



PERMANENT MISSION OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS
NEW YORK

No. 437/L/O/IX/23

The Permanent Mission of the Republic of Indonesia to the United Nations in New York presents its compliments to the Office of the Secretary-General of the International Seabed Authority and has the honor to refer to the Revised Facilitators' Texts on the Draft Regulation on Exploitation of Mineral Resources in the Area as discussed in the Part II of the 28th Session of the Council No. ISBA/28/C/IWG/ENV/CRP.2/Rev.1 of 21 June 2023, No. ISBA/28/C/IWG/ICE/CRP.2 of 26 June 2023, and No. ISBA/28/C/IWG/IM/CRP.1 of 29 June 2023.

The Permanent Mission has further the honor to convey the textual proposals of the Republic of Indonesia for each respective working group, based on the Facilitator's Text of the Part II of the 28th Session of the Council, as attached. The Government of the Republic of Indonesia also reserves the rights to provide further comments and submissions on the Draft Exploitation Regulation if deemed necessary.

The Permanent Mission of the Republic of Indonesia to the United Nations in New York avails itself of this opportunity to renew to the Office of the Secretary-General of the International Seabed Authority the assurances of its highest consideration.

New York, 13 September 2023



Office of the Secretary-General
of the International Seabed Authority
Kingston, Jamaica

Enclosure: 1 (one) bundle of documents

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

II

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

1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 44

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

1. The Authority, sponsoring States, the Enterprise, Contractors and flag States shall each, within their **competence**, plan, adopt, implement and modify measures necessary for ensuring effective **preservation and** protection of the Marine Environment, ~~including rare or fragile ecosystems all forms of marine life as well as the habitat of depleted, threatened or endangered species from harmful effects directly or indirectly resulting from Exploitation in the Area, including from shipboard processing and from transportation of minerals to inland facilities, which may include inland processing~~ in accordance with the **Convention, the Agreement, the Rules of the Authority, Standards and taking into account** Guidelines ~~referred to in regulation 45~~ and the applicable Regional Environmental Management Plan. To this end:

(a) ~~The Authority shall~~ **in** adopting and keep**ing** 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;~~ **and based on the following principles:**

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

(iii) Integrate Best Available Scientific **information**, ~~[traditional and indigenous knowledge]~~ in decision-making, **especially on issues relating to the effective protection of the Marine Environment, 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, [including 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.~~

(iv)bis Take into account the polluter pays principle;

(vi) Ensure ~~to minimize the direct or indirect~~ [act so as not to transfer] ~~that the damage or the likelihood of damage~~ from one part of the environment ~~does not harm to~~ another part of the environment or transform one type of pollution into another as stated in article 195 of the Convention. This [is] especially related to avoiding [persistent and bio accumulative] toxic, persistent and bio accumulative substances [effects.]

~~(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, [at minimum], assist the Authority to implement, , the measures set out under paragraph (a)(i) to (vi) above.~~

(c) ~~The Enterprise and Contractors shall in-taking take~~ necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment ~~,including the coastline, ecosystem structure, function and resilience~~ arising from 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 timely public release of environmental data and information on their respective activities at regular intervals and in an accessible format. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, mitigate, and remediate shall Mitigate harm to the Marine environment restore, offset~~ harm to the Marine Environment and adapt the necessary measures to newly obtained information and data.

~~2-bis.The parties [mentioned in paragraph 1] shall:~~

~~(a) Apply the precautionary approach, and the ecosystem-based management 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;~~

~~Integrate Best Available Scientific [information Evidence] 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 that the polluter should, in principle, 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}.~~

(d) States shall adopt ~~in-adopting~~ laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the Marine environment from **Exploitation in the Area** undertaken by vessels, installations, structures 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.~~

New (e) Sponsoring States shall adopt laws and regulations and take necessary measures to implement the due diligence obligation to ensure the compliance of the Contractor with its obligation to preserve and protect the Marine Environment, including the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment; the obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution; the obligation to conduct environmental impact assessments, and other obligations of the Contractor as regulated in the Rules of the Authority.

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

Para. 1 (a)(iii)

Indonesia is of the view that the definition of "Best Available Scientific Information" can include all the elements included in this paragraph (definition to be adjusted in the Schedule/Use of Terms). The reference to "risk assessment" under the Environmental Impact Assessment (EIA) process is better placed in other operational Regulations, and it can directly make reference to the defined term of "Best Available Scientific Information".

Para 1 (a) (iv)

The provisions in General Obligation (Regulation 44) shall not add the obligation that is supposed to be included and elaborated in other Regulations. Indonesia is of the view that the general obligation should outline only fundamental principles, with more detailed elaboration in other Regulations.

Indonesia is also of the view that the Stakeholder Participation shall include "adjacent Coastal State, including potentially affected Coastal State" as a term used in the 2023 BBNJ

Agreement.

Para 1 (a) (iv)bis

- Need further clarification on the term “due regard to public interest”
- The operationalization of polluter pays principle in other Regulations shall consider the definition and degree of “harm” in the Draft Exploitation Regulation.

Para 1 (a) (v)

Indonesia agrees with the deletion. Indonesia acknowledged the ecological importance of the Underwater Cultural Heritage (UCH). However, the Convention and the Agreement does not specifically regulate UCH under marine environment as it is under the purview of other international law instruments.

Para 1 (a) (vi)

Indonesia Delegation acknowledged that the no-harm principle encompasses the duty not to transfer direct or indirect impact of a damage to the environment of other countries. However, to harmonize the Regulation with the provisions under the Convention, the Regulation does not need to separate the direct and indirect impact of the environment in the context of no-harm principle. Further details on how the no-harm principle is implemented in the exploitation activities in the Area can be included in the Standards & Guidelines.

Para. 1 (b)

The obligation of Sponsoring State has been included in Indonesia’s proposal (para (E)).

Para 1 (c)

- Indonesia is of the view the phrase “including the coastline, ecosystem structure, function, resilience” can be included in the definition of “Marine Environment” in the Schedule/Use of Terms.
- Indonesia agrees with the addition on “adapt the necessary measures to newly obtained information and data”.

Para (2)

Indonesia suggests deleting para. (2) as it is redundant and repetitive with the provisions under other paragraphs (in this Regulation). Indonesia is of the view that in this Regulation, the general obligation of the Sponsoring State shall be put in a separate para.

Para (e)

- The formulation of the Sponsoring State’s obligation is taken from Para. 122 of the Advisory Opinion of the Seabed Disputes Chamber.

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

II

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

- 1. Name of Working Group: IWG Environment**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 45

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

1. The Council shall, based on the recommendations of the Commission, develop ~~Environmental~~ Standards and Guidelines with regard to 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~~ in accordance with regulations 94 and 95.

~~New 2. The following Standards and Guidelines shall be developed with a view to be adopted at the adoption of these Regulations, pursuant to the relevant Regulations, inter alia: the following subject matters aimed at ensuring a Contractor does not cause Serious Harm to the Marine Environment:~~

- a. Regulation 46 on Environmental Management System;
- b. Regulation 46bis on Environmental Impact Assessment, including procedures on consultation process with Stakeholders, the levels of environmental quality objectives, procedures on the new or revised Environmental Impact Statement, baseline data that captures temporal, seasonal, and spatial variation;
- c. Regulation 48 on the preparation of Environmental Management and Monitoring Plans;
- d. Regulation 45 and 49 on hazard identification and risk assessment;
- e. Safe management and operation of mining vessels and installations;
- f. Regulation 53 (50bis) on emergency response and contingency plan.

~~New 3. 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.~~

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

Indonesia acknowledged the report of the Chair of the Legal and Technical Commission during the 25th Session of the Authority (Addendum, ISBA/25/C/19/Add.1) that the adoption of the Standards and Guidelines are divided into 3 (three) stages:

1. Phase 1: Standards & Guidelines that need to be adopted when the Draft Exploitation Regulation is adopted.
2. Phase 2: Standards & Guidelines that need to be adopted before the submission of the applications of the Plan of Work
3. Phase 3: Standards & Guidelines that need to be adopted before the start of commercial mining in the Area.

Indonesia noted that the Standards and Guidelines that are included as "Phase 1" include those which are directly cited throughout the Draft Regulations. These Standards and Guidelines include:

- Draft guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation
- Draft standard and guidelines on the development and application of environmental management systems
- Draft standard and guidelines on the form and calculation of an environmental performance guarantee
- Draft guidelines for the establishment of baseline environmental data
- Draft standard and guidelines for environmental impact assessments
- Draft guidelines for the preparation of an environmental impact statement
- Draft guidelines for the preparation of an environmental management and monitoring plans
- Draft guidelines on tools and techniques for hazard identification and risk assessment
- Draft standard and guidelines for the safe management and operation of mining vessels and installations
- Draft standard and guidelines for the preparation and implementation of emergency response and contingency plans

The use of the term "Environmental Standards and Guidelines" will require further definition in the Schedule, and such term creates possible confusion with the Standards and Guidelines that are currently being discussed in the Council.

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

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

- 1. Name of Working Group: IWG Environment**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 46

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

~~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 relevant Guidelines and in accordance with Best Available Science and Scientific Information, Good Industry Practice and internationally recognized standards.]~~

2. An environmental management system shall, [inter alia]:

~~(a) — Deliver the Authority’s environmental objectives in the [area under application] [Contract area including those] [as] reflected in the [applicable Regional Environmental Management Plan and the] Applicant’s Environmental Management and Monitoring Plan, [and taking into account the applicable Regional Environmental Management Plan] as well as any additional objectives as set by the Contractor or Sponsoring State;~~

New (a) (merge with para. (e)):

Provide references to the Rules of the Authority, including the Regional Environmental Management Plan, and reflect the commitment of the Contractors to adhere to the Rules of the Authority in conducting the activities in the Area. The Environmental Management System shall also be in accordance with Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, Good Industry Practice, and other Internationally Recognized Standards

(b) alt: Be periodically reviewed to reflect the development of the Rules of the Authority, in accordance with the Convention, the Agreement, and other relevant international law. The periodical review mechanism shall be included in the Environmental Management System.

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

(c) The Sponsoring State, as part of its due diligence obligation, shall conduct assessment to evaluate whether the Contractor's Environmental Management System has adhered to the Convention, the Agreement, and the Rules of the Authority.

~~[(e) Be in accordance with Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques [and Good Industry Practice.] and Internationally Recognized Standards]~~

[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.~~

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

General Observation:

1. In our previous Written Comments, Indonesia has inquired further clarification on the main purpose of the Environmental Management System (EMS) made by the Contractor, and how it is fundamentally different with the EMMP. However, since further information has not been provided, Indonesia is of the view that if other Member States agree, the EMS should:

- Serve as the guarantee that the Contractor already has a Standard Operating Procedure (SOP) on the procedures & requirements (for environment-related purposes), which can be periodically reviewed to reflect the development of the Authority's Rules and Regulations.
- Reflect the commitment of the Contractor in the Rules of the Authority in the Exploitation Activities in the Area, thus the EMS shall reflect the updated standards in the ISA.
- Guide the procurement process of equipment/facilities that will be used by the Contractor in conducting exploitation activities in the Area.

2. Indonesia suggests adjustments to the Regulation to underline the difference between EMS dan EMMP. In this regard, Indonesia is of the view that the EMS shall be included as accompanying documents for the application of the Plan of Work. Reference to the EMMP (which will be created after an EIA is conducted), is not supposed to be included in the EMS.

3. The REMP is used as a reference as the exploitation in the Area shall commence until all contract areas already have REMPs.

4. Further, in line with the due diligence obligation of the Sponsoring State, Indonesia views that the evaluation of the EMS shall first be done by the Contractor and the Sponsoring State.

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

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1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 46bis (Environmental Monitoring)

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

~~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 relevant guidelines] observe, measure, evaluate and analyse, in accordance with [Good Industry Practice,] Best Available Scientific [informationEvidence], Best Environmental Practices, and Best Available Techniques, the environmental [metrics relative to] thresholds contained in the Standards, and risks to Environmental Effects on the Marine Environment arising from Exploitation [the following the approval of the Plan of 11 Work. It shall keep under] sSurveillance, [shall be conducted] during all stages of the mining [life cycle] [operation], [the effects of the mining operation] to determine whether it is having or likely to have harmful effects on the Marine Environment until [post closure monitoring is concluded] [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 monitoring plan and in accordance with the Standard on Monitoring Programmes and cooperate with,] [after approval by] the Authority and the Sponsoring State or States [in the establishment and implementation of the Contractor's environmental monitoring programmes] as well as share findings and results of such programmes with the Authority for wider dissemination.~~

~~[2.Alt: A Contractor shall establish and implement an environmental monitoring programme, after approval by the Authority and the sponsoring State or States of the Contractor's environmental management and monitoring plan.]~~

~~[3. — In addition to the Monitoring conducted by the Contractor pursuant to Paragraph 2,] t The Environmental Management and Monitoring Plan shall [cover all stages of the mining life cycle, and on submission for approval] contain a monitoring programme for at least the first~~

~~[seven] [five] years of the mining project Exploitation, to be conducted by independent experts and in compliance with the applicable Standards [and taking account of the relevant guidelines].~~

~~[4.bis.] The Secretary General shall release publicly [environmental data and information in the required standardized format], [in an accessible format] [in] real time or at monthly intervals, if possible consistent with best scientific practices, environmental data and information in the required standardized format, and in accordance with the applicable Standards, and taking into account the applicable Guidelines. Other monitoring data, [pertaining for example to monitored variations in geochemistry or fauna] shall be released annually in the form of a written report. 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 across whose limits of national jurisdiction lie with a view to avoiding infringement of their rights and legitimate interests, in accordance with Regulation 4.~~

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

General Observation:

1. Indonesia observed that the new formulation on Environmental Monitoring in Regulation 46bis is redundant with Regulation 48 on Environmental Management and Monitoring Plan (EMMP).
2. Indonesia has moved some provisions in Regulation 46bis to Regulation 48.

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

II

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1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 47 (Environmental Impact Assessment)

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

1. An applicant or Contractor shall carry out an Environmental Impact Assessment.
2. The purpose of an environmental impact assessment under this regulation shall be to ensure that the activities in the Area are assessed and conducted to prevent, mitigate and manage Environmental Effects arising from the activities, ~~predict environmental impacts anticipated from the proposed activities, to enable the Authority to assess the potential adverse Environmental Effects,~~ with the aim to:
 - 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, that~~ **conduct** the environmental impact assessment is conducted with due regard to the rights and legitimate interests and duties of ~~affected coastal States adjacent Coastal State, including the potentially affected Coastal State~~ 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. **New (b) Identify specific components of the Marine Environment most likely to be affected as the result of the proposed activities in the Area, including the organisms or ecosystems that are most sensitive to the predicted impacts is thus appropriate, as well as other relevant indicators, particularly cumulative impacts to the Marine Environment.**
- ~~(b) — Be carried out by qualified, 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,

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

3. The Environmental Impact Assessment Process must ~~follow certain procedural steps to having the plan of work assessed 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 ~~Exploitation in the Area proposed mining operation~~ which are relevant to the assessment.

(b) An assessment to describe the impacts ~~of the activities in the Area~~ on the marine environment ~~and Underwater Cultural Heritage~~ and predict the nature, ~~magnitude, extent, and duration~~ of the Environmental Effects of the ~~mining operation activities in the Area, including cumulative impacts. including residual impacts, also considering other existing and foreseen mining operations.~~ This includes assessing:

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

(ii) 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.

(iii) The uncertainties and gaps in knowledge.

(c) The Identification of measures ~~to prevent, mitigate, and manage potential Serious Harm of the activities in the Area to envisaged to remediate, restore, rehabilitate (where possible) the Marine Environment, including through~~ for the development and preparation of an Environmental Management and Monitoring Plan,

(d) An analysis of reasonable alternatives to the ~~activities in the Area planned activity under the jurisdiction or control of a State Party, including the no-action alternative,~~

(e) 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,;~~

~~New (f) Submission of the Environmental Impact Statement to the Authority, alongside the application of the Plan of Work in accordance with Regulation 7;~~

~~New (g) Publication of the Environmental Impact Statement in accordance to Regulation 11;~~

~~(f) Publication and~~ ~~New (h) Review by the Commission of the Environmental Impact Statement, which includes comments by relevant Stakeholders, and publication of the~~

report and recommendation by the Commission to the Council pursuant to Regulations 11 – 15.

~~4. A Contractor shall review, and when needed revise, previously performed Environmental Impact Assessments periodically, and in accordance with Regulation 48bis. This include reviewing cumulative effects of activities covered by the assessment whenever a material change in the existing Plan of Work or approved mining operation has occurred, there is relevant new information, or when the review indicates that such changes warrant a revision.~~

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

General observation: Regulation 47 (on Environmental Impact Assessment Process) and Regulation 47bis (on Environmental Impact Assessment) can be merged.

Para 2 (e) can be deleted. The conduct of ensuring that proposed activities are carried out according to the Rules of the Authority, and international law in general, needs to also consider other aspects from the activities in the Area, not only EIA process.

→ Indonesia notes that Article 27 (b) of the 2023 BBNJ Agreement regulates that the purpose of EIA is to “Ensure that activities covered by this Part are assessed and conducted to prevent, mitigate and manage significant adverse impacts for the purpose of protecting and preserving the marine environment”.

On para 3 (e): Independent scientific assessment is not something that should be obliged by the Draft Exploitation Regulation, as long as those conducting EIA is included in the Environmental Impact Statement.

On para (4): Indonesia views that in the current Facilitator’s Text, the review/revision of EIA will be regulated in a separate Regulation. Thus, the reference in this Article can be deleted.

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

II

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- 1. Name of Working Group: IWG Environment**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 48

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

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 ~~identified during the Environmental Impact Assessment, through:~~

a. ~~Assessing whether Environmental Effects~~ meets Standards on environmental quality objectives and environmental performance for the mining operation. ~~The plan shall~~

b. ~~Addressing~~ any issues that ~~may~~ arise from the Environmental Impact Statement; ~~and will~~

c. ~~Setting~~ 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 (d)bis Include assessment on the comparison between baseline data and monitoring data to document the actual effects on the Marine Environment.~~

~~3 (e) alt.: Incorporate components of the Marine Environment most likely to change as a result of the activities in the Area and its relation to the site-specific environmental thresholds to achieve the objective of preserving and protecting the Marine Environment, and ensure the sustainability of the Marine Environment.~~

~~3. (f) Incorporate measurement criteria, internal thresholds and reflect its methodology to determine whether the environmental objectives are being met and that the operation is compliant with applicable environmental Standards and other Rules of the Authority;~~

~~3(g)(i)bis Apply best endeavours to improve Mitigation and management measures to ensure the effective protection of the Marine Environment from harmful effects, as set out in the~~

relevant Standards and taking into account relevant Guidelines referred to in regulation 45; and

3 (h) (i) how the environmental ~~and archaeological~~ impacts of the ~~mining operation~~ Exploitation in the Area will be monitored in accordance with ~~regulation 46ter and the~~ Environmental Management Plan Standard, in consideration of any additional indicator, such as cumulative impacts;

3. (h)(i) (bis) Apply best endeavours to improve Mitigation and management measures to ensure the effective protection of the Marine Environment from harmful effects, as set out in the relevant Standards and taking into account relevant Guidelines referred to in regulation 45; and

(h) (iii) and (v) and (vi) can be merged into: New (iii) how the effectiveness of such measures will be monitored, managed, and reported, including on any new knowledge.

~~(vii) how continual improvement will be promoted, including by testing assumptions and predictions made in the Environmental Impact Statement, improving implementation, monitoring, and reporting measures, and improvement in environmental knowledge, and any other environmental concerns specified in the Standards and Guidelines. and reducing residual uncertainties remaining from the environmental impact assessment process.~~

~~3bis. In addition to the Monitoring required to be performed by the Contractor, the Environmental Management Plan shall contain a supplementary monitoring programme for at least the first seven years of Exploitation, to be conducted by independent experts and in compliance with the applicable Standards.~~ The Contractor shall conduct monitoring for the entire duration of exploitation and comply with any post-closure monitoring requirements. Monitoring of the Exploitation in the Area may be conducted by independent experts, as necessary, in compliance with the applicable Standards.

4. The Contractor shall provide information in its annual report on the implementation of the Environmental Management and Monitoring Plan in accordance with regulations 38, paragraph 2(g), and 46ter, paragraph 4, for evaluation by the Legal and Technical Commission, as well as publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information, ~~taking into account the confidentiality and data security of the information~~; at a regular basis to be determined in each project. Other monitoring data, for example pertaining to monitored variations in geochemistry or fauna, shall be released annually in the form of a written report.

4bis. The Contractor shall take measures to incorporate such comments and evaluations from the Commission, as well as comments from the relevant stakeholders in improving the implementation of the Environmental Management and Monitoring Plan, including through revising the Plan, if necessary. The report, as well as the comments and evaluation, shall be taken into account by the Contractor in conducting the performance assessment in accordance with Regulation 52.

5bis. In implementing ~~paragraph 1~~, this Regulation, the Sponsoring State and Contractor shall consult, with any adjacent coastal State, including potentially affected State, ~~across whose~~

~~limits of national jurisdiction lie with a view to avoiding infringement of their rights and legitimate interests. in accordance with Regulation 4.~~

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

On para. 1: The phrase "Applicant" has indicated that it is a Contractor for the Exploitation. Therefore, it should not be added with "or Contractor".

On para. 3(d) bis: Indonesia's new proposal, taken from the formulation in Regulation 51. (see Indonesia's comments on Regulation 51).

On para. (3) (f): Indonesia proposed to delete, merged with para 3 (e).

On para. (h)(i)(bis): Indonesia's new proposal, taken from the formulation in Regulation 51. (see Indonesia's comments on Regulation 51).

On para (h)(i): Archaeological impacts are not the environmental concerns regulated under UNCLOS. Agreed with the deletion. Indonesia also added the reference to the relevant additional indicators in monitoring environmental impacts from the activities in the Area, which includes cumulative impact.

On para. 3bis: Additional or supplementary program should not be something that is obliged under the Regulation. It can be a choice by the Contractor as long as the standards & guidelines set out by the Authority are adhered to.

On para. 4bis: There should be a follow up action after the LTC provides comments/evaluations. Besides, Indonesia is of the view that the use of this report for the performance assessment under Regulation 52 can have a substantive merit.

On para 5bis: Taken from Regulation 46ter (Environmental Monitoring).

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

II

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

- 1. Name of Working Group: IWG Environment**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 48 (Environmental Impact Statement)

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

Consider merging Para. 3 and 4 as follows:

3. The Environmental Impact Statement should, 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, including a description of the proposed project, its objectives, alternatives analysed, anticipated benefits, anticipated impacts and measures to minimize these, consultation efforts. The summary shall be able to highlight main conclusions and information provided to facilitate understanding of the nature of the activity by Stakeholders.’
 - (b) 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
 - (c) Methodologies for assessing the Marine Environment, the Environmental Effects of the proposed project and collecting baseline data,
 - (d) Description of the baseline assessment of the Marine Environment likely to be affected, which includes:
 - i. 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;

- ii. A description of the existing biological environment, including information on biological properties and communities in the area, also taking into consideration studies and research on this,
 - iii. 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,
- (e) Description of the results of the scoping stage, which are the identification of relevant aspects to be assessed in the impact assessment, in accordance with Regulation 47.
 - (f) Description of potential impacts of the activities in the Area to the Marine Environment, which includes physical, chemical, geological, biological, socioeconomic and sociocultural impacts, including cumulative impacts and impacts in area within national jurisdiction.
 - (g) An outline of potential hazards arising from natural, accidental and discharge events from the activities in the Area, for example related to extreme weather, natural hazards, accidental events, threats to maritime safety, emergency response, waste and ballast water,
 - (h) Description of potential prevention, mitigation, and management measures, to be included in the Environmental Management and Monitoring Plan, and other follow-up actions;
 - (i) Describe the evaluation of identified environmental impacts from the proposed activities in the Area based on the Rules of Authority, relevant Regional Environmental Plan, environmental baseline data, as well as environmental thresholds.
 - (j) A summary of consultation and stakeholder engagement and methods, particularly substantive comments received through public consultation on the environmental impact assessment and explain how each comment has been incorporated or otherwise addressed.
 - (k) A summary of the study team outlining the people involved in the environmental impact assessment studies and in writing the Environmental Impact Statement,
 - (l) A list of glossaries, abbreviations, references, and appendices
 - (m) Description of uncertainties and gaps in knowledge;
 - (n) Description of the consideration of reasonable alternatives to the elements included in the proposed Plan of Work;
 - (o) Be prepared in clear language and in an official language of the Authority together with an English-language version, where applicable.

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

Although there is no uniform standard on the content of EIA Report or Environmental Impact Statement (EIS), the elements that should be included have been outlined in various international framework, especially the COP 8 Decision VIII/28 on Voluntary guidelines on biodiversity-inclusive impact assessment adopted by the COP of Convention on Biological Diversity; as well as the 2023 BBNJ Agreement. Such elements have yet to be comprehensively included in this Regulation. Those elements are as follows:

- a. a description of the planned activity, including its location;
- b. a description of the results of the scoping exercise;
- c. a baseline assessment of the marine environment likely to be affected;
- d. a description of potential impacts, including potential cumulative impacts and any impacts in areas within national jurisdiction;

- e. a description of potential prevention, mitigation and management measures;
- f. a description of uncertainties and gaps in knowledge
- g. information on the public consultation process;
- h. a description of the consideration of reasonable alternatives to the planned activity;
- i. a description of follow-up actions, including an environmental management plan;
- j. and a non-technical summary.

Indonesia notes that these elements were separated in para. (3) and (4), thus Indonesia suggests merging both paragraphs.

On the deletion of para. 3 (c) ("*Demonstrate that the proposed activities and mining operation are in accordance with all relevant Environmental Standards*"...): Indonesia views that this will be the decision of the LTC and the Council.

On the deletion of para 3 (g) ("*Be peer reviewed by competent independent experts..*"), Indonesia views that this obligation also falls under the discretion of the Contractor, the Sponsoring State, or the LTC/Council.

On the deletion of the reference to EMMP in para. 4 (a): EMMP is supposed to be established after the EIA process, since it will contain measures to monitor and mitigate the impacts as assessed during the EIA.

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

II

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

1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 48bis (New EIA and Revised EIA)

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

1 a) A Material Change to ~~an existing a proposed~~ Plan of Work ~~is proposed~~ which is likely to ~~increase the cause~~ adverse Environmental Effects ~~caused by the activities, that are unable to be mitigated by the measures identified in the previous Environmental Impact Assessment,~~

1 c) ~~An activity~~ 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;~~

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

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 when the Commission requests an applicant to~~ ~~change amend~~ its proposed Plan of Work during the application stage under Regulation 14.

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

- Indonesia is of the view that there should be a clear formulation which reflects that the revision of EIA is conducted during the submission of the Plan of Work (PoW) as well as after the PoW is approved, but there is a Material Change to the PoW.
- Since result of EIA will also indicate the possible mitigation measures to be included in the EMMP, reference to EMMP (including in revising the EMMP), should be referred in the Regulation.

- For para (e): There should be a cross-referencing system with Regulation 7 (5) which states "Where a single set of documents is submitted by the applicant and the Commission considers it is not appropriate, the Commission may reject the application and request separate documents under paragraphs 3 [(b)], (d), (h) and (i) above for each Mining Area" → the documents referred to in this Regulation is the Mining Work Plan, Environmental Impact Statement (EIS), EMMP, and Closure Plan.

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

II

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

1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 49

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

A Contractor shall take all ~~the~~ necessary ~~and appropriate~~ measures to protect and preserve the Marine Environment ~~and coastlines,~~ [from harmful effects],[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 ~~the Convention, the Agreement, its Environmental Management and Monitoring Plan and~~ all relevant Rules of the Authority, the relevant applicable Regional Environmental Management Plan, taking account ~~the Environmental Management and Monitoring Plan and~~ of the applicable Standards and/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.~~

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

Indonesia suggests to delete “coastlines” as it is not acknowledged in the obligation of States to protect and preserve marine environment in UNCLOS.

“Activities in the Area” is a term used in UNCLOS, however, the term “Exploitation in the Area” has been included in the Use of Terms. Indonesia notes that States shall consider using the term activities in the Area as it encompasses other activities related to the exploitation.

Besides, Indonesia also observes that it is not only the exploitation and extraction process that can cause pollution/damage to the marine environment.

Indonesia is consistent with its position that heritage/wreck is not included under UNCLOS’ definition of marine environment.

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

II

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

1. **Name of Working Group: IWG Environment**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 50

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

1. (a) Relevant international law, especially the international applicable rules and regulations set out by the International Maritime Organization [Alt: competent organization].

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. In this regard, the Secretary-General shall notify the Flag State or the Sponsoring State, and other potentially affected States, to take further measures to respond and mitigate the impacts of such disposal, dumping or discharge to the Marine Environment.

4bis. Procedures and mechanisms to prevent disposal, dumping, and discharge to the Marine Environment in the Environmental Management and Monitoring Plan, and its implementation, including in cases of unauthorized mining discharge, shall be set out in accordance with the applicable Standards and Guidelines.

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

On para. 1: The reference to international law should be put first as point (a), as the Standards & Guidelines, including other rules of the Authority shall adhere to the relevant international law.

On para. 3: Indonesia notes that in cases of unauthorized mining discharge, there should be a follow-up action, especially by the Secretary-General of the Authority, to notify flag States (if the perpetrators are vessels) or the Sponsoring States (if the perpetrators are Contractors), as well as potentially affected States on the impacts of such discharge.

On para. 4bis: Regulation 48 highlights that the EMMP shall include procedures on the disposal, dumping, and discharge to the Marine Environment. This hasn't been specified in the Regulation and such procedures can be regulated in the Standards & Guidelines.

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

II

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

1. **Name of Working Group: IWG Environment**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 51

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

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, release monitoring data publicly, in an accessible format consistent with best scientific practice, on a monthly basis 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 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) Apply best endeavours to improve Mitigation and management measures to ensure the effective protection of the Marine Environment from harmful effects, as set out in the relevant Standards and taking into account relevant Guidelines referred to in regulation 45; and~~

~~(c)~~ Monitor compliance with, assess, and maintain the currency and adequacy of the Environmental Management and Monitoring Plan and 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.

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

Indonesia notes that points (a) and (b) are already regulated under Regulation 48 on the EMMP. It is better that those points be incorporated in the Regulation 48 (see Indonesia's textual proposal under Regulation 48).

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

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

1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 52

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

1. (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;

(c) ~~The conformity of~~ [That] the measures included in the Environmental Management and Monitoring Plan ~~plan~~ [takes into consideration] [with] the applicable Regional Environmental Management Plan[, if any]

(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.

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 [a] [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. [If the Commission does not possess sufficient expertise amongst its members, it shall consult independent experts to review the performance assessment.] ~~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, ~~in relation 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.~~

~~Where the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor consistent with the [applicable Standards] [Guidelines, the Commission may procure] at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.~~

~~7. ————— Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.~~

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

To streamline the provision with Regulation 48. Indonesia notes that Regulation 48 also obliges the Contractor to make report of the implementation of the EMMP to be commented and evaluated by the LTC, while also be published. Such report shall also be taken into account by the Contractor in conducting performance assessment.

Amendment on para 1 (a): Indonesia views that the assessment on the compliance of mining operations based on the approved Plan of Work should also consider other environment outside of environmental elements.

Indonesia is of the view that further consideration is needed on whether the performance assessment needs to be conducted repeatedly, especially if the LTC have sufficient time to conduct review to the performance assessment.

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

I

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

- 1. Name of Working Group: IWG Environment**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 53 (Emergency Response and Contingency Plan)

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

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).

1bis. 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.

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

Indonesia notes that the obligation of developing an Emergency Response and Contingency Plan hasn't specified a specific timeframe on when the Plan should be created by the Contractor. We also note that the Plan should take into account the result of EIA.

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

I

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

1. **Name of Working Group: IWG Environment**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 55

4. **Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**
 1. The Fund shall be used without prejudice to the precautionary principle, where the contractor shall take any necessary measure to prevent, any damage to the Marine Environment arising from the activities in the Area, as well as the polluter pays principle, where the Contractor shall pay for any necessary measure to limit, remedy and compensate any damage to the Marine Environment arising from the activities in the Area.
 2. The Fund may be utilized in the following conditions:
 - a. To finance compensation and mitigation costs when there are unforeseeable impacts or environmental emergencies that cannot be mitigated with the Contractor’s finances in full;
 - b. In cases where the Contractor is not found liable for the damage to the Marine Environment arising from the activities in the Area;
 - c. In cases where the Contractor’s financial capabilities, as identified in its financial statement, has been exceeded to limit, remedy and compensate any damage to the Area arising from the activities in the Area, which may threaten the continuity of the exploitation activities in the Area.
5. **Please indicate the rationale for the proposal. [150-word limit]**

Indonesia adheres to the “polluter pays principle” where the Contractor who is responsible for the damage shall also be responsible to limit, remedy, and compensate such damage. Only if its financial capacity has been exceeded, and in cases of unforeseeable impacts/environmental emergencies that cannot be fully mitigated by the Contractor’s current financial capacity, the environmental compensation fund may be used. Besides, the Fund may also be used if it is proven that the Contractor or the Sponsoring State is not liable for the damages occurring from the activities in the Area.

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

I

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

1. Name of Working Group: IWG Environment
2. Name(s) of Delegation(s) making the proposal: Indonesia
3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 59

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

1. A Contractor shall develop a Closure Plan ~~that~~, in accordance with regulation 7 (3) (i) and ~~the relevant Standards and Guidelines that set out the condition of the Closure Plan. Such Closure Plan applicable environmental standards, shall sets~~ out the responsibilities and actions of a Contractor for the decommissioning and closure of activities in a Mining Area, based on the Good Industry Practice, Best Environmental Practices, Best Available Techniques, and Best Available Scientific Evidence.; ~~including the post-closure management and monitoring of residual Environmental Effects, in accordance with the applicable Standard. Closure also includes a temporary suspension of mining activities.~~

2. Suggestion to add in (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 residual Environmental Effects are identified, quantified, assessed and managed~~ in accordance with best available technologies, which includes the gathering of information relevant to closure or suspension.

~~4. — A Contractor shall maintain the currency and adequacy of its Closure Plan in accordance with Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Evidence and the Standards and, taking account of the relevant Guidelines.~~

5. 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 ~~updated~~ reviewed annually and, if necessary, be updated and ~~be~~ finalized in accordance with regulation 60(1). ~~Otherwise, the Closure Plan shall be reviewed and updated. The review and update of the Closure Plan shall take ing~~ into account the results obtained from monitoring post-closure activities and 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, also.~~ In cases where no such Material Change has occurred and no monitoring data and information or improved knowledge or technology has signaled a

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.**

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

Indonesia highlights that the establishment of a Closure Plan requires a more detailed Standards & Guidelines which can be developed as a Phase 2 S&G (which can be adopted before the application of the Plan of Work). In this regard, the term “environmental standards” in para. (1) of this Draft Regulation can be adjusted to include a mandate of establishing a Standards & Guidelines on Closure Plan. Further, the phrases “including the post closure management and monitoring of residual Environmental Effects...” have been included in para. (2) of this Paragraph, and it can be further detailed in the Standards & Guidelines or subsequent paragraphs in Regulation 59.

Para. (4) can be merged into para. (1), as the paragraph sets out the basis of the Closure Plan.

Indonesia is of the view that the Standards & Guidelines on Closure Plan shall include the following elements:

- a. The consideration in establishing Closure Plan, which includes the system and method of mining based on the results of monitoring (mining area, facilities used in the mining), the status of the environment (ecosystem, biodiversity, economic and socio-cultural conditions).
- b. Post-closure management measures, including the management of quality of the marine environment, and protection of marine biodiversity;
- c. The status of the marine environment in and around the mining area, consideration of other activities surrounding the mining area (after consideration on the Environmental Impact Statement, Plan of Work, the Environmental Management and Monitoring Plan/EMMP, and any inspection result/monitoring result);
- D. Criteria of the success of closure plan and post-closure management measures.

Indonesia notes the views from various delegations during the 27th session that the update of the Closure Plan shall be assessed on a case-by-case basis, where the updates to the Closure Plan shall take into account the conditions requiring such updates as stated in the text (Material Change to the Plan of Work, etc). The most important element is to conduct review of such Closure Plan and only conduct updates if necessary, of which the details can be further regulated in the Standards & Guidelines.

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

II

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

- 1. Name of Working Group: IWG Inspection, Compliance, Enforcement**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Regulation 96

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

(2) The Contractor shall permit the Authority to send its Inspectors, who shall upon request by sponsoring States, adjacent coastal states and any other states adjacent to the activity when they are potentially most affected states ~~[any other State Party] or other party concerned~~ be accompanied by a representative of the sponsoring State, adjacent coastal states and any other states adjacent to the activity when they are potentially most affected states [any other State Party] or other party concerned, aboard all vessels and Installations whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract as well as to enter its offices wherever situated.

(8) The Secretary-General, upon the notification of a Member State, shall inform the Council and based on the direction of Council 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.

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

On para (2): Indonesia is consistent with our position in other Regulations, which is to use the term “adjacent Coastal States and any other states adjacent to the activity when they are potentially most affected states” which have gained international acceptance as it is included in the 2023 BBNJ Agreement.

On para (8): Indonesia acknowledges that the inspection shall be initiated by the Council, based on relevant standards/indicators.

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

II

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

- 1. Name of Working Group: IWG Inspection, Compliance, Enforcement**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Regulation 98

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

New Text

7. Inspectors may inspect any relevant document or item which is necessary to monitor the Contractor’s compliance, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.

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

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

II

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

1. **Name of Working Group: IWG Inspection, Compliance, Enforcement**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Regulation 100

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

No later than thirty days after the end of an inspection, the Chief Inspector shall prepare and deliver a compliance report to the Compliance Committee in accordance with the template and other requirements of the relevant Standards and Guideline setting out the findings and any recommendations for improvements in performance, procedures or practices by a Contractor.

The Compliance Committee shall send the copy of the report to the Secretary General, who shall send copy(ies) of the report to the Contractor and its sponsoring State or States, adjacent coastal states, including potentially affected coastal State, and any relevant coastal State when they are most potentially affected, flag State, and to publish a copy of the report in the Seabed Mining Register, excluding confidential information.]

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

Indonesia is of the view that reports from the Chief Inspector shall be given to the Council as an executive body of the Authority, not to the Secretary General of the Authority. Secretary General will be notified/reported by the Council to be passed to the relevant States, especially affected States, which includes adjacent Coastal State, including potentially affected Coastal State.

Further, Compliance Committee shall be based under the Council, which carry out the function of ensuring the monitoring process of compliance by the Contractors.

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

II

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

- 1. Name of Working Group: IWG Institution**
- 2. Name(s) of Delegation(s) making the proposal: Indonesia**
- 3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 7 (Form of Applications and Information to Accompany a Plan of Work)

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

3. An application shall be prepared in accordance with these regulations [and applicable Standards, taking into account applicable Guideline] [as well as the respective Regional Environmental Management Plan] and accompanied by the following:

3 (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 the applicable Regional Environment Management Plan and based on the result of the Environmental Impact Assessment];

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

Para (3): Proposes the inclusion of “taking into account the applicable Guidelines” to be consistent with other Regulations.

Para (3)(h): Aside from the Regional Environmental Management Plan (EMMP), the EMMP should also take into account the result of EIA, especially the mitigation measures to address the potential risks identified in the EIA.

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

II

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

1. **Name of Working Group: IWG Institution**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 11 (Publication and Review of the Environmental Plans)
Alt (Publication, notification and review of the Application)

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

1. (a) Place the Environmental Plans [and any information necessary for their assessment 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 most affected States], Stakeholders [and the general public] to submit comments in writing, taking account of the relevant Guidelines and applicable Standards, taking into account the confidentiality of the data; and

1 [~~(c) 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.]~~

Alt. 1 (c): Based on the assessment/evaluation 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.]

2ter. The applicant shall consider the comments provided pursuant to paragraph (2) and [~~may~~ shall] revise the Environmental Plans [~~and the test mining study~~] or provide responses in reply to the [~~substantive~~] comments, [as appropriate], and shall submit any revised plans or responses [~~to the Secretary-General~~][to the Commission] within a period of [30] Days following the close of the comment period,. [unless otherwise decided by the Secretary-General after considering a request by the applicant before the time period of 30 Days expires for an extension of the period due to the time required to

5.The Commission shall prepare a report on the Environmental Plans [and the test mining study], in accordance with the provisions of these regulations, the applicable Standards, taking into account applicable Guidelines, and the Regional Environmental Management Plans. The report shall include:

- a. details of the Commission’ s determination under regulation 13 (4) (e) [~~as well as~~
- b. [~~a summary of~~] the comments [or and] responses [made submitted] under regulation 11 (2), and ways made by the Applicant to address such comments or responses;

- c. ~~{as well as any further information provided by the Secretary-General under regulation 11(2)} ~~{as well as the relevant rationale for the Commission's determination, with specific explanation as to any comments or responses that are disregarded}~~. The report shall also include~~
- d. any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14 [and changes subsequently made to application documents by the applicant]. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

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

On para 1 (a):

→ The use of the term "adjacent coastal States and any other States adjacent to the Exploitation Area when they are potentially most affected States" is used to accommodate the ongoing proposal in the previous Regulations under IWG Institution. This term has been used in the BBNJ Agreement that was recently adopted, which already gained international acceptance.

→ Need to further consider confidentiality. Further safeguards/non-disclosure: on the grounds of confidentiality, its impact to national or public security, if it's badly affecting ongoing proceeding of public authorities.

On para 1 (c): The establishment of an independent review team shall not be obligatory, but be based on the case-by-case basis, or specific area of the Exploitation activities which are currently lacking sufficient knowledge on the marine environment. Indonesia also respects the authority of the Commission and the Council to determine whether independent review is needed.

On para 2ter:

- Agree with the deletion of the bracket of "as appropriate".
- Since the Commission will assess the Plan of Work, and the Environmental Plans are part of the Plan of Work, it can be submitted to the Commission instead of the Secretary-General.

On para. 5: Indonesia highlights the importance of reaffirming the reference to the Regulations, S&G, as well as the REMP, since Environmental Plans shall take into account those standards.

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

II

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

1. **Name of Working Group: IWG Institution**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 12

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

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 ~~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] [hu]mankind 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].~~

[3bis. 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](#).]

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

On para. 3:

- Needs to distinguish the 1982 UNCLOS, the 1994 Implementing Agreement, separate from the definition of the Rules of the Authority under the Use of Terms (in accordance with the comments by the United Kingdom during the ISA council session on March).
- Prefer the term [shall have regard] or [apply] instead of [ensure compliance], since the term “compliance” may indicate a specific system under the ISA which is currently being established.
- Resonates with the comment that for the Commission to determine if a Plan of Work has fulfilled the Common Heritage of Mankind → it will lead to a premature decision as it relates to many different aspects. One important aspect that can be apparent in the Plan of Work is actually the fair and equitable sharing of benefits.

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

II

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

1. **Name of Working Group: IWG Institution**
2. **Name(s) of Delegation(s) making the proposal: Indonesia**
3. **Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 13 (Assessment of Applications)

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

1 (b): Has prepared the application in conformity with these regulations, the Standards and ~~[the applicable]~~ Guidelines, and the [Regional Environmental Management Plan](#);

1 (e)bis fulfil the obligations to preserve and protect the Marine Environment in accordance with the Convention and the Agreement, and as listed out in the Rules of the Authority ~~[meet or exceed environmental performance obligations]~~ and to meet all obligations under an exploitation contract ~~[according to criteria defined by the Council]~~;

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

On para. 1 (b): Indonesia highlights the importance of the inclusion of the REMP as one of the fundamental documents.

On para. 1 (e)bis: The previous formulation [according to criteria defined by the Council] opens various interpretation. However, the environmental obligations have been set out in the Exploitation Regulations, S&G, and the REMP.