organ of the Authority as appropriate shall [Secretary General may] review with the Contractor the Contractor's activities under the Plan of Work, and such organ shall recommend to the Council [discuss] whether any modifications to the Plan of Work are necessary or desirable.

(h bis.) Changes in the overall policy of the Authority.

*[Facilitators' note: one submission asks for more clarity on the procedure for 'pulling the trigger' to initiate the review; and queries whether or not the Contractor is expected to suspend activities until the review concludes and a new Plan of Work is adopted? Another submission noted the need for a threshold of 'significance' for trigger events, and suggested this could be further detailed in Standards.]*

2. [alt 1. The Contractor shall commission a competent, independent expert or experts to undertake a review under paragraph (1)] [alt 2. A review of activities under paragraph (1) shall be undertaken by the Contractor and verified by an independent expert] in accordance with the relevant regulations, Standards and taking into account the Guidelines. The [Secretary-General][or][and][the Contractor] shall invite the sponsoring State or States, and relevant coastal States, to participate in the review of [activities][the Plan of Work]. The results of the review shall be compiled as a report.

*[Facilitators' note: submissions noted that it was yet to be discussed who would be conducting the review, which point needs to be settled in order to be reflected clearly in this regulation 58].*

3. The Secretary-General shall forward the report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, [alt 1. the Contractor or the Council, based on the recommendation by the Commission, 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)] [alt 2. Material Changes need to be made to the Plan of Work, the Commission shall recommend the relevant changes to the Council, and the Contractor shall implement them].

[[3 alt.] The organ person or persons in charge of the review shall report on each review to the Commission and Council, the sponsoring State or States and the relevant coastal States. Where, as a result of a review, material changes the Council, Commission, Contractor or reviewer identifies that modifications need to be made to the Plan of Work, the Commission shall recommend said changes to the Council, and the Contractor shall implement such changes as soon as viable. 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) shall apply.

4. [alt 1. For the purpose of the review, the Contractor shall provide all] [alt 2. The Secretary-General may request the Contractor to submit such additional data and] information required by the [alt 1. independent expert or experts] [alt 2.

Secretary-General] in the manner and at the times [alt 1. as ~~the Secretary-General~~ reasonably requests][as may be necessary for the purposes of this regulation].

5. Nothing in this regulation shall preclude the ~~appropriate organ of the Authority~~ **Commission or the Council Secretary-General**, the sponsoring State or States, 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).

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 [IWG ENV]

##### Closure Plan

1. A Contractor shall develop a Closure Plan, in accordance with Regulation 7 (3) (i), Annex VIII to these regulations, the Environmental Management System and other Environmental Plans of the Contractor, as well as Standards, also taking into consideration Guidelines and the Regional Environmental Management Plan.

[1.bis. The objectives of a Closure Plan are to ensure that:

(a) The marine environment is effectively protected and will have a clear and healthy status following the end of mining activities, (b) The adverse effects arising from closure activities are avoided, , or mitigated,

(c) Any remaining environmental effects continue to be monitored and reported for a period prescribed in the closure plan, (d) The mined site is returned to its natural state, or returned to its natural state to the extent possible, through rehabilitation and restoration,

(e) The closure of mining activities is a process that is incorporated into the mining life cycle,

(f) Contractors take appropriate steps to minimise harm to the environment and to human health during any period of temporary suspension.]

2. The Closure Plan shall, in accordance with the requirements of Annex VIII, set out the responsibilities and actions of a Contractor during any temporary suspension, and also for the decommissioning and closure of activities in a Mining Area, including the post-closure management and monitoring of remaining Environmental Effects. [In fulfilling these responsibilities, the Contractor shall, *inter alia*:

(a) Undertake activities and the scheduling of studies, based on available baseline data, to inform about Closure,

(a bis) Undertake a gap analysis of existing environmental data to determine if additional baseline information and/or surveys will be required, and

(a ter) Utilise Best Industry Practice, Best Environmental Practices, Best Available Techniques and Best Available Scientific Information,

(b) Set a date of cessation or suspension of mining activities, at which point a management and monitoring plan must also be in place for the period prescribed in the Closure Plan and in accordance with the Standards and taking into account the relevant guidelines and results obtained in previous monitoring activities,

(b bis) Undertake early discussions between the Authority and contractors so that regulators understand the likely timing of

(i) mining cessation, (ii) decommissioning,

(iii) post-closure monitoring.

(c) Final environmental condition of the area, including the state of remaining reserves, the oceanographic, geological, biological, socioeconomic and sociocultural condition, and the risks relating to remaining Environmental Effects are identified, quantified, assessed and managed in accordance with Best Available Scientific Information, Best Available Technologies Best Available Technologies and Best Environmental Practices, which includes the gathering of information relevant to closure or suspension,

(d) Comply with health and safety requirements related to closure activities,

(e) Report on the identification, monitoring, and quantification of remaining Environmental Effects to the Authority, including data to inform about recovery or lack thereof, over a period established in the closure plan, and management responses are implemented in a timely manner, including plans for further surveys, data collection, Mitigation, or remediation where appropriate.

(f) Make and fulfil required disposal, restoration and rehabilitation commitments in accordance with the relevant Standards and taking into account the relevant Guidelines,

(f bis) Remove completely any Installations and equipment, or parts therefrom, from the Mining Area, as well as any kind of abandoned waste. The Closure Plan should include an assessment of options leading to the identification of the contractor's preferred decommissioning solution for Installations and equipment, as well as parts therefrom, and

(g) The mining activities are closed or suspended efficiently and safely.]

2bis. The Contractor shall ensure transparency during the Closure process and consult Stakeholders in the Closure Plan design, review, and implementation.

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

4. A contractor shall maintain and update its Closure Plan in accordance with these regulations, and Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Information and the Standards and taking account of the relevant Guidelines.[5. The Closure Plan shall be reviewed and updated taking into account the results obtained from monitoring closure activities;

(a) Each time there is a Material Change in a Plan of Work, including new knowledge, technologies, devices and new scientific findings, change of contractor or sponsoring State, (b) Every five years, when no Material Change has required an earlier update, and

(c) In the five years preceding the planned end of the period of Exploitation, the Closure Plan shall be updated [annually] [every 2 years] [every 3 years] [in

the third and fifth year] [in the year before closure] and finalized in accordance with Regulation 60 (1).]

5. Alt. In the five years preceding the planned end of the period of Exploitation, or any other period as deemed necessary by the Contractor and the Sponsoring State, the Closure Plan shall be reviewed annually and, if necessary, be updated and be finalized in accordance with regulation 60(1). The review and update of the Closure Plan shall take into account the results obtained from monitoring post-closure activities and each time there is a Material Change in a Plan of Work. In cases where no such Material Change has occurred and no monitoring data and information or improved knowledge or technology has signalled need for updates, every five years and at the end of the project and be finalized in accordance with regulation 60 (1). Details on the procedures of review of the Closure Plan, including conditions requiring updates thereof, shall be further elaborated in the Standards and Guidelines.

**Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- At a previous meeting, several participants called for streamlining this and other regulations. Some participants agreed to form an intersessional working group to rework and submit a revised/streamlined version of regulation 59, using the previous version of the regulation as a basis. I thank the group for its hard work and for the submitted proposal which I have reviewed and will use as the basis of this regulation going forward.
- In para 2(e), one group suggested to delete the last sentence as this is already covered by a separate insertion in the beginning of the para.
- I note that the group has presented a draft where the participants weigh in with (sometimes diverging) views and comments to the submitted provision. For example, in paragraph 5, litra c there is a reference to requiring the Closure Plan to be updated at a specific interval in the last five years leading up to the planned end of the period of exploitation. These different intervals (annually, every 2 years, every 3 years, in the third and fifth year or in the year before closure) have been placed in square brackets. I invite for views on this.
- Some participants have proposed an alternative to paragraph 5. This has been inserted as paragraph 5 alt and I invite for a discussion.
- In general, and as also referred to in paragraph 5 alt, several participants have stated a need for consolidation or rewording or formal drafting of the regulation, perhaps moving parts to a relevant standard or guideline. I fully agree and propose that the detailed provisions in paragraph 1 bis, paragraph 2 litra a-g and paragraph 5 litras a-c are moved to a standard and/or guideline, either to be developed or in the existing “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” which has references to the Closure Plan (see [The Mining Code: Standards and Guidelines – International Seabed](#)

[Authority \(isa.org.jm\)](http://isa.org.jm) or Annex VIII. I have also suggested this in the accompanying Matrix. I have placed these mentioned sections (eligible for transfer to standard and guideline) in square brackets and invite for a discussion on this and/or concrete suggestions on streamlining this provision to be able to proceed on finalizing these Draft Regulations.

**Regulation 60 [IWG ENV]**

**Final Closure Plan: cessation of production**

1. A Contractor shall, at least 24 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation including a temporary suspension, submit to the Secretary-General, for the consideration of the Commission, a Final Closure Plan, taking into account the results of monitoring and data and information gathered during the exploitation phase and the applicable Regional Environmental Management Plan.

1bis. The Secretary-General shall make the final Closure Plan submitted pursuant to paragraph (1) available on the Authority's website for a period of at least [60] [90] days and invite members of the Authority and Stakeholders to submit comments in writing.

1 ter. The Secretary-General shall, within [seven calendar days] [14 calendar days] following the close of the commenting period under paragraph 1bis, provide the comments submitted by members of the Authority and Stakeholders, to the applicant Contractor for its consideration and to the Commission. The Contractor shall consider the comments and provide responses to the substantive comments received and shall submit any revised plans and responses to the Commission within 90 days from receiving the comments from the Secretary-General.

2. The Commission shall examine the Final Closure Plan and any comments received pursuant to paragraph 1bis and revisions and responses made pursuant to paragraph 1ter at its next meeting, provided that these have been circulated at least [30] [60] [[90] Days in advance of the meeting or of receipt of the Final Closure Plan. The Commission should, where necessary and appropriate to ensure sufficient technical expertise, consult external independent experts, identified in accordance with Annex VIII to evaluate the Final Closure Plan.

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 the Contractor to make and submit amendments to the final Closure Plan as a condition for recommendation of approval of the plan in accordance with paragraph 3 of this regulation.

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] [60] [90] Days in advance of that meeting.

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

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

9. Any reports and recommendations submitted to the Council and decisions made by the Council under this regulation shall be published on the Authority's Website by the Secretary-General within [7] [14] days of a submission or decision being made.

#### **Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- At a previous meeting, several participants called for streamlining this and other regulations. Some participants agreed to form an intersessional working group to rework and submit a revised/streamlined version of regulation 60, using the previous version of the regulation as a basis. I thank the group for its hard work and for the submitted proposal which I have reviewed and will use as a basis on this regulation going forward.
- I noted that not all paragraphs have been amended by the group; for example, paragraph 1 bis to which one participant has submitted a proposed change regarding deadlines for uploading on the Authorities website and submitting comments in writing. I have left these proposed changes in square brackets for your consideration and invite for views on this.
- I invite the group members to lead the discussion during our meeting, including the deliberations on whether reports, responses and recommendations should be circulated at least 30, 60 or 90 days ahead of meetings as suggested in paragraph 2 and 6 as well as whether decisions should be published on the Authority's website within 7 or 14 days as suggested in paragraph 9. (Suggestions left in square brackets). I invite for a discussion on this following the introduction by the group.
- Finally, I would note that – as I also referred to in my comments to the previous regulation (60) – parts of this regulation could perhaps be relocated to Annex VIII or a standard and/or guideline, either to be developed or in the existing “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](#)). although I have no concrete proposal for which parts should be moved. I invite for a discussion on this.

#### **Regulation 61 [IWG ENV] Post-closure monitoring**

1. A Contractor shall implement the Final Closure Plan in accordance with Best Environmental Practices and Good Industry Practice and shall report to the Secretary-General on the progress of such implementation on an [annual] [two year] basis [after an initial 5 year period] [or on a case-by-case basis agreed by the Council on recommendation from the Commission]. This report shall include a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the post closure monitoring programme, and management actions taken in response to any adverse Environmental Effects identified through monitoring, until completion of execution of the Final Closure Plan.

1 alt. A Contractor shall implement the Final Closure Plan and shall report to the Secretary-General on the progress of such implementation, including a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the monitoring programme, and management actions taken in response to any adverse Environmental Effects identified through monitoring, until completion of execution of the Final Closure Plan. Such report will be submitted in accordance with the following schedule: on annual basis during the first [three] [five] years after cessation of mining activity, on two year basis during the next [six] [four] years, on five yearly basis during the remaining term of the Closure Plan. This schedule can be corrected in agreement with the Council on recommendation from the Commission.

2. The Contractor shall continue to monitor the Marine Environment for a minimum of [such period] [X years] after the cessation of activities, or until the closure objectives have been achieved, as set out in the Closure Plan and for the duration provided for in the Standards and taking into account Guidelines.

2 bis. Monitoring data shall be released publicly in an accessible format according to the relevant Standard and taking into account Guidelines in intervals defined in the Final Closure Plan according to the Standard adhering to internationally recognized data principles, consistent with Best Scientific Practices, [] [in annual intervals] []

3. Upon completion of implementation of the Final Closure Plan, the Contractor shall, in accordance with the procedure described in the Standard, hire a competent, independent and accredited auditor to conduct a final compliance assessment and submit a final compliance assessment report according to the relevant Standards and taking into account relevant Guidelines to the Secretary-General to ensure that the closure objectives contained 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.

3 bis. The Commission shall provide a report and recommendations to the Council for consideration, who shall decide whether, the objectives of the final Closure Plan have been achieved, which decision shall be relevant to the retention, release, forfeiture or use by the Authority of the Contractor's Environmental Performance Guarantee. The report shall be published on the website of the Authority.

4. If, on the basis of the auditor's report and Commission's recommendations provided pursuant to paragraph(3bis),) the Council decides that a Contractor has failed to meet, , the objectives of the Final Closure Plan and reporting hereon, the Council shall direct the Contractor what further action must be taken to achieve the objectives of the Closure Plan.

**Explanation / comment**

- For overall remarks to Regulation 49-61 and the annexes, please see my comments to Regulation 49.
- At a previous meeting several participants called for streamlining this and other regulations. Some participants agreed to form an intersessional working group to rework and submit a revised/streamlined version of regulation 61, using the previous version of the regulation as a basis. I thank the group for its hard work and for the submitted proposal which I have reviewed and will use as basis on this regulation going forward.
- I note that the group has presented a draft where the participants weigh in with, sometimes diverging, views and comments to the submitted provision. Exemplified by there being both a “paragraph 1” and “Paragraph 1 alt.”.
- I invite the group members to lead the discussion during our meeting, including the deliberations in paragraph 1 and 1 bis as well as in paragraph 2 and 2 bis, on specific intervals – listed in square brackets – for different periods of monitoring. I invite for a discussion on this following the introduction by the intersessional working group.
- In paragraph 1, several participants have submitted different proposals regarding the timeframe for the Contractor to submit a report to the Secretary-General on the progress of the implementation of the Final Closure Plan. I have placed these suggestions in square brackets and invite for views on this.
- I also note that several references are made to the need for consolidation or rewording or formal drafting of the regulation.
- As mentioned in my previous comments to the Closure Plan regulations, parts of this regulation could perhaps be relocated to Annex VII to a standard and/or guideline, either to be developed or in the existing “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](#)) although I have no concrete proposal for which parts should be moved. I invite for a discussion on this.
- On a final note, this group has also proposed definitions of “Closure”, “Decommissioning” and “Final Closure Plan” which have been inserted in the Schedule.

**Part VII  
Financial terms of an exploitation contract****Section 1 General****Regulation 62 [OEWG]**

## Equality of treatment

The Council [shall, based on the recommendations of the Commission, apply the provisions of this Part ~~in~~ on a transparent, uniform and non-discriminatory basis manner, and] shall ensure equality of financial treatment and comparable financial obligations for Contractors [to counter any disparity arising out of any grossly incomparable concentration of given resources].

### Explanation / Comment

- Participants at the July meeting supported inclusion of the word “transparent”. Those participants also proposed to change “manner” to “basis”. I propose to change “manner” to “basis”, to be consistent with other provisions (i.e. Regulation 63).
- One participant proposes adding “to counter any disparity arising out of any grossly incomparable concentration of given mineral resources”. I invite comments.
- One participant proposes deleting, “shall be applied in a uniform and non-discriminatory manner” as it may create a negative inference for sections where these words are not included. It recommends adding “transparency” to Regulation 1. I invite comments.

## Regulation 63 [OEWG] Incentives

1. The Council may, taking into account the recommendations of the Commission [and the Economic Planning Commission], [in accordance with the Standards and taking into account the Guidelines,] provide for incentives to Contractors, including financial incentives, [as well as regulatory and technical advice] on a transparent, uniform and non-discriminatory basis, [to further] [limited to] the objectives set out in article 13 (1) of annex III to the Convention. [Incentives introduced by the Authority shall, where appropriate, incentivize also Contractors to go beyond their existing contractual obligations and good industry practice, in particular in the context of environmental performances, and fully reflect any impacts on ecosystem services and the natural capital.]

2. [Furthermore,] the Council may provide incentives, [including financial incentives,] to [those Contractors entering into] [Contractors to undertake] joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing including to 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.

[4. Any incentives shall be fully compatible with the policies and principles under Regulation 2].

### ALT

1. In accordance with the Standards and Guidelines and considering the

recommendations of the Commission, the Council may offer incentives, as well as regulatory and technical advice to all Contractors, transparently, uniformly, without discrimination or arbitrariness, to advance the goals outlined in article 13 (1) of Annex III to the Convention.

2. Furthermore, the Council may provide advice and support to Contractors entering into joint arrangements with the Enterprise as stipulated in article 11 of annex III to the Convention. The primary purpose of these incentives is to promote technology transfers and to support the training of personnel from both the Authority and developing States.
3. The provision of these incentives should not create an artificial competitive advantage for any of the companies holding exploitation contracts.
4. The Council will ensure that the incentives granted to Contractors, as per paragraphs 1 and 2, do not result in an explicit or implicit subsidy, giving them an unfair competitive leverage over land-based miners.

#### Chair's Proposed text

1. Pursuant to Article 11 of Annex III to the Convention, the Council may provide financial incentives to Contractors to undertake joint arrangements with the Enterprise, as provided for in Article 13 of Annex III to the Convention.
2. 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.
3. Any incentives shall be fully compatible with the policies and principles under Regulation 2.

#### **Explanation / Comment**

- There are now three options to consider for this regulation. The first option includes 4 paragraphs incorporating the text mark-up to date. The second option is a 4 paragraph proposal from a participant. The third option is a Chair's proposal.
- As requested at the July meeting, I have prepared a proposal for consideration as a Chair's text. It attempts to limit the reference to financial incentives to the scope of Article 11 and Article 13 of Annex III, and also seeks to avoid selectively referencing from those articles.  
7.
- One participant proposes that the incentives referred relate to joint ventures with the Enterprise only, and therefore suggests merging paragraphs 1 and 2 and clarifying that financial incentives are only permitted to further a subset of the objectives listed in Article 13 paragraph 1 of annex III.
- One participant proposes including a reference to the Economic Planning Commission, with the explanation that UNCLOS Annex III Article 13 paragraph 14 requires

recommendations of the Economic Planning Commission and the LTC before rules, regulations and procedures are adopted in relation to incentives to further the objectives set out in article 13(1). I invite comments.

- One participant has proposed a change “Contractors to undertake” to replace “to those Contractors undertaking” to more closely reflect Article 13(1)(d).
- One participant has proposed adding “regulatory and technical advice”, in addition to incentives. I invite comments.
- One participant has proposed to clarify that any incentives should be aligned with efforts to reduce environmental impacts such as, for instance, through the use of zero-carbon fuels. The concept of incentives is supposed to take into account efforts of contractors that go beyond legal obligations and best business practices, in particular in the context of the environment. Contractors should not be given any incentives to execute what they are already obliged to do under the contract. I invite comments.
- One participant proposes deletion of ‘Furthermore’ in DR63(2), as this seems to indicate incentives for joint arrangements with the Enterprise are further and additional to another type of incentive that may be offered, which we do not consider to be an accurate reading of UNCLOS.
- Three participants proposed that the Standards and Guidelines should include a clear definition and explanation of “financial incentives”. Another participant opposes this and considers it should be left to experts. I invite the view of the participants as to what that definition would include.
- Participants at the July meeting supported including paragraph 4. One participant now opposes paragraph 4.

## **Section 2**

### **Liability for and determination of royalty**

#### **Regulation 64 [OEWG]**

##### **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 pursuant to paragraph 1 of section 8 of the annex to the Agreement.

#### **Explanation / Comment**

- Following discussions at the March 2023 meeting where a number of participants expressed views that Commercial Production should be defined with more specificity, some participants submitted comments indicating that further guidance is needed concerning the definition of “Commercial Production”. One participant has expressed concerns about commercially strategic stockpiling.

**[Regulation 64Bis [OEWG]**

**Determination of the applicable equalization measure**

1. If a Contractor's most recent Equalization Measure Audit confirms that:
  - (a) the Contractor does not have any Tax Exemptions from its Sponsoring State(s); and
  - (b) the Contractor does not receive any Subsidies from its Sponsoring State(s),  
then the Contractor shall pay the Top-up Profit Share Payment to the Authority.
2. If a Contractor's most recent Equalization Measure Audit confirms that:
  - (a) the Contractor does have Tax Exemptions from its Sponsoring State(s); and/or
  - (b) the Contractor does receive Subsidies from its Sponsoring State(s),  
then the Contractor shall pay the Additional Royalty to the Authority.
3. A Contractor shall ensure that an Equalization Measure Audit shall be carried out prior to the commencement of Commercial Production and periodically thereafter as determined by the Authority in accordance with the relevant Standard and applicable Guidelines. Promptly on its completion a Contractor shall forward a copy of the Equalization Measure Audit to the [Secretary-General][Commission].
4. A Contractor will pay for each Equalization Measure Audit, which shall be undertaken by an Independent Auditor in accordance with the relevant Standard and applicable Guidelines.
5. A Contractor and Sponsoring State(s) shall fully assist an Independent Auditor undertaking an Equalization Measure Audit and shall provide the Independent Auditor with all relevant documentation, including but not limited to the Contractor's audited accounts, any sponsorship agreement or other arrangements between the Contractor or any of its Related Entities and the Sponsoring State(s) or any other government authority in any jurisdiction, any contract, and any other documents that evidence or provide the Contractor with an actual or potential Tax Exemption or Subsidy.
6. If a Contractor or any of its Related Entities, at any time after the initial Equalization Measure Audit has been completed, enters into, or otherwise agrees, or receives the benefit of, any arrangement that could be considered to provide the Contractor with an actual or potential Tax Exemption or Subsidy, the Contractor shall immediately notify the [Secretary-General][Commission]. The [Commission] may, in accordance with the relevant Standard and applicable Guidelines, determine that an Equalization Measure Audit must be carried out.

**Regulation 64Ter Additional Royalty [OEWG]**

1. The Additional Royalty payable under Regulation 64Bis is in addition to the royalty provided for in Regulation 64.
2. If required under regulation [64Bis], a Contractor, from the [commencement of

- the Second Period of Commercial Production][fifth anniversary of the date of commencement of Commercial Production], shall pay an Additional Royalty in respect of mineral-bearing ore sold or removed without sale from the Contract Area as provided for in Appendix IV to these regulations.
3. The Authority shall set an Applicable Additional Royalty Rate in respect of the Additional Royalty to be paid by the Contractor to the Authority for the Minerals which constitute polymetallic nodules, as set out in the relevant Standard and applicable Guidelines.
  4. The Applicable Additional Royalty Rate shall be [8%].
  5. The Additional Royalty payable to the Authority for each [royalty return period][Calendar Year] shall be equal to X minus Y, where:
    - (a) X is the product of the Applicable Additional Royalty Rate multiplied by the Aggregate Relevant Metal Value for that [royalty return period][Calendar Year]; and
    - (b) Y is any amount of Allowable Sponsoring State Tax that has not been deducted in previous [royalty return periods][Calendar Years] when calculating an Additional Royalty payment or a Top-up Profit Share Payment, calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Additional Royalty be less than zero.
  6. A payment from a Contractor to the Sponsoring State(s) is an Allowable Sponsoring State Tax, where:
    - (a) the payment is an actual cash payment made by the Contractor to its Sponsoring State(s) in respect of taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract;
    - (b) there is a [signed letter][receipt] from the Sponsoring State's tax authority stating the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract; and
    - (c) where there is a signed letter from an Independent Auditor confirming the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract.
  7. The Contractor shall pay for the audit referred to in regulation [64Ter.6(c)].
  8. [Draft Regulations 27, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 89 shall apply to the Additional Royalty as they apply to the royalty.
  9. Appendix IV definitions apply to the Additional Royalty as they apply to the royalty.
  10. Draft Standard sections 1 to 4 apply to the Additional Royalty as they apply to the royalty.]

**Regulation 64Qua [OEWG]**  
**Top-up Profit Share Payment**

1. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production][fifth anniversary of the date



of commencement of Commercial Production], shall pay a Top-up Profit Share Payment [ as provided for in Appendix IV to these regulations].

2. The Authority shall set an Assumed CIT Rate in respect of Top-up Profit Share Payment to be paid by the Contractor to the Authority, as set out in the relevant Standard and applicable Guidelines.

3. The Assumed CIT Rate shall be [25%].

4. The Top-up Profit Share Payment payable to the Authority for each [royalty return period][Calendar Year] shall be equal to A minus B, where:

(a) A is the Assumed CIT Rate multiplied by Profits for that [royalty return period][Calendar Year]; and

(b) B is Total Eligible Payments for that year, calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Top-up Profit Share Payment be less than zero.

5. Profits for the [royalty return period][Calendar Year] are equal to C plus D plus E (without double counting) where:

(a) C is the sum of the Income for that [royalty return period][Calendar Year] from Relevant Activities from all Related Entities that have not met the Inclusion Criteria;

(b) D is the sum of the Income for that [royalty return period][Calendar Year] from all activities from all Related Entities that have met the Inclusion Criteria; and

(c) E is the Income of the Contractor for that [royalty return period][Calendar Year].

6. Total Eligible Payments for a [royalty return period][Calendar Year] are equal to Eligible Royalty Payments to the Sponsoring State(s) for that [royalty return period][Calendar Year] plus Eligible Tax Payments for that [royalty return period][Calendar Year].

7. Eligible Royalty Payments are royalties payable to the Sponsoring State(s) by the Contractor [related to activities associated with][accruing from seabed mining under] the exploitation contract.

8. Eligible Tax Payments are equal to F plus G, where:

(a) F is the sum of Covered Taxes [incurred][paid] by all Related Entities to the Sponsoring State(s) or any other government authority in any jurisdiction arising due to Income that has been included in the calculation of Profits provided for by regulation 64Qua.5 for that [royalty return period][Calendar Year]. Any payment made to any Sponsoring State(s) or any other government authority due to Income not included in the definition of Profits in Draft Regulation 64Qua.2 is not an Eligible Tax Payment; and

(b) G is Covered Taxes [incurred][paid] by the Contractor to the Sponsoring State(s) [or any other government authority in any jurisdiction] for that [royalty return period][Calendar Year].

9. A Contractor shall lodge with the Secretary-General a Top-up Profit Share Return not later than 90 Days after the end of each [royalty return period][Calendar Year]

10. A Top-up Profit Share Return shall include the following information for each [royalty return period][Calendar Year], in accordance with the Standard and taking into account the Guidelines:

- (a) the Top-up Profit Share Payment due, Profits, Income, Income included in Profits, Total Eligible Payments, Eligible Royalty Payments, and Eligible Tax Payments for that [royalty return period][Calendar Year];
- (b) for each Related Entity, whether it meets the Inclusion Criteria;
- (c) for each Related Entity that meets the Inclusion Criteria, its Income, Total Eligible Payments, and Eligible Tax Payments;
- (d) for each Related Entity that does not meet the Inclusion Criteria, its Income from relevant Activities, Total Eligible Payments, and Eligible Tax Payments;
- (e) audited accounts for the Contractor and its Related Entities;
- (f) for each Related Entity that does not meet the Inclusion Criteria, audited segmented accounts for each of those Related Entities showing the Income, Eligible Tax Payments and Covered Tax payments from Relevant Activities and separately from non-Relevant Activities; and
- (g) any other information, document or anything required under the Standards, Guidelines or reasonably requested by the Authority for the administration and validation of the Top Up Profit Share Payment.

11. A Profit Share Audit shall be carried out by an Independent Auditor [employed by and reporting to the Authority and] in accordance with the relevant Standard and applicable Guidelines.

12. A Contractor will pay for each Profit Share Audit.

**Regulation 64Qui [OEWG]**  
**Applicable Standards for financial payments**

The Authority shall adopt Standards [and Guidelines] providing for the effective operation of the Additional Royalty and Top-up Profit Share Payment, including but not limited to:

- (a) definitions of Inclusion Criteria, Subsidies, Relevant Activities, and Tax Exemptions;
- (b) applicable rates for the Assumed CIT Rate and Applicable Additional Royalty Rate;
- (c) definitions of Related Entities, Income and Covered Taxes that will be based to the greatest extent practical on the Pillar 2 Global Anti-Base Erosion Model Rules, or alternatively, may directly reference the relevant articles of the Pillar 2 Global Anti-Base Erosion Model Rules (as amended or updated from time to time);
- (d) the criteria an auditor must meet to be an Independent Auditor;
- (e) the criteria for the Equalization Measure Audit and Profit Share Independent Audit;
- (f) the fees for the Equalization Measure Audit and Profit Share Audit;
- (g) the format and required content of the Top-up Profit Share Return;

- (h) the penalties, fees, and interest that the Authority shall levy on a Contractor due to non-cooperation with an Independent Auditor, late submission of a Top-up Profit Share Return, failure to submit a Top-up Profit Share Return, submission of an incomplete Top-up Profit Share Return, late payment of the Top-up Profit Share Payment and non-payment of a Top-up Profit Share Payment; and
- (i) any other provisions as required.

**Explanation / Comment**

- The text proposal (based on a hybrid royalty and top up profit share equalization measure) submitted by a group of participants following the intersessional work on the equalisation measure has been included here, with further suggested amendments to align with existing text proposals. I invite comments on both the concepts and drafting. See also the additional proposed definitions which have been included for discussion purposes in the definitions section in Enclosure V of this document.
- If there is broad support for the proposal reflected in the text of DR 64Bis to DR 64Qui, I would propose that the text is moved into the various other draft regulations where similar issues are dealt with, for example moving some text to Appendix IV and the relevant Standards, and some text to the other draft regulations which deal with audit requirements, etc.
- The following explanation was submitted with the text proposal:

*Under this measure, the contractor pays the additional royalty if it receives tax exemptions or subsidies (an indicative figure of 8% for the additional royalty is included square brackets in DR64ter, paragraph 5(a), but further modelling from MIT on the rate to be used will be required), and it pays the top-up profit share if it does not. The equalization measure is designed so that a contractor and its related entities paying at least 25% of their profits in taxes and royalties to sponsoring and other states pay nothing additional under the equalization measure.*

*The hybrid equalization measure demotivates tax avoidance by contractors and is better at equalization than the additional royalty only. The hybrid measure builds on definitions of income and taxes provided by the GloBe Rules, which simplifies administration and audit.*

*Standards and Guidelines will be needed to define terms and aspects of the implementation of the hybrid measure by the Authority. For example, an Equalization Measure Audit (DR 64Bis) will determine whether the contractor is liable to pay the Additional Royalty or the Top-up Profit Share Payment. The initial audit should be conducted prior to the commencement of commercial production to provide certainty to the contractor and the Authority. However, after the initial Equalization Measure Audit, further such audits may not need to be conducted annually and may be initiated only if the Authority believes that new tax exemptions or subsidies have been provided to the contractor since the last audit.*

*By way of another example, 'Inclusion Criteria' (DR 64Qua) will need to be defined to make it clear what activities of entities related to the contractor, or percentage of revenues of the related activities, are counted as falling within the 'mining perimeter'. This will avoid all related entities of a contractor being required to submit accounts to the Authority.*

### Regulation 65 [OE WG]

#### Explanation / Comment

- At the March 2023 meeting the participants agreed to delete **Regulation 65** (Secretary-General may issue Guidelines) on the basis that the draft Regulations 94 and 95 already provides the Commission with the powers to make Standards and Guidelines.

## Section 3

### Royalty returns and payment of royalty

#### Regulation 66 [OE WG]

##### Form of royalty returns

A royalty return lodged with the Secretary-General shall be in the form prescribed by ~~any the Standards, and taking into account any of~~ Guidelines and signed by the Contractor's designated official.

#### Explanation / Comment

- As a general point, I would suggest a review of all references to Standard(s) and Guideline(s) throughout the text to ensure there is consistency and also to take account of whether there will be one or multiple relevant and applicable Standards.

#### Regulation 67 [OE WG]

##### 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 [OE WG]

##### Lodging of royalty returns

1. A Contractor shall lodge with the Secretary-General a royalty return for ~~each Mining Area~~ the Contract 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 for the Contract Area by the joint venture or consortium.
3. A royalty return may be lodged electronically.

#### Explanation / Comment

- Regulation 64 requires royalties to be paid for the Contract

Area. On the suggestion of a participant, I have adjusted the text of this regulation to harmonize.

**Regulation 69 [OEWG]  
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 [OEWG]  
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. [The Council may request the advance payment of any royalty due by way of instalment where special circumstances exist, in accordance with relevant Standards and [Guidelines] [ rules, regulations and procedures of the Authority], to reflect for instance impacts on ecosystem services and the natural capital.]

2. Payments to the Authority shall be made in United States dollars or other foreign currency which is freely convertible and approved in accordance with relevant Standards.

2.bis. A Contractor shall declare the currency to be used in the payment of royalties [in the exploitation contract] [prior to the commencement of Commercial Production].

2.ter. Unless otherwise decided by the Council, a Contractor may only change the currency used for the payment of royalties on the anniversary of the fifth year of Commercial Production and at the end of every subsequent [fifth] year of Commercial Production [after requesting the change of currency, and only after obtaining [authorization from the Authority][approval of the Council], which shall decide on this after assessing that income will not be affected by the requested change].

[ALT 2. bis/ter. The currency to be used in the payment of royalties must be stated in the exploitation contract and declared before the commencement of Commercial Production. Such currency may be changed by previous request of the Contractor and approval by the Council at the end of every subsequent fifth year of Commercial Production.]

3. All payments made to the Authority shall be made ~~gross net~~ 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 it determines that special [and extenuating] circumstances of force majeure exist, that justify payment by instalment, in accordance with [relevant][applicable] Standards, taking account of [relevant Guidelines] [rules, regulations and procedures of the Authority.]

<b>Explanation / Comment</b>
<p><i>Paragraph 1</i></p> <ul style="list-style-type: none"><li>• One participant has proposed additional text in paragraph 1 in relation to advance payments. <u>I invite comments, including on whether the reference to Rules, Regulations, and Procedures should be changed to Standards and Guidelines as this is a</u></li></ul>

reference to the royalty regime – or are other Rules, regulations, and Procedures considered to be applicable?

***Paragraph 2***

- Participants at the July meeting supported this paragraph as now drafted.

***New paragraph 2.bis***

- Participants at the July meeting supported this paragraph as drafted. One additional change has now been proposed for greater certainty.

***New paragraph 2.ter***

- This paragraph was supported by participants at the July meeting. Two participants have now proposed new language to ensure that the Authority’s income will not be negatively affected. I welcome views on this additional language.
- One participant has now raised a question as to how frequently currency changes should be permitted. I invite views on how frequently currency can be changed after the initial five year period.
- One participant has proposed a simplified Alt paragraph to replace paragraphs 2bis and 2 ter. I invite comments.

***Paragraph 4***

- Participants at the July meeting supported paragraph 4 as now drafted, and proposed that there should be a definition of force majeure. One participant proposed that the circumstances for using instalment payments should be further clarified in the relevant Standards, and force majeure is suggested to be one of the circumstances. One participant now proposes that “special circumstances” should be sufficient. One participant now proposes its deletion of paragraph 4. I invite comments, including on: (i) a definition of force majeure; and (ii) whether the reference to Rules, Regulations, and Procedures should be changed to Standards and Guidelines as this is a reference to the royalty regime – or are other Rules, regulations, and Procedures considered to be applicable?

**Regulation 71 [OEWG]  
Information to be submitted**

1. A royalty return shall include the following information for each royalty return period, in accordance with Standards and taking into account the Guidelines:
  - (a) The quantity in wet metric tons and dry metric tons of mineral-bearing ore recovered from each Mining Area;
  - (b) The quantity and value by Mineral in wet metric tons and dry metric tons of the mineral-bearing ore shipped from the ~~Mining Area-Contract Area~~; The value, grades and the basis of the valuation (by Mineral and Metal) of the mineral-bearing ore sold or removed without sale from the ~~Mining Area-Contract Area~~, as verified by a Suitably Qualified Person and supported by a representative chemical analysis of the ore by a certified laboratory, with the

cost of weighing and testing to be borne by the Contractor;

- (c) [Details of all contracts and amendments to contracts] and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area]; and
- (d) 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.
- (e) [Details of all revenues and operating costs associated with activities in handling and processing, to the degree available.]

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 (by Mineral and Metal) 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.

**Explanation / Comment**

- Some participants have proposed changing “mineral-bearing” to “metal-bearing”, and “mineral” to “metal”, throughout this Regulation, because the mineralogy of nodules is fluid depending upon the level of desiccation and moisture content. I have not included this change as “metal-bearing” is a subset of “mineral-bearing” in the context of the definitions of Mineral and Metal in the Schedule, and so narrower. However, as previously noted, the Guidelines should require distinctions by Metal.

**Paragraph 1**

- At the July meeting participants supported the text referencing collecting both wet (at time of extraction) and dry (calculated outside of Area) weights. Some participants have proposed to further clarify the definition and difference between dry and wet nodules and an agreed procedure for converting wet metric tons to dry metric tons in the Standards. I do not propose a conversion formula in the text. To my understanding, the most reliable measure to ensure consistency in analysis is to use DMT. The modelling assumes reporting and assays are done on the basis of dry metric tons (DMT). Calculations of royalties will need to be against DMT, however, contractors should be required to submit information on both the wet metric

tons (WMT) and DMT collected from the area for data collection and audit purposes. Additional technical specifications and parameters (such as the point(s) in time at which wet metric tons should be measured, and a requirement to report details of the moisture content) may be included in Standards and Guidelines as already contemplated.

- Regulation 71 refers to sale or removal without sale from the Mining Area (now proposed to refer to the Contract Area). For accuracy and consistency, weighing and sampling should take place at the same Valuation Point (as defined in Appendix IV) irrespective of whether there is a sale.
- Some participants propose that suitably qualified person and certified laboratory be qualified in the Guidelines; that this should be “as defined by ISO standards”; and that a list of approved persons and certified laboratories could be maintained by the Council. I welcome language proposals.
- One participant proposes deleting subparagraph 1(c) as these materials may be confidential, and in any case, serve no purpose.
- One participant has proposed a new subparagraph 1(e) to ensure that the Authority is appropriately informed, to the degree possible, of each sale, shipment, transfer, exchange or other disposal beyond the Contract Area so that it can ascertain that the same standards, including environmental standards are deployed throughout the value chain.

### **Regulation 72 [OEWG]**

#### **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, which shall be no later than 90 days from the date of the notice, information to support the matters stated in the royalty return.

### **Regulation 73 [OEWG]**

#### **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. Contractors will properly demonstrate that an overpayment was made, and support their claim with all necessary documentation and justifications. The Secretary-General shall authorize refunds as an exceptional measure, but no more than [XX] times for the same Contractor.
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, or, if the exploitation contract has expired, refund the amount within 90 days.



3. Any request to reduce a royalty-related amount payable by a Contractor must be made within [one year of an applicable financial report] [five years] [three years] [six months] 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 within 90 days 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.

#### **Explanation / Comment**

##### ***Paragraph 1***

One participant has proposed language that would impose additional obligations and restrictions on contractors seeking refund, on the explanation that overpaying royalty and then requesting refunds could become a path for obtaining other indirect benefits, such as corporate tax reductions in contractors' home countries, or others. I invite comments on the proposal.

##### ***Paragraph 2***

- Some participants have proposed that relevant contents be added to paragraph 2 to deal with the situation that the contract has expired and no future royalty is needed. For example, if the contractor does not request a refund of any such overpayment within 90 days, and the contractor does not need to pay any future royalties upon expiration of the contract. Prior to the March 2023 session, I proposed text to address this situation, reflecting the time limits proposed in the preceding Regulation.

##### ***Paragraph 3***

- Two participants propose changing “5 years” to “6 months” on the basis that a five year period for paragraph 3 is too long. One participant proposes changing “5 years” to “one year of an applicable financial report”. One participant proposes 3 years. I welcome views on these proposals.

#### **[Regulation 73bis [OEWG]** **[title]**

1. Where a royalty return shows any underpayment of royalties, the Secretary-General must demand payment from the Contractor within [XX] number of days.

2. If no payment is received, the Authority shall add the payment due to the next period of royalty collection.

3. Proper measures shall be taken against contractors who do not pay the underpaid royalty in due time.]

#### Explanation / Comment

- One participant has proposed a new regulation to address underpayment. I invite comments on whether this is necessary, or whether underpayment of royalties would constitute a non-payment of royalty (for the underpaid portion) and so be covered by the existing provisions requiring payment of royalties and imposing penalties for late or non-payment.

## Section 4 Records, inspection and audit

### Regulation 74 [OEWG]

#### 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 [and appropriate environmental, social and governance standards and disclosure requirements, including but not limited to, IFRS, ISSB, TFCD, TFND,] and ~~that~~ verify, in connection with each Mining Area [and the Contract Area], inter alia:

- (a) Details of the quantity and grade of the Minerals, by Metal, recovered from [each Mining Area and the Contract Area];
- (b) Details of sales, shipments, transfers, exchanges and other disposals of Minerals, by Metal, from ~~[the Mining Area]~~ [each Mining Area and the Contract 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 the Contract Area] or in direct support of activities within ~~[the Mining Area]~~ [each Mining Area and the Contract Area]; and
- (d) Details of all revenues and operating costs associated with activities in ~~[the Mining Area]~~ [each Mining Area and the Contract Area].

[(e) Details of any sales, shipments, transfers, exchanges and other disposals of any Minerals, to the degree available.]

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 for the duration of the contract and a period of [10 years] [2 years] following the expiry or cancellation of the contract and including duration of the Closure Plan, and make such records available for [inspection and] audit under regulation 75.

### **Explanation / Comment**

- This Regulation refers to Minerals recovered from the Mining Area, as opposed to mineral-bearing ore recovered. As discussed in the July meeting, reference to “Metals” has been added, given that it is for record keeping purposes. This will aid auditing and analysis. It seems particularly appropriate given the level of detail of this Regulation (i.e. with respect to operating costs, and with respect to transfers and disposals).
- Additionally, these Regulations require Contractors to keep records of quantity and grade of Minerals recovered from each Mining Area and the Contract Area, and the details of shipments from the Mining Area. This supports the formulation of a royalty based on weight and sampling at a Valuation Point, and calculation of the royalty based on weight and assays per shipment, as drafted here.

#### ***Paragraph 1***

- One participant has proposed specifying that records must be kept both digitally and physically, and online and physically. I propose retaining the current drafting as it is neutral as to technology and covers records irrespective of where they are kept, as this should future-proof the obligation.

#### ***Paragraph 2***

- Paragraph 2 as drafted was supported by participants at the July meeting.
- One participant now proposes that contractors should not have to keep records for each particular Mining Area but only for the Contract Area. I invite comments.
- One participant proposes to add additional language in paragraph 2, to clarify that internationally accepted accounting principles should include appropriate environmental, social and governance standards and disclosure requirements. I invite comments.
- One participant proposes to add a subparagraph 2(e) to ensure information on the entire value chain is collected for environmental disclosure. I invite comments.

#### ***Paragraph 4***

- Paragraph 4 as drafted was supported by participants at the July meeting. One participant has now proposed changing 10 years to 2 years; and removing “inspection” (as it considers this to be addressed in Part XI). I invite comments.

1. The Secretary-General, [by itself or at the request of the Council] or Council, may [request an] audit of the Contractor's records and [all subcontractors' records associated with the exploitation activities] [the records of subcontractors' directly engaged in the Contractor's exploitation activities] in the Area.

2. Any such audit shall be undertaken at the Contractor's sole cost and shall be performed by [an] [[Council approved] Inspector in accordance with Part XI of these regulations] [independent auditor approved by the Council].

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

- (a) [Audit] [Inspect] [all corporate offices, plants and] the mining and on-board processing facilities with a view to verifying the accuracy of [all information reported and 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 [relevant] 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 [relevant] questions in connection with the inspection audit and provide any missing documents, papers, records and data; and
- (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection audit and provide a Contractor with a list of such copies or extracts.

[3. ALT An auditor may, in connection with a liability for a royalty payment require assistance from the Inspectors, through the Secretary-General, and the Inspectors shall assist the auditors in discharging their functions under this part]

4. [For the purposes of an audit] The Contractor shall make available to an [Inspector] [auditor] 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] [relevant organ of the Authority] and any [Inspector] [auditor] in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an [Inspector] [auditor] and assist in the exchange of information relevant to a Contractor's obligations under this Part.

**Explanation / Comment**

- One participant proposes that this regulation duplicates Part XI on inspections and so should be deleted except to state "The Council or Compliance Committee may request an audit of the Contractor's records, which shall be undertaken at the Contractor's sole cost." That participant also proposes that this regulation should be bracketed until Regulation 99 is progressed.
- Participants have mixed views on whether to include the word "inspection" in the title and in the body of the regulation. One participant argues that Audit and inspection are two different issues. Part XI of the Draft Regulations, entitled "Inspection, compliance and

enforcement ", already contains provisions on matters relating to inspection, so it is proposed that Regulation 75 should only deal with audit matters, and that the contents relating to inspection should be provided for in Part XI. I invite comments.

- As mentioned in the Drafting Note to Regulation 74, this Regulation also refers to Minerals recovered from the Mining Area, as opposed to mineral-bearing ore recovered. It is recommend including additional detailed requirements in the Guidelines to also refer to “mineral-bearing ore” and “Metals”.
- This Regulation as drafted suggests the possibility of some assaying of samples on-board the harvesting and/or transfer vessel. While the Valuation Point is the point that might be used as the weighing and sampling point, it is possible that detailed assaying of the samples is likely to take place at onshore facilities, and the grade will then be attributed retrospectively to the Valuation Point for the purpose of calculating the royalty on that shipment. It is therefore important to prescribe the appropriate parameters for independent assaying in the Guidelines.

#### ***Paragraph 1***

- At the March 2023 meeting the participants agreed to paragraphs 1, 2, 4 and 5. Two participants have proposed reopening the text of paragraph 1 to extend it to all Contractors’ and their sub-contractors’ records, not just those in relation to activities in the Area. One participant has proposed to narrow it to only subcontractor’s directly engaged in activities in the area.

#### ***Paragraph 2***

- Two participants proposed that the Inspector be “Council-approved”. Some participants have proposed that a financial audit should be undertaken by an independent auditor or accountant, rather than an Inspector. One participant proposes that it should be expressly stated as an “independent auditor”, as Annex IV, article 11, paragraph 5, of the Convention provides that "the records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Council." One participant proposes to remove “Council approved” as an Inspector will be Council approved under Part XI as being included on the roster with relevant audit experience. I propose that text regarding the qualifications and approval of Inspectors be addressed in the Standards, and invite participants to propose text. This will also ensure greater consistency. I propose that if there is support for that proposal, adjusting the qualifications and functions of an Inspector, to require an independent auditor or accountant, could be addressed in Part XI itself, which contains provisions on Inspectors’ functions.
- One participant proposes that “questions” in paragraph

3(c) should be restricted to “relevant” questions.

***Paragraph 3 ALT***

- One participant proposes a new para 3, as it considers that most of the contents concerning inspections in Paragraph 3 of this regulation are covered in Part XI of the draft regulations " Inspection, compliance and enforcement ", and should not be repeated in this paragraph. Audit and inspection are two separate issues, and the auditor may, through the Secretary-General, request the assistance of inspectors if inspections are required in order to carry out its responsibilities with respect to royalties.

***Paragraph 5***

- Two participants recommend the phrase "to the best of their abilities" be removed. Their view is that the members of the Authority, including Sponsoring States must cooperate and assist the Secretary-General.

**Regulation 76 [OEWG]**

**Assessment by the Authority**

1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and 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.

[4bis. If the Contractor is not satisfied with the Secretary-General's confirmation or revision of the assessment, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then re-consider and either affirm, revise, or revoke the assessment, taking into account the further information provided by the Contractor, within 60 Days.]

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 [or, where

[applicable, paragraph 4bis\].](#)

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.

#### Explanation / Comment

- One participant suggests there is a duplication between paragraphs 2 and 5; and Regulation 72.
- One participant has proposed an administrative review mechanism (4bis). [I invite comments.](#)

## Section 5

### Anti-avoidance measures

#### Regulation 77 [OEWG]

##### 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 [any 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 [any payment of a royalty](#); then the Secretary-General shall determine the liability for a [royalty payment under this part](#) 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 payment under this part](#) for the original or revised amount. [\[If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then re-consider and either affirm, revise, or revoke the decision, taking into account the further information provided by the Contractor, within 60 Days.\]](#)

[\[2 ALT 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. [\[If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the \[Secretary-General/the Council\] to consider. The Commission and Finance Committee shall](#)

consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then re-consider and either affirm, revise, or revoke the decision made by the [Secretary-General]].

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

[4. If the Contractor ~~incurs~~ ~~is found to be in~~ is in ~~a~~ ~~gross and persistent breach~~ ~~serious, persistent and willful violation~~ ~~non-compliance of payment of a~~ ~~of royalty~~ any payment obligations in accordance with this Part, the Council shall suspend or rescind the ~~exploitation~~ contract pursuant to regulation 103 of these Regulations ~~and the Contactor's company principals shall be barred from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years~~.]

**Explanation / Comment**

***Paragraph 2***

- Some participants note that if a Contractor disagrees with the decision of the Secretary-General, the Contractor will have no recourse or method for reviewing a decision unless the Contractor commences costly dispute resolution procedures pursuant to Section 5, Part XI of the Convention. I invite for discussions of this view.
- One participant proposes more oversight of the Secretary-General's decision, and proposes 2 ALT. I invite comments.

***Paragraph 4***

- Previously participants proposed adding this additional paragraph to address cases where a Contractor repeatedly fails to comply with its payment duties, namely that the Council shall be entitled to terminate the contract in accordance with DR 103. This suggestion is made in support of DR 80, which only provides for conventional (pecuniary) penalties. I included language that would allow the Council to effect both the termination and suspension of the contract and to have the power to impose conventional penalties for breaches of a Contractor.
- Three participants now propose additional language in this paragraph that would bar the Contractor, or its company principals from direct or indirect involvement with any Contractor or Subcontractor, operating in the Area for a period of, for example, 10 years. However, they recognize that this addition may be better suited to be included in Draft Regulation 103. I invite comments on the proposed text and proposed changes to Regulation 103.
- Several participants have proposed changes to paragraph



4. Some participants noted that Article 185 of the Convention limits suspension to circumstances of gross and persistent violations. I invite views on the text. One participant proposes that more appropriate language to use here would be ‘serious, persistent and wilful violation’ in accordance with Article 18 of Annex III, which relates to Contractor compliance with their contract and the rules of the ISA.

- One participant proposed deletion of paragraph 4 expressed as follows: “If the Contractor incurs in a non-compliance of payment of a royalty in accordance with this Part, the Council shall suspend or rescind the Contract pursuant to regulation 103 of these Regulations.” It said Regulation 77 is targeted at anti-avoidance and not compliance per se. It said matters relating to any violation under this Part VII are addressed by Regulation 80 which appears adequate for this purpose and now reflects suspension or termination.
- A participant proposed paragraph 4 is deleted and discussed in Part XI of the Draft Regulations, entitled "Inspection, compliance and enforcement".

#### **Regulation 78 [OEWG] 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 without one party influencing another; 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 to in a competitive environment.
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 Council may adjust the value of such costs, prices and revenues to reflect an arm’s-length value, taking into account the recommendations of the Commission, 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. If the Contractor submits written representations, the Secretary-General shall affirm, amend or revoke the adjustment, taking into account the further information provided by the Contractor, within 60 Days of being provided with that further information.

[4.The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall decide the value of relevant costs, prices and

revenues based on the recommendation.]

**Explanation / Comment**

- In July participants supported the text as drafted. One participant has now proposed a new paragraph 4, to ensure more oversight of the Secretary-General's decision. I invite comments.

**Section 6**  
**Interest and penalties**

**Regulation 79 [OEWG]**  
**Interest on unpaid royalty**

Where any royalty or other amount levied under this Part remains wholly or partly 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] [10] [20] per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable in accordance with Appendix IV.

**Explanation / Comment**

- Participants have proposed different proposals for the interest rate. One participant proposes 5% for a month delay and 10% for one to three month delay. I invite participants to settle on a percentage.

**[Regulation 80 [OEWG]**  
**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][and may] suspend or terminate the exploitation contract in respect of a [gross and persistent] [material breach] [violation] under this Part [or of the contract] [and company principals would be barred from direct or indirect involvement with any Contractor or Subcontractor operating in the Area for a period of 10 years].]

**Explanation / Comment**

- Two participants have proposed that this Regulation (and Regulation 77) should include the possibility of "barring company principals from direct or indirect involvement with any Contractor or Subcontractors operating in the Area for a period of, for example, 10 years." However, they note this may better fit within Regulation 103. I invite proposals for changes to Regulation 103.

- Two participants suggest that criteria be included for "seriousness of the breach", although they note this too may be best included in Regulation 103. I invite them to propose changes to Regulation 103.
- Some participants have proposed inclusion of a materiality obligation. They say that suspension and termination of an exploitation contract may only occur in the event of a material breach under the Convention. Another participant proposes "gross and persistent".
- One participant proposes that this paragraph should be deleted, as it overlaps and seems to conflict with other provisions in the Regulations including DR103, and Annex X, and is inconsistent with the Convention, which requires serious, persistent and willful violations of the fundamental terms of the contract, and the rules of the ISA, as well as warnings, before a contractor's rights under their contract can be suspended or terminated by the ISA. It proposes revisiting this regulation after negotiations on DR103 have progressed.

## Section 7

### Review of payment mechanism

#### Regulation 81 [OEWG] 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][in accordance with relevant Standards] [as well as all observed environmental impacts].
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, [taking into account the economic viability of the project] save that any revision shall only apply [to existing exploitation contracts by agreement between the Authority and the Contractor] [after five years of Commercial Production have been completed under that exploitation contract] [from five years after such revising would be adopted] [to (i) new exploitation contracts agreed between the Authority and a Contractor after the revised system of payments is in effect; and (ii) existing exploitation contracts if the Authority and Contractors so agree].]

[2 ALT The Council, based on the recommendations of the Commission and following a review under paragraph 1, may decide to adjust the existing system of payments or introduce a new system of payments, taking into account the level of maturity and development of Exploitation activities in the Area.

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to an existing system of payments, or an introduction of a new system of payments, and may consider changes to all applicable Rules Regulations and Procedures (RRPs) [including any relevant Standards and Guidelines].

4. A review of the system of payments shall consider all Resource Categories unless otherwise decided by the Council.

5. A change to the system of payments shall only apply by agreement between the Authority and the Contractor for Contract Areas that have already commenced Commercial Production.]

[3. Recommendations of the Council to the Assembly under paragraph 2:

(a) take into account the sufficiency of the benefits that are being generated for humankind as a whole in return for the loss of the common heritage of humankind;

(b) reflect the objectives contained in Article 13, Annex III of the Convention, including to ensure optimum revenues for the Authority from the proceeds of Commercial Production;

(b) follow the process and consider relevant matters as set out in the applicable Standard; and

(c) be informed by consultations with relevant experts and stakeholders including the Legal and Technical Commission, Economic Planning Commission and Finance Committee.]

<b>Explanation / Comment</b>
<p><b><i>Paragraph 1</i></b></p> <ul style="list-style-type: none"><li>• Two participants propose that review intervals be determined by Standards rather than the Council.</li><li>• One participant proposes to add environmental impacts 8.</li></ul>
<p><b><i>Paragraph 2</i></b></p> <ul style="list-style-type: none"><li>• One participant proposes not “taking into account the economic viability of the project” as it suggests case by case decision making, which it considers is not the intention.</li><li>• <u>I invite comments on whether Contractors should be consulted.</u></li><li>• <u>I invite comments on the three options for review after 5 years.</u></li></ul>
<p><b><i>Paragraph 2 ALT (and paragraphs 3, 4, 5</i></b></p> <ul style="list-style-type: none"><li>• One participant proposes merging Regulations 81 and 82.</li><li>• Two participants propose a new paragraph 2 and additional paragraphs 3, 4, 5 to align the review of the</li></ul>

system of payments (DR 81) with the review of the rates of payments (DR 82). Section 8, paragraph 1(c) of the Annex to the Implementation Agreement provides that any change to the system of payments may only apply to existing contracts at the election of the contractor and this shall be implemented by agreement between the Authority and the contractor. However, such agreement is not a pre-requisite for the application of a change in the payment rates (DR 82). The need to make a clear distinction between the two provides a strong rationale to avoid merging text under DR 81 and 82 into a single regulation. Specific elements to be included in the review process, including timelines, processes, and methodologies are proposed for inclusion in Standards will ensure greater transparency and predictability of the process from initiation to completion. Draft Standards are included as an appendix to this submission. A compliance and enforcement function (Regulation 103) will also be important. I invite comments.

**Paragraph 3**

- I invite comments on the new proposed paragraph 3.  
9.

**Regulation 82 [OEWG]  
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] [and every five years thereafter, applying to all contractors that have commenced Commercial Production, unless otherwise 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, [taking into account the economic viability of the project.] 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] [after five years of commercial production have been completed under that exploitation contract]].

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 [, including triggers for price-based royalties].

**ALT**

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 [in accordance with relevant standards] [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 ~~[decide to]~~ adjust the rates of payments ~~[taking into account the Resource Category and the level of maturity and development of Exploitation activities in the Area].~~

~~[2 bis. A review of the rates of payments shall consider all Resource Categories unless otherwise decided by the Council.]~~

~~[2 ter. An adjustment to the rates of payments shall [apply to all Contract Areas but shall] only apply by agreement between the Authority and the Contractor for Contract Areas where each of the following conditions are met:~~

~~a) the first five years of Commercial Production in the Contract Area have elapsed; and~~

~~b) the Contractor does not hold rights to another Contract Area of the same Resource Category for which the first five years of Commercial Production has elapsed.]~~

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the ~~[rate associated with any payment mechanism adopted under the [Rules Regulations and Procedures,] [including any Standards and Guidelines] including the manner and basis of their calculation, as well as the establishment of rates of payments for new relevant metals or minerals that are likely to be commercially exploited during the next review cycle.]~~

#### **Explanation / Comment**

- Two participants propose an alternative – 5 paragraphs to replace the three, with additional complementary drafting in the Standards. It notes that a systematic, periodic review of the rates would help ensure that the financial mechanisms meet the needs and objectives of the Authority. Specific elements to be included in the review process, including timelines, processes, and methodologies are proposed for inclusion in Standards and will ensure greater transparency and predictability of the process from initiation to completion. I invite comments on the alternative paragraphs.
- One participant proposes deletion of paragraph 2.
- I note that while paragraph 1(c) of section 8 of the Annex to the Agreement indicates that “a change to a system of payments may apply to existing contracts only at the election of the contractor” no such requirement is laid out regarding a change to rates. The fiscal stabilization provisions currently included in DR 82 are inconsistent with current global norms, as evidenced by the 2020 OECD Guiding Principles on Durable Extractive Contracts. It is proposed to have a simple, regular review of rate of payments every 5 years following the commencement of Commercial Production in the Area.
- One participant previously proposed triggers for price-

based royalties. It proposes that the Regulation should be clear about what constitutes a review of system of payments *vis-à-vis* a review of rates of payment. A review of rates of payment should explicitly include reference to price “triggers” under variable royalty rate regimes. Some participants outlined their opposition to the inclusion of “triggers for price-based royalties” in paragraph 3 on the basis that the terms are ambiguous and appear to be inconsistent with the proposed system of payments set out in the Convention and the Part XI Implementation Agreement.

## **Section 8**

### **Payments to the Authority**

#### **Regulation 83 [OEWG]**

##### **Recording in Seabed Mining Register**

1. All payment figures made by the Contractor to the Authority under this Part are publicly available.
2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.

#### **Regulation 83 bis [OEWG]**

##### **Beneficial Ownership Registry**

1. A Contractor shall submit information [as part of its annual report pursuant to regulation 38] to the Secretary-General to be included in a Beneficial Ownership Registry in accordance with [relevant] [applicable] Standards and [applicable] Guidelines.
2. The Beneficial Ownership Registry shall be published through the Seabed Mining Register.

#### **Explanation / Comment**

- Participants in July supported the regulation as drafted. One has now proposed additional language linking it to the annual report. On participant has now proposed its deletion.

## **Part VIII**

### **Annual, administrative and other applicable fees**

*[Facilitators' Note: There has been some agreement to our previous proposal to request the Commission or the Finance Committee to clarify the purpose, use and the mechanism to calculate each annual and administrative fee listed in Appendix II. Submissions also generally noted interest in harmonizing the different fees (e.g. combining the annual fixed fee and the annual reporting fee),*

*and also a need in the regulations expressly to state consequences for failure to pay fees.]*

## **Section 1 Annual fees**

### **Regulation 84 [IWG IM] 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 pro-rated and made within 30 Days after the effective date of an exploitation contract.] [Facilitators' Note: One submission noted that the annual report is always submitted at annual intervals, so there should be no need for pro-rating.]*

4. Where an annual reporting fee remains unpaid after the date it becomes due and payable:

(a) this constitutes a violation of the fundamental terms of the contract for the purposes of regulation 103, and

(b) 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 85 [IWG IM] Annual fixed fee**

1. A Contractor shall pay ~~to the Authority, [alt 1. from the date of commencement of Commercial Production in a Contract Area][alt 2. from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof]~~ an annual fixed fee. 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, ~~on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the Authority's management of the contract, including staffing the Secretariat and conducting inspection and enforcement activities.~~

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.~~

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.

**3 bis.** Where an annual fixed fee remains unpaid after the date it becomes due and payable,



(a) this constitutes a violation of the fundamental terms of the contract for the purposes of regulation 103, and

(b) 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.

[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.] *[Facilitators' Note: One submission noted that retention of this wording would mean using the financial benefits derived from exploitation to fund the ISA's regulatory costs, i.e. prioritising savings for the contractor above maximising revenue for equitable benefit-sharing for humankind, and particularly developing countries.]*

## Section 2

### Fees other than annual fees

*[Submissions noted that the text would need to be amended to take into account the March 2023 discussions to delete Appendix II.]*

### Regulation 86 [IWG IM]

#### 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 [alt 1. As determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee][alt 2. In the amount specified by the Council] [~~alt 3. in the amount specified in appendix II.~~].

2. If the administrative costs incurred by the Authority in processing an application, which may include the costs of recruiting competent independent experts, are less than the [alt 1. Amount paid in accordance with paragraph 1][alt 2. Amount specified by the Council][~~alt 3. Fixed amount in appendix II.~~], the Authority shall refund the difference to the applicant.

2 bis. If the administrative costs incurred by the Authority in processing an application are more than [alt 1. Amount paid in accordance with paragraph 1][alt 2. Amount specified by the Council][~~alt 3. Fixed amount in appendix II.~~] 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 [alt 1. Amount set in accordance with paragraph 1][alt 2. Amount specified by the Council][~~alt 3. Fixed fee specified in appendix II.~~].

2. Taking into account any criteria established for this purpose by the Finance Committee or in a case-by-case basis, the [Secretary-General][Finance Committee] shall determine the amount of such differences as indicated in paragraph (2), 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 [alt 1. by the Council][alt 2. in appendix II] ~~and~~ in accordance with the applicable regulation.]

## Section 3 Miscellaneous

### Regulation 88 [IWG IM] 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. ~~[A Contractor shall pay fees in full at the time of the submission of the relevant application, request, document, or other event except as provided for in this part and as specified in appendix II]~~ 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~~ **this Part**.
3. The Secretary-General shall not process any application until the applicable fee under ~~appendix II~~ **this Part** 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 [OEWG]

##### Confidentiality of information

1. ~~[There shall be a presumption that any]~~ ~~[All]~~ data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract ~~[are]~~ ~~[shall be]~~ 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]~~ ~~[the Data Committee in accordance with the relevant Standard]~~ on the basis that there would be substantial risk of serious or unfair economic prejudice ~~[risk of harm]~~ if the data and information were to be released;

(e) [documents exempt from disclosure due to attorney-client privilege].

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 [from time to time] by the Authority of rules, regulations and procedures [and decisions of the Authority] 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] [unless] 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;

[(f)alt. Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council;]

[(f) ALT.2. Are environmental data, including all baseline and monitoring information.]

(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);

(h) [Relate to contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments and other forms of financial benefit received by the contractor from Sponsoring States;

\_(i) Relate to beneficial ownership of contractors;

(j) [Relate to Sponsorship Agreements or other contractual arrangements between contractors and Sponsoring States; or]

(k) The Contractor to which the data and information relates has given prior written consent to its disclosure.

(l) 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 ISBA/25/C/WP.1 56/117 19-04869 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], [in accordance with the relevant Guidelines] and save any data and information relating to personnel matters under paragraph 2 (b) above.

(m) are in a category designated by the Council as not being Confidential Information.

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 reasonable cause] 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 [describing, in general and non-prejudicial terms, any information redacted or required to be withheld from publication on the basis of confidentiality with an explanation of the reasons. The Secretariat shall publish a copy of any such notice received upon receipt]. If the Secretary-General [a member state, or another Stakeholder] 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 [and consult the Data Committee as appropriate]. During the consultations, the Secretary-General shall take into account any relevant [Standard or] policy guidance from the Council. [The Secretary-General shall report to the Council regarding the types and quantities of data that are designated confidential in accordance with this paragraph.] Any dispute arising as to the nature of the data and information shall be dealt with [through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures] [in accordance with Part XII of these regulations].

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

#### **Explanation / Comment**

- Participants have proposed amendments to Regulation 89 with the following explanation: Contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments received by the contractor from Sponsoring States, should be disclosed publicly in line with terrestrial mining best practices. This is in line with international standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad. Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and enable reviews of the system of payment. Sponsorship Agreements should also be fully disclosed. A definition for these may be required in the Schedule: use of terms and scope. Beneficial ownership of contractors should also be disclosed as per best practice.
- Some participants submit that the text should mandate the publication, and process for publication, of sponsorship agreements, other contractual arrangements between Sponsoring States and Contractors, and payments between Contractors and Sponsoring States. I invite comments and proposals.
- On participant has proposed deleting subparagraph (a) as it would be inconsistent to consider some data confidential under an exploration

contract but not under an exploitation contract. The relevant exploration contract would have expired by the time this provision becomes relevant. Any information carried over from the exploration phase that should remain confidential can be justified under paragraphs 2(b) – (e).

- One participant has proposed the “Data Committee” to be the decision maker for confidential information, rather than the Secretary-General. Designating data as confidential should not be done ad hoc on a case-by-case basis but should follow pre-agreed, transparent criteria.
- One participant proposes broadening paragraph 5, as given the importance of transparency and public participation as good governance standards, para 5 should be widened to allow stakeholders other than the Secretary-General to object to data being kept confidential and introduce a transparent process to evaluate confidentiality.
- Necessary amendments may be needed to DR 83 Recording in Seabed Mining Registry
- “State enterprises” are referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to Sponsoring States will be important for determining a nodule transfer price in the future.

### **Regulation 90 [IWG IM]**

#### **Procedures to ensure confidentiality**

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information **held by the Authority** and shall not, except with **good cause** or 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, members of the Council, 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 breaches any of the obligations relating to confidentiality contained in the Rules of the Authority.

6. In the case of any breach of obligations relating to Confidential Information held by the Authority, the Authority shall notify the relevant Contractor and sponsoring State.

#### **Regulation 91 [IWG IM]**

##### **Information to be submitted upon expiration of an exploitation contract**

1. ~~Upon expiration of an exploitation contract,~~ The Contractor shall transfer to the Authority, to the extent feasible within [alt 1. 90][alt 2. 180] 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 Standard taking into account the Guidelines.

1 bis. The Contractor may seek advice from the Commission with regards to the data and information that is required pursuant to this regulation, and the Commission will report to the Council in relation to any such advice provided.

[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 [IWG IM]**

##### **Seabed Mining Register**

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and taking account of the Guidelines. Such register shall contain the following information (except to the extent it is Confidential Information):

- (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 including any revisions;
- (c) A copy of each Council decision to award a contract including the rationale, and the terms of the various exploitation contracts in accordance with regulation 1, including copies of the approved Plans of Works;

- (d) The geographical extent of Contract Areas and Mining Areas to which each relate;
  - (e) The category of Mineral Resources to which each relate;
  - (e bis.) Annual reports, including the amount of Mineral Resources mined, and details of any Incidents, Notifiable Events, Compliance Notices or other compliance-related interventions taken by the Authority;
  - (e ter.) The results of monitoring and test mining projects;
  - (e quat.) Inspection reports;
  - (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;
  - (h) Any instruments of transfer;
  - (i) All reports submitted to the Authority by the Contractor, including annual reports submitted under regulation 38, Incident reports submitted under regulation 33(2)(f), environmental monitoring reports submitted under regulation 39bis(3) and (4), and performance assessment reports submitted under regulation 52;
  - (j) copies of notifications made under regulation 34 of Notifiable Events;
  - (k) Reports of reviews of activities under plans of works under Regulation 58;
  - (l) A copy of inspection reports prepared under Regulation 100;
  - (m) A copy of the compliance record for every Contractor, prepared under Regulation 100bis;
  - (n) A copy of every compliance notice issued under Regulation 103 and, where applicable, the corresponding improvement plan;
  - (o) copies of each Contractor's documents validating, declaring, and confirming the Environmental Performance Guarantee;
  - (p) Any other details which the Secretary-General considers appropriate (save Confidential Information).
2. The Seabed Mining Register shall be publicly available free of charge on the Authority's website.

## **Part X**

### **General procedures, Standards and Guidelines**

#### **Regulation 93 [President's Text]**

##### **Notice and general procedures**

1. [Replaced to the Schedule]
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. [If the communication is transmitted orally, it will be followed up by a written confirmation at the earliest time convenient].
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] [accompanied with an acknowledgement copy]. 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 mail 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 93.bis.**

#### **Stakeholder Consultation**

[Under development by the intersessional working group on a standardized approach]

#### **[Regulation 93 ter [President’s Text]**

##### **Consultations with coastal States**

1. Targeted and proactive consultation with adjacent coastal States and any other coastal States adjacent to the areas of a planned activity when they are potentially most affected States, shall take place at different stages of a plan of work, when documents are being developed and at other appropriate times during and at cessation of exploitation activities, in particular at the development of:

(a) Environmental Plans;



(b) Any review/update of the environmental plans in light of Material Change;

I Performance Assessment; or

(d) Closure Plans.

2. Potentially most affected coastal States shall be determined by taking into account the potential effects of the planned activity and includes:

(a) Adjacent coastal States and any other coastal States adjacent to the areas of a planned activity whose exercise of sovereign rights for the purpose of exploring, conserving or managing natural resources may reasonably be affected by the activity;

(b) Adjacent coastal States and any other coastal States adjacent to the areas of a planned activity whose exercise of jurisdiction with regard to the protection and preservation of the marine environment may be reasonably affected by the activity; and

(c) Coastal States identified as potentially affected by the REMP.

3. The Secretariat should assist developing States, including small islands developing States, upon request, to identify potential effects of the planned activity on areas under their jurisdiction.

4. At the different stages indicated in paragraph 1 above, the following steps will be taken:

(a) The contractor/sponsoring State informs the Secretary-General that is ready to engage in a target and proactive consultation. The contractor must then provide a geographical description of the area to be covered by the plan of work and may indicate any coastal State adjacent to the areas of a planned activity that they believe to meet the criteria for potentially most affected States based on studies and available knowledge;

(b) The Secretary-General notifies all States, via Note Verbal, that a plan of work is being prepared for the area "X" and requests them to communicate, within I...] days, whether they meet the criteria for potentially most affected coastal States;

(c) Coastal States that believe they meet such criteria must justify this based on the criteria outlined above in Section II and other relevant information;

(d) The Secretary-General informs the contractor/sponsoring State of the coastal States that have communicated that they meet the criteria for potentially most affected;

(e) The contractor must then undertake targeted and proactive consultations

with the coastal States in question [to be further developed in a standard/guideline, which may address inter alia the following issues: (i) the provision of access to information to the coastal States in question relating to the environmental impacts of the planned activity; (ii) consideration of the views and comments of the coastal States in question; (iii) provision of written responses specifically addressing such views and comments, in particular with respect to potential impacts in areas under national jurisdiction; (iv) revision of the planned activity, if appropriate].

5. If the planned activity includes resources that lie across limits of national jurisdiction, the contractor/sponsoring State must exercise due regard to the

rights and legitimate interests of the coastal States across whose jurisdiction such deposits lie, and shall:

(a) Notify the coastal State of the intention to submit a plan of work;

(b) Hold regular consultations with the coastal State in question to avoid violation of its rights and interests in the marine resources over which the coastal State exercises sovereignty;

(c) Obtain the prior consent of the coastal States in question if the activity could result in the exploitation of the marine resources over which the coastal State exercises sovereignty; and

(d) Provide opportunity and resources for the coastal State in question to monitor the exploitation activity within the meaning of Article 142 (1) and (2) of UNCLOS.]

#### **Comments/remarks**

- I have received one proposal for the insertion of a new draft regulation 93 bis with reference to article 142 of the Convention. I am concerned about the interpretation and extent of the application of article 142 of the Convention, and I have asked the Secretariat to prepare a briefing note in this respect. I invite for discussions of this insertion.

#### **Regulation 94 [President's Text]**

##### **Adoption of Standards**

1. The Commission shall, taking into account the views of [recognized experts identified in accordance with annex X], Stakeholders and relevant existing internationally accepted standards, [where applicable,] make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to, inter alia:

(a) Operational safety;

(a).bis. The effective protection of human health and safety, and labour matters;

(b) The conservation and Exploitation 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 145.

1.bis. Standards shall describe [and determine] how the Authority and Contractors shall implement these regulations, and shall aim for:

(a) a uniform and non-discriminatory operating environment for all Contractors;

(b) a consistent approach by all parties to reduce environmental impacts and human health and safety risks to as low as reasonably practicable; and

(c) an outcomes-based approach to regulation, which prescribes rigorous environmental outcomes while affording flexibility for the processes by which

these outcomes are achieved to enable continuous improvement, particularly as technology advances.

2. The Council shall consider [], upon the recommendation of the Commission and taking into account statements submitted by Stakeholders during a public consultation, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority, including the decisions of the Council and the Assembly and, to the extent relevant, developed on the basis of Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice. 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. The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3. The Standards contemplated in paragraph 1 above must include both qualitative and quantitative standards, if applicable, and must include all the methods, processes and technology required to implement the Standards.

4. Standards or amendments thereto adopted by the Council [and approved by the Assembly] shall be legally binding on Contractors, member States and the Authority from the date of their adoption and the Commission shall review these Standards at least every five years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology, as to whether any revision is required]

4.bis. Standards adopted or revised may incorporate an appropriate transition period for implementation by existing Contractors.

5. In the event of any conflict between the provisions of these regulations and the provisions of a Standard, the regulations shall prevail. The Authority should be notified of the conflict, and shall provide additional guidance as necessary.

**Comments/remarks**

- I suggest deleting 4.ter since this is redundant.
- I suggest deleting 5.bis. as this is overlapping and to some extent contradicts the content of paras 4.alt and 4.bis.

**Regulation 95 [President's Text]**

**Issue of Guidelines**

[1. The Commission or other subsidiary organs of the Authority, shall, from time to time, [where appropriate or upon request by the Council,] develop Guidelines of a technical nature, in order to assist in the implementation of these Regulations, taking into account the views of relevant Stakeholders.

1. alt bis. The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, in order to assist in the implementation of these

Regulations, taking into account instructions from the Council and the views of the Commission as well as other relevant Stakeholders.

2. The full text of such Guidelines [or any revisions thereto] 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 direct that the Guideline be modified [by the Commission] or withdrawn.

3. The Commission or other subsidiary organ, in the case of technical Guidelines and the Secretary-General, in the case of administrative Guidelines shall keep under review such Guidelines which shall be reconsidered, and revised subject to Council approval as needed, at least every five years from the date of their adoption or revision, and in the light of improved knowledge or information.

[4. Guidelines are only of a recommendatory nature, [yet Contractors shall ensure they are apprised of the Guidelines and take them into account in their performance of functions under these regulations and their contract. The observance of a Guideline by a Contractor may serve as supporting evidence of compliance by that Contractor with the relevant Rules of the Authority to which the Guideline relates. The Authority may also request applicants or Contractors to identify and explain departures from Guidelines].

## **Part XI**

### **Inspection, compliance, and enforcement**

#### **Section 1**

##### **Inspections**

##### **Regulation 96 [IWG ICE]**

###### **The inspection mechanism**

1. The Commission shall establish a Compliance Committee, within the Commission, pursuant to regulation 96 bis.
2. The Secretary-General shall appoint an officer with suitable qualifications to be Chief Inspector. The Chief Inspector shall undertake the day-to-day management and administration of a Roster of Inspectors and inspection programme.
3. The Council shall, on the basis of the recommendations of the Commission, approve and maintain a code of conduct for Inspectors.

##### **Regulation 96 bis [IWG ICE]**

###### **The Compliance Committee**

1. The Compliance Committee shall be comprised of ten [fifteen] members of the Commission with appropriate expertise to carry out the functions of the Compliance Committee in accordance with this regulation.
2. The Compliance Committee shall, inter alia:
  - (a) provide recommendations to the Council on the administration and management of the roster of Inspectors and matters relating to inspection,

compliance and enforcement in accordance with relevant policies or directions issued by the Council;

(b) Review the annual reports of Contractors;

(c) Examine reports and recommendations from the Chief Inspector and Inspectors, and other relevant data and information;

(d) Report to the Council, the results of inspections and resulting recommendations for enforcement action, in a timely and comprehensive manner and coordinate compliance matters with other organs of the Authority that play a role in inspection, compliance and enforcement;

(e) Convene, with the support of the Secretary-General, a process to liaise with Contractors in cases of non-compliance or complaints;

(f) Consult and cooperate, through the Secretary-General with sponsoring States, flag States, port States and competent international organizations as regards compliance and enforcement measures;

(g) Make recommendations to the Council for the issue of emergency orders and appropriate penalties; and

(h) Perform any other duties that the Council directs in writing.

3. The Compliance Committee shall develop its own rules of procedure, under the rules of procedure of the Commission.

#### **Regulation 96 ter [IWG ICE]**

##### **Access to inspections**

1. The Chief Inspector shall give reasonable notice to a Contractor of the projected time and duration of inspections, the names of the Inspector(s) and any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor. The activities of the Inspector(s) should in any case not unnecessarily impede activities in the Area.

2. Where the Compliance Committee or the Chief Inspector have reasonable grounds to consider the matter to be so urgent that reasonable notice cannot be given, the Compliance Committee or the Chief Inspector shall instruct an Inspector to conduct an inspection without prior notification, and shall cooperate with a Contractor to conduct the inspection as soon as practically possible.

3. Inspectors may inspect any relevant documents necessary to monitor a Contractor's compliance under its exploitation contract and the Rules of the Authority which include inter alia, all recorded data and samples and any ships or Installation used by the Contractor to carry out Exploitation activities and activities related to such exploitation activities in the Area, including its log, equipment, records and facilities, as well as interview relevant personnel.

4. The Contractor, its subcontractors, agents and employees shall cooperate with Inspectors and give full assistance to Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of ships and Installations used to carry out Exploitation activities and activities related to such activities in the Area by Inspectors;

(a) bis. Keep the Chief Inspector and sponsoring State or States notified of proposed ship schedules including support and supply vessels, and when feasible, inform the Chief Inspector before any ship commences its voyage to a Contractor's Contract Area to facilitate the conveyance of Inspectors and representatives of Sponsoring States parties, where appropriate and to keep the Chief Inspector informed if there is a change to proposed ship schedules due to operational, logistical or unforeseen circumstances;

(a) ter. Within seven business days of the Chief Inspector informing the Contractor that the Inspector(s) would like to conduct an inspection of a Contractor's ship or Installation, the Contractor shall inform the Chief Inspector of the next date a ship will commence its voyage to the Contractor's Contract Area.

(b) Cooperate with and assist in the inspection of any ship or Installation or equipment used to carry out Exploitation activities and activities related to such activities in the Area conducted pursuant to this regulation and comply with the requests of an Inspector;

(b) bis. Provide reasonable facilities, financed by the Contractor, including, where appropriate, food and where feasible accommodation, to Inspectors;

(c) Provide access to all relevant areas, items and personnel or on ships and Installations used to carry out Exploitation activities related to such exploitation activities in the Area at all reasonable times.

(d) Provide access to relevant monitoring and surveillance systems and equipment, books, documents, papers and records to determine compliance with terms and conditions of a 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 in a uniform manner and as required by the Council or the Compliance Committee;

(f)bis Facilitate the activities of Inspectors to observe the Contractor's monitoring operations.

## **Regulation 96 quarter [IWG ICE]**

### **Request for inspection in the event of Harm to the Marine Environment**

1. In the event of Harm to the Marine Environment and the livelihood of any coastal community, adjacent coastal States which have grounds for believing such harm is caused by activities in the Area, shall notify the Secretary-General in writing through appropriate channels of the grounds upon which such belief is based and request an inspection.

2. The Secretary-General, upon the notification of a Member State, shall promptly initiate inspection, and invite representatives of coastal States to participate in the inspection, no later than 24 hours after such notification was made by the States to assess whether pollution the harm is attributable to activities in the Area.

## **Comments/remarks**

### General comments:

- Considering the replacement and redrafting of this provision, I have for the sake of clarity put the new draft regulation 96 (in its entirety) in a clean version.
- Important discussions have been carried out in the group in respect of identifying the most appropriate inspection mechanism, cf. article 162(2)(z) of the Convention. Several participants asked for a streamlined version of draft regulation 96, since it contained a great number of contradictions. Many participants suggested to continue the negotiations based on the proposed hybrid model (the “LTCCC”), since it seems to reflect a compromise between different views and had implemented many of the core elements identified by the working group. Consequently, I have updated draft regulation 96 and based it on the hybrid model. I have implemented the elements from the original draft regulation 96 that there seemed to be consensus around, but I am also aware that I have not been able to accommodate for all views. I invite for discussions and suggest focussing on how this basis can be used and if there are any concerns, concrete proposals should be put forward as to how the concerns can be accommodated for.
- In respect of the choice of the hybrid model, I think it is important to recall the roles assigned to the different organs in the Convention. I would like to highlight, that in the hybrid model, the inspectors will carry out the day-to-day work. The Chief Inspector will be in charge of the unit and the roaster. The Compliance Committee will report, review and provide recommendations to the Council and this is in line with the functions assigned to the Commission in the Convention. The decision-making power remain and fully rest with the Council. So, I believe this hybrid model could work within the framework set out by the Convention. If we would like to consider moving this model in another direction, and e.g. establish a completely separate body, we would have to consider how to do this, since we need a solution on how it would be established, rules of procedure, membership etc.

### Specific comments on draft regulation 96:

- In respect of the competencies required of the Chief Inspector, I have noted that the Chief Inspector should possess appropriate experience in compliance assurance, and health, safety and environment in marine mining or other related marine extractive industries. I suggest to regulated this further in the relevant Standard.
- In draft regulation 96, para 3, a participant has suggested to replace the Chief Inspector with a Standing Committee. Entailing that the Compliance Committee shall establish a Standing Committee, composed of the Chair of Commission and/or the Chair of the Compliance Committee and some individual

members from the Compliance Committee. I invite for discussions of this proposal.

Specific comments on draft regulation 96 bis:

- In draft regulation 96 bis, para 1, one participant has suggested to let the Compliance Committee consist of fifteen members and that the regional groups shall designate two members from among Council members who shall serve for a period of two years, with the possibility of extension. Furthermore, that the remaining five members shall be designated by the Commission taking into account geographic representation. I have also received a proposal for the allowance of a number of individual professionals with the needed competencies to be included in the Compliance Committee. I invite for discussion of these proposals.

**Regulation 97 [IWG ICE]  
Inspectors: Appointment and supervision**

1. The Council, shall on the basis of the recommendations of the Commission, determine the relevant qualifications and experience for Inspectors to be included in the Roster of Inspectors appropriate to the areas of duty of an Inspector under this Part.

1 bis. States Parties may, subject to the requirements of this regulation, nominate Inspectors for consideration, and [individual applications may be submitted directly for] inclusion in the Roster of Inspectors. Nominees [and applicants] will be considered against the qualification and experience requirements. Equitable geographical representation and gender balance will also be considered, in line with the Convention principle. Subject to considerations of protection of personal data, the roster of Inspectors shall be made publicly available on the Authority's website.

2. The Compliance Committee shall make recommendations, to the Council on the appointment, supervision and direction of Inspectors included in the Roster of Inspectors, and on an inspection programme and schedule for the Authority in accordance with any applicable Standards and taking into account any applicable Guidelines.

3. The inspection programme shall be [overseen] by the Council and [managed] by the Compliance Committee, [and implemented by the Chief Inspector and the Inspectors].

4. The Inspectors shall be independent in the fulfilment of their tasks and [be guided by transparency, accountability and non-discrimination]

5. The Authority will cooperate with the Sponsoring State or State to ensure that inspections performed by Inspectors are aligned with enforcement at the national level. Inspectors shall report to the Compliance Committee in writing regarding any difficulties relating to the enforcement of the measures.

6. Inspectors may be required to undertake relevant training programmes, [including but not limited to project and ship instructions, health and safety, as well as undergo fit for work medical evaluations], at the request of the Council,



based on the recommendations of the Compliance Committee. The Secretariat shall facilitate the requisite trainings and evaluations.

7. The Compliance Committee shall keep the Roster of Inspectors under review and updated. The Council may, for reasonable cause, remove an Inspector from the Roster of Inspectors, on the basis of the recommendations of the Compliance Committee.

**Comments/remarks**

- In respect of 97, para 1 (bis) it should be considered whether only state parties may nominate inspectors or whether a person can apply independently and irrespective of a state party nomination. Currently, the provision is unclear in this respect. I invite for discussions of this matter.
- The reference to transparency and accountability in para 4 has been moved from para 96 to this draft regulation. A participant also proposed to reference non-discrimination, which I have also inserted. I have refrained from referencing the precautionary approach, as I believe that the inspectors must determine objectively that a contractor is in compliance with the terms of the contract. This is also in line with several proposals for the suggested deletion.

**Regulation 97 bis [IWG ICE]**

**Inspector's functions and liabilities**

1. [In conducting the inspections, the] Inspectors shall:

(a) Carry out inspections in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of life at sea, and where appropriate follow instructions and directions pertaining to the safety of life at sea given to them by the Contractor and the master of the ship ;

(b) Avoid interference with the safe and normal operations of the Contractor and of ships and Installations.

(b) bis. Comply with Authority's code of conduct for inspectors and inspections established pursuant to draft regulations 96 (3).

(d) Indicate in their reports all ships, installations, equipment, facilities, data and samples monitored or otherwise examined, all documents reviewed or copied, all questions posed to the Contractor or any personnel.

2. The Compliance Committee, upon the notification of any Member State on reasonable grounds that an inspection is expedient to prevent Contractor non-compliance or harm to the Marine Environment, shall promptly initiate inspection.

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

#### Comments/remarks

- I have suggested to insert a new section that specifically deals with the inspector's functions and liabilities as, to my understanding, these elements do not strictly fit into either draft regulations 96, 97 or 98.
- Para 2 is a consolidation of paras 7 and 8 of the original draft regulation 96.
- Para 3 stems from draft regulation 98 and is to be considered a replacement. Several participants supported to have a strict liability clause but suggested that it was moved from regulation 98 as that draft regulation relates to the inspector's powers.

#### **Regulation 98 [IWG ICE] 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 [relevant] 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 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;

(b) bis Inspect any [relevant] documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any ship or Installation used [to carry out Exploitation activities and activities related to such exploitation activities in the Area] [] including its log, equipment, records and facilities and question relevant personnel.

(c) [Request] from any person referred to in subparagraph (b) above [reason for] 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 [] 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;

[(f) [After due notification to the Authority giving reasons for the same, seize document[s], article[s], substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;]

[(g) Remove representative samples or copies of assays of such samples from any ship or equipment used for or in connection with the Exploitation activities that the Inspector may reasonably require;]

(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 necessary by the Inspector; and,

[(h).bis. [Issue a] "do not disturb notice", in writing, in order to allow the further inspection, examination or measurement of, or the conducting of tests concerning, any ship, installation, equipment or facilities used [to carry out Exploitation activities and activities related to such exploitation] [] activities in the Area.]

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

[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 shall document any site visit or inspection activity and [shall] use any [] means to do so, including video, audio, photograph or other form of recording.

#### **Comments/remarks**

- Paras 1(f) and (g) and paras 3 and 4 of draft regulation 98 remains in brackets as there are divergent views as to whether the inspectors subject to the Convention has the power to seize documents.
- Para 1(h). bis is retained in brackets as some participants are of the view that the regulation should be deleted. I invite for discussions of that.

#### **Regulation 99 [IWG ICE] Inspectors' power to issue instructions**

1.If, as a result of an inspection, an Inspector has reasonable grounds to determine [] that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of [h]arm to the Marine Environment, [including Underwater Cultural Heritage [or a Contractor is otherwise in breach of the terms of its contract with the Authority] the Inspector shall give an instruction of a temporary nature considered reasonably necessary to remedy the situation, in accordance with any applicable Standards, including:

(a) A [written] instruction requiring a Contractor to undertake specific tests or monitoring and to furnish the Chief Inspector with the results or report of such tests or monitoring within a set period;

(b) A [written] instruction placing a requirement 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

[(d) A [written] instruction requiring a suspension in some or all [exploitation] activities for a specific period.

(e)

1.bis The instruction will have immediate effect.

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 ship or Installation to whom the instruction can be issued.

2. bis. [The Inspector shall notify the Chief Inspector immediately when an instruction has been issued under paragraph 1]. The Chief Inspector shall [then] report immediately [and provide a copy of the instruction] to the Compliance Committee, the Secretary-General and through the Secretary-General to the Contractor's sponsoring State or States and, if applicable to the relevant [adjacent] coastal State or States, that an instruction has been issued under paragraph 1.

2. ter. An instruction shall specify the information to be provided to the Inspector by the Contractor to demonstrate the steps being taken to implement the instruction within the specified period.

2. sexies. The Compliance Committee may:

(a) Request the [ ] Inspector to provide further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration; or

(b) revise or set aside an instruction under paragraph 1 as soon as practicable; or

(c) Invite the Council's attention to any cases of non-compliance with the terms of a contract.

3. An instruction shall be for a specified period not exceeding seven days. The Chief Inspector may extend such period [by an additional seven days]/[until such time the Contractor has complied with the instruction and fulfilled all requirements], and shall report any such extension to the Compliance Committee.

3.bis An instruction is effective from the time fixed by the Inspector and remains in force unless set aside by the Compliance Committee or until the Inspector's instructions have been complied with within the specified period or the instruction lapses at the end of the specified period.

3.ter Within three days of the expiry of the specified period or any extension thereto under paragraph 3, the Chief-Inspector shall assess whether the instruction has been complied with by the Contractor and shall report immediately to the Compliance Committee. Subject to paragraph 3, where a Contractor has failed to comply with a written instruction or the circumstances giving rise to the instruction remain unresolved, the Compliance Committee may thereafter exercise the powers conferred upon it under regulation 103.

3.quarter In the case of a written instruction issued under paragraph 1(d), where the circumstances giving rise to a suspension in some or all exploitation activities are not resolved or are unlikely to be resolved, the Compliance Committee shall [following consultation with the Contracot, notify the Council immediately together with any recommendation as to whether such suspension should continue. [Following consultations with the Contractor], the Council shall decide if the suspension should continue, including the placing of conditions on any recommencement of activities, taking into account any recommendations of the [Commission] [Committee].

4. Nothing in this regulation shall preclude the Council from issuing emergency orders pursuant to article 162, paragraph 2(w) of the Convention.

**Comments/remarks**

- Several participants supported the deletion of “serious” in para 1. Some participants suggested to retain the reference to written, and I have thus kept this reference in brackets.
- In para 1, some participants suggested to delete the reference to Underwater Cultural Heritage as it is not related to the inspection mechanism of the Authority, I invite for discussion on this.
- Several participants pointed out that there was a need for streamlining para 3 and eliminated the duplications. I have tried to do so and have also implemented 2.ter in the streamlined version of para 3. Considering the replacement and deletions, I have for the sake of clarity put the new para 3 in a clean version. I invite for discussions of this new para 3 and in particular whether the extension should be for another 7 days or open as it is currently drafted.
- I understood from the meeting in July that there was consensus to continue the negotiations based on the alternative version of para 3. In that regard, I have attempted to streamline the para, in particular in relation to 3.alt.bis and 3.alt.quater where there was a degree of overlap.

**Regulation 100 [IWG ICE]**

**Inspection Reports**

1. No later than thirty days after the end of an inspection, the Inspector shall prepare and deliver a report to the Chief Inspector in accordance with the template and other requirements of the relevant Standards and in accordance with relevant Guideline setting out the findings and any recommendations for improvements in performance, procedures or practices by a Contractor. The Chief Inspector shall send the report to the Compliance Committee and the Secretary General, [who shall send a copy of the report to the Contractor and its sponsoring State or States].

1 bis. The Contractor and the sponsoring State or States may within thirty days of the date of receipt of the Inspector’s report, provide to the Secretary -General comments on the findings and recommendations, [including details of any action taken or to be taken in accordance with the findings and recommendations of the Inspector’s report.] The Secretary-General shall transmit any comments to the Compliance Committee.

2. The Compliance Committee shall pursuant to regulation [96 bis paragraph 6], in their annual report to the Council include details on the findings and recommendations following the inspections conducted in the prior Calendar Year and shall make any recommendations to the Council on any enforcement action to be taken by the Council under these regulations and an exploitation contract. Taking account of any regulatory action taken by the sponsoring State or States or corrective actions taken by a contractor to address the findings or recommendations.

3. The Compliance Committee shall report to the Secretary-General any acts of violence, intimidation, or abuse against or the wilful obstruction or harassment by any person of an Inspector, or a representative of a sponsoring State, any other State Party, or other party concerned who accompanies the Inspector, as identified in regulation 96, in the course of their duty. The failure by a Contractor to comply with regulations 96 or 96 ter shall also be reported to the Secretary-General. Appropriate measures shall be taken in accordance with regulations 99 and 103 respectively.

3 bis. The Secretary-General shall report subject to regulation 100(3) such acts immediately to the sponsoring State or States and the flag State of any ship or Installation concerned, the national State of the Inspector for consideration of the institution of proceedings under national law.

#### **Regulation 100bis: [IWG ICE]**

##### **Contractor compliance report**

The Compliance Committee shall prepare an annual compliance report for each Contractor, which shall be made available in draft form within thirty Days for comment to the Contractor and the Sponsoring State or States, before being reported to the Council and published in the Seabed Mining Register.

##### **Comments/remarks**

- The last sentence has been deleted since it overlaps with draft regulation 103, para 7. bis.

#### **Regulation 101 [IWG ICE]**

##### **Complaints relating to Inspections**

1. A Contractor who considers that an Inspector has acted unreasonably or outside of the scope of their powers under this Part may complain in writing to the Secretary-General, who will transmit the complaint promptly to the Compliance Committee who shall consider the complaint as soon as practicable.

1 bis. A person aggrieved by an action of an inspector under this Part may complain in writing to the Compliance Committee, who shall report to the Commission to consider the complaint as soon as practicable.

2. The Compliance Committee may take such reasonable action as is necessary in response to the complaint, in accordance with applicable Standards and the Authority's Code of Conduct.

3. The Compliance Committee shall [submit] a report to the Council describing the complaint and the action taken in response to such a complaint.

**Comments/remarks**

- I have suggested to delete the whistle blowing procedures from this part of the draft regulations, as I understand that most participants agreed that this would not be an appropriate placement. Also, as far as I understand, the Council can only require contractors to have a whistle blowing policy, rather than specifying what that policy should contain.

**Section 2  
Monitoring**

**Regulation 102 [IWG ICE]  
Ship notification, electronic monitoring and data reporting**

2. All installations, ships and mining collectors involved in exploitation activities under the Exploitation contract shall be fitted with:

- (a) an electronic monitoring system which shall record, where technically feasible in real time, inter alia, the date, time and position of all mining activities, and environmental data, [including Underwater Cultural Heritage]; and
- (b) The electronic monitoring system shall also encompass the monitoring of the environment, implementing the obligations under Regulation [46ter], allowing for adaptive management during the mining operation.
- (c) a satellite tracking system to enable identification of each ship and determination of its position, navigation status, course and speed. The detail and frequency of reporting shall be in accordance with the Standards and taking into account the Guidelines.

2 bis. The Contractor shall use the best-available environmental techniques to monitor in real-time, [where practicable] and in the actual environment the mining impact. [The electronic monitoring system shall be in accordance with the Environmental Monitoring and Management Plan.

3. The Compliance Committee shall notify the [Contractor and the] sponsoring State or States and shall issue a compliance notice under regulation 103, where there is reasonable evidence to suggest based on the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.

5. All data received and transmitted to the Authority under this regulation shall be transmitted to the sponsoring State or States [].

**Comments/remarks**

- I have attempted to consolidate paras 2 bis and 2 ter.
- I suggest deleting para 3. bis since this will be covered by Annex VII (EMMP).
- Para 4 is already covered in draft regulation 96 ter, para 5(d) and thus deleted.

- Several participants have suggested to delete the last sentence from para 5.

### **Section 3**

#### **Enforcement and penalties**

##### **Regulation 103 [IWG ICE]**

##### **Compliance notice, suspension, and termination of exploitation contract**

1. At any time, if it appears to the Compliance Committee based on reasonable grounds, including a report from an Inspector, or failure to comply with a written instruction under regulation 99, that a Contractor is in breach of, the terms and conditions of its exploitation contract, provisions of the Convention related to activities in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Compliance Committee shall issue a compliance notice to the Contractor requiring such action as may be specified in the compliance notice and shall report immediately to the Council on the issue of such notice.

[];

[[1.bis.Alt. The Authority should discuss the issue in detail with the Contractor to inform decisions of the Council.]

2. A compliance notice shall:

- (a) Describe the [] breach and the factual basis for it; and
- (b) Require the Contractor to take remedial or corrective action or other such steps as the Compliance Committee considers appropriate to ensure compliance within a specified time period and may include:
  - (i) the implementation of an improvement plan setting out actions to be taken to return to compliance, how the actions' effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue; or
  - (ii) agreeing with the Contractor a modification to the Plan of Work in accordance with regulation 57.

2 bis. Actions specified in the compliance notice should be commensurate with the gravity, frequency or other circumstances of the [] breach.

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 not exceeding 30 days to make representations in writing to the Secretary General concerning any aspect of the compliance notice, who shall transmit same to the Compliance Committee. Having considered the representations, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of one or more 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 violations of the fundamental terms of the exploitation contract, provisions of the Convention related activity in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Council shall 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.

[5. Bis Alt 1 The Secretary-General shall, [subject to the confidentiality requirements of regulation 90] make public any compliance notice issued to a Contractor, any response received from the Contractor or Sponsoring State or States[. The Compliance Committee shall [include] [] in their annual report to the Council a summary of any compliance notices issued.]

6. In the case of any violation of an exploitation contract not covered by paragraph 5 above, 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 which must be in line with indicative penalties set out in the relevant Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.

7. Except 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.

7.bis. The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

#### **Comments/remarks**

- Different views were provided during the July session, and I have attempted to accommodate for these views and in general streamline the provision.

#### **Regulation 104 [IWG ICE]**

##### **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. The Council shall determine the nature of such works or measures and the manner in which they are to be carried out.

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

#### **Regulation 105 [IWG ICE]**

##### **Sponsoring States**

1. 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, Rules of the Authority and the terms and conditions of the exploitation contract.

## **Section 4**

### **Periodic review of inspection mechanism**

#### **Regulation 105 bis [IWG ICE]**

### **Periodic review of inspection mechanism**

1. Every 5 years from the date of establishing the Compliance Committee, the Council shall commission through the Secretary-General an independent review of the Authority's inspection, compliance and enforcement mechanism to ensure that the manner of its operation and activities accords to best international regulatory practice.

[1. bis. The report of the periodic review should be published on the Authority's website, with private and confidential information redacted.]

2. In the light of the review, the Council may, taking into account any recommendations of the Commission, recommend changes to improve the way the mechanism operates.

## **Part XII**

### **Settlement of disputes**

#### **Regulation 106 [IWG IM]**

### **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 and Part XV of the Convention [and the rules of procedure adopted by the International Tribunal for the Law of the Sea [for the conduct of expedited hearings concerning the Rules of the Authority.]]

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] [and the Rules of the Authority] 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].

*[Facilitators' Note: Delegates are requested to consider whether the regulations should provide mechanisms for administrative review procedures for decisions of the Authority (in addition to the more formal dispute resolution procedures in UNCLOS). This may, for example, provide for procedures that can be more efficient than a referral to ITLOS, and may provide more comprehensive grounds for review and/or legal standing in certain circumstances to parties other than Contractors and States. Delegates are also invited to discussed whether the regulations should include a requirement to attempt alternative dispute settlement, rather than requiring immediate recourse to ITLOS.]*

## **Part XIII**

### **Review of these regulations**

#### **Regulation 107 [IWG IM]**

### **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 full review of the manner in which the regulations have operated in practice.

2. If, in the light of improved knowledge, technology, implementation experience, or identification of regulatory gaps, it becomes apparent that these regulations are not adequate, any State party, the Commission, any Contractor through its sponsoring State, [or Stakeholder [through its relevant State Party]] may at any time request the Council to consider, at its next ordinary session, revisions to these regulations and the matter shall be included in the provisional agenda of the Council for that session.

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.

[5. Any amendments to these regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an exploitation contract with the Authority.]

5 alt. The Council may incorporate an appropriate transition period for implementation by existing Contractors of any amendments to the regulations.

## **Annex I [President's Text]**

### **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 [of applicant's designated representative].
5. [ ]
6. Email address [of applicant's designated representative].
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.
  - [(d) Identify the identities and locations of the applicant's:
    - (i) management including any members of its board of directors;
    - (ii) ownership, including any persons or entities holding 5 percent or more of the applicant's equity, if different from the place of registration/domicile, for example in the case the the applicant is a subsidiary of a parent company located in a different jurisdiction and
    - (iii) an organisational chart of the group structure.]
    - (vi) holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships at the time of application]
- [13. bis. Where the applicant is a company, provide an organisational chart or other description of any company group structure, including parent, subsidiary or other associated companies.]
- [13.ter. Provide any additional information to assist determine the nationality of the applicant, or by whose nationals the applicant is effectively controlled.]
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.

[15.bis. Provide information about relevant national laws and administrative measures that would apply to the applicant in its conduct of Activities in the Area, including on compensation mechanisms in respect of damage caused by pollution of the marine environment.]

[15.ter. A description of the Contractors and the Sponsoring States (or States) compliance enforcement strategies, and how these align with the Rules of the Authority.]

16. Attach a certificate of sponsorship issued by the Sponsoring State or States.

## **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] [ ] [and a georeferenced file and a map with the limits of the requested area ]

## **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 [and is able to apply its policies in a non-discriminatory and gender-sensitive way].

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. [Provide organograms of staffing, and staffing data provided should be disaggregated by gender].

20. **bis.** [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].

[20.ter. Provide evidence that the applicant has demonstrated a satisfactory record of past operational performance and compliance, both within the Area and in other States' jurisdiction].

## **Section IV**

### **Financial information**

21. Attach such information, in accordance with the [Standards and] Guidelines, [as applicable], [to enable the Council to determine] [to assist the Authority in determining] 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] [Director-General] 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 [and the predicted debt-to-equity ratio].

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 contractors;
- (c) The date of termination of the contract or contracts, if applicable;
- (d) [The final report on the results of exploration and baseline investigations, including results of testing equipment and operations in the exploration area.]

**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).

26.Alt. [Attach the following attachments and annexes: [xx]]

## **Annex II [President's Text]**

### **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;

[(a).bis. A description and schedule of any Exploration activities planned to be conducted following approval of the Exploitation Plan of Work, including a description of the equipment and methods expected to be used.]

(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 [] [most recent applicable international standards used by the Authority];

(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 [ [test mining] 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, and electricity or other energy supply 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 [and suppliers of goods and services] to be used for Exploitation activities, [together with information about their compliance records].

(j) Details on how many vessels [are proposed to] [will] be involved in the mining operations, including how and to where the collected ores [will] [are proposed to] be transported from the mining site to shore for processing,

(k) Details relating to onshore processing, if applicable.



## **Annex III [President's Text]**

### **Financing Plan**

A Financing Plan should include [supported by evidence or other relevant sources]:

- (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 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;
- € Details regarding other relevant costing, including capital expenditure requirements;
- (f) Details of [advance agreed sales, and all] 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 [and debt-to-equity ratio].
- [(i) Details of any loans or planned loans, and the institutions making the loans, with an indication whether those institutions apply [relevant best practice international standards or their equivalent] [the Equator Principles or the International Finance Corporation performance standards, or equivalent.]

## Annex IV [IWG ENV]

### Environmental Impact Statement

#### Explanation / comment

General comments by the Facilitator relating to the work on streamlining this annex and relevant regulations:

- Ahead of our meeting in July, I highlighted that there seems to be a tendency to include much detailed methodological suggestions. For example, I received a proposal to reference “particle modelling or other means of establishing dispersal kernels or connectivity paths” in section 3.1.1 of this annex. I believe that we should attempt to avoid such references as they might not be sufficiently accurate and comprehensive. I therefore urged participants to keep this in mind through the reading of this annex and other annexes. Furthermore, I urged for participants attempting to simplify the annexes and try to identify areas that could be more suitable for the Standards and Guidelines.
- As a result, I moved some parts of this annex to the regulations on the Environmental Impact Assessment Process, the Environmental Impact Assessment, the Environmental Impact Assessment Scoping Report and the Environmental Impact Statement as suggested by the intersessional working group on this.
- Ahead of this meeting in October/November, I have received proposals to keep and reinstate some of the parts which was moved previously. I have followed those suggestions as it aligns with the work of the intersessional working group on streamlining section 2.
- Furthermore, as I stated previously, I have attempted to introduce a Matrix overview of what regulations and parts of the annexes could be moved to relevant Standards and Guidelines. I have for example suggested in the Matrix to move different parts of this annex (IV) into the “Draft guidelines for the preparation of environmental impact statements” as can be seen here; ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](#)) Furthermore, it could be relevant to consider drafting a Standard on this matter to entail the more overall provisions.
- This to have a better overview going forward as it is imperative that we move on with this work output to create the needed regulatory basis. I therefore propose, when we read through this annex, that we decide after each section whether it should be *included* in the relevant regulation(s), be *moved* to a Standard or *kept* as an annex. I invite for a discussion on this.
- Some participants proposed to delete point “5.5.4” and use “Alt. 5.4.4” going forward. However, as other participants have submitted changes to 5.5.4, I propose to have a discussion on which to use going forward.
- I propose to follow all recommendations from the intersessional working group on “Underwater Cultural Heritage”, both in respect

to suggested deletions, but also regarding proposed insertions, e.g. point Alt. 6.2.5 which I believe should serve as basis going forward.

- One participant proposed to move parts of point 7.9 (on noise and light emissions) and 7.10 (on GHG emissions and climate change) top point 8.6.1. I see merit in this proposal and suggest using this.

## **1. Preparation of an Environmental Impact Statement**

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

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

(b) Provide information [based on data from,] [as a general rule, a minimum of 15 years of] [monitoring], in accordance with the regulations, and taking into account the applicable regional environmental management plan, [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 or Contractor considers an Environmental 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.]

[(d) Be peer reviewed by competent independent experts, before submission and include a description of the experts, their qualifications, and the results of their review.]

## **2. Template for Environmental Impact Statement**

[]The required contents and 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 based on the Best Available Scientific Evidence, Best Environmental Practices, and Best Available Techniques, and Good Industry Practice on which the Authority can base its decision, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

This document is a template and does not provide details of methodology or thresholds that may be resource- and site-specific. These methodologies and thresholds may also change over time in according to, for example, development of new technologies, new scientific data or new knowledge, and will be developed as Standards and Guidelines to support the regulations.

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## 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 project, its objectives, if any, a description of alternatives analysed, and a justification of the alternative chosen;

Alt (a)bis A description of alternatives analyzed;

(b) Anticipated Economic, financial and other benefits to be derived from the project, and the beneficiaries for each;

(c) A description of anticipated and cumulative, [risks and] impacts of the activity, as assessed by experts, (. including, but not limited to, oceanographic, geological, biological, socioeconomic and sociocultural) including the expected spatial extent and duration of impacts and cumulative impacts in relation to the identified baselines, and the expected recovery rates of the system to its original state;

(d) Measures to [minimize and] [mitigate anticipated and cumulative environmental impacts [support recovery of the marine environment from impacts,] and a description of any anticipated and cumulative residual impacts, that may occur despite Mitigation, noting how the mitigation hierarchy is being employed in assessing impacts;

[[Alt (d bis) A description of any residual impacts;] ]

[[Alt (d ter) Expected recovery rate of the marine environment impacted;] ]

(e) Linkages with development of the Environmental Monitoring and Management Plan and the Closure Plan; [and]

[]

(f) Consultation undertaken with other parties and Stakeholders.

## 1. Introduction

The purpose of the Introduction section is to set the scene for the Environmental Impact Assessment. This section should contain enough detail for a reader to form an overall impression of the proposed project and how it has developed and understand how the Environmental Impact Assessment is structured. As this section mainly provides a 'roadmap' to more detailed material in the Environmental Impact Assessment, it may be relatively short.

### 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.

Provide understanding of the policy on alternatives being followed by the applicant. The determination of project viability may include a summary of feasibility investigations related to geophysical, engineering, geotechnical, oceanographic, biological and other components of project operations.

### **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 depth zones, and any component/system testing conducted to date. The time, location, and parties involved in exploration work should be included. For the component/system testing, provide a brief description of activities here. If applicable, include any report(s) related to results of component/system testing and Test Mining studies including any monitoring and assessment of the environmental impacts 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. The proponent's technological and environmental expertise, capacity and financial resources should be outlined, and the proponent's environmental record for this work and any previous comparable works should be summarised as well as how they intend to support commitments made elsewhere in the application.

### **1.5 This report**

This section should constitute a guide for users of the Environmental Impact Statement on how to effectively use the information contained in the Environmental Impact Statement.

#### **1.5.1 Scope**

Provide detail as to what is and is not included, and which risks have been prioritised and which received less emphasis, in this Environmental Impact Statement, based on the Scoping Report and previous feedback from the Authority and Stakeholders. Link to other supporting information.

#### **1.5.2 Report structure**

This subsection should refer to the prescribed structure of the template but should also indicate where to find information that is not obvious from the table of contents, for example in cases where the Environmental Impact Statement relates to a larger project covering several Mining Areas within the Contract Area or for an Environmental Impact Statement that contains a large volume of information (especially multiple volumes). Authorship should be provided for chapters.

#### **1.5.3 Consultation overview.**

Provide overview of mandatory [, as well as any] voluntary stakeholder consultation processes and consultations.

## **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 national and international legislation policies and procedures,**

Outline the national and international legislation, procedures and policies, for example those adopted in accordance with article 209 of the Convention to prevent, reduce and control pollution of the marine environment[, including the coastline,] from activities in the Area, as well as applicable rules, regulations, procedures, standards and Guidelines and the Regional Environmental Management Plan of the Authority, that is applicable to the proposed mining operation in the Area, including any guidance provided for implementation and how the proposed operation will comply with them.

### **2.2 Other applicable /national legislation, policies and regulations**

Outline any other legislation, policies, regulations or Sustainable Development Bills 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, flag State laws, climate []). 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**

In addition to the United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the Implementation of Part XI of the Convention, list the international and regional agreements applicable to the operation, (whether directly or via incorporation into domestic laws cited in section 2.2 above), such as relevant conventions, including annexes and Guidelines, of the International Maritime Organization related to protection of the environment, biodiversity and safety. These include the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the Ballast Water Management Convention (BWMC), the International Convention on the Control of Harmful Anti-fouling Systems on Ships and the 1996 Protocol thereof and the Convention on Biological Diversity and the Convention on Migratory Species of Wild Animals and the international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ); and describe how the proposed operation will comply with them.

### **2.4 Other applicable standards, principles and Guidelines**

Discuss applicable standards and Guidelines, including those mandated by the source(s) of funding for the operations, that will be adhered to or aligned with throughout the operation, such as those of the International Seabed Authority not already included in section 2.1, 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.

## **2.5 National Processes related to [S]ponsoring State permits**

Describe any national processes followed and permits received from the Sponsoring State in relation to the environmental impact assessment.

## **2.6 Ecologically and/or Biologically Significant Areas (EBSAs) and Area-based management tools**

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

# **3. Description of the proposed project**

Provide details of the proposed project and the area of influence of the project or impact area, 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 this section should provide a 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), showing the relevant sites proposed as Contract Area and Mining Area and any other features that can be usefully marked upon the map at the time of application, including the locations of impact reference zones and preservation reference zones as well as locations of other nearby contract areas or known seabed infrastructure. Provide general location of the project on a regional map.

[The map should indicate Areas of Particular Environmental Interest, Sites[/Areas] in Need of Protection, or other sites designated for particular status under the rules, regulations, procedures, Standards, or Regional Environmental Management Plans of the Authority. This may also include sites of other competent authorities, 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. The map shall also identify the nearest coastal States and States that may be affected by mining activities, and any adjacent ISA contract sites. This map may be the same as the map supplied in Annex 1 Section II.

### **3.1.2 Associated activities**



Describe the supporting activities and infrastructure required (e.g., transportation corridors, ports for disembarkation of vessels, ports for unloading of ore that are outside the direct mining site, anchoring areas for vessels and machinery).

### **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, size, shape, tonnage, volume grade and distribution pattern [Italy] of the mineral deposits. Estimates of the inferred indicated resource should be provided on the basis of the international CRIRSCO reporting template or national accepted codes (NI 43-101, JORC Code) and the official ISA mineral classification (PMN, PMS and CFC).

### **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 (horizontal and vertical) and temporal (seasonal and annual) scales of the mining operation, including volumes, depth of penetration into the seabed. Provide an overview of physical, chemical, geological and oceanographic properties of material to be recovered, dewatered and deposited or discharged into the water column or back to the seabed, and the target depth range for any such discharge. This should include an account of the area to be directly impacted over time, including the water column and seafloor beyond the contract area, if applicable, as well as the likely extent of any secondary impacts (e.g., sediment plumes, noise, light), which will be discussed in greater detail later.

#### **3.3.2 Mining Equipment**

Describe any equipment expected to qualify as Best Available Technology for mining and support operations (e.g., mining vessels/platforms, supply vessels, barges), including the anticipated frequency of vessel movements for these activities. Also, including a description of any specific technologies developed to reduce impacts should be included.

Provide details of [methodologies of exploitation (drilling, dredging, excavating, disposing of waste, constructing and operating or maintaining installations, pipelines and other devices) and give specifications of] the technologies to be employed in relation to Best Environmental Practice, 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 the specific technologies developed to reduce the direct impact of mining activities (e.g. noise, light, plumes) and other details of the mining activities subsea and on the surface. [Describe the energy requirements of the requisite machinery.]

#### **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 in relation to Best Environmental Practice, and any methods related to the trans-shipment of the

mineral-bearing ore, including transfers at sea. Describe the energy requirements of the requisite machinery. Also, a description of any specific technologies developed to reduce impacts should be included[, highlighting at which levels, in the water column (generation of plume at the seafloor, turbidity in the water column, addition of bottom sediments to the surface waters) resulting impacts to the marine ecosystem, may be mitigated during the different phases for collection, separation, lifting, transportation, processing, and discharge of effluents.]

#### **3.3.4 On-site processing**

Provide a [detailed] description of the [plan for] processing of the mineralized material that will occur within or above the Area in relation to Best Environmental Practice, including water column activities (such as riser pipe transfer) and 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 and separation of the mineralized material at the surface. This section should also cover any disposal of seawater/fines [and include the spatial layout of the activities over time which will provide a comprehensive map of the disturbance area from which to assess harm to the Marine Environment].

Include a description of the waste management, transport, disposal and discharge of sediment, wastes or other effluents into the Marine Environment and the disposal of waste from general ship operations, including the specific technologies and methods to be adopted to reduce harmful impacts of such disposal to the marine environment. The description should acknowledge respective ISA Standards and Guidelines as well as other applicable legal frameworks. Describe the management of shipboard wastes to be transported to shore-based disposal facilities, including 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. [Describe the energy requirements of the requisite machinery.] Also, a description of any specific technologies developed to reduce impacts should be included.

#### **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 or certification standards to which the equipment will be or has been built, as well as the operating standards that will be applied to mining operations, including those for Best Available Technology and Best Environmental Practice issued by the ISA [International Seabed Authority]. 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 or in the event of an emergency, including the decommissioning and removal of offshore infrastructure or the temporary suspension of mining activities, under a Closure Plan.

### **3.7 Other alternatives considered**

Provide an account of alternative options that were rigorously explored and objectively evaluated, including a no-action alternative, that were considered and rejected in favour of the current proposal with justification as to why the alternatives were rejected. Aspects should include the selection of the mine site, mine production scenarios, equipment design and engineering decisions, including technologies selected to reduce the direct impact of mining activities, environmental impacts, financial feasibility, transport and materials handling, shipboard processing and stakeholder support. A no mining scenario must be included.

#### **3.7bis Environmental management measures to mitigate impacts**

Provide a summary description of reasonable measures taken to mitigate adverse impacts to the physical, chemical, geological, biological[, socioeconomic[, and sociocultural] environment.

### **3.8 Development timetable (detailed schedule)**

Provide a description of the overall timetable, from initiation and equipment construction the implementation of the mining programme, through 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;
  - (a) bis Timing of expected regulatory approvals
- (b) Pre-construction activities including the development and testing of mining equipment, operations and systems in situ (if applicable);
- (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.

Whether the availability of funds is subject to approvals should be noted on the timetable.

#### **Section 3bis1 Summary of Scoping results, including of the risk assessment process [**

Provide a brief overview of the results of the scoping exercise including with regard to the sufficiency of the scientific baseline data collected during exploration to support a robust Environmental Impact Assessment.

## **Section 3bis [2] Methodology for Description of the Marine Environment and Assessment of Impacts and Environmental Effects**

[Methodological approaches should be consistent with established community standards. In the case that novel sampling techniques, new technology, or sampling designs are employed, particularly detailed methodology and justification should be provided in this section.]

### **3bis.1 Studies completed**

Describe any prior research/Exploration that could provide relevant information for this Environmental Impact Statement and future activities. These [studies] should be detailed in the appendices.

### **3bis.2 Methodology for Collecting Baseline Data**

For each of the baseline descriptions of the Marine Environment in sections 4 and 5 and socioeconomic [and sociocultural] environment in section 6, describe the methodology for collecting and analysing baseline data, including:

1. spatial and temporal extent of sampling;
2. spatial and temporal frequency of sampling;
3. gear used for sampling and any modifications or calibrations conducted to the gear;
4. results of power analysis;
5. limitations of sampling and how this may impact certainty of impact assessments; and
6. any cooperation with other research programmes in the Area, such as with the ISA, States, other Contractors, or non-governmental organizations.

Highlight any deviations from baseline data collection requirements provided in relevant Standards and Guidelines, and the Regional Environmental Management Plan [, and provide a rationale for those deviations.]

Assess the sufficiency of baseline data collected and compiled in view of the aim to establish mining-related environmental change in relation to natural variability.

Raw baseline data and computer code[, with sufficient metadata and code comments,] used to analyse and provide a description of the Marine Environment shall be included in the annexures of the Environmental Impact Statement or, if the data and/or code have been previously submitted to the Authority, the applicant may provide a link to the Authority's database where the data and/or code [[are] stored or other location where such information has been made available online.

### **3bis.3 Methodology for Summarizing Baseline Data**

Provide a description of the methodology used to summarize baseline data collected. This shall include:

a description and justification of transformations performed to the data and analyses used to summarize the data;

a list of program(s) used to analyze results;

a list of methods to determine species identification and life history; and,

any limitations associated with the results of the analysis.

### **3bis.4 Methodology for Assessments of potential environmental impacts and Environmental Effects to the Marine Environment**

For each assessment of potential environmental impacts and Environmental Effects in sections 7 and 8 and socioeconomic [and sociocultural] environment in section 9, describe the methodology used to assess impacts and Environmental Effects from proposed operations and alternatives considered in section 3.7. in line with the applicable regulations and standards and taking into account the applicable guidelines.

Data, predictive models, and computer code used to analyse and provide a description of the Marine Environment shall be included in the annexures to the Environmental Impact Statement or, if the data, model, and/or code has been previously submitted to the Authority, [] other location where such information has been made available online. Each description of methodology used to assess impacts shall include:

- a) a description and justification of analyses and models used to summarize the data; and
- b) any limitations associated with the analysis or results.

In accordance with Regulation 47quater, where predictive models have been used these shall be reviewed by competent independent experts and the relevant review reports shall be provided as annexures to the Environmental Impact Statement

## **4. Description of the existing physiochemical and geological oceanography**

Give a detailed account of knowledge of the oceanographic\_(physical, chemical and geological) conditions at each mining the stie and impact area as well as Reference Zones, which should include information from a thorough literature review as well as from on-site studies in accordance with the Regulations and applicable Standard and taking into account the relevant Guidelines to be specified. The Guidelines on baseline data collection as updated from time to time by the Commission, shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline description. The account will provide the baseline description of the oceanographic conditions, including physical, chemical and geological oceanographic setting, including its spatial and temporal variability and temporal trends [conditions], against which impacts will be measured and assessed. The detail in this section is based on the prior environmental risk assessment carried out in line with the respective standard and guideline, that will have identified the main impacts, and thus the priority elements that need to be [] considered and assessed 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 baseline environmental conditions of the site and impact area, in accordance with the Standard and Guideline on baseline data collection, including but not limited to the physical, chemical and geological oceanographic setting [] within a broader regional context and [taking into account] [] the applicable Regional Environmental Management Plan. This should be a brief section that includes a map. A more detailed site-specific and impact area description will be provided in accordance with the sections below.

#### **4.3 Studies completed**

Describe any prior research/Exploration studies (including methods used for completing the studies based on Best Available Science using Best Available [Germany] Techniques that could provide relevant information for this Environmental Impact Statement. This research should be detailed in the appendices or in reports attached to the appendices.

#### **4.4 Meteorology and air quality**

Provide a general [] [Characterization of the local meteorology (e.g., wind directions and speeds, seasonal [and interannual] patterns and variability). Provide description of air quality, including chemical characteristics. This section may be most relevant to surface operations and the general risk assessment.

#### **4.5 Geological properties and habitat classification**

Provide a baseline description of the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the geological petrographic and geomorphological setting of the mining sites, the impact areas, and the designated preservation reference zones (PRZs) including sea floor mapping (bathymetry and backscatter), high-resolution sub-bottom profiling, and sedimentation rates, and refer to submarine features such as hydrothermal vents, seamounts abyssal hills and canyons as appropriate.

Provide habitat classification using an appropriate system as prescribed in the relevant Standard [and taking into consideration the] [] Regional Environmental Management Plan. **4.6 Oceanographic setting**

Provide a description of oceanographic aspects including but not limited to thermohaline conditions, optical properties and turbidity, [surface, mid-water and bottom] currents regime, tides, waves, turbulence, and oceanographic fronts, eddies and climate change projections, including spatial variation at and above the site. Seasonal and longer-term variability is an important element. Detail is required on the regional setting, as well as the specific mining site and impact area, and the designated Preservation Reference Zones (PRZs), and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site to boundaries of the Impact Area. [For activities conducted in areas of seamount chains, hydrothermal vent fields, trenches and canyons or other areas with complex bathymetry, oceanographic currents will be influence by topographic forcing and will require a more detailed oceanographic

assessment, including targeted sampling programs, to determine the impact area.] Climate change projections should also be included.

#### **4.7 Chemical oceanographic setting**

Provide a description of water mass characteristics at the mining sites, the impact areas, and the designated Preservation Reference Zones (PRZs) and above the sites at various depths of the water column, including the structure and development of the oxygen minimum zone in particular near the sea floor (up to 200m above bottom), that includes nutrients, particle loads, temperature and dissolved gas profiles, vent-fluid characteristics if applicable, turbidity, etc.

Provide a description of chemical oceanographic properties at the mining sites the impact areas, and the designated Preservation Reference Zones (PRZs), throughout the water column and horizontally from the proposed mine site, that includes nutrients, particle loads, temperature, oxygen, salinity, density, particulate and dissolved organic matter, pH, chemical composition, including[, but not limited to] concentrations of trace metals, dissolved gas profiles, depth range and characteristics of oxygen minimum zone, redox regimes, carbonate saturation, [hydrocarbon] and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability of these properties, and vent-fluid characteristics if applicable.

#### **4.8 Seabed substrate and sub-seabed characteristics**

Provide a description of seabed substrate and sub-seabed composition (to benthic subsurface layers) of the wider mine sites, the impact areas, and the designated Preservation Reference Zones (PRZs), including, but not limited to, physical, chemical, geological and oceanographic properties, specific gravity, bulk density, sediment composition, physical and chemical composition of pore-water and pore-water profiles, grain size, [mineralogy] sediment mechanics, dissolved and particulate organic and inorganic carbon, nutrients, carbonates, redox regimes, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics). Substrate composition shall [] be described to a depth below the seafloor prescribed in the relevant Standard on Baseline Information and the applicable [as indicated in the] [] Regional Environmental Management Plan.

#### **4.8bis Rare or sensitive habitats**

Identify and describe the physical and chemical characteristics of rare or sensitive habitats in line with the respective international guidelines (FAO 2009, Azores Criteria 2010) and policy decisions (, UN, CBD ...) such as hydrothermal vents, ridges, seamounts, as well as oceanographic fronts or eddies, abyss hills and canyons and other geological and oceanographic features.

#### **4.9 Natural hazards**

Provide a description and trend analysis of variation related to applicable potential natural hazards for the site, including, but not limited to, volcanism, seismic activity, cyclone/hurricane, tsunamis, climate-related oceanographic changes and variability [, slides, slumps,] etc. and how these may develop [] in future, e.g. as a consequence of climate change.

#### **4.10 Noise and light**

Provide a description of local ambient noise and light at the seabed, [] throughout the water column and at the surface, including, but not limited to,

light intensity, backscatter, and attenuation, bioluminescence, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics, indicating pertinence to fauna where known.

#### **4.11 Greenhouse gas emissions []**

Provide a description [and quantification] of the level of gas and fluid emissions from [] anthropogenic activities in the Area, as well as those affecting sea floor and water-column chemistry.

#### **4.11bis Climate Change**

Description of the expected changes in physical and chemical oceanographic conditions and processes in the broader area of the mine site due to climate change.

#### **4.12 Summary of the existing physicochemical environment**

Summarize key findings and include notes on special considerations for rare or sensitive habitats hydrothermal vents, ridges, seamounts and oceanographic fronts or eddies, abyss hills [, fracture zones] and canyons and other geological and oceanographic features described in this section. 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**

Give a detailed account of knowledge of the biological communities' composition and structure and ecosystem functions in the proposed mining sites and impact areas, and the designated Preservation Reference Zones (PRZs), including information from a thorough literature review and baseline data collected from on-site campaigns, in accordance with the Regulations and applicable Standard and taking into account the relevant Guidelines. The description of the site should be divided by depth regime (surface, midwater from 200m depth to 50m above bottom and benthic including benthopelagic, where appropriate) or otherwise as indicated in the relevant Regional Environmental Management Plan and provide a description of the various biological components and communities that are present in or utilize the area. The Standard [] on baseline environmental data collection shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline description. The detail in this section is expected to be based on a prior environmental risk assessment that identified, and thus the elements that need to be measured and assessed in the environmental impact assessment.

#### **5.1 Key messages**

Provide key messages (overview of main findings, covered in six or fewer bullet points).

#### **5.2 Regional overview**

Provide regional context for the baseline environmental conditions of the mining site and impact areas, and the designated Preservation Reference Zones (PRZs), including but not limited to the general biological setting, [taking into account] in accordance with the applicable Regional Environmental Management Plan. This should be a brief section that includes a [habitat classification](#) map. A more detailed description of the mining site, the



Preservation Reference Zones (PRZs) [] and impact area description will be provided in accordance with the sections below.

### 5.3 Studies completed

Describe any prior research/Exploration studies (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. This research 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

Provide a description of biological [and ecological] properties in the [region and the mine site, with special focus on the designated preservation reference zones PRZ and the total [mine site and] Impact Area, including diversity, abundance, biomass, life history parameters, relevant behaviour, including feeding rates, community-level analyses, connectivity, trophic relationships, resilience, ecosystem functions and services as well as seasonality and spatial (horizontal and vertical) 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 and shall be guided by the variables given by the Standard for the establishment of baseline environmental data.

The description of the [benthic ecosystem] fauna and its food web is structured by depth range, as this enables a direct link[] to the source and location of an impact. For each depth zone, (at least surface, midwater and benthic as below) there should be a[n inventory] [USA] [description] [Canada] of the known taxonomic/ecological groups (e.g., plankton, fish, marine mammals, marine turtles, benthic microbial invertebrates, demersal scavengers) [in accordance with] the Authority's Guidelines.

Describe the biological communities and ecosystem functions, structured by depth ranges in accordance with the relevant Standards and [taking into account] Regional Environmental Management Plans, may encompass:

1. surface seawater
2. epipelagic zone (< 200 metres)
3. mesopelagic zone (200-1000 metres),
4. bathypelagic zone (1000 - 4000 metres),
5. abyssopelagic zone (4000 - 6000 metres),
6. hadalpelagic zone (> 6000 meters),
7. demersal zone (part of the water column near to and significantly affected by the seabed), and
8. benthic zone.

The description should evaluate the temporal and spatial variability in distribution and composition.

The description should include the size and habitat distributions of the fauna and their life history stages (such as larval and juvenile stages, which differ from the adult stage) as well as trophic pathways. Discussions of species

and communities should include considerations of whether they are endemic (restricted to just the site, resource substrate or region) or are known to be rare, threatened or endangered.,

Migratory and highly mobile species should be included where foraging ranges / migration pathways / management units have been noted as overlapping with proposed operations during scoping.

The climate mitigation functions and services of the ocean shall also be described (including CO2 uptake and sequestration, or nutrient cycling).

#### **5.4.1 Surface**

Describe the biological communities from the surface to a depth of 200 metres, including microbes plankton (phytoplankton and zooplankton, microbial plankton and organic matter), micro-nekton [Germany] surface/near-surface fish such as tuna, and seabirds, marine turtles and marine mammals. Address factors provided in 5.4, as well as spatial and temporal variability and trends.

[the temporal and spatial variability in distribution and composition.]

#### **5.4.2 Midwater**

Describe the pelagic communities [] and their habitat in the open water from a depth of 200 metres down to 50 metres above the sea floor, and include particulate organic matter, microbes, zooplankton, nekton, mesopelagic, bathypelagic and abyssopelagic fishes and deep-diving mammals. Address factors provided in 5.4, as well as spatial and temporal variability.

#### **5.4.3 Benthic**

Describe the [known] benthic microbial, invertebrate and fish communities, including infauna, epifauna, benthopelagic fauna, and demersal fish and scavengers, up to an altitude of 50 metres above the sea floor [and at least 5 meters below (into the sediments).] This inventory should include considerations of species richness, biodiversity, faunal densities, taxonomic uniqueness, community structures and connectivity, etc. Ecosystem functions, such as []bioturbation, habitat and food [Germany] creation [] and elemental cycling etc. should also be covered in this section. Address factors provided in 5.4, as well as spatial and temporal variability and patchiness.

#### **[5.4.4 Ecosystem/community-level description**

Summarize existing community and ecosystem studies that integrate elements of the above sections. The summary should consider productivity, habitat heterogeneity, food-web complexity, carbon and nutrient cycling, benthopelagic coupling, biodiversity, succession, stability, the potential toxicity effects of plumes, bioavailability of toxins, trophic relationships, ecosystem functioning, benthic-pelagic couplings, ecosystem connectivity, early life-history stages, recruitment and behavioural information. Identify, preserve and distribute to the scientific community [] any unique, rare and threatened elements, outline which habitats and communities can be considered representative and their distribution, indicate existence and connectivity to the same habitats and communities outside the mine site and the potential impact zone.]

**[Alt. 5.4.4 Ecosystem/community-level description**

Summarize existing community and ecosystem-level studies. This should include integration of connectivity studies (e.g. life history and recruitment research), trophic interactions and the linkages between food energy and contaminants in the food chain (including benthopelagic couplings) and ecosystem functioning / services. Food energy linkages and the complexity of the food web should be included, giving consideration to the impacts that may result from contaminants or other disruptions to the food web. Understanding across depths should be provided. Emphasis might be placed on knowledge of trophic levels, the degree of interaction between benthic and pelagic communities, whether there are specialized predators that could be more vulnerable than generalists, and the complexity of the food web and species interactions, with a view to gaining an idea of the resilience of the system to disturbances. It is important to consider wider community relationships to enable assessments to move beyond community descriptions to incorporate potential changes in ecosystem function.]

### **5.5 Summary of the existing biological environment**

Summarize the findings focusing on key ecosystems and species determined above. It is envisaged that this summary will be up to one page in length.

### **5.6 Rare or sensitive habitats and species**

Identify and describe the biological characteristics of rare or sensitive habitats and species potentially affected by the planned mining operation. The identification (as in 4.8bis) shall be guided by the respective international guidelines (FAO 2009, Azores Criteria 2010) and policy decisions (UNGA, CBD) and include features such as hydrothermal vents, ridges, seamounts, as well as oceanographic fronts or eddies, abyss hills and canyons and other geological and oceanographic features.

Identify any unique, rare and threatened elements, outline which habitats and communities can be considered representative and their distribution, indicate existence and connectivity to the same habitats and communities outside the mine site and the potential impact zone.

## **6. Description of the existing human activities / the socioeconomic and sociocultural environment**

This section should describe the socioeconomic and sociocultural environment aspects and potential impacts of the project [] on [] existing human activities. This may include consideration of the scale of effects (such as the creation of jobs and estimates of the risk of environmental impacts), extent of duration of impacts in time and space, intensity or severity of social impacts and an assessment of whether impacts are likely to be cumulative. It is important to consider the social equity or distribution of impacts across different populations: in other words, which groups are likely to be affected in which ways.

### **6.1 Key messages**

**Provide key messages (overview of main findings, covered in six or fewer bullet points).**

#### **6.2 Existing uses**

##### **6.2.1 Fisheries**

Relevant fisheries shall be described here to further assess the socioeconomic impacts. This should include description of areas of

significance for migratory fish stocks, such as spawning grounds, nursery areas or feeding sites. Any closed fishery areas such as VME closures, MPAs, or voluntary closures must be named and taken into consideration. Provide a 'heat map' showing important fishery areas in relation to proposed operations and note any areas of interaction or cumulative impact.

#### **6.2.2 Marine traffic**

This section describes the non-project-related marine traffic occurring within the Contract area and uses the Regional Environmental Management Plan in accordance with IALA's regulations to provide a summary of regional movements. Provide a 'heat map' showing densities of marine traffic in relation to proposed operations and note any areas of interaction or cumulative impact. Provide this per season if repeatable seasonal variation exists.

#### **6.2.2bis Submarine cables**

This section describes the in situ non-project-related submarine cables occurring within the Contract area. Provide a map showing known submarine cables in relation to proposed operations and note any areas of interaction or cumulative impact.

#### **6.2.3 Tourism**

Describe areas used by cruise liners and for game fishing, sightseeing, marine mammal watching and other relevant tourism activities. Provide a 'heat map' showing densities of tourism in relation to proposed operations and note any areas of interaction or cumulative impact. Provide this per season if repeatable seasonal variation exists.

#### **6.2.4 Marine scientific research**

Outline the ongoing current scientific research programmes taking place in the area, studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them.

#### **6.2.5 Sociocultural uses**

List [human activities in] [sociocultural uses of] the project area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities [].)

##### **Alt 6.2.5**

List sociocultural uses the project area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities as well as known or suspected objects or sites of an archaeological or historical nature, taking into account the work of the United Nations Educational, Scientific and Cultural Organization referred to in Regulation 35(2)).

#### **6.2.6 Other**

List other uses of the project area that are not related to the above (e.g., other, exploitation projects [sports and leisure]).

#### **6.2bis Planned uses**

Describe the planned uses of the area for which information is publicly available (e.g. other exploitation contracts, exploration contracts, fisheries, maritime traffic, tourism, marine scientific research, submarine cables, area-based management tools).

#### **6.3 Sites of an archaeological, historical significance**

List any sites of archaeological or historical significance that are known to occur [] within the potential area of impact. Provide a map as applicable showing known archaeological and historical sites in relation to proposed operations and note any areas of interaction or cumulative impact taking into account the work of the United Nations Educational, Scientific and Cultural Organization referred to in Regulation 35(2). []

#### **6.4 Summary of existing socioeconomic and sociocultural environment**

Summarize key findings regarding the socioeconomic and 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 physical, chemical and geological environment and proposed Mitigation**

Provide a detailed description and evaluation of potential impacts and Environmental Effects of the operation to components of the physical chemical and geological environment identified in section 4. This should consider the entire lifespan of the project, i.e. construction/development (precommissioning-) of the mine site, operational and decommissioning phases, and following Closure of the site. The potential for accidental events and natural hazards. The detail in this section is expected to be based on a prior environmental risk assessment prepared, reviewed, and revised in accordance with [] Regulation 47ter and respective Standard and Guideline for Environmental Impact Assessment (chapter III Scoping, D). It should include for each component a description of:

(a) The source (action, temporal and spatial duration) and nature of the disturbance;

(a)bis The nature, duration and extent of any actual or potential impact, including cumulative effects and taking into account ecological and biologically significant areas;

(a)ter The methods used to determine impacts (including the assumptions and limitations of any impact modelling or other analysis undertaken);

(b) Measures that will be taken to prevent, mitigate and manage such impacts; and

(c) The unavoidable residual impacts that will remain, including their expected longevity.

(d) The extent to which any potential impacts and Environmental Effects may occur in areas under a State's national jurisdiction.

The detail in this section is expected to be based on the environmental risk assessment carried out according to the relevant regulations, Standards and Guidelines 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 potential impacts caused by the proposed mining operation.

Key elements that need to be included are:

(a) The major types of potential impacts, such as habitat removal, variations in communities' composition, the creation of sediment plumes, dewatering plumes, noise, light, etc.;

(b) Descriptions of impact studies carried out during exploration (e.g., component testing and the resulting observations from the associated monitoring);

(b bis) Descriptions of test mining studies undertaken prior to the application;

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

(d) Descriptions of the methods applied to describe and quantify impact categories and assessment from impact to receptor (including the assumptions and limitations of any impact modelling undertaken);

### **7.2 bis Description of impact pathways**

The preferred approach for this template is to include for each receptor descriptions of:

(a) The methods used to determine the pathway from impact to receptor (including the assumptions and limitations of any impact modelling undertaken);

(b) The source(s) of impact

(c) The nature, spatial extent and temporal extent of potential impact(s), including cumulative impacts;

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

(e) The unavoidable (residual) impacts that will remain, including their expected longevity and outline the measures that will be taken to ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these regulations and the applicable Standard, and taking into account the relevant Guidelines.

### **7.2 ter Receptors and impacts**

Receptors for which this will be done include:

(a) Meteorology and air quality

- (b) Geology [and Geophysics]
- (c) Physical oceanography
- (d) Chemical oceanography of the mine site and impact area
- (e) Seabed substrate characteristics

Impacts to be considered include:

- (a) Sediment plume generation,
- (b) discharge of water
- (b)bis Energy flow pathways (such as hydrothermal fluid);
- (c) Noise and light
- (d) Greenhouse gas emissions and climate change emissions (including estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate)

Effects to be considered include:

- (a) changes in temperature and salinity of water,
- (b) optical characteristics / water clarity
- (c) turbidity / particulate loading
- (d) sediment characteristics (including changes in the sediment composition, grain size, density and pore-water profiles)
- (e) discharge plumes (frequency, spatial extent, composition and concentration, etc.)
- (f) primary sediment plume (frequency, spatial extent, composition and concentration)
- (g) dissolved gas levels
- (h) nutrient levels
- (i) For a sea floor massive sulphide project, the modification of vent-fluid discharges, if present, should be addressed.

#### **7.8 Accidental events and Natural hazards**

Discuss impacts of accidental events and the cumulative effects of the mining operation in relation to any natural hazards that could occur, including, but not limited to, volcanism, seismic activity, cyclone/hurricane, tsunamis, etc. and the measures that will be taken to avoid, remedy or mitigate those impacts.

#### **7.9 Noise and light**

Provide a description of the expected emissions of noise and light from the proposed operations [] [*The deleted part has been suggested moved to section 8.6.1.1. See facilitator comment for more information*].

#### **7.10 Greenhouse gas emissions and climate change**

Provide an assessment of gas and chemical emissions from proposed operations, relative to emissions both natural and anthropogenic activities. Subsections should include estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate.] *[The deleted part has been suggested moved to section 8.6.1.2. See facilitator comment for more information].*

### **7.13 Cumulative impacts**

Provide a description of the source of nature and extent of any interactions between various potential environmental impacts and Environmental Effects across the environment. Where they may have cumulative effects, they must be considered on both spatial and temporal scales over the lifetime of the proposed mining operation and in the post-Closure period and alternatives considered.

#### **7.13.1 Proposed operations impacts**

Cumulative within the mining site and Impact Area of the mining proposed herein.

#### **7.13.2 Regional operation impacts**

Cumulative between activities, actions, or natural phenomena, where known in the region.

### **7.14 Other issues**

Outline here other, more general issues, as applicable.

### **7.15 Summary of residual effects**

Summarize key findings on potential environmental impacts and Environmental Effects, environmental management measures, and any potential impacts and effects to areas under any State's national jurisdiction. A table may be a useful summary format to pull together the above elements in a simple visual mode. The table should include a column outlining the measures that will be taken to address potential environmental impacts and manage residual effects and ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these regulations and the applicable Standard and taking into account the relevant Guidelines.

## **8. Assessment of impacts and Environmental Effects on the biological environment and proposed Mitigation**

Provide a detailed description and evaluation of potential impacts and Environmental Effects of the proposed operation and alternatives considered in section 3.7 to the biological environment components identified in section 5 in the mine site and the Impact Areas. Consider impacts and effects that could happen during the entire lifespan of the project i.e. construction/development (pre-commissioning), operational and decommissioning phases and following Closure of the site. The potential for accidental events and natural hazards should be considered.

The detail in this section is expected to be based on a prior environmental risk assessment prepared, reviewed, and revised in accordance with [Regulation 47ter][ ] and respective Standards and Guidelines for Environmental Impact Assessment Process. The [description] analysis shall be



structured by the depth ranges described in section 5 and shall for each component, provide a description of:

(a) The source (action, temporal and spatial duration) and nature of the disturbance;

(a)bis The nature and extent (temporal and spatial) of any actual or potential impact, including cumulative effects;

(a)ter The methods used to determine impacts (including the assumptions and limitations of any impact modelling or other analyses undertaken);

(b) Measures that will be taken to prevent, mitigate and manage such impacts with reference to the submitted Environmental Management and Monitoring Plan; and

(c) The unavoidable residual impacts that will remain, including their significance and expected longevity.

(d) An evaluation of the impacts and effects against the applicable environmental goals and objectives, [] indicators and thresholds as identified in the [] relevant environmental standards and Guidelines and in the applicable Regional Environmental Management Plan. (e) The extent to which any potential impacts and Environmental Effects may occur in areas beyond the contract area or under a State's national jurisdiction.

The detail in this section is expected to be based on the [] environmental risk assessment, carried out according to the relevant regulations, Standards and Guidance 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.

### **8.1bis Description of the key sources of environmental impacts**

This section should describe the key sources of impacts on the marine environment from the mining operation.

## **8.2 Description of potential impact categories**

Provide an overview and description of the categories of potential impacts caused by the hazards arising from the proposed mining operation and alternatives considered. This should introduce the major types of impacts and their effects on the biotic environment, such as habitat removal, the crushing of animals, the creation of sediment plumes, noise and light, etc. and be referred to in subsequent descriptions and evaluations of potential environmental impacts and Environmental Effects from the hazards posed by the proposed operation and alternatives considered. A description should be included of any lessons learned from activities during the exploratory phase of the programme (e.g., mining system component tests).

Key elements that need to be included are:

(a) Description of the major types of potential impacts, such as habitat removal, the biological effects of sediment plumes and dewatering plumes, noise, light, etc. These impact categories should be used in subsequent descriptions and evaluations of potential environmental impacts and Environmental Effects from the proposed operations.

(b) Descriptions of impact studies carried out during exploration (e.g., component testing and the resulting observations from the associated monitoring);

(b bis) Descriptions of test mining studies undertaken prior to the application; 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 pathways and assessment in line with the relevant Standard and Guideline, i.e. EIA Guideline.

### **8.2 bis Description of impact pathways**

The preferred approach for this template is to include for each impact pathway an overarching description of:

(a) The methods used to determine the pathway from impact to receptor (including the assumptions and limitations of any impact modelling undertaken);

(b) The source(s) of impact

(c) The nature, spatial extent and temporal extent of potential impact(s), including cumulative impacts;

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

(e) The unavoidable (residual) impacts that will remain, including their expected longevity and outline the measures that will be taken to ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these regulations and the applicable Standard, and taking into account the relevant Guidelines.

### **8.2 ter Receptors and impacts**

Receptors for which this must be done include:

(a) Microbial communities

(b) Phytoplankton]

(b)bis zooplankton and micronekton

(b)ter nekton

(b)quart benthopelagic fauna, including scavengers

(c) Meiofauna (infauna / epifauna)

(d) Macrofauna (infauna / epifauna / demersal fish)

(e) Megafauna, including surface/near-surface fish such as tuna, and seabirds, marine turtles and marine mammals

As appropriate, these receptors are to be considered:

(a) at the surface (from the surface down to a depth of 200 metres)

(b) midwater (from a depth of 200 metres down to 50 metres above the sea floor)

(c) up to an altitude of 50 metres above the sea floor, including zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals.

Impacts to be considered include:

- (a) Sediment plume generation,
- (b) discharge of water
- (c) Noise and light
- (d) Greenhouse gas emissions and climate change emissions (including estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate)

Effects to be considered include:

- (a) changes in temperature and salinity of water,
- (b) optical characteristics / water clarity
- (c) turbidity / particulate loading
- (d) sediment characteristics (including changes in the sediment composition, grain size, density and pore-water profiles)
- (e) discharge plumes (frequency, spatial extent, composition and concentration, etc.)
- (f) primary sediment plume (frequency, spatial extent, composition and concentration)
- (g) dissolved gas levels
- (h) nutrient levels
- (i) For a sea floor massive sulphide project, the modification of vent-fluid discharges, if present, should be addressed.

## **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**

8.6.1.1 Noise and light Provide a description of the expected emissions of noise and light from the proposed operations and any potential environmental effects, especially any impacts of noise on avoidance, masking and availability of prey (e.g., on marine mammals) and fish. Provide a description of the measures that will be taken to ensure compliance with applicable environmental quality objectives and quantitative thresholds for noise and light levels for relevant fauna, in accordance with these regulations and the applicable Standard, and taking into account the relevant Guidelines. *[This part has been inserted from section 7.9. See facilitator comment for more information].*

8.6.1.2 Greenhouse gas emissions and climate change Effects of mining on ocean climate mitigation functions and services should be described (including any anticipated alteration of CO<sub>2</sub> uptake and sequestration, or nutrient cycling.) [*This part has been inserted from section 7.10. See facilitator comment for more information*].

## **8.6.2 Environmental management measures to mitigate impacts**

### **8.7 Cumulative effects**

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 including existing uses considered in the Assessment and described in Section 9 of the Environmental Impact Statement as well as an evaluation of the resulting cumulative effects to the ecological balance of the marine environment, including the spatial and temporal extent of such effects. Describe how spatial and temporal cumulation will differ between faunal groups and different habitats.

Provide a description of the source of nature and extent of any interactions between various potential environmental impacts and Environmental Effects across the environment. Where they may have cumulative effects, they must be considered on both spatial and temporal scales over the lifetime of the proposed mining operation and in the post-Closure period and alternatives considered.

#### **8.7.1 Proposed operations effects**

Cumulative effects within the scope of the site and Impact Area of the mining proposed herein.

#### **8.7.2 Regional operation effects**

Cumulative effects between activities to be analysed by the Secretariat according to the REMPs, [].

### **8.8 Summary of residual effects**

Summarize key findings on potential environmental impacts and Environmental Effects, environmental management measures, residual effects, and any potential impacts and effects to areas under any State's national jurisdiction. Information on potential recovery times following disturbance and the longevity of residual effects should be included. This will give readers an understanding of the temporal component and efficacy of proposed mitigation measures. A table may be a useful summary format to pull together the above elements in a simple visual mode. The table should include a column outlining the measures that will be taken to address potential environmental impacts and residual effects and ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these regulations and the applicable Standard and taking into account the relevant Guidelines.

8.9 Practicable restoration and rehabilitation of the project area – approach  
The restoration and rehabilitation of the project area should be considered as a part of the mitigation hierarchy. At this stage in the Environmental Assessment Process, there might be no final knowledge on the potential of restoration and rehabilitation in the area, so a plan should be proposed to develop this knowledge throughout the lifespan of the project and to prepare

the decision on the issue at the end of the project. This should be done in accordance with relevant Standards and taking into account relevant guidelines.

#### **Alt. 8.9 Accidental events and Natural hazards**

Discuss impacts to the biological environment of accidental events and the cumulative effects of the mining operation and natural hazards and the measures that will be taken to avoid, remedy or mitigate those impacts.

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

Provide a detailed description and evaluation of potential impacts and Environmental Effects of the operation to the socioeconomic and sociocultural components identified in section 6. This should include projections on the potential impacts in national waters outside the mining area and should also consider the entire lifespan of the project i.e. construction/development (pre-commissioning), operational (including maintenance) and decommissioning phases. A description of the benefits to mankind may be included. Attitudes towards, and perceptions of, the proposed project are among the variables that should be considered in determining the significance of impacts. The potential for accidental events [and natural hazards] should also be considered.

### **9.1 Key messages**

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

#### **9.1 bis Description of potential impact categories**

Provide an overview and description of the categories of potential impacts caused by the proposed mining operation. Key elements that need to be included are:

(a) the major types of potential impacts, such as habitat removal, the creation of sediment plumes, noise, light, etc. These impact categories should be used in subsequent descriptions and evaluations of potential environmental impacts and Environmental Effects from the proposed operations.

(b) Descriptions of impact studies carried out during exploration (e.g., component testing and the resulting observations from the associated monitoring);

(c) bis Descriptions of test mining studies undertaken prior to the application;

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

(e) Descriptions of the methods applied to describe and quantify impact pathways and assessment.

#### **9.1 ter Description of impact pathways**

The preferred approach for this template is to include for each impact pathway an overarching description of:

(a) The source

(a)ter The methods used to determine impacts (including the assumptions and limitations of any impact modelling undertaken);

(a)bis The nature, spatial extent and temporal extent of potential impacts, including cumulative impacts;

(b) Measures that will be taken to avoid, minimise or mitigate such impacts, including a comparative analysis of how measures taken may differ across alternative operations considered;

(c) The unavoidable (residual) impacts that will remain, including their expected longevity. The detail in this section is expected to be based on the scoping environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment; and

(d) The extent to which any potential impacts and effects may occur in areas under a State's national jurisdiction.

## **9.2 Impact identification**

### **9.2.1 Impacts on [E]xisting human uses**

For each of the following marine uses, describe:

(a) Potential impacts and effects and issues to be addressed;

(b) Environmental management measures to Mitigate impacts and effects;

(c) Residual impacts and effects; and

(d) Potential impacts and effects in areas under any State's national jurisdiction.

#### **9.2.1.1 Fisheries and biological conditions**

A description of potential impacts, e.g., effects from light and noise on fisheries and biological conditions, with proposed management measures and a description of residual impacts.

#### **9.2.1.2bis Submarine cables**

A description of potential impacts on non-project-related submarine cables 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 [, according to the IALA's regulations.].

## **[] 9.2.2 Impacts on Sociocultural values and uses**

A description of potential impacts and issues to be addressed pertaining to sociocultural uses of the area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities), along with proposed management measures and a description of residual impacts.

### **[] 9.2.3 Impacts on Ecosystem Functions and Services**

A description of potential impacts of the operation on any ecosystem functions and services, for example, carbon burial and sequestration, taking into account the relevant Guidance.

### **[] 9.2.4 Other impacts**

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

### **[] 9.2.5 Impacts on Planned uses**

Describe the potential impacts on planned uses of the area for which information is publicly available (e.g. fisheries, maritime traffic, tourism, marine scientific research, submarine cables, area-based management tools).

### **9.[2.6] Impacts on Area-based management tools**

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

### **9.[3] Impacts on 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, taking into account the work of the United Nations Educational, Scientific and Cultural Organization referred to in Regulation 35(2) [.]

## **9.4 Gender Impact analysis**

Assess and analyse how the proposed operations may impact on gender roles and relationships.

[.]

### **9.5.1 Summary of socioeconomic and sociocultural environment**

Summarize findings on management measures, residual effects, and any potential impacts and effects, (including to sociocultural conditions). A table may be a useful summary format to pull together the above elements in a simple visual mode. Potential cumulative effects should also be included.

### **9.5bis. Assessment of Uncertainty**

#### **9.5bis.1 Uncertainty Assessment**

Provide a detailed description and evaluation of any uncertainties in the assessments described in section 7, 8, and 9. This uncertainty assessment shall:

- (1) Identify any relevant areas of uncertainty and gaps in knowledge and their implications for the environmental impact assessment and its findings; and,
- (2) Describe the measures taken in the environmental impact assessment to reduce uncertainty in its findings to as low as reasonably practicable.

#### **9.5bis.2 Addressing Significant Uncertainty**

Where significant uncertainty exists despite the efforts described in 9bis.1(b), provide a detailed description of environmental monitoring and management measures for managing and reducing uncertainty during the proposed operations, to be incorporated into the Environmental Monitoring and Management Plan and describe how these will enable the applicant to ensure compliance with relevant Rules of the Authority.

#### **9.6 Accidental events and Natural hazards**

Discuss any impacts of accidental events and the cumulative effects of the mining operation and natural hazards, and the measures that will be taken to avoid, remedy or mitigate those impacts.

##### **9.6.1 Potential impacts and issues to be addressed**

##### **9.6.2 Environmental management measures to mitigate impacts**

##### **9.6.3 Residual effects**

Provide a description of any residual impacts that may remain following the application of mitigation measures, including the expected longevity of those impacts, and outline the measures that will be taken to ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these regulations and the applicable Standard, and taking into account the relevant Guidelines.

## **10. Hazards arising from natural, accidental and discharge events**

This section should outline the possibility/probability of accidental events and natural hazards occurring, an assessment of the impact they may have, to the mine site and impact area, the measures taken to prevent or respond to such an event and an assessment of the residual impact should an event occur. This should include an overview of potential environmentally hazardous discharges resulting from accidental and extreme natural events as these are fundamentally different from normal operational discharges of wastes and wastewaters. Reference should be made to the ERCP.

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.

### **10.4 Maritime safety and interactions with shipping**

Provide a description of predicted maritime safety issues and potential interactions with other vessels from the proposed activities with reference to compliance with the relevant conventions.

### **10.5 Emergency response and contingency plan**

Provide a description of an emergency response and contingency plan.

### **10.6 Waste management**

Provide a description of proposed vessel waste management, with reference to compliance with relevant conventions, legislation and principles, and methods of cleaner production and energy balance.

### **10.7 Blast Water management**

Provide a description of proposed vessel blast water management where applicable, with reference to compliance with relevant rules and principles, and methods of cleaner production and energy balance.

## **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 include a description of the applicant's environmental management system and 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 and the post-closure period).

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 and professional qualifications of key personnel should be outlined.

## **11.2 Environmental management system**

A full environmental management system shall exist at the time the Environmental Impact Statement is submitted. The applicant has to demonstrate that it will be capable of managing appropriate relevant environmental questions and 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. With reference to, the headings set out below and Annex VIII of the Exploitation Regulations of the Authority.

### **11.3.1 Mitigation and management**

Summarize the mitigation and management measures that will be taken, based on the impact minimization and mitigation analysis undertaken as part of the environmental impact assessment, and as described in the environmental impact statement in Sections 7, 8, and 9.

### **11.3.3 Closure Plan**

A Closure Plan will be submitted as a separate document for the Authority's approval prior to the commencement of mining operations. 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**

Outline how data collected at the mine site and impact area will meet reporting requirements and best scientific practices outlined in Annex VII on the Environmental Management and Monitoring Plan.

### **11.4.1 Monitoring**

Outline how the results of monitoring studies will be reported to the Authority, as well as the frequency and format of data releases in accordance with the regulations and any relevant Standards and taking into account any relevant Guidelines.

### **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 how the Contractor will minimize health, safety, environmental, socioeconomic and sociocultural effects of the intended product or products to meet standards for environmental management, and should address the following potential impacts:

- (a) Energy and materials consumption;
- (b) Waste generation;
- (c) Toxic substances;

(d) Air and water emissions.

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.

## **13. Consultation**

Consultations shall be inclusive, transparent and open to all relevant stakeholders, including States, global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, indigenous peoples and local communities.

### **13.1 Consultation methods**

Provide a description of the nature and extent, participation and outcomes of consultation(s) that have taken place with relevant Stakeholders, and how their comments have been addressed in the Environmental Impact Assessment. This will include the description of the mechanisms used to manage the diversity of Stakeholders addressed and comments provided.

This includes describing the mechanism(s) used to consult with different groups and how this aligns with the relevant Standards and Guidelines, also incorporating criteria for Preservation Reference Zones and Impact Reference zones.

### **13.2 Stakeholders**

List Stakeholders that have been consulted and explain the process by which Stakeholders were identified. This should include a brief description of the Stakeholders and a historic overview of any previous activities conducted by the Stakeholders in The Area.

### **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, including outlining any concerns and comments made by Stakeholders and how these will be addressed, and, if not, describe the reasons for that decision.

### **13.4 Commission consultation**

Summarize the Legal and Technical Commission's recommendations on the Scoping Report and proposed Terms of Reference for the applicant's environmental impact assessment submitted to the Commission, and justification for any deviation either from those submitted Terms of Reference, or from the Commission's recommendations. []

### **13.5. [Germany] Stakeholder and coastal State Consultation**

Describe how comments received under Stakeholder consultation have been or will be taken into account, or why they have not been taken into account, and the reasons for that decision. The summary should be based on the detailed response of the applicant to each consulted party and be available for review.

### **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**

Include a glossary of terms, acronyms and abbreviations used throughout the document. The glossary should include definitions for, and key terms defined in the regulations so as to ensure that users of the Environmental Impact Statement, including the decision-makers and relevant stakeholders, have a clear understanding of the intention behind the use of certain terms in the Environmental Impact Statement. The glossary should be included in the table of contents for the Environmental Impact Statement and referenced in the introduction section.

## **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. Any remuneration should be mentioned. The names, [current and validated contact information,] occupational qualifications and their role in the generation of the Environmental Impact Statement of such people should also be included. [A statement that those individuals so named concur with the content of the report should be included.] Any conflict of interest must be identified, disclosed in detail in this section including the way it was and continues to be managed.

## **16. References**

Evidence obtained from outside sources should be documented throughout the Environmental Impact Statement, with the use of footnotes or other suitable reference mechanism. In addition, all sources used in preparation of the Environmental Impact Statement (including those specifically referenced in the body of the document) should be listed in bibliography format, with full details of the source (including website addresses, if applicable). This enables users of the Environmental Impact Statement to review the supporting documentation independently.

## **17. Appendices**

The appendices section should include a list of all the technical reports carried out for parts of the environmental impact assessment or that are used in support of any aspect of the environmental impact assessment (such as prior risk assessments or monitoring activities conducted as part of exploration contracts). Copies of these reports should be provided as appendices to the Environmental Impact Statement, with clear indications as to which section(s) the document is being provided to support.

## Annex (IV bis) [IWG ENV]

### Scoping Report

#### Explanation / comment

- This entire annex has been moved to paragraph 4 of the new regulation 47ter following the outline by the intersessional working group on streamlining the regulations on the Environmental Impact Assessment Process, the Environmental Impact Assessment, the Environmental Impact Assessment Scoping Report and the Environmental Impact Statement. From there, further parts can be moved to the relevant Standard and Guideline as suggested in the Matrix I have introduced.
- For an overview of these new regulations see my comments to the new regulation 47 or in my initial statement.
- I note that no suggested amendments to this annex was received after our last meeting.

[]

## Annex V [President's Text]

### 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, [] 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) Organizational structure and personnel roles and responsibilities;
  - (iii) Details of individuals authorized to initiate response mechanism(s);
  - (iv) Details of the emergency response equipment;
  - (v) Details of the safety management system relevant to emergency response;
  - (vi) Details of the environmental management system relevant to emergency response;
  - (vii) A description of all foreseeable Incidents, an assessment of their likelihood and consequences and associated control measures;

(viii) A description of the arrangements to protect persons on the mining vessel(s), and to ensure their safe escape, evacuation and rescue [in the event of an Incident that presents risks to their safety];

(ix) Details of arrangements for the maintenance of control systems to monitor the Marine Environment in the event of an Incident;

(x) Information and measures relating to the prevention of Incidents which could result in Serious Harm to the Marine Environment;

(xi) An assessment of [potential] pollution hazards and the measures to prevent or reduce such hazards, including an assessment of unintentional and unauthorised Mining Discharges and measures to control such discharges;

(xii) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning;

(xiii) Details of arrangements for coordinating any emergency response, including coordination with the Authority, other service providers, maritime search and rescue authorities, and nearby vessels, citing the course for such arrangements, where relevant;

(xiv) Details of training programmes for personnel relating to emergency prevention of response;

(xv) Details of audit and review processes relating to matters covered by this Plan, including regular testing of the Plan, significant changes to the Plan or the nature of operational activities, and the process of Incident investigation, recording and communication to the Authority and the Sponsoring State;

[(xvi) Details of the presence of other hazards/harmful substances;

[(xvii) A description of accountability and liability for environmental damage resulting from an [] [Incident]; and

(xix) Details of how the Plan is gender-responsive and responsive to persons from vulnerable groups”.]

*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.

**Comments/remarks**

- I have received a proposal for simplifying Annex V to keep the focus on it being the Emergency Response and Contingency Plan. For example, elements and descriptions of the environmental management system should be a part of the Environmental Management Plan.



## **Annex VI [President's Text]**

### **Health and Safety Plan and Maritime Security Plan<sup>1</sup>**

#### **A**

#### **Health and Safety Plan**

1. The Health and Safety Plan prepared under these regulations and this annex must:

(a) Be prepared in accordance with Good Industry Practice, and [relevant] [applicable] standards and guidelines;

(b) Comply with applicable national laws and regulations related to safety and health, including occupational safety and health, of personnel on vessels or installations engaged in activities in the Area, as well as applicable international rules and standards of the International Labour Organization and the International Maritime Organization related to safety and health, including occupational safety and health;

(c) [Be designed with the aim to] ensure that all personnel on a vessel or installation engaged in activities in the Area are provided with appropriate safety and health protection, including occupational safety and health protection, and live, work and train in a safe and hygienic environment [with roles and responsibilities allocated to relevant named personnel appropriately];

(d) Identify hazards and risks and include a comprehensive and integrated system for the management of the hazards and risks;

(e) Ensure that the risks to the health and safety of personnel on a vessel or installation engaged in activities in the Area are reduced to a level that is as low as reasonably practicable;

(f) Address all matters of safety of life and the prevention of occupational accidents, injuries and diseases that may be identified as hazards and risks for personnel on vessels or installations engaged in activities in the Area;

(g) Include and refer to the requirements of the Emergency Response and Contingency Plan under annex V of these regulations that relate to protecting and securing the safety and health of all persons on vessels or installations during an incident or emergency;

(h) Be worded in plain language [].

(i) [Be gender-sensitive, and specifically address women's safety, and freedom from harassment in the workplace, and consider other issues relevant to ensuring an equitable and inclusive working environment for a diverse workforce].

2. The Health and Safety Plan must contain, as a minimum:

(a) Requirements regarding minimum age and medical fitness for all personnel working and living on a vessel or installation;

(b) Requirements for the competency and training, including mandatory safety training, for all personnel working and living on a vessel or installation;

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<sup>1</sup> Annex VI on a Health and Safety Plan and Maritime Security Plan has been populated with the content of ISBA/26/C/17 and is here shown in a clean version.



- (c) A description of the measures taken to ensure that the vessel or installation is appropriately and sufficiently staffed in order to ensure that the vessel or installation is operated safely, efficiently and with due regard to security under all conditions;
- (d) Information about the number and positions of all personnel working or living and working on a vessel or installation;
- (e) Details of shore-based management providing assistance to the vessel or installation, including the designated person with responsibility and authority for monitoring the safety, health and security of operations and with direct access to the highest level of management;
- (f) Definitions of levels of authority and effective lines of communication between and among shore staff and personnel on board vessels and installations;
- (g) A description of the duties of the master and/or the person designated by the master to take responsibility for the implementation of and compliance with the occupational safety and health plan;
- (h) A description of an effective fatigue management strategy determining operational workload requirements matching onboard manning levels and onshore support resources as well as work schedules indicating the maximum hours of work or minimum hours of rest for all personnel living and working on a vessel or installation;
- (i) Information about the medical care available on the vessel or installation and the communication and response plans in the event that additional or onshore medical care is required;
- (j) Arrangements and procedures for the safe transfer of personnel to and from or between vessels or installations;
- (k) A description of [] foreseeable occupational hazards, an assessment of their likelihood and consequences, and associated preventative and control measures;
- (l) Details regarding procedures for hazard identification and risk assessment on vessels or installations and the preventive and protective measures adopted based on the outcomes of those procedures;
- (m) Details of procedures, plans and instructions for key operations concerning the safety of the personnel, vessels and installations;
- (n) A description of the equipment and tools to be provided to ensure that all operations are conducted in such a manner as to minimize any adverse effects on [the] [] occupational safety and health [of personnel] to the extent necessary;
- (o) Identification of critical equipment and technical systems that may result in hazardous situations;
- (p) A description of crew accommodations and recreational facilities enabling and promoting the personnel's health and well-being, and information on their conformity to relevant rules, regulations and standards;
- (q) Details of procedures to ensure that the vessels or installations are maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements that may be established;
- (r) Details of audit and review processes, and information on procedures for the implementation of corrective action, including measures intended to prevent recurrence;

(s) Information on procedures ensuring that non-conformities, accidents and hazardous situations are reported, investigated and analysed with the objective of improving safety and prevention;

(t) Details of the procedures for the communication of information between the company/owner/operator and competent authorities and organizations, including the Authority;

(u) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in the warning;

(v) Details regarding consultations with personnel on vessels or installations and, where appropriate, the representative workers' organizations, on the preparation and implementation of the vessel's or installation's occupational safety and health policies and programmes and the procedures to ensure the continuous improvement of the policies to take into account changes in practice and technology;

(w) The occupational safety and health policy and programme for each vessel or installation engaged in activities in the Area;

[(x) Procedures for the periodic review of the plan and for its updating.]

3. An occupational safety and health policy and programme for a vessel or installation engaged in activities in the Area must contain the following to ensure a safety culture on board the vessel or installation:

(a) An occupational health, safety and environmental awareness plan to inform all personnel engaged in activities in the Area as to the occupational and environmental risks that may result from their work and the manner in which such risks are to be dealt with;

(b) A plan for the communication of the occupational health, safety and environmental awareness plan;

(c) A training plan to establish a safety culture for occupational safety and health for the vessel or installation, including mandatory personal safety training and specific task and equipment training, including the labelling of safety-related equipment;

(d) The roles and responsibilities of:

(i) Masters, officers or other personnel responsible for safety and health, including occupational safety and health on a vessel or installation;

(ii) The vessel or installation safety committee;

(iii) The worker representative on the safety committee.

(e) Requirements, policies and training on the vessel or installation to address the following:

(i) Food and water safety;

(ii) Hygiene and sanitary facilities;

(iii) Measures to prevent disease and vermin;

(iv) Safety, and structural and design features of the vessel or installation, including means of access and asbestos-related risks;

(v) Provision of personal protective equipment for personnel;

(vi) Machinery;

(vii) Ambient factors in the workplace and living accommodation on the vessel or installation, including exposure to noise, vibration, lighting, ultraviolet light, non-ionizing radiation and extreme temperatures;

(viii) Air quality, ventilation and the effects of other ambient factors, including tobacco smoke;

(ix) Structural features of the vessels or installations and means of access, and materials;

(x) Special safety measures on and below deck on vessels and installations;

(xi) Loading and unloading of equipment;

(xii) Fire prevention and fire-fighting;

(xiii) Anchors, chains and lines;

(xiv) Dangerous cargo and ballast;

(xv) Work in enclosed spaces;

(xvi) Exposure to biological hazards;

(xvii) Exposure to radiological hazards;

(xviii) Exposure to chemicals;

(xix) Ergonomic hazards;

(xx) Physical and mental effects of fatigue;

(xxi) Effects of drug and alcohol dependency;

(xxii) Communicable diseases;

(xxiii) HIV/AIDS protection and prevention;

(xxiv) Emergency and accident response;

(xxv) Harassment and bullying;

(xxvi) Safety and occupational safety and health training of younger workers and trainees on the vessel or installation;

(xxvii) Protection for lone and isolated workers;

(xxviii) Protection of women workers [and workers from vulnerable groups];

(xxix) Measures regarding the safety, and occupational safety and health, of any temporary workers.

4. The occupational safety and health policy and programme must also address:

(a) Cyberrisks;

(b) Procedures for the investigation, reporting and follow-up to any safety or occupational safety and health incidents, including occupational diseases;

(c) Protection of the privacy of personal and medical data of personnel.

## **B**

### **Maritime Security Plan**

1. The Maritime Security Plan prepared under these regulations and this annex must:

(a) Be prepared in accordance with Good Industry Practice and relevant standards and guidelines;

(b) Comply with applicable national laws and regulations related to maritime security, as well as applicable international rules and standards of the International Maritime Organization related to maritime security;

(c) Be developed based on a security assessment and risk analysis relating to all aspects of the vessel's or installation's operations in order to determine which of its parts are more vulnerable to maritime security incidents;

(d) Provide an effective plan to ensure the application of measures on board the vessel that are designed to protect the persons on board, the ancillary equipment, the cargo, the cargo transport units, the ship's stores or the vessel from the risks of a security incident;

(e) Be protected from unauthorized access or disclosure;

(f) Be subject to inspection by officers duly appointed by [Inspectors appointed by the Authority under Part XI of these Regulations];

(g) Be worded in plain language;

[(h) Be gender-sensitive, and specifically address women's security, and any other issues relevant to ensuring maritime safety measures are applied equitably and inclusively for a diverse workforce.]

2. The Maritime Security Plan must contain, as a minimum:

(a) Measures designed to prevent weapons, dangerous substances and devices that are intended for use against persons, vessels, installations or ports, and whose carriage is not authorized, from being taken on board the vessel or installation;

(b) An identification of the restricted areas, and measures for the prevention of unauthorized access to them;

(c) Measures for the prevention of unauthorized access to the vessel or installation;

(d) Procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the vessel or installation, or vessel/port interface;

(e) Basic security measures for security level 1 (the level for which minimum appropriate protective security measures shall be maintained at all times), both operational and physical, that will always be in place;

(f) Additional security measures that will allow the vessel or installation to progress without delay to security level 2 (the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident) and, when necessary, to security level 3 (the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target);

(g) Procedures for evacuation in case of security threats or breaches of security;

(h) Duties of personnel on board vessels and installations who are assigned security responsibilities, and duties of other shipboard personnel relating to security aspects;

(i) Procedures for auditing the security activities;

(j) Procedures for training, drills and exercises associated with the plan;

(k) Procedures for interfacing with port facility security activities;

(l) Procedures for the periodic review of the plan and for its updating;

(m) Procedures for reporting security incidents;

(n) Identification of the vessel or installation security officer;

(o) Identification of the company security officer, including 24-hour contact details;

(p) Procedures to ensure the inspection, testing, calibration, and maintenance of any security equipment provided on board;

(q) Frequency of testing or calibration of any security equipment provided on board;

(r) Identification of the locations where the activation points of the vessel or installation security alert system are provided (when activated, a ship security alert system automatically transmits a ship-to-shore security alert to a competent authority,

(s) Procedures, instructions and guidance regarding the use of the vessel or installation security alert system, including testing, activation, deactivation and resetting, and regarding the limitation of false alerts.

3. The Maritime Security Plan must establish that:

(a) All personnel on board vessels and installations have received security-related familiarization and security-awareness training or instruction;

(b) Personnel on board vessels and installations with designated security duties have attended a training course on those duties.

## Annex VII [IWG ENV]

### Environmental Management and Monitoring Plan

#### Explanation / comment

- One of the other Working Groups on Draft Regulations asked if the content of Regulation 102 could be inserted in this annex as it pertains to information the Environmental Management and Monitoring Plan shall include. Litra a) from Regulation 102 was merged into litra p) below, while litra's b), c) and d) from Regulation 102 has been inserted as new litra's d), e) and f) in this annex. (The subsequent litra's has been restructured accordingly). I invite for views on this.

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

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

(a)bis Prepared in accordance with the relevant Regulations [], taking into account applicable Guidelines [and Regional Environmental Management Plan], on the basis of Best Environmental Practice, Best Available Scientific [Information], and Best Available Information; and

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

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;

(a)bis Outline the guiding principles which apply to the monitoring approaches;

(b) A description of the project and the area likely to be affected by the proposed activities and by any suspension plumes they generate. Include detailed location maps showing proposed impact reference zones and preservation reference zones as well as locations of other nearby contract areas or known seabed infrastructure the Preservation Reference Zones, the Impact Reference Zones and the surrounding area with reference to the Regional Environmental Management Plan including any buffer zones to prevent damage to these areas;

(b)ter A description as to how the Environmental Management and Monitoring Plan has been prepared;

(c) The project-specific environmental objectives, indicators and thresholds based on baseline environmental data and relevant standards ;

(c)bis A description of the environmental baseline data, [,] measured baseline values for parameters at the site, a characterization of the area

proposed to be mined, adjacent areas that could be affected by mining, and areas that will be avoided due to their environmental value.

(d) A description of how the monitoring data will be transmitted during operations, how the data will be labelled and monitored by qualified personnel, and how the data will be stored;

(e) The qualifications and proposed location of the personnel monitoring the data;

(f) A description of the procedures for providing the Authority and the sponsoring State or States access to or receipt of the monitoring data for the purposes of monitoring compliance with the terms of an exploitation contract and collection of data.

(g) Details of or cross-references to the Contractor's Environmental Management System documentation;

(i) implementing the measures reflected in the Environmental Management and Monitoring Plan,

(ii) monitoring, recording and reporting fulfilment of the Environmental Management and Monitoring Plan, and

(iii) regularly reviewing and updating the Environmental Management and Monitoring Plan to ensure that it complies with rules, regulations, and procedures of the Authority;

(h) An assessment of the predicted Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result, consistent with the environmental impact assessment and the Environmental Impact Statement;

(h)bis A description of uncertainties identified from the environmental impact assessment and the plan to reduce or manage these;

(i) An assessment of the significance of the potential Environmental Effects to receptors identified in the Environmental Impact Statement, their key uncertainties, proposed monitoring approach and objectives, and proposed mitigation measures and management control procedures and responses to minimize, prevent, reduce and control the harm from Environmental Effects, consistent with the environmental impact assessment and the Environmental Impact Statement;

(j) A description of the planned monitoring programme, with reference to the applicable Standard on Monitoring, and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Management and Monitoring Plan, including the necessary risk assessment and techniques for managing these risks, including the use of monitoring data to validate predictive models and reduce uncertainties, and adaptive management techniques, if appropriate, needed to achieve the desired outcomes. Each component should be described separately in a manner consistent with sections 7-10 of Annex IV. Monitoring methodology/results should provide a sufficient degree of confidence that conclusions in the Environmental Impact Statement can be validated and that agreed performance standards are being met (monitoring should have the statistical power to detect changes in environmental state). The components of the monitoring programme should, at a minimum, include those applicable to the Contractor during its exploration phase to allow for comparison of monitoring data.

(k) Details of the proposed monitoring stations across the contract area, including the frequency of monitoring and data collection, the spatial and temporal arrangements for such monitoring and the justification for such arrangements, including how in situ validation of modelled results will be carried out. The proposed monitoring stations should, at a minimum, include the monitoring stations used during mining tests carried out in the Exploration phase;

(l) The location and planned monitoring and management of Preservation Reference Zones and Impact Reference Zones designed in accordance with the criteria contained in Annex [Xter], as well as other spatial management planning tools if any;

(l)bis The location and boundaries of planned or established long-term protected areas within the Contract Area as [] [determined] in the applicable Regional Environment Management Plan as well as of declared PRZs of neighbouring Contract Areas, if known;

(l)ter Details of any plans outside of the Contract Area to increase scientific knowledge and other knowledge/information in the relevant region, including in collaboration with other contractors or via international cooperation efforts, as well as in collaboration with Indigenous Peoples and local communities;

(m) A description, with threshold levels, of the applicable environmental performance Standards and indicators (trigger and threshold points) to be monitored, including decision rules based on the results of the monitoring of these indicators;

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

(o) Details of the quality control and management standards, and how the effectiveness of management measures will be monitored, assessed and reviewed, including list of reporting deliverables to the Authority and time schedule, plans for real-time reporting of environmental data to the Authority, internal and external auditing and reporting of environmental performance, and including the frequency of the review of the performance of the Environmental Management and Monitoring Plan for the purposes of Regulation 51;

(p) A description of the monitoring technology and system to be implemented, including the types of data to be collected and monitored, and frequency of monitoring, in accordance with Good Industry Practice and Best Available Techniques, reflecting the types of data and formats to be collected and monitored, the use of remote monitoring technology and the types of data available in real time together with a description of the procedures for providing the Authority and the Sponsoring State or States access to the monitoring system and data for the purposes of monitoring compliance with the Environmental Management and Monitoring Plan and collection of data;

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

(r) Details of discharges, including those defined and regulated by relevant rules and regulations issued by the International Maritime Organization, within the project area;



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

(s)bis Details of arrangements made or planned with other marine users, with the aim to ensure due regard to each other's rights and activities.

(t) Details of any practicable restoration and rehabilitation of the project area and the monitoring of their success;

(u) A plan for further research and studies;

(u)bis Detail of the process and measures to be taken in case of non-compliance with the Environmental Monitoring and Management Plan.

(u)ter A description of the measures that will be taken to address non-compliance with the Environmental Monitoring and Management Plan, including reporting, recording and response action protocols;

(u)quart A description of the document control system that will be used for environmental management documentation;

(v) Details of reporting requirements and timing (<2 years) including details of the methodology to be applied to ensure that monitoring data submitted are provided in an accessible and interpretable format consistent with best scientific practices; and

(x) An overview program (list) of all proposed activities

## Annex VIII [IWG ENV]

### Closure Plan

#### Explanation / comment

- One participant has submitted a proposal entailing different changes to this annex, which I have included to the extent possible.
- I highlight the proposed change to point “j” which now refers to “*rehabilitation (where possible)*” instead of merely “*rehabilitation*”. I invite for views on this.

1. The Closure Plan or Final Closure Plan shall be prepared and implemented in accordance with regulation 7, the Environmental Management System, Standards and taking into account the relevant Guidelines and the relevant Regional Environmental Management Plan and shall include the following information:

(a) A description of the closure objectives to ensure that the closure of mining activities is a process that is incorporated into the mining life cycle, any **measures** agreed or proposed to implement these, and how these relate to the mining activity and its environmental, socioeconomic and sociocultural 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 and shall relate to the objectives of the Environmental Impact Assessment, such as recovery of impacted environment;

(c) Coordinates showing the area(s) subject to the closure objectives accompanied by a map;

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

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

(f) Summary of data and information relating to [environmental]baseline [Russia suggests deleting] for monitoring measures;

(g) A summary of the Environmental Impact Statement entailing an updated environmental impact assessment for the activities that will be undertaken during closure, if any, together with details of the identifiable [] [remaining] Environmental Effects, including any relevant technical documents or reports [as well as the expected period until recovery of the environment towards natural state conditions];

(h) Details of monitoring to be undertaken during and after closure (comparable to monitoring efforts prior and during exploitation) 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 [] [minimize, control, mitigate] [] the [] [remaining] Environmental Effects;

(j) Details of the [] remediation[, restoration and rehabilitation (where possible)] objectives and activities building on those detailed in the Environmental Impact Statement and the Environmental Management and Monitoring Plan; [(k)] Documentation of environmental recovery and [D]details of any anticipated residual impacts that may remain even after Mitigation measures;

([l]) Information on reporting and management of data and information postclosure- including information on how data will be archived and made [publicly] available post-closure, and how the formatting of submitted datasets and reports will be consistent with best scientific practices;

([m]) Details of the persons or entity (subcontractor, consultant(s)) that will carry out the monitoring and management measures under the Closure Plan or Final Closure Plan, including their qualification(s) and experience, together with details of the budget, (incl. inflation adjustment for long-term monitoring), project management plan and the protocols for reporting to the Authority under the Closure Plan or Final Closure Plan;

([n]) Details of the amount of the Environmental Performance Guarantee provided under these regulations; and

([o]) Details of consultations with Stakeholders in respect of the plan.

2. The level of detail in the Closure Plan or Final Closure Plan is expected to differ between cases involving a temporary suspension of mining operations, cases involving unplanned abandonment of work, and cases involving final mine closure. The content of the Closure Plan or Final **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.

## **Annex IX [President's Text]**

### **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 [to the exploitation contract]**

### **Schedule 1**

Coordinates and illustrative chart of the Contract Area and proposed Mining Area(s).

### **Schedule 1 bis**

[Certificate of sponsorship]

### **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 [President's Text]**

### **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 [and Best Environmental Practices]. 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 [and Standards], 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 [Exploration and] 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 [and the Regulations]. [Any impacts from activities in the Area carried out under an Exploitation Contract must be strictly limited to the Contractor area.]

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 [onto the Contractor's mining vessel or installation and receipt by the Authority of the required payment for those Minerals], 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.

[6.2.bis. The Contractor shall apply due diligence in selecting its suppliers, and shall be responsible to ensure the adequacy of goods and services it procures, 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 [In accordance with the ‘polluter pays’ principle,] 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 [] [arising out of its wrongful acts [or omissions]], 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 [arising out of the Contractors wrongful acts [or omissions]] regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. [For the purpose of clauses 7.1 and 7.2, ‘wrongful acts or omissions’, means any unlawful act or omission attributable to the Contractor that results in damage not anticipated and approved in the Plan of Work, irrespective of bad intention or negligence]. [Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay-out in lieu of actual reinstatement, and/or measures to compensate for third-party economic loss, as well as pure ecological loss and harm to the living resources of the Area.]

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 in accordance with regulation 20.

## **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, [good faith efforts to comply with the environmental obligations imposed by the Authority,] 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 [such a] [] 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 the Environmental Management and Monitoring 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 [to result in adverse impacts, or a reasonable likelihood of such impacts, to] 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.

## Annex Xter [IWG ENV]

### Design Criteria for Impact Reference Zones (IRZs) and Preservation Reference Zones (PRZs)

#### Explanation / comment

- In general, I have noted that in this Annex Xter many scientific and technical terms are not clearly defined, e.g. “environmentally similar” and “most species” and would need to be further developed and included in the Schedule.
- Furthermore, I believe that there would be merit in considering placing the content in a relevant standard. In any circumstance, to my understanding this annex should be more concise and focused on the purpose of the IRZ/PRZ and the design criteria, while specific details related to baseline data collection and monitoring should refer to the respective standards and guidelines. I therefore, kindly invite for discussions on that.
- Recalling our discussion during March 2023, several participants expressed support for including an annex on design criteria for Impact Reference Zones (IRZs) and Preservation Reference Zones (PRZs). There were two annex versions “Annex Xter” and “Annex Xter ALT”. There seems to be a consensus using the “Annex Xter ALT” version, also considering that all comments received pertained to this version. I therefore propose using this version going forward.
- A proposal to describe characterisation of the pelagic and benthic environment has been forwarded and included. I invite for views on this.
- A proposal, listed as point “13 ALT”, suggests the continued monitoring of post mining *until ecosystem function returns to the level of the pre-mining condition*. This in contrast to the current point 13 which states monitoring should merely *“last until monitoring results show a trajectory towards recovery”*. I invite for a discussion on this.
- One participant suggested to broaden the scope of establishing PRZ’s outside the contract area. I do not believe that the Authority has the mandate to regulate outside contract areas.

]

### **Annex.]**

Applicants must establish suitable and effective Impact reference zones (IRZs) and Preservation reference zones (**PRZs**) in order to monitor the environmental impacts of their activities. The following parameters shall apply in the designation of IRZs and PRZs.

1. IRZs and PRZs must be situated within the Contract Area (and the Contract Area may need to be selected around the need for appropriate IRZ/PRZs, especially where multiple or large reference zones are required)
2. The applicant needs to demonstrate that the IRZ/PRZs are [environmentally] similar before the commencement of mining.
3. [To designate representative IRZs/PRZs requires characterisation of the pelagic and benthic environment including all sub-habitats that may be impacted by mining operations, and determination of regional distributions and patterns of connectivity of communities. Temporal variation must also be evaluated over multiple years. ]
4. IRZs must be zones where direct impacts from mining are predicted to occur once mining commences.
5. [All types] [ ] of impact identified in the Environmental Impact Statement, [ ] must [ ] correspond [ ] [with] IRZ[/IRZs] which will enable the Contractor to monitor [ ] [these] impacts. [Designation of] [ ] multiple IRZs [ ] [is possible for this purpose.]
6. The area(s) of the IRZ(s) needs to be sufficiently large and representative to allow adequate assessment of recovery of populations and environmental conditions after the mining activities, in accordance with the relevant Standards, taking into account relevant Guidelines.
7. PRZs will be important in identifying natural variations in environmental conditions against which impacts shall be assessed and must be comparable to that of the impacted areas, in accordance with the relevant Standards [and], taking into account the relevant Guidelines. The abiotic and biotic baseline data include but are not limited to the quantity and quality of mineral resources, species composition and habitat types.
8. PRZs must be areas that will not be impacted by mining activities from any contractor, including impacts from operational and discharge plumes and including during the post-closure period. PRZs must also be free [ ] from impacts of other industrial activities[. PRZs must have to remain unimpacted throughout the post-mining monitoring period.]
9. Where a Contract Area consists of several disjunct sub-areas that are isolated from each other, then each of those areas would require a corresponding PRZ and IRZ.



10. Use of multiple PRZs and IRZs should be considered for increase in statistical rigour, and chance of detecting effects and adding redundancy in case of unexpected variation/plan changes.
11. The area of the PRZ needs to be sufficiently large to contain sufficiently large populations to guarantee long-term survival. The PRZ will also require a buffer zone around it to protect the populations and ensure maintenance of natural environmental conditions in the PRZ.
12. Abiotic and biotic parameters, within the IRZ and PRZ will need to be monitored to quantify impacts. This includes but is not limited to monitoring species diversity and function. To establish an adequate baseline and to find suitable indicator species (e.g., the sensitive species that will suffer most from an impact, key-stone species that are crucial for ecosystem processes, or species which abundance indicates a disrupted ecosystem functioning), it will be necessary to catalogue most species in the IRZ and PRZ in question and unravel their functions. This will require sufficient sampling effort to collect sample sizes that allow for a meaningful comparison (i.e., with high statistical power).
13. The longevity of PRZs [and duration of post-monitoring ] [] [are] important[. The] duration of post-mining monitoring should last until monitoring results show a trajectory towards recovery. Post-mining monitoring should be described in the final EMMP and/or Closure Plan.] no measurable difference between IRZ and PRZ can be detected anymore.

[13 Alt. Post mining monitoring shall continue until ecosystem function returns to the level of the pre-mining condition agreed within the EMMP/Closure Plan and taking into account the time taken to reach a new equilibrium state. ]

14. Isolation of PRZs is important. Any PRZ will by definition have to remain unimpacted throughout the post-mining monitoring period.
15. To designate representative IRZs/PRZs requires characterisation of the pelagic and benthic environment including all sub-habitats that may be impacted by mining operations, and determination of regional distributions and patterns of connectivity of communities. Temporal variation must also be evaluated over multiple years.
16. An applicant will need to be able to demonstrate knowledge of species' ecological requirements (e.g. for successful reproduction); an average population density alone will not suffice.

## Appendix I [President's Text]

### Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 34 include [any of the following events, except for where it constitutes an "Incident" for the purposes of these regulations]:

3. Occupational lost time illness.

4. Occupational lost time injury.

5.bis. [Marine Mammal Fatality ]

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, [including cyber security].

14. Impairment/damage to safety or environmentally critical equipment.

15.  Contact with fishing gear [resulting in its damage].

16.  [[Suspected] c[C]ontact with submarine pipelines or cables [resulting in its damage].]

17.  Contact with equipment related to marine scientific research [resulting in its damage].

## **[Appendix II: Schedule of annual, administrative and other applicable fees [IWG IM]**

**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] ]

*[Facilitators' Note: Several delegations have proposed to delete Appendix II, and instead to set specific fee amounts via Council decision (on the basis of a recommendation by the Finance Committee). Another proposal is to retain the list in Appendix II, but with specific fee amounts.]*

## APPENDIX III: Monetary Penalties [IWG IM]

<del>Penalty in respect of any underdeclaration or underpayment in respect of a royalty</del>	
<del>Penalty in respect of any failure to deliver or furnish a royalty return</del>	
<del>Penalty in respect of false royalty returns and information</del>	
<del>Failure to submit an annual report (regulation 38)</del>	
<del>Other: to be considered e.g. relating to Notifiable Events (failure to notify); environmental &amp; 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.</del>	

*[Facilitators' Note: Several delegations have proposed to delete Appendix III, and instead to set specific penalty amounts via Council decision.]*

## Appendix IV [OEWG] Determination of a royalty liability

Appendix IV 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.

Several updates have been made since the last version of Appendix IV. Therefore, I have replaced the Appendix in its entirety.

A participant has expressed support for the Two Stage Variable Ad Valorem (Option 4) and the gross metal value calculation as set out in the Standard.

In the present appendix:

**Aggregate Relevant Metal Value** means the aggregate of the Relevant Metal Values for each Relevant Metal calculated in accordance with the [applicable](#) Standard.

**Applicable Royalty Rate** means the royalty rate set out in the [applicable](#) Standard, which may be by a decision of the Council following any review under these regulations.

**Average Listed Price** means the average listed price for a Relevant Metal, calculated in accordance with the [applicable](#) Standard.

**Average Grade** means the average metal content of the Relevant Metal calculated in accordance with the [applicable](#) Standard.

**Relevant Metal** means a metal contained in the mineral-bearing ore identified and determined in accordance with the [applicable](#) Standard.

**Relevant Metal Value(s)** means the gross market value(s) of a Relevant Metal calculated in accordance with the [applicable](#) Standard.

**Valuation Point** is the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore out of the Contract Area. [In the instance where the transfer of mineral-bearing ore onto another vessel does not take place, the valuation point shall be on board the original vessel before it leaves the Contract Area.](#)

### Explanation / Comment

- In relation to the Valuation Point, further specificity may be required in the Guidelines to clarify as to when, during the transferring process, weighing and sampling may take place, given that it is likely to be a continuous process over hours, or days, to load a single shipment onto the transport vessel.
- Some participants have proposed to add “applicable” before each reference to “Standards” as there may be different Standards

which apply to the various matters listed as defined terms in Appendix IV. I have proposed including that change.

- Some participants have proposed additional text for Valuation Point, with the following explanation: There are scenarios where the ore remains in the hold of the collector ship and is transferred directly out of the area without being transferred onto a transport ship. It is also possible that the ships sink with the mineral-bearing ore in their hold. We recommend amending the definition of “Valuation Point” accordingly and recommend that any associated Guidelines also reflect this possibility. I have included text to address that possibility.
- Following the March 2023 negotiating round, one Contractor proposed a complete rewrite of Appendix IV. It considers the formulas for calculating the royalty to have design defects. The ore in the two formulas are valued according to the metal or mineral in the ore rather than the raw ore. It considers that the valuation should be based on the original ore rather than the metals in the ore. It also considers that the 1994 Implementation Agreement is based on the principle of establishing a payment system that should treat both the contractor and the ISA fairly, and any one-sided pursuit of maximizing benefits by either party deviates from this principle. It considers the payment rate should be set so that the mineral types from the deep-sea bed have the ability of fair market competition with similar mineral types from the land. It suggests adopting a lower royalty rate equivalent to similar types of ore on land during the first 5-year commercial production stage (and as outlined above, it should be priced using the original ore).

## 1. The Authority shall set a royalty rate

The Authority shall set an Applicable Royalty Rate in respect of the royalty to be paid by the Contractor to the Authority for Minerals which constitute polymetallic nodules, as set out in the Relevant Standard and ~~taking into account the any~~ Guidelines.

### [1.bis. Additional Minerals

Additional Minerals shall be included in the calculation of the royalty should evidence become available that such minerals are being profitably extracted.

The Legal and Technical Commission shall recommend to the Council for decision whether additional Minerals shall be included.

The inclusion of additional Minerals in the determination of the royalty shall constitute a review of rates of payments as described in Regulation 82.]

### **Explanation / Comment**

- Regulation 64 prescribes that a royalty will be paid by the Contractor. This paragraph 1 now establishes who will set and collect the royalty, and how it will be calculated. The paragraph only concerns polymetallic nodules. To maintain long term adaptability, it directs the details to the Standard and Guidelines.
- Some participants have proposed removing the reference to Guidelines. I

propose to retain the reference, as it gives greater flexibility of options (including, for example, for worked examples in Guidelines). Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. I consider that the original text proposal, which would require the Authority to consider the Guidelines, would make consideration of the Guidelines (and therefore compliance with the Guidelines), binding.

- Participants have proposed different options for addressing additional metals. This is one such proposal, another is at the “Relevant Metals” section. I invite views of the participants on whether such updates could fall within the broader review and update mechanism contemplated under DR 81 and 82. I invite the submissions of participants on preferred approach for additional metals.

## 2. Calculation of royalty payable

The royalty payable to the Authority for each royalty return period shall be the product of the Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value for that royalty return period, calculated in accordance with the Standard and taking into account the Guidelines.

### **Explanation / Comment**

- Regulation 64 prescribes that a royalty will be paid; paragraph 1 of Appendix IV above states that the rate will be set by the Authority. This paragraph 2 establishes how the royalty payment will be calculated.
- To maintain long term adaptability, it directs the details to the Standard and Guidelines. Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. I consider that while most matters could be included in Standards, there is a role for Guidelines. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice, to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples.
- I consider that the original text proposal makes consideration the Guidelines (and therefore compliance with the Guidelines), binding, as it requires the Authority to consider the Guidelines.

## Draft Standard [OEWG]

In the present Standard:

**First Period of Commercial Production** means a period of 5 years following the date of commencement of Commercial Production.

### Explanation / Comment

I invite views on whether it would be preferable for administrative purposes if the First Period of Commercial Production was to end at the end of a royalty return period.

**Listed Price** means:

1. For copper, nickel and cobalt: the price (in United States dollars), quoted for the Relevant Metal in the Official Listing relating to that Relevant Metal for the relevant period.
2. For manganese: ~~the price (in United States dollars), quoted for manganese ore in the applicable Official Listing for the relevant period, the result of the following calculation:~~

~~$(0.1 \times \text{EMM Price}) + (0.4 \times \text{LC FeMn Price}) + (0.4 \times \text{MC FeMn Price}) + (0.1 \times \text{HC FeMn Price})$  where:~~

~~FeMn Price) where:~~

- ~~(a) EMM Price means the price (in United States dollars), quoted for electrolytic manganese metal in the applicable Official Listing for the relevant period;~~
- ~~(b) LC FeMn Price means the price (in United States dollars), quoted for low carbon ferromanganese in the applicable Official Listing for the relevant period;~~
- ~~(c) MC FeMn Price means the price (in United States dollars), quoted for medium carbon ferromanganese in the applicable Official Listing for the relevant period; and~~
- ~~(d) HC FeMn Price means the price (in United States dollars), quoted for high carbon ferromanganese in the applicable Official Listing for the relevant period.~~

### Explanation / Comment

- Once the relevant indices have been settled, the applicable units for each quotation should be confirmed. It should also be confirmed that the relevant indices do in fact quote the prices for the relevant periods that are reflected by the draft Standards and Guidelines.
- To reflect the discussions of the OEWG, for manganese I have proposed text which features a manganese ore reference price. This also reflects the new work done by MIT in their updated modelling. I invite further discussion on this point, noting that some participants proposed using only



the electrolytic manganese price as the reference price, while another submission proposed eventually moving to a nodule ore price as opposed to a composite based on individual metals prices.

- To expand further on the relevant participant’s proposal to use an official listing of EMM only rather than the composite calculation originally proposed based on MIT’s earlier modelling, the explanation for that proposal is as follows: *The MIT model assumed, and included costs and royalty rates consistent with this assumption, that manganese was processed to the electrolytic manganese metal (EMM) grade. If the royalty rates proposed are levied on a base containing different/lower manganese prices then the conclusions from the MIT model are no longer relevant and the royalty rates should be revised upwards to maintain ISA revenues. Likewise, the proposed minimum acceptable royalty rates assume that the royalty is levied on a base using the EMM price. If there is a change to the manganese price used then the royalty base will be lower and payments to the ISA will be lower, and we will then revise its minimum acceptable royalty rates upwards to maintain acceptable revenues for humankind. It is important to understand that the regulations are not dictating what manganese grade processors process manganese to. The royalty regulations are simply determining a base on which the royalty is applied. There is no reason that the Draft Regulations cannot use the EMM price for that base. Trying to understand exactly what grade processors will process manganese to is likely to be a fruitless and unconstructive task that will only serve to delay the Draft Regulations. Reasons for this include: a.) some nodules may be processed to the EMM grade, while others will be processed to a lower grade, b.) different contractors will sell nodules to different processors, and not all processors will process nodules to the same grade, c.) some contractors may not even know the full downstream sales and processing chain. They will sell unprocessed nodules and are not legally responsible for what happens to the metal in those nodules downstream. In short, the main criteria for the royalty base are that it is simple to calculate, easy to audit and results in significant revenues for the ISA. In addition review “Issue 3: The Valuation of Manganese” from the “African Group Speaking Notes on the Payment Regime” submitted on 15 January 2023, for further commentary to consider.*

**Official Listing** means the quoted or published price of the Relevant Metals as specified for each Relevant Metal in the Guidelines.

**Explanation / Comment**

The reference to the Guidelines is to provide greater flexibility for future changes. The Guidelines also provide for a determination to be made by the Authority or Council (as determined during the negotiations) as to a new index, should the current one cease to be published.

**Second Period of Commercial Production** ~~means the period commencing on the day following the last day of the First Period of Commercial Production.~~ means [a period of [x] years commencing on the day following the last day of the First Period of Commercial Production.] [the period commencing on the day following the last day of the First Period of Commercial Production.]

[Third Period of Commercial Production means the period commencing on the day

following the last day of the Second Period of Commercial Production.]

**Explanation / Comment**

- Participants have proposed to define all periods of Commercial Production. I have proposed text to this effect, although noting that currently ‘Third Period of Commercial Production’ is not used in the text.
- As additional context, the two periods of Commercial Production were intended to reflect the two-stage ad valorem nature of Option 4, with the royalty rate increasing for the second period (namely the duration of the contract following an initial 5 year ramp up).

**Shipment** means each shipment of mineral-bearing ore by a vessel transporting the ore out of the Contract Area.

**1. Relevant Metals**

1. For the purpose of polymetallic nodules and appendix IV, [during the First Period of Commercial Production] Relevant Metals will be copper, nickel, cobalt and manganese [only].

[2. During the Second Period of Commercial Production and subsequent periods of Commercial Production relevant metals will include copper, nickel, cobalt and manganese and may include other metals and substances, but only if there is substantial evidence that such other metals and substances are being processed from mineral-ore mined under the exploitation contract and are substantially increasing the value of polymetallic nodules mined in the area and in such case additional Standards will be published providing for the inclusion of these other metals and substances in aggregate relevant metal value.]

**Explanation / Comment**

- Participants have proposed different options for addressing additional metals. One proposal is to include text at Appendix IV. Another is here in the “Relevant Metals” section. Or such updates could be included within the broader review and update mechanism contemplated under DR 81 and 82.

**2. Calculation of Average Grade**

1. In respect of each Relevant Metal, the Average Grade shall be the metal content of that Relevant Metal expressed as a percentage per dry metric ton of mineral-bearing ore in a Shipment.

2. The metal content of each Relevant Metal shall be determined based on samples of the mineral bearing ore collected at the Valuation Point in accordance with the sampling and assaying procedures set out in the Standards and any Guidelines.

**Explanation / Comment**

- This provides for the royalty to be calculated based on the actual (sampled) metal content of each individual Shipment based on a number of samples taken at the Valuation Point during the loading of the transport vessel. This approach approximates the reality of the operations and the likely basis on which the product will be sold on a commercial basis.
- The MIT model assumes a consistent grade / content for each metal due to the fact that, for the purposes of analysing financials, MIT used the average composition and kept this constant. However, in practice the Contractors would need to measure actual composition for reporting and royalty calculations.
- Some participants have proposed removing the reference to Guidelines. I consider that while most matters could be included in the Standards, there is a role for Guidelines. Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice, to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples.
- I consider that the original text proposal makes consideration the Guidelines (and therefore compliance with the Guidelines), binding, as it requires the Authority to consider the Guidelines, would make consideration of the Guidelines.

**3. Calculation of Average Listed Price**

The Average Listed Price for a Relevant Metal shall be the Listed Price for the Relevant Metal for the month during which loading of that Shipment commenced.

**Explanation / Comment**

- This calculates the royalty based on the market price applicable to each individual Shipment and avoids averaging market pricing across periods or Shipments. In calculating the price for each Shipment, it is preliminarily proposed that the average price is reported for that month (or some other period, if the OEWG agrees), on the basis that this approach is similar to that used in the pricing of bulk commodities in commercial contracts (i.e. the ‘quotational period’).
- The model uses a single price over a 12-month period because future price forecasts don’t exist on a more granular basis; and it should be noted that the model makes no reference to the time periods for calculating royalties in practice. MIT’s modelling has demonstrated that more accuracy (with respect to reflect actual market prices) is achieved by not averaging prices over long periods of time.

**4. Calculation of Relevant Metal Value and Aggregate Relevant Metal Value**

1. The value of the mineral-bearing ore for a royalty return period shall be the Aggregate Relevant Metal Value for that period.

2. The Aggregate Relevant Metal Value for a royalty return period shall be the aggregate of the

Relevant Metal Values for each of the Relevant Metals for that period.

3. The Relevant Metal Value for each Relevant Metal during the royalty return period shall be calculated as follows:

(a) For each Shipment:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

(b) For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment [which commenced loading] in the royalty return period

Where:

- (i) Quantity means the quantity (in dry metric tons) of the mineral-bearing ore in each Shipment [which commenced loading] in a royalty return period and calculated in the light of the applicable Guidelines.
- (ii) Average Grade is calculated in accordance with this Standard and in the light of the applicable Guidelines.
- (iii) Average Listed Price is calculated in accordance with this Standard and in the light of the applicable Guidelines.

## 5. **Determination of the Applicable Royalty Rate**

The Applicable Royalty Rate shall be:

~~Two-stage variable ad valorem~~

1. For the First Period of Commercial Production, [~~2-3~~ %]; and

[1alt For the First Period of Commercial Production, [12%]; and]

2. [For][From] the Second Period of Commercial Production, a rate no less than [~~5-7.5~~ %] and no greater than [~~9-12.5~~ %] determined by reference to the table below and the Notional Relevant Metal Value:

[2alt [For][From] the Second Period of Commercial Production, a rate no less than [12%] and no greater than [25%] determined by reference to the table below and the Notional Relevant Metal Value:]

Where:

- (a) Notional Relevant Metal Value means the [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period].
- (b) The [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period] shall be calculated by dividing the Aggregate Relevant

Metal Value for that royalty return period by the total Quantity shipped during that royalty return period.

<b>Notional Relevant Metal Value</b> <i>[(as may be adjusted in accordance with the Standards and Guidelines)]</i>	<b>Applicable Royalty Rate</b> <b>[for][from] Second Period of Commercial Production</b>
Less than <del>[US\$850]</del> [US\$ 510] per dry metric ton ( $x < \frac{\text{US\$850}}{t}$ <del>[US\$ 850/t]</del> $\frac{\text{US\$ 510}}{t}$ )	<del>[5.75 %]</del> <del>[alt [12%]]</del>
Greater than or equal to <del>[US\$850]</del> [US\$ 510] per dry metric ton but less than <del>[US\$925]</del> [US\$ 580] per dry metric ton ( $\frac{\text{US\$850}}{t}$ <del>[US\$ 850/t]</del> $\frac{\text{US\$510 X}}{t} \leq x < \frac{\text{US\$925}}{t}$ <del>[US\$ 580/t]</del> )	<del>[6.875 %]</del> <del>[alt [15.3%]]</del>
Greater than or equal to <del>[US\$925]</del> [US\$ 580] per dry metric ton but less than <del>[US\$1,000]</del> [US\$ 650] per dry metric ton ( $\frac{\text{US\$925}}{t}$ <del>[US\$ 580/t]</del> $\leq x < \frac{\text{US\$1,000}}{t}$ <del>[US\$ 650/t]</del> )	<del>[7.10 %]</del> <del>[alt [18.5%]]</del>
Greater than or equal to <del>[US\$1,000]</del> [US\$ 650] per dry metric ton and less than <del>[US\$1,075]</del> [US\$ 720] per dry metric ton ( $\frac{\text{US\$1,000}}{t}$ <del>[US\$ 650/t]</del> $\leq x < \frac{\text{US\$1,075}}{t}$ <del>[US\$ 720/t]</del> )	<del>[8.11.25 %]</del> <del>[alt [21.8%]]</del>
Greater than or equal to <del>[US\$1,075]</del> [US\$ 720] per dry metric ton ( $\frac{\text{US\$1,075}}{t}$ <del>[US\$ 720/t]</del> $\leq x$ )	<del>[9.12.5 %]</del> <del>[alt [25%]]</del>

<b>Explanation / Comment</b>
<ul style="list-style-type: none"> <li>• The applicable rates and thresholds provided are placeholders. <u>Invite further discussion on this issue.</u></li> <li>• The new proposed rates and thresholds reflect the new work done by MIT in the updated model, noting however that the rates and thresholds need to be considered alongside other proposals which still require further discussion, including that relating to an additional royalty, as proposed in the OEWG, and in two submissions received from participants.</li> <li>• In particular, one participant proposed changes to the rates and to the proposal to move to a one-stage rather than two-stage model. The alternative text rates reflected here are</li> </ul>

based on that submission, which notably referenced an EMM price for the manganese component, and also proposed an additional royalty. The proposed alternative rates should be considered in that context.

- The drafting here provides for the variable rate to be set based on the average market price per DMT for all Shipments during the 6-month royalty return period. Although the MIT model uses an annual price so that the rate is constant over the year and does not change for each Shipment, this was because the model was not intended to address the royalty calculation periods. In practice, applying this formulation, the rate will be re-calculated every six months to reflect market prices over that period.
- Reflection should be given to the issue as to whether the Guidelines should address inflationary (or other applicable) increases to the Notional Relevant Metal Value amounts specified in the table. Alternatively, another approach may be to simply amend the table in this Standard from time to time to reflect appropriate price increases in the future.

6. **[Commercial Production]**

1. Commercial Production shall commence on the date that recovery, for commercial purposes, of Minerals from the relevant Mining Area has reached at least [60%] of the design capacity outlined in the initial production phase of the Mining Work Plan for that Mining Area for [90] consecutive days.
2. Recovery, for the purposes of Commercial Production, shall take place at the point at which Minerals from the Mining Area are transferred to a vessel directly following collection or removal from the seabed and ocean floor and subsoil thereof.
3. ~~Once the Contractor determines that it is engaging in sustained large scale~~ recovery operations meet the criteria for the commencement of Commercial Production as set out in paragraph 1 above, 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.
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.
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).~~
6. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the [Mining Area]~~[Contract Area]~~, that Commercial Production has commenced ~~begun~~ and the location of the Mining Area(s).

7. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to paragraph 5. Regulation 27(3).
8. If the Authority [or Inspectorate] has reasonable grounds to believe that the Contractor's recovery rate does not achieve the 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.
9. The Contractor shall submit any additional information requested by the Authority [or Inspectorate] within [30] days of any such request by the Authority.

**Explanation / Comment**

- These changes should be read in conjunction with Regulation 27. In July participants supported the text as drafted. One participant has now proposed deleting the relevant paragraphs from Regulation 27 and moving them to the Standards as set out here, with the changes proposed here in mark-up. I invite comments.
- The applicable thresholds provided are placeholders as proposed by one participant. I invite further discussion on this issue.
- I note that if the definition of Commercial Production in the Schedule to the Regulations is amended, this text may require consequential harmonization amendments.

7. **[Methodology for the review of Rates of Payments]**

1. In line with common practice in cross-country comparisons of fiscal regimes imposed on land-based mining operations, the Commission, when undertaking a review pursuant to this Standard, will use average Effective Tax Rate (AETR) to make comparisons between the rates of payments for deep-sea mining operations and land-based mining operations exploiting similar minerals.
2. In addition, the Commission will draw on established methodology routinely used by intergovernmental organizations conducting such comparisons – for example, the International Monetary Fund's Fiscal Analysis of Resource Industries (FARI) Methodology (see FARI Technical Notes & Manual, 2016).

EFFECTIVE TAX RATE  
Mining in the Area  
of deepsea minerals

$$\frac{\text{ISA Royalty} + \text{GovRev}}{\text{Pre-tax net cashflows}}$$

within  
range

EFFECTIVE TAX RATE  
Land-based mining  
of same or similar minerals

$$\frac{\text{GovRev}}{\text{Pre-tax net cashflows}}$$

GovRev is all payments to government  
composed of royalty, income tax, resource rent  
tax, withholding taxes, and so on, as specified  
by the fiscal regime.

Source: [IMF Technical Note on FARI  
Methodology, 2016](#)

3. The Commission will use the following information when conducting a review pursuant to this Standard:
  - (a) Pre-tax net cashflows for a typical deep sea mining project;
  - (b) Authority and government revenue from deep-sea mining operations; and
  - (c) Government revenue from land-based mining operations exploiting the same or similar minerals.

**Pre-tax net cashflows for a typical deep-sea mining project**

4. The ISA Financial Model will be updated based on best available pre-tax net cashflows data for the five years preceding the most recent review of rates of payments.
5. The data referenced in paragraph 4 above will include prefeasibility studies submitted by Contractors as part of their exploitation contract application, feasibility studies submitted 12 months before the commencement of Commercial Production and any annual reporting required during Commercial Production.

**Authority and government revenue from deep-sea mining operations**

6. Along with royalty payments to the Authority, the Commission shall review the fiscal regimes of governments who either already generate revenue from Commercial Production undertaken by Contractor(s) in the Area or those governments who could generate such revenue in the future if Contractor(s) with existing Exploration contracts were to proceed with Commercial Production. For the purpose of information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.

**Government revenue from land-based mining operations exploiting the same or similar minerals**

7. The Commission shall review the fiscal regimes of land-based mining jurisdictions that have accounted for at least 80% of global (excluding seabed mining) production of the same or similar minerals during the preceding five years. For example, when reviewing rates of payment for Contractors who exploit polymetallic nodules, the Commission will review land-based mining jurisdictions accounting for at least 80% of global (excluding seabed mining) nickel, copper, manganese, and cobalt mining production during the preceding five years. For the purpose of the information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.
8. Subject to the review conducted pursuant to these Standards, if the AETR for mining in the Area is determined to differ from the AETR for land-based mining exploiting the same or similar minerals, the Commission shall propose a recommendation for consideration by the Council to adjust the rates of payments with a view to bringing the AETR for Contractors within the range of AETR for land-based mining operations exploiting the same or similar minerals.]



**Explanation / Comment**

- Two participants have proposed the above mechanism relating to the review of rates for payments under draft regulation 82. I invite comments.
- The following explanation has been provided by the participants:

*The establishment of Standards for the review of the financial terms of exploitation contracts will enable the Authority to simplify the text of the regulations and move rates, deadlines, timelines, and technical considerations, etc. into a set of Standards that can be easily updated.*

*The establishment of Standards will ensure that there is a consistent, rigorous, transparent, and timely approach to the process by which the Authority will review the system of payments and the rates of payments.*

*The establishment of a defined review process will also ensure that the Authority can fulfil its mandate to organize and control all mineral-resources-related activities in the Area for the benefit of humankind as a whole.*

*Also, any review of the system of payments and rates of payments should consider the rates of payments across all financial mechanisms established by the Authority (e.g., potential additional tax, profit share mechanism, financial incentives, etc.) and be aligned with the review of the system of payments and rates of payments.*

*Finally, the establishment of a transparent review process by the Authority will ensure that member States and Contractors have confidence in the Authority's ability to manage the financial system of the Area for the benefit of humankind as a whole.*

## Draft Guidelines in accordance with Regulations 95 in respect of the administration and management of royalties prescribed in Part VII [OEWG]

### Official Listings

1. Official Listing in respect of copper means [appropriate reference to be determined].
2. Official Listing in respect of nickel means [appropriate reference to be determined].
3. Official Listing in respect of cobalt means [appropriate reference to be determined].
4. Official Listing in respect of manganese: [appropriate reference to manganese ore to be determined].
  - ~~(a) — in respect of [electrolytic manganese metal] means [appropriate reference to be determined];~~
  - ~~(b) — in respect of [low carbon ferromanganese] means [appropriate reference to be determined];~~
  - ~~(c) — in respect of [medium carbon ferromanganese] means [appropriate reference to be determined]; and~~
  - ~~(d) — in respect of [high carbon ferromanganese] means [appropriate reference to be determined].~~

### Explanation / Comment

- This definition could be moved directly into the Standard if preferred. It has been included here to provide greater flexibility for future changes.
- As identified in the past, manganese presents a challenge. There is currently no accepted market index price because the manganese product, form and value relative to reference prices remain highly uncertain. The new text in relation to manganese reflects the discussions of the OEWG with respect to a medium-grade manganese reference price. This also reflects the new work done by MIT in their updated modelling. I invite further discussion on this point, noting that one participant proposed using only the electrolytic manganese price as the reference price, while another participant proposed eventually moving to a nodule ore price as opposed to a composite based on individual metals prices.

### Replacement of Official Listing

If:

1. any of the indices or publications listed as an Official Listing ceases to be published or determinable for a period of [one month] and there are reasonable grounds on which to conclude that the index or publication will continue not to be published on a consistent basis in future; or
2. any of the indices or publications listed as an Official Listing does not, in the opinion of the [Council] fairly and reasonably, whether due to persistent errors or omissions, a change in its methodology or for any other reason, reflect the fair market price of the Relevant Metal,

then the [Council] may determine a replacement Official Listing for the Relevant Metal, which shall be:

- (a) the price for the Relevant Metal quoted on a recognized international mineral exchange or market;
- (b) the published price for the Relevant Metal in a publication recognized for quoting or publishing prices of metals in an international market; or
- (c) based on recommendations of the Commission [and following consultation with Contractors], a formula determined by the Council.

### Worked example of royalty calculation

The following provides a worked example of the calculation of the royalty in accordance with regulation 64, appendix IV, the applicable Standard and these applicable Guidelines. This is for illustrative purposes only.

Explanation / Comment
<ul style="list-style-type: none"> <li>• <u>I invite views on whether the worked example should be retained in the Guidelines.</u> The example (currently based on a two-stage variable ad valorem) will need to be updated and refined as changes are made to the proposed drafting, and if required, more detail could be added. For example, it could include changes to the Average Grade rather than the consistency shown in the example below, and adjustment of Shipment sizes and frequency to more closely emulate a typical nodule mining operation.</li> <li>• Pending further discussion with members, the worked example has simply been updated to reflect the rates and thresholds proposed in this text, and does not yet take account of different participants' submissions, including on an additional royalty.</li> <li>• Once the equalization measure has been settled in principle, an updated worked example could be included to encompass the relevant equalization payments.</li> </ul>

### WORKED EXAMPLE 1:

(see Worked Example 2 for details)	<b>Copper</b>	<b>Nickel</b>	<b>Cobalt</b>	<b>Manganese</b>
	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)
<b>Shipment 1</b>	US\$47,025,000	US\$128,700,000	US\$49,500,000	US\$62,622,000
<b>Shipment 2</b>	US\$57,750,000	US\$169,000,000	US\$62,000,000	US\$67,450,000
<b>Shipment 3</b>	US\$75,625,000	US\$171,600,000	US\$73,700,000	US\$70,290,000
<b>Relevant Metal Value (US\$)</b>	US\$180,400,000	US\$469,300,000	US\$185,200,000	US\$200,362,000
<b>Aggregate Relevant Metal Value (US\$)</b>	US\$1,035,262,000			
<b>Royalty Rate</b>	First Period of Commercial	3%		

	Production		
	Second Period of Commercial Production	Notional Relevant Metal Value	US\$1,035,262,000 / 1,500,000 DMT = US\$690/t
		11.25%	
<b>Royalty payable (First Period of Commercial Production)</b>	US\$1,035,262,000 x 3% = US\$31,057,860		
<b>Royalty payable (Second Period of Commercial Production)</b>	US\$1,035,262,000 x 11.25% = US\$116,466,975		

**WORKED EXAMPLE 2:**

1. Calculation of royalty payable (see Appendix IV)

Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value

$$= \cancel{2} \underline{3}\% \times \cancel{\text{US\$1,591,760,000}} \text{ US\$1,035,262,000} = \cancel{\text{US\$31,835,200}} \text{ US\$31,057,860} \text{ (First Period of Commercial Production) Or}$$

$$= \cancel{8} \underline{11.25}\% \times \cancel{\text{US\$1,591,760,000}} \text{ US\$1,035,262,000} = \cancel{\text{US\$127,340,800}} \text{ US\$116,466,975} \text{ (Second Period of Commercial Production, if two stage variable ad valorem)}$$

2. Applicable Royalty Rate (see Standard)

If during First Period:  $\cancel{2} \underline{3}\%$

If during Second Period:  $\cancel{8} \underline{11.25}\%$  (two stage variable ad valorem)

where  $\cancel{8} \underline{11.25}\%$  based is on a Notional Relevant Metal Value of  $\cancel{\text{US\$1,061/t}} \text{ US\$690/t}$  (as per table in Standard)

*Notional Relevant Metal Value*

= Aggregate Relevant Metal Value / total Quantity

$$= \cancel{\text{US\$1,591,760,000}} \text{ US\$1,035,262,000} / 1,500,000\text{DMT}$$

$$= \cancel{\text{US\$1,061}} \text{ US\$690 per ton}$$

3. Aggregate Relevant Metal Value (see Standard)

Aggregate Relevant Metal Value = the aggregate of the Relevant Metal Value for each Relevant Metal during the royalty return period

= Relevant Metal Value for copper + Relevant Metal Value for nickel + Relevant Metal Value for cobalt + Relevant Metal Value for manganese

$$= \text{US\$180,400,000} + \text{US\$469,300,000} + \text{US\$185,200,000} + \cancel{\text{US\$756,860,000}} \text{ US\$200,362,000}$$

$$= \text{US\$1,591,760,000} - \text{US\$1,035,262,000}$$

Relevant Metal Value for Copper:

1. For each Shipment of copper:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	1.10%	9500	47025000
<b>Shipment 2</b>	500000	1.10%	10500	57750000
<b>Shipment 3</b>	550000	1.10%	12500	75625000
<b>Aggregate for royalty return period</b>				180400000

Relevant Metal Value for Nickel:

1. For each Shipment of nickel:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

The aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period.

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	1.30%	22000	128700000
<b>Shipment 2</b>	500000	1.30%	26000	169000000
<b>Shipment 3</b>	550000	1.30%	24000	171600000
<b>Aggregate for royalty return period</b>				469300000

Relevant Metal Value for Cobalt:

1. For each Shipment of cobalt:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	0.20%	55000	49500000
<b>Shipment 2</b>	500000	0.20%	62000	62000000
<b>Shipment 3</b>	550000	0.20%	67000	73700000
<b>Aggregate for royalty return period</b>				185200000

Relevant Metal Value for Manganese:

1. For each Shipment of manganese:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

*NOTE: Price based on the following:*

*(0.1 x EMM Price) + (0.4 x LC FeMn Price) + (0.4 x MC FeMn Price) + (0.1 x HC FeMn Price)*

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	28.40%	<del>1500</del> <u>490</u>	<del>191700000</del> <u>62622000</u>
<b>Shipment 2</b>	500000	28.40%	<del>2000</del> <u>475</u>	<del>284000000</del> <u>67450000</u>
<b>Shipment 3</b>	550000	28.40%	<del>1800</del> <u>450</u>	<del>281160000</del> <u>70290000</u>
<b>Aggregate for royalty return period</b>				<del>756860000</del> <u>200362000</u>

## Schedule [President's Text] Use of terms and scope

### Comments/remarks

- General terms and scope used throughout the draft regulations are handled in the President's text. In relation to specialized terms and where expertise within the subject is required for further development, the terms and scope are handled by the relevant working group.

["Additional Royalty" [OEWG] means the additional royalty payable in accordance with regulation [64Bis] and [64Ter].]

["Allowable Sponsoring State Tax" [OEWG] has the meaning given in regulation [64Ter.6].]

["Applicable Additional Royalty Rate" [OEWG] is the rate determined in the [applicable] Standard.]

["Assumed CIT Rate" [OEWG] is the rate determined in the [applicable] Standard.]

["Authority" means the International Seabed Authority as established by part XI of the Convention and for the purposes of these Regulations shall include all organs of the Authority save for the Enterprise, except where the Enterprise is expressly stated as being included.]

"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 [] [Information]" means the 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" [IWG ENV] means the [latest stage of development, and state-of-the-art [the most appropriate] processes], [within reasonable technical and economic constraints, [] facilities or [] methods of operation that indicate the practical suitability of a particular measure for the [avoidance], 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 [Standards and] Guidelines.]

**Alt. 1** ["Best Available Techniques" means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

(a) 'techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

(b) 'available techniques' means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.

(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;]

**Alt 2. [“Best Available Techniques”** means the most appropriate processes, within reasonable technical and economic constraints, facilities or 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”** [IWG ENV] means the application of the most appropriate combination of environmental control measures and strategies, [based on the Best Available Scientific Information and Best Available Technology which] [that] will change with time in the light of improved knowledge, understanding or technology, [as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities] taking into account the [guidance set out in the] applicable [Standards and] Guidelines [including traditional knowledge and international best practices].

~~[handled by the IWG ENV].]~~

**“Calendar Year”** means a period of 12 months, ending with 31 December.

[**“Closure”** means activities undertaken within a Contract Area once commercial production has ceased, and includes; Decommissioning, post-mining monitoring and reporting, and any rehabilitation and restoration or compensatory measures that may be agreed.]

[**“Certified Laboratory”** [OEWG] means a laboratory certified to undertake a chemical analysis of mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and which otherwise complies with the requirements for a Certified Laboratory in Standards and Guidelines.]

**“Closure Plan”** means the document referred to in annex VIII.

[Alt **“Closure Plan”** means a document that contains an integrated environmental, social and economic base case for decommissioning, closure and postclosure activities and conditions against which future monitoring can be compared. It will be revised through the lifetime of the contract and must be considered as an integral. Part of operational planning.]

**“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.<sup>1</sup>

**“Commission”** means the Legal and Technical Commission of the Authority.

**“Communication”** means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these regulations;

**“Confidential Information”** shall have the meaning assigned to that term by regulation 89.

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<sup>1</sup> 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.



**“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.

[**Alt “Contractor”** means a party to an exploitation contract (other than the Authority) in accordance with Part III of these regulations] [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.

**“Covered Taxes” [OEWG] has the meaning given to that term in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time.**

**“Cumulative Environmental Effect”** [IWG ENV] [means any consequences in the Marine Environment arising over time from the conduct of Exploitation activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority.]

**“Damage to the Marine Environment”** [handled by the IWG ENV]

**“Day”** means calendar Day.

[**“Decommissioning”** means measures taken, whether onshore or offshore, to permanently cease the operations, remove, or dispose of structures, facilities, Installations, and other equipment erected or used for the purposes of activities undertaken pursuant to an exploitation contract, in connection with the abandonment or cessation or partial cessation of those activities in a Contract area or part of a Contract area.]

**“Depleted, Threatened or Endangered Species”** [handled by the IWG ENV]

**“Designated representative”** means the person so named on behalf of a Contractor on the Seabed Mining Register [or prior to award of contract, in the application].

**“Ecological Balance of the Marine Environment”**] [IWG ENV] means the equilibrium between, and harmonious coexistence of, organisms and their environment.]

**“Ecosystem Approach”** [IWG ENV] means a comprehensive, integrated approach to the management of human activities based on the Best Available Scientific [Information] that accounts for marine ecosystems and their dynamics, in order to achieve ecosystems’ conservation and sustainable use of, and the avoidance of interference with, the ecological balance of the marine environment.

**“Effective Control”** or **“effectively controlled”** [IWG IM] requires a substantial and genuine link between sponsoring State and Contractor, which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the sponsoring State or otherwise.

**“Effective Protection”** [handled by the IWG ENV]

["Eligible Royalty Payments" [OEWG] has the meaning given in regulation [64Qua.7].]

["Eligible Tax Payments" [OEWG] has the meaning given in regulation [64Qua.8].]

**"Emergency Response and Contingency Plan"** means the document referred to in annex V.

**"Environmental Effect"** [IWG ENV] means any [material] consequences in the Marine Environment, [,] arising from the conduct of Exploitation activities, [whether][being] positive, [negative], direct, indirect, temporary or permanent, or [c]Cumulative environmental effect arising over time or in combination with other effects or impacts stressors and activities in the same area, including those not regulated by the Authority.

[**Alt 1. "Environmental Effect"** [IWG ENV] means any material consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, cumulative, temporary or permanent.]

**"Environmental Impact"** [IWG ENV] [changes (physical and or chemical) to the environment resulting from Exploitation activities.]

**"Environmental Management System"** [handled by the IWG ENV] means the part of the overall management system implemented by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, [] objectives and environmental performance.

[**Alt. 1 "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.]

[**Alt. 2** means the 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, objectives and environmental performance.]

[**Alt. 3 "Environmental Management System"** means part of the management system used to manage environmental aspects, fulfil compliance obligations, and address risks and opportunities.]

**"Environmental Objectives"** [IWG ENV] means a specific statement of desired environmental outcomes that represent the achievement of a Goal.]

**"Environmental Risk"** [IWG ENV] means the potential of an event happening that will have an adverse effect measured in terms of the severity of the environmental consequences and the likelihood of those particular consequences occurring.]

**"Environmental Risk Assessment"** [IWG ENV] means the process for identifying and evaluating Environmental Risk using a generally accepted risk assessment methodology.]

**"Environmental Performance Guarantee"** means a financial guarantee supplied under regulation 26.

**"Environmental Performance Guarantor"** means each entity or individual that provides an Environmental Performance Guarantee in accordance with these regulations.

**“Environmental Plans”** [IWG ENV] means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

**“Equalization Measure Audit”** [OEWG] means an audit in respect of a Contractor carried out in accordance with the relevant Standard and applicable Guidelines to determine whether the Contractor has any Tax Exemptions or receives any Subsidies from its Sponsoring State.]

**“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 area beyond national jurisdiction, for the production and marketing of metals, as well as the Decommissioning and Closure of mining operations.

**“Exploitation Contract”** means an exploitation contract entered into between the Authority and a Contractor in the form prescribed in annex IX to these regulations.

**“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.

**“Facilities-maritime infrastructure-floating platforms”** [handled by IWG ENV]

**“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.

**“Final Closure Plan”** [IWG ENV] means the version of a Contractor’s Closure Plan that has been approved by the Council pursuant to Regulation [60(8)]

**“financial incentive”** [OEWG] means [a financial grant or reduction of amounts otherwise payable to the Authority which otherwise complies with the requirements for financial incentives in these Regulations and in Standards and Guidelines.]

**“Financing Plan”** means the document referred to in annex III.

**“force majeure” means [...].** [OEWG]

**“Good Industry Practice“** [IWG ENV] **“Best 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 and includes meeting the performance requirements under any Rules of the Authority, and relevant Standards. [based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology]. [Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry]

**Alt 1.** the exercise of the 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 such documents issued by the organs of the Authority/[Commission and the Secretary-General, respectively] pursuant to regulation 95. [Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. Guidelines are generally considered as recommendatory].

[**Alt “Guidelines”** means a document that supports the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. The Guidelines are recommendations and not requirements].

**“Impact reference zone”** (or “IRZ”) [IWG ENV] means a zone designated within the Contract Area [in accordance with Annex XX to these regulations] that is representative of the environmental characteristics of the Contract Area, is predicted to be impacted by mining activities, and will be used to assess the effects of the Exploitation on the marine environment, including by way of comparison with the Preservation reference zones.

**“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) [A significant unanticipated or unpermitted adverse impact] [] to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such [] [adverse impact was only narrowly avoided] 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 to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events].

**“Inclusion Criteria”** [OEWG] means [a substantial (but not necessarily the majority or primary) part of (i) its business is connected to or associated with, and/or (ii) its revenues are derived from, mining, harvesting, transporting, processing and/or sale of Minerals or Metals obtained under an exploitation contract].

**“Income”** [OEWG] has the meaning given to ‘GloBE Income’ in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time.]

**“Independent Auditor”** [OEWG] means [an auditor appointed by [...] to conduct an audit in respect of a Contractor and/or its Related Entities in accordance with the relevant Standards and applicable Guidelines].

**“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.

[~~“Handled by the IWG ENV”~~]

**“Interference with the Ecological Balance of the Marine Environment”** [handled by the IWG ENV]

["large scale production" [OEWG] means exploitation, production or removal from the Area of mineral-bearing ore in a quantity which is in excess of the thresholds specified in the Standards.]

**"Marine Environment"** [IWG ENV] includes the physical, chemical, [oceanographic] geological, genetic, 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, [species, biodiversity, ecosystems,] as well as the seabed and ocean floor and subsoil thereof.

**"Material Change"** means a [substantial] [significant] change that affects [] the basis on which [] [an] original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, [changes to harmful effects of activities on the Marine Environment, [other environmental effects or effects on stakeholders], the availability of new knowledge or technology and changes to operational management that are to be considered in light of the applicable Guideline[s].

[Alt **"Material Change"** means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.]

[Alt 2 **"Material Change"** means a change that effects the fundamental basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority].

**"Metal"** means any metal contained in a Mineral.

**"Minerals"** means Resources that have been recovered from the Area.

["mineral-bearing ore" means [...].] [OEWG]

**"Mining Area"** means the part or parts within the Contract Area [from which minerals will be extracted, as], 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 [and includes but is not limited to, disposal, spilling, leaking, pumping, emitting, emptying, or discharging].

**"Mining Workplan"** means the document referred to in annex II.

**"Mitigate"** and **"Mitigation"** [means acting/an action or activity intended to remedy, reduce or offset known potential negative impacts to the environment. These occur in a strict hierarchy] []:

(a) Avoiding an Environmental Effect altogether by undertaking or not undertaking a certain activity or parts of an activity;

(b) For Environmental Effects that cannot be avoided, minimizing effects by limiting the degree or magnitude of the activity and its implementation [to the extent practicable and necessary to ensure protection of the Marine Environment];

(c) For Environmental Effects that cannot be avoided or minimised rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and

(d) For Environmental Effects that cannot be avoided, minimised or rectified, reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;

[(e) Offsetting, only as a last resort.].

["monopolize" [OEWG] means the ability to control over 75 per cent of the estimated annual volume of similar mineral-bearing ore exploited, produced or removed from the Area after Commercial Production has occurred in respect of at least two exploitation contracts.]

**"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.

**"Preservation"** [handled by the IWG ENV] means [the maintenance of the environment, lands and natural resources in a pristine form, without anthropogenic use beyond access.]

**"Preservation reference zone"** (or "PRZ") [IWG ENV] means a zone designated within the Contract Area in accordance with Annex [XX] to these regulations that has been identified as having similar ecological characteristics to an Impact reference zone, and within which no mining impacts are predicted to occur, which will be used to show a representative and stable ecosystem from the sea surface to the benthic subsurface layers, and can be used to form a comparison with an Impact reference zone.

["Profits" [OEWG] has the meaning given in regulation [64Qua.5].]

["Profit Share Audit" [OEWG] means an audit in respect of a Contractor carried out in accordance with the relevant Standard and applicable Guidelines to verify a Top-up Profit Share Return and related Top-up Profit Share Payment.]

**"Proponent"** [handled by the IWG ENV]

**"Protection"** [IWG ENV] means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to environment, land, ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts

**"Rare and Fragile Ecosystems"** [handled by the IWG ENV]

**"Rehabilitation"** [IWG ENV] [occurs when an ecosystem recovers certain characteristics of, or resemblance to, its natural state, such as the presence of certain species, functions or services, without necessarily aiming at exhaustiveness.]

**"Regional environmental management plan"** [handled by the IWG ENV]

["Related Entities" [OEWG] means, in respect of a Contractor, [the 'Group Entities' that are part of the same 'Group' as the Contractor, where 'Group Entity' and Group' have the meanings given to those terms in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time].]

["related parties" [OEWG] means parties that belong to the same corporate structure, such as a parent and subsidiary company, or sister companies which are both subsidiaries of the same parent company, and a state enterprise shall be considered a "related party" vis-à-vis its host State party or a contractor sponsored by its host State party unless evidence is provided that any costs, prices and revenues have been charged or determined on an arm's-length basis.]

["Relevant Activities" [OEWG] means [all activities and business operations which are connected or associated with the mining, harvesting, transporting, processing and/or sale of Minerals or Metals obtained under 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"** [IWG ENV] means all solid, liquid or gaseous mineral resources, [mineral-bearing ore, associated minerals, or mixture thereof] 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.

**"Resource Category"** [handled by the IWG ENV]

**"Restoration"** [IWG ENV] means [a return to pre-disturbance conditions, implying complete re-creation of a system]

**"Rules of the Authority"** means , these regulations and other rules, regulations and procedures of the Authority [including Standards,] [] [decisions of the Council or Assembly of the Authority, and any other ISA instruments expressed as being binding upon Contractors] 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"** [IWG ENV] means any effect from activities in the Area on the Marine Environment which represents a[n [unlawful]] 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 [] [Information].

[Alt. **"Serious Harm to the Marine Environment"** means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:

- (a) it is not likely to be redressed through natural recovery within a reasonable period;
- (b) it impairs the ability of affected populations to replace themselves;
- (c) it degrades the long-term natural productivity of habitats or ecosystems;
- (d) causes, on a more than temporary basis, a significant loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or
- (e) criteria for significance contained in the relevant Regional Environmental Management Plan, or Standards.]

**"Sound commercial principles"** means] [...]

**"Special Circumstances"** means] [...]

**"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, [knowledge] or expertise.

**“Standards”** means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. [Standards have to be considered as mandatory.]

**[Alt.1 “Standards”** means methodological, procedural, technical or environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, including performance and process requirements, adopted pursuant to regulation 94. Standards are legally binding on Contractors and the Authority”.]

**[Alt.2. “Standards”** means such documents adopted by the Authority pursuant to regulation 94.]

**[“Subsidies” means [...].] [OEWG]**

**[“sustained large-scale recovery operations” [OEWG] means the exploitation, production or removal from the Area of mineral-bearing ore in a systematic manner over a minimum period specified in the Standards and which constitutes large-scale production.]**

**[“Suitably Qualified Person” [OEWG] means a person qualified to conduct a valuation of mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and who otherwise complies with the requirements for a Suitably Qualified Person in Standards and Guidelines.]**

**“Synergistic Impacts”** [IWG ENV] means joint effects caused for the interaction of two or more simultaneous activities that result in a combined effect that is greater than the sum of individual and isolated effects.

**[“Tax Exemptions” [OEWG] means [any reductions in or exemptions or relief from generally applicable tax which would have otherwise been applicable to a Contractor].]**

**[“Top-up Profit Share Payment” [OEWG] means the top-up profit share payment payable in accordance with regulation [64Bis] and [64Qua].]**

**[“Top-up Profit Share Return” [OEWG] means a return in relation to a Top-up Profit Share Payment in the form and with the content prescribed by the relevant Standards and taking into account the Guidelines.]**

**[“Total Eligible Payments” [OEWG] has the meaning given in regulation [64Qua.6].]**

**[“Transferee” [OEWG] means an entity to which a Contractor may transfer, or has transferred, its rights and obligations under an exploitation contract in accordance with Regulation 23.]**

**[“Transfer Profit Share” means [...].] [OEWG]**

**“Ultimate Beneficial Owner”** means each individual who ultimately owns or controls, directly or indirectly and legally or beneficially, shares, capital, a right to profits or voting rights of the Applicant or any individual who otherwise exercises control over the management of the Applicant.

**[ [IWG ENV].]**



