

## **Outcomes of the informal group discussing Standardisation of Stakeholder consultation.**

The United Kingdom has been working with interested parties on the subject of Standardisation of Stakeholder consultation, since Part II of the 27<sup>th</sup> Session of the Council. The UK would like to convey, on behalf of the group (Australia, Canada, Costa Rica, Federated States of Micronesia, New Zealand, Norway, United Kingdom and United States of America) outcomes of the group and proposed next steps, for consideration of Council.

### **1. Work of the group on Standardisation of Stakeholder consultation for Council consideration:**

**Background:** The current draft Regulations contain a number of obligations to undertake Stakeholder consultation (see Annex II). The group considers it important that there is a standardised approach to Stakeholder consultations to ensure a clear and consistent process that effectively consults all Stakeholders in a transparent and open manner.

#### **Key principles and positions agreed within the group:**

> An overarching provision should be drafted to standardise core elements of Stakeholder consultation: where consultations are hosted, the time for which they are open, and how they are conducted, including which party is responsible for each stage of the consultation process. We offer DR93bis (Annex I) as an example of the group's work on how to achieve this in the regulations.

> Where required in the Regulations, Stakeholder consultation should be open to the general public. The definition of 'Stakeholders' in the Schedule includes the general public and so the 'general public' does not need to be explicitly referenced in regulations on Stakeholder consultation. We also acknowledge ongoing discussions on whether (and if so, how) to reflect the legitimate rights and interests of coastal States in the exploitation Regulations and related Standards and Guidelines, including in terms of targeted and proactive consultations with certain coastal States. Our group's non-paper is without prejudice to such discussions and the possible reflection of language on consultations with coastal States in a consolidated Regulation on Stakeholder consultations.

> 90 days should be the minimum time for the comment period to be open for Stakeholder consultation.

> We consider that Standards and/or Guidelines should be developed on Stakeholder consultation under the exploitation regime to complement this overarching provision, and recognise some information is already contained in draft Standards and Guidelines. Separate to the regulations, the group can also see future value in the development of a guidance document at the overarching ISA policy level for any Stakeholder consultation related to the activities of the Authority (noting the [draft ISA consultation and communication strategy](#)) and recommend the general principles within this non-paper be considered in the development of such a document.

> Roles – it should be clear which actor(s) are responsible for activities within the consultation process:

- o **ISA Secretariat/Secretary-General** shall administratively facilitate Stakeholder consultations. This is to ensure transparency, accessibility and consistency of process through:
  1. a centralised location and standardised process all Stakeholders know is followed and therefore Stakeholders know how they will be notified of any upcoming consultations; and
  2. a permanent public record of all documentation associated with Stakeholder consultations.
- o **The consulting party/applicant/Contractor** (as appropriate, see Annex II) shall be responsible for: developing the documents to be consulted upon, effectively identifying and engaging with Stakeholders

(based upon Standard/Guidelines), addressing [substantive] comments from Stakeholder consultations in a revised version of the document(s) and preparing written response to explain how comments from Stakeholder consultation have been addressed.

<b>Consulting party</b>	<b>Developing the documents for consultation</b>
<b>Consulting party</b>	<b>Identifying Stakeholders</b>
<b>Secretary General</b>	<p><b>Preparing and publicly circulating notice of consultation</b></p> <p>&gt; Noting Consulting party/applicant/Contractor responsible for providing all documentation required to be consulted upon and to identify Stakeholders, and that such identification and notifying of Stakeholders (including [key] Stakeholders) is based upon Guidance).</p> <p>&gt; Also noting advance warning to Stakeholders required to enable all Stakeholders to mobilise resource to utilise full consultation period for consideration of issue.</p>
<b>Secretary General</b>	<p><b>Determine the length of consultation period and any extensions.</b></p> <p>&gt; Based on regulated minimum of 90 days.</p>
<b>Consulting party</b>	<b>Engaging with Stakeholders</b>
<b>Secretary General</b>	<b>Receive and transmit comments from Stakeholder consultations</b>
<b>Consulting party</b>	<b>Addressing comments from Stakeholder consultations</b>
<b>Consulting party</b>	<b>Preparing written response to comments from Stakeholder consultations</b>
<b>Secretary General</b>	<p><b>Maintain a permanent public record of all the consultation documentation</b></p> <p>&gt; Which shall be in the Seabed Mining Register (DR92, also see <a href="#">joint proposal*</a>).</p>

\*Joint proposal from UK, Norway & USA (provisional support from Canada) was submitted Sept 2022 Part II 27<sup>th</sup> Session Council. It proposes edits to DR92, and new DR92bis and aims to ensure ease of access by all Stakeholders to environmental information for each contract.

## 2. Suggested areas for further consideration by Council:

- The group agrees there are particular [key] Stakeholders who should be directly notified of Stakeholder consultations (in addition to notification of general public). However, how to refer to/define such group of Stakeholders requires further consideration.
- At which milestones is Stakeholder consultation required, and where should it be ‘required’ or ‘encouraged’ as best-practice? In particular on the Environmental Impact Statement (EIS) - whether Stakeholder consultation is required during the Scoping process, pre-EIS finalization and on submission of Plan of Work, or only ‘encouraged’ as best-practice at pre-EIS finalization stage. It was also discussed whether there are additional places where Stakeholder consultation is required, or should be encouraged, but not yet provided for in these regulations (Annex II).
- If an overarching provision is adopted on Stakeholder consultation, the group agrees there is a need to align all regulations providing for Stakeholder consultation with such overarching provision, including removal of duplication. However, specific application of this is not finalised by the group.

Annex I & II are attached to this note, both for consideration by the Council. Annex I provides an example of how such an overarching provision DR93bis could be drafted, and Annex II provides a detailed explanatory commentary and rationale for the drafting and policy positions raised above.

The UK, on behalf of the group, recommends that the issue of Stakeholder consultation under the exploitation phase is discussed as a priority in Part I 28<sup>th</sup> Session of the Council in March 2023 (notably issues raised in Sections 1 & 2 of this non-paper), noting it is relevant to both the Informal Working Groups on Institutional Matters and Protection and Preservation of the Marine Environment. We hope that this document and its annexes serve as a useful basis for such discussion, in particular Council considering the policy areas outlined above. We have aimed to circulate this document as the earliest opportunity to allow time for Members of the Council and Observers to consider this complex but important issue, and kindly ask the Secretary-General to disseminate this note to Members of the Council.

## **Annex I: Standardisation of Stakeholder consultation – draft text example DR93bis**

For drafting approach see Annex II.

**NB:** *Drafting proposal in green changes, red and black as appears in current ISA drafts.* [square brackets] reflect positions which have not yet reached consensus within the group.

### **Example overarching provision: Reg [93bis]**

#### **Stakeholder consultation**

1. Where these Regulations require Stakeholder consultation by an applicant, a Contractor, [a Sponsoring State], the Secretary General or any other officer or organ of the Authority (the consulting party), consultation shall be conducted in accordance with this regulation [and relevant Standards or Guidelines].
2. The consulting party shall provide the Secretary General with a list of [key] Stakeholders.
3. At least two weeks before the consultation begins, the Secretary General shall correspond directly with [key] Stakeholders advising that that the consultation will occur, and shall publish such advice on the website of the International Seabed Authority.
4. The Secretary General shall determine the consultation period which shall begin on publication of a notice of consultation and may not be less than 90 days.
5. The Secretary General shall prepare a notice of consultation. The notice of consultation shall invite Stakeholders and members of the Authority or other states to make submissions to the consultation, describe the matters on which submissions are sought, include the documentation that is the subject of consultation and other relevant information, and specify the final date for submissions. A consulting party, shall provide the Secretary General with all information and documentation required to prepare a notice of consultation.
6. The Secretary General shall publish the notice of consultation on the website of the International Seabed Authority and send written notice of consultation to [key] Stakeholders and all States.
7. During the consultation period, the consulting party shall conduct public engagement and carry out direct [, targeted and proactive] engagement with [key] Stakeholders and States. The Secretary General may direct the consulting party to conduct such meetings, workshops and engagement.
8. The Secretary General shall receive all submissions.
9. The Secretary General shall transmit all submissions to the consulting party. The consulting party shall consider the submissions received and may revise the documentation that was the subject of consultation. The consulting party shall prepare a written response to consultation that summarises and responds to the [substantive] comments expressed in submissions and includes an explanation of any revisions to the document and how those revisions respond to [substantive] comments expressed in the submissions.
10. The Secretary General shall maintain a permanent public record of the notice of each consultation conducted under this Regulation, all submissions, and the written response to consultation, by publishing the notice, submissions and response on the website of the International Seabed Authority (except for confidential information which shall be redacted from documents before publication). The Secretary

General shall ensure that such consultation records relating to a specific contract are included in, or are accessible from, the relevant entry in the Seabed Mining Register, in accordance with Regulation 92.

## **Regulation 11**

### **Publication and review of the Environmental Plans**

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

- (a) ~~alt2) Direct the applicant to begin the Stakeholder consultation required under subparagraph 1bis.~~(b) Request the Commission to provide its comments on the Environmental Plans within the comment period

1bis. The applicant shall conduct a Stakeholder consultation on the Environmental Plans, in accordance with regulation 93bis;

## **Section 4**

### **Regulation 46bis**

#### **Environmental impact assessment**

4. The environmental impact assessment **process** shall:

- (c) ~~Provide for sStakeholder consultation in accordance with relevant Standards and Guidelines at the scoping stage and before the Environmental Impact Statement is finalized~~ include Stakeholder consultation on the draft scoping report, by the applicant and in accordance with regulation 93bis;

[(c bis) include Stakeholder consultation on the draft Environmental Impact Statement, by the applicant and in accordance with regulation 93bis]; and

## **Section 2**

### **Preparation of the Environmental Impact Statement and the Environmental Management and Monitoring Plan**

#### **Regulation 47**

##### **Environmental Impact Statement**

2. An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation **and in consultation with relevant Stakeholders throughout the process** in accordance with regulation 93bis.

#### **Regulation 94**

##### **Adoption of Standards**

1bis. The Commission shall conduct Stakeholder consultation on Standards in accordance with regulation 93bis.

#### **Regulation 95**

##### **Issue of Guidelines**

1bis. The Commission shall conduct Stakeholder consultation on Guidelines in accordance with regulation 93bis.

#### **Regulation 107**

##### **Review of these regulations**

3. The Council shall establish a process that gives [relevant] Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations **in accordance with regulation 93bis**, 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.

## **Annex II: Explanatory commentary**

**Drafting approach:** There are many different provisions across the draft exploitation regulations requiring consultation with stakeholders. The example drafting for an overarching provision DR93bis in Annex I to standardise “Stakeholder consultation” currently applies to the list in table 1 only. If further places where Stakeholder consultation is required in the exploitation phase are decided upon, these could be added to the list and covered by this overarching provision.

Table 1.

<b>List 1: “Stakeholder consultations” (included in overarching provision)</b>
<i>a) Development/review of regulations (DR107 (3))</i>
<i>b) Development/review of other rules, regulations and procedures (e.g. Standards and Guidelines) (DR94&amp;95)</i>
<i>c) Stakeholder consultation during scoping phase of EIS (DR46bis(2a))</i>
<i>d) Stakeholder consultation during pre-finalisation phase of EIS (DR46bis(4c))</i>
<i>e) Stakeholder consultation on all environmental plans once application for PoW received (DR11)</i>
<i>f) Stakeholder consultation on all environmental plans throughout contract term (DR11 through linked reference e.g. DR. 57 Material Change links back to DR12 which links back to DR11 to require Stakeholder consultation).</i>

*NB: \*1 We acknowledge ongoing discussions on whether (and if so, how) to reflect the legitimate rights and interests of coastal States in the exploitation Regulations and related Standards and Guidelines, including in terms of targeted and proactive consultations with certain coastal States. Table 1 is without prejudice to such discussions and the possible reflection of language on consultations with coastal States in a consolidated Regulation on Stakeholder consultation.*

*NB: REMPs are not included in this list as the group considers details on REMP development should be included under the ‘Guidance to facilitate the development of regional environmental management plans ISBA/27/C/37’.*

All references to required ‘Stakeholder consultation’ in the regulations are linked back to example “DR93bis” (the overarching provision). Any additional detailed provisions relevant to Stakeholder consultation on specific issues can be provided for, where required, in each relevant regulation in a piecemeal and targeted approach (see section 2).

We further note that if an overarching provision is adopted on Stakeholder consultation, there is a need to align all regulations providing for Stakeholder consultation with such an overarching provision, including removal of duplication (e.g. elements of DR11 (1a) & (2)).

DR93bis aims to lay out a standardised process for required Stakeholder consultation, including where roles and responsibilities lie. For the purposes of example provision 93bis in Annex I, we have allocated the ‘consulting party’ for each type of Stakeholder consultation, and identified in the respective regulations, as follows:

### **Consulting parties:**

- For the purposes of Standards and Guidelines, the Commission is the consulting party (as per DR94 & 95).
- For review of the Regulations, the Council is the consulting party (as per DR 107).
- For consultation on the environmental impact assessment process prior to submission to the Authority, the applicant is the consulting party (as per DR46bis).
- For consultation on the environmental plans (and any other documents submitted in the PoW) submitted to the Authority as an application for a Plan of Work, the applicant is the consulting party as the regulator (as per DR11).

- For consultation on the environmental plans (or any other documents within the contracted PoW) during the exploitation contract term (e.g. if there is a Material Change under Reg 57, and submission of final Closure Plan DR60), the Contractor is the consulting party (as Reg 57 refers to Reg 11 consultation process).

## **Responsibilities for Stakeholder consultation:**

### **1. Secretary General (as administrative body of regulator):**

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The group considers it important that there is a standardised administrative approach to Stakeholder consultations to ensure a clear, transparent and consistent process for Stakeholders. This means comments are centrally received and transmitted effectively so that all Stakeholders know where, when and how they are notified and can engage with consultations, and that all documentation regarding consultations (including comments received) are centrally archived permanently and publicly.

We consider that where Stakeholder consultations are 'required' under the exploitation regulations (table 1) the Secretary General/ISA Secretariat, as the administrative body of the Authority should administratively facilitate Stakeholder consultations. By this, we mean:

#### **A. Prepare the notice of consultation**

- For consultation on documents under the Plan of Work ((PoW) pre-submission, on submission and during the contract term), where the consulting party is an applicant, Contractor [or Sponsoring State], it shall provide the Secretary General with all information and documents reasonably required to prepare a notice of consultation. The Secretary General will only collate such documents and notify Stakeholders with such documentation. The consulting party is responsible for identifying and engaging with Stakeholders as per Section 2 (B) below.

#### **B. Determine the length of consultation period (based on regulated minimum)**

- The Secretary General shall determine the consultation period which shall begin on publication of a notice of consultation and may not be less than 90 days. The group considered 90 days would be the minimum amount of time for effective consultation in the international context.

#### **C. Notify Stakeholders of consultations**

- At least two weeks before the consultation begins, the Secretary General shall correspond directly with [key] Stakeholders advising that that the consultation will occur, and shall publish such advice on the website of the International Seabed Authority. This will ensure all Stakeholders have advance warning that a Stakeholder consultation is upcoming, and put resource in place to mean the full 90 day-minimum consultation period can be utilised to consider the documentation.
- The Secretary General shall publish the notice of consultation on the website of the International Seabed Authority and send written notice of consultation to [key] Stakeholders and all States.
  - The publication on the ISA website is to notify the public of the consultation, however it should be made clear in Guidelines that it is expected that the applicant/Contractor should take all reasonable measures to advertise the consultation to the general public.
  - Although the Secretary General is sending written notice of consultation to [key] Stakeholders and all States, the consulting party shall be responsible for providing

the Secretary General with a list of [key] Stakeholders which will inform who should be notified of the consultation as per Section 2 (B) below.

**D. Receive and transmit comments from Stakeholder consultations**

- The Secretary General shall receive all submissions and the Secretary General shall transmit all submissions to the consulting party.
- The consulting party is responsible to addressing and preparing responses to Stakeholder consultations as per Section 2 (C&D) below.

**E. Maintain a permanent public record of all the consultation documentation**

- The Secretary General shall maintain a permanent public record of the notice of each consultation conducted under this Regulation, all submissions, and the written response to consultation, by publishing the notice, submissions and response on the website of the International Seabed Authority. The Secretary General shall ensure that such consultation records relating to a specific contract are included in, or are accessible from, the relevant entry in the Seabed Mining Register, in accordance with Regulation 92 (see related joint text proposal from UK, Norway, USA and provisional support from Canada, to ensure all environmental documentation and data is centrally hosted in the Seabed Mining Register and ISA Central Data Repository [Microsoft Word - Joint submission Norway USA Canada UKTemplate Proposal DRAFT 92 and 92bis.docx \(isa.org.im\)](#)).

**2. Consulting party:**

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We consider that where Stakeholder consultations are required under the exploitation regulations, the consulting party should be responsible for:

**A. developing the documents for consultation**

- For consultation on documents under the PoW (pre-submission, on submission and during the contract term), where the consulting party is an applicant, Contractor [or Sponsoring State], it shall provide the Secretary General with all information and documents reasonably required to prepare a notice of consultation. The Secretary General will only collate such documents and notify Stakeholders with such documentation.
- For Standards and Guidelines and review to the Regulations, the consulting party (Commission or Council respectively) shall provide the Secretary General with all information and documents reasonably required to prepare a notice of consultation.

**B. identifying and engaging with Stakeholders**

- The consulting party shall be responsible for providing the Secretary General with a list of [key] Stakeholders, which will inform who should be proactively notified of the consultation. There should be Guidance developed for the process of identifying Stakeholders who should be directly notified, including a list (which could be updated over time) of types of Stakeholders who should always be directly notified, and the group considered whether such Guidance could be descriptive enough so as not to require a definition of [key] Stakeholders in the regulations.
- The consulting party shall be responsible for conducting public meetings and workshops, and carrying out direct engagement with [key] Stakeholders and States including States adjacent to the contract area\*<sup>1</sup>. The Secretary General may direct the consulting party to conduct such meetings, workshops and engagement (which can include direction from the Council to do so).

**C. addressing comments from Stakeholder consultations**

- The consulting party shall consider the submissions received and make any revisions to the document that was the subject of consultation.

**D. preparing written response to comments from Stakeholder consultations**

- The consulting party shall prepare a written response to consultation that summarises and responds to [substantive] comments expressed in submissions and includes an explanation of any revisions to the document and how those revisions respond to [substantive] comments received.
- A public record of these written responses will be maintained by the Secretary General, as per Section 1 E above.

Where consultations are ‘encouraged’ as best-practice in addition to the required Stakeholder consultations in the exploitation regulations, the consulting body is responsible for all the above responsibilities, and Guidance should be developed on this matter.

**Additional General comments:**

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- We have square bracketed references to Standards and Guidelines in our text proposal, because although we consider Stakeholder consultation will need to be in accordance with Standards and Guidelines under the exploitation regulations, attempts are being made in Council negotiations to develop a standard phrase to be used when referencing ‘in accordance with Standards and Guidelines’. Standards and Guidelines are not referred to in a piecemeal approach through DR11, 46bis, 93, 94 & 107 proposals as ‘in accordance with relevant Standards and Guidelines’ is applied to all Stakeholder consultations in DR93bis (1).
- The group discussed at which milestones Stakeholder consultation is required, and where it should be ‘required’ or ‘encouraged’ as best-practice? In particular, there was disagreement on the Environmental Impact Statement (EIS), whether Stakeholder consultation is required during the Scoping process, pre-EIS finalization and on submission of Plan of Work, or only ‘encouraged’ as best-practice at pre-EIS finalization stage. It was also discussed whether there are additional places where Stakeholder consultation is required, or should be encouraged, but not yet provided for yet in these regulations. For example:
  - if the Commission considers changes made by the applicant in the process laid out in Reg 11 paragraph 2 are Material Changes, if such documents affected by the Material Change must undergo Stakeholder consultation again/undergo the process laid out in paragraphs 1&2 of Reg 11 again?
  - If there is required Stakeholder consultation on the EIS pre-finalisation, whether there should also be Stakeholder consultation on other pre-finalised Environmental Plans.
  - Whether the requirement for Stakeholder consultation on the Closure Plan is clear enough in DR59 through referencing D60, which refers back to DR57 and then requirements under Reg 11 (which include Stakeholder consultation on Environmental Plans), or whether an explicit reference to the need for Stakeholder consultation is required in DR60 (noting Germany has made [a related proposal](#) Part II 27<sup>th</sup> Session Council). If existing reference is considered adequate, redrafting is required to consider this link between these regulations, as DR11 is currently drafted using the term ‘applicant’, whereas DR60 is relevant to the ‘Contractor’.
  - Whether the final performance assessment report in DR61 (3) requires Stakeholder consultation