

Outcomes of the Intersessional Working Group on a Standardized Approach for Stakeholder Consultation

Summary

1. The UK has worked informally with interested parties (Australia, Canada, Costa Rica, Federated States of Micronesia, New Zealand, Norway, United Kingdom and United States of America) on standardising Stakeholder consultation, since Part II of the 27th Session of the Council. At Part I of the 28th Session of ISA Council, the UK conveyed on behalf of the group outcomes and proposed next steps for consideration of Council.
2. Council offered its comments and support for the intent of the proposal and many delegations, including Observers, have since expressed their interest in joining the group (China, Fiji, Germany, Italy, Morocco, Nauru, Netherlands, Portugal, Switzerland, ACOPS, DSCC, DOSI, The Metals Company, The Ocean Foundation, The Pew Charitable Trusts and UK Seabed Resources).
3. At the request of the Facilitator of IWG Environment, the Intersessional Working Group on a Standardized Approach for Stakeholder Consultation has since undertaken further work with this expanded membership and, as coordinator of the group, the UK submits the outcomes of this work for consideration by Council.
4. This outcomes report includes an overview of group discussion on key topics, identified areas of general agreement and proposed ways forward, and outstanding issues recommended as areas for further consideration. It is supplemented by Annexes I and II and Appendix I, which respectively present: further detail on roles and responsibilities of each actor during consultations; a flow chart outlining the current places consultation is required in the draft Regulations; and a comprehensive list of all regulations which refer to 'participation', 'consultation' or 'Stakeholder consultation'.

Work of the group on standardisation of Stakeholder consultation

5. 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, including the public, in a transparent and open manner.

I. When should consultation be required and in what form?

Discussion

6. From the outset, some group members highlighted the importance of broader public participation, noting that it is identified as a key principle under DR2(4). They observed that stakeholder consultation is only one form of public participation, as an umbrella term, and suggested the group should also develop a standardised approach to public participation overall. Other group members noted that public participation in the work of the Authority (e.g. representation of observers at Council), while important, is a more fundamental institutional issue and better provided for in high-level documents, such as the Rules of Procedure for the organs of the Authority, and therefore outwith the scope of this group.

7. The group considered instances of consultation across the regulations and generally agreed that standardised Stakeholder consultation, in accordance with DR 93bis, should be required on ‘final’ documents submitted to the Authority (see Table 1).
8. There was then a range of views within the group on whether to require additional, mandatory consultation during the development of draft documents. Some group members felt it was important to provide opportunities for early and ongoing consultation during these developmental stages, including to meet consultation requirements under DR4 regarding the rights and legitimate interests of coastal States. Other members felt that requiring formal consultation at these stages could be duplicative and disproportionate, and that it may not be practical to run a 90-day without a clear document on which Stakeholders could provide written comments. The group therefore discussed the potential need for a more flexible and less prescriptive approach to allow the applicant/contractor to conduct more targeted consultation during these stages.

Outcomes

8. On public participation, the group will look to integrate language on the principles of transparency and inclusivity into the standardised approach to consultation under DR93bis and ‘engagement’. It also notes the proposals by Norway, UK, USA and Canada on DR92 and DR92bis to ensure ease of access by all Stakeholders to environmental documents, data and information regarding each contract. However, as coordinator, we consider that the Council’s broader consideration of public participation is beyond the specific scope of this group. Separate to the exploitation regulations, the group recognises the potential value in the development of further guidance at the overarching ISA policy level for any public participation related to the activities of the Authority (noting this should be considered alongside the [draft ISA consultation and communication strategy](#)).
9. Following review of the flow chart at Annex II, the group considers that ‘Stakeholder consultation’, in accordance with the process set out in DR 93bis, shall be required in the following instances¹:

Table 1: “Stakeholder consultations” (in accordance with overarching provision DR93bis)
<i>a) Scoping report, once submitted by applicant to Authority for decision (DR 46bis. alt)</i>
<i>b) All Environmental Plans once application for PoW submitted to inform Authority decision (DR11)</i>
<i>c) If Material Change made in light of Feasibility Study (DR25), once Environmental Plan(s) submitted to inform Authority decision *</i>
<i>d) If Environmental Plans updated throughout contract term due to Material Change(s) (DR11, DR12 & DR57), once Environmental Plan(s) submitted to inform Authority decision</i>
<i>e) i. On Closure Plan, if Material Change (see above c); or *</i>
<i>e) ii. On Closure Plan review in final 5 years (DR59) *</i>
<i>f) on Performance Assessment report submitted by Contractor for review to inform Authority decision (DR52) *</i>

10. We propose to categorise ongoing consultations on the development of draft documents that take place outside of consultation under DR93bis as ‘engagement’ (see Table 2). This would allow the contractor/applicant greater discretion to undertake more flexible consultation than what is required under DR93bis. Engagement could include inter alia: targeted consultation on draft documents, stakeholder data submissions, workshops, dialogues and other forms of outreach. We

¹ Regulations marked with * are subject to caveats detailed in, ‘Areas for further consideration’

propose it should be mandatory to conduct this ‘engagement’ with at least Coastal States and other identified key stakeholders.

Table 2: “Engagement”
<i>a) during development of draft Scoping report (DR46bis(2a))</i>
<i>b) during pre-finalisation phase of EIS/on draft EIS (DR46bis(4c))</i>
<i>c) during development of all other draft Environmental Plans</i>

Areas for further consideration

11. **Material Change** - a group member noted that a 90-day consultation requirement on Material Changes made in light of the Feasibility Study might disincentivise a Contractor to make changes intended to have positive effects following the Feasibility Study e.g. reducing environmental impact of activities. They asked whether the group could explore an exception to this process if the Material Change is proposed for positive change/improvement. It was also highlighted that a Material Change intended to have a positive effect may not do so in practice and so further, careful consideration of this question is required by group.
12. **Closure Plan** – as currently drafted, DR59 requires a final Closure Plan to be submitted annually for the final 5 years before the end of Commercial production for consideration under DR11. Some group members judged that conducting annual Stakeholder consultation in accordance with DR93bis would be too onerous, and that there would be insufficient time for a 90-day consultation and Authority decision before the next final Closure Plan had to be reviewed. It was noted that the IWG on Closure Plans is considering options to require a review of the Closure Plan 3 years before and then 1 year before Closure, or just 1 year before. This group considered that either of these options would allow sufficient time for Stakeholder consultation and Authority decision. The group’s general agreement to apply DR93bis to consultation on the Closure Plan is therefore subject to developments on the agreed frequency of review.
13. **Performance assessment** – some group members highlighted that if we require reconsideration of Performance Assessment under DR11, and 90-day Stakeholder consultation under DR93bis, then the frequency requirement of Performance Assessment needs to take this into account. This is to ensure there is a long enough gap between Performance Assessments to allow implementation of any new measures, and monitoring of such measures, before submission of the next Performance Assessment. (**NOTE:** Council is currently choosing between 24 and 36 months for Performance Assessment).
14. **Definition of ‘engagement’** – although generally supportive of the principle of ‘engagement’, the group considers that a clearer understanding of what this entails is needed to require it as mandatory. There were differing views about the extent to which ‘engagement’ should be prescribed across regulations, standards and guidelines, ranging from core principles in the regulations to more operational detail in Standards and Guidelines. Further work will be required to identify the core elements that need to be detailed to support best practice and robustness of process, whilst retaining additional flexibility and avoiding duplication of full Stakeholder consultation under DR93bis.

II. Core elements of standardisation

Discussion

15. The group reviewed previous outcomes concerning the core elements of stakeholder consultation that an overarching provision (DR93bis) should standardise, including **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.
16. Regarding duration of Stakeholder consultation under DR93bis, most of the group reaffirmed that there should be a 90-day minimum comment period, citing the need to scale up timeframes from domestic practices to allow for the expanded international stakeholder base and differences in capacity. A couple of members expressed concerns about the lead-in times and cost-effectiveness of a 90-day consultation period, and one suggested 45-days would be more proportionate.
17. The group also discussed the need for clarity on the roles and responsibilities of different actors throughout the consultation process, and worked through this in systematic detail (see Annex I). Most group members were in general agreement that the Secretary-General should have a role in administratively facilitating Stakeholder consultation, providing a 'mailbox' function and centralised location to ensure transparency, accessibility and consistency. At the same time, group members were clear that Stakeholder consultation should be driven by the applicant/Contractor, and one group member expressed concerns about conflating the responsibilities of the applicant/Contractor and the Authority/Secretary-General.

Outcomes

18. The group proposes that Standards and/or Guidelines should be developed on Stakeholder consultation under the exploitation regime to complement DR93bis, recognising some information is already contained in draft Standards and Guidelines and that further consideration is also needed on a Potential Standard and/or Guideline for 'engagement.'
19. The group reaffirms that where required in the Regulations, 'Stakeholder consultation' includes the public. On the understanding that the definition of 'Stakeholders' in the Schedule is inclusive of the public, the 'general public' therefore does not need to be explicitly referenced in regulations on Stakeholder consultation.
20. Given the general agreement of the group, we propose to maintain the recommended 90-day consultation period for DR93bis. However, we note a period of this length will have implications for the frequency of Stakeholder consultations undertaken on Material Changes, Performance Assessments and Closure Plans.
21. Following detailed review of the roles and responsibilities during Stakeholder consultation under DR93bis, the group generally agreed the below allocation set out in Table 3.

Table 3: roles and responsibilities for Stakeholder consultation (additional detail Annex III).	
Applicant/Contractor	Developing the documents for consultation
Applicant/Contractor	Identifying Stakeholders
Secretary General	<p>Preparing and publicly circulating notice of consultation</p> <p>> 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>> Also noting advance warning to Stakeholders required to enable all Stakeholders to mobilise resource to utilise full consultation period for consideration of issue.</p>
Secretary General	<p>Determine the length of consultation period and any extensions.</p> <p>> Based on regulated minimum of 90 days.</p>
Applicant/Contractor	Engaging with Stakeholders
Secretary General	Receive and transmit comments from Stakeholder consultations
Applicant/Contractor	Addressing comments from Stakeholder consultations
Applicant/Contractor	Preparing written response to comments from Stakeholder consultations
Secretary General	<p>Maintain a permanent public record of all the consultation documentation</p> <p>> Which shall be in the Seabed Mining Register (DR92, see also joint proposal*).</p>

*Joint proposal from UK, Norway & USA (provisional support from Canada) was submitted Sept 2022 Part II 27th 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.

Areas for further consideration

22. **Standards and Guidelines** - as identified above, further work will be required to consider the content of any Standards and/or Guidelines on Stakeholder consultation.
23. **Consultation duration** - given that a 90-day consultation period could have implications for documents that may require frequent review and consultation (e.g. Performance Assessments and Closure Plans), we recommend maintaining a watching brief and revisiting these areas as development of the Regulations progresses.

III. Coastal states and other identified 'key' stakeholders

Discussion

24. The group considered and was broadly supportive of the concept of [key] Stakeholders that should be identified by applicants/Contractors and directly notified of Stakeholder consultations (in addition to notification of the general public), as well as targeted for engagement during the development of draft documents. However, some group members considered the term 'key Stakeholder' to be unclear and require definition. The group discussed the potential need for further detail to support identification of these stakeholders, with a Guideline likely to be most appropriate. The discussion included suggestion of a list of key Stakeholders that could be updated semi-regularly, including with provision for Stakeholders to self-identify.
25. There was also substantive discussion of how to provide for consultations with coastal States required under DR4 within this standardised approach. Some members of the group raised that early and ongoing engagement with Coastal States (DR4) during the development of environmental documents is necessary, as well as during formal Stakeholder consultation milestones open to the

public under DR93bis. They also noted that if we are to require 'engagement' with coastal States as mandatory, then some assurance would be required (e.g. through detail in a Standard) as to the robustness and formality of the process. It was noted that this work should be joined up with the broader work taking place under the IWG on Coastal State obligations.

Areas for further consideration

26. **[key] Stakeholders** - although initial discussions were constructive, how best to define such group of Stakeholders and identify them as part of the consultation process requires further consideration (recognising that DR46bis (alt) also requires the identification of stakeholders as part of the scoping process).
27. **Coastal states consultations** – the group acknowledges ongoing discussions on reflecting the legitimate rights and interests of coastal States in the Regulations under the IWG on Coastal State obligations and suggests that consultations with coastal States should be taken forward and considered holistically alongside these other issues. To support this join-up between the Intersessional Working Groups, we propose to share the detail of this group's discussions on coastal States consultations with the IWG on Coastal State obligations, as well as suggestions on how to integrate requirements under DR4 with a standardised approach across the Regulations.

Annex I – detailed policy requirements for Stakeholder consultations undertaken in accordance with DR93bis to inform discussion and drafting.

Public participation fundamental principle of these regulations (already in DR2 and DR44).
Environmental Plans (DR11, <i>Environmental Plan specific regulations: DR46bis, 46ter, 47, 48, 48bis DRs 59-61</i>) and any review/update in light of Material Change (DR57), draft Performance Assessment (<i>on submission and any update/review DR52</i>), final Closure Plan (<i>in final 5 years, whatever frequency of review is determined DR59</i>).
Engagement with Coastal States (DR4) and other identified [key] Stakeholders (as a minimum) required throughout development. Such [key] Stakeholders will be identified in the EIA, and their identification based on Guidelines (group recommends to be developed).
Further consideration required on the core elements that should be required for engagement, and how this should be detailed across Regulations, Standards and Guidelines.
Stakeholder consultation (public) to be undertaken by the applicant/Contractor, in accordance with DR93bis, facilitated by the Secretary-General on submission to Authority for decision. Key steps in the process include:
Applicant/contractor provides Secretary General with a list of Stakeholders, including [key] Stakeholders and their contact details, as identified in the EIA, taking into consideration Guidelines (to be developed)
Advance notice (2 weeks prior to consultation published) shall be given to all Stakeholders and States to allow mobilisation of resource and support capacity issues. Secretary General sends written notification to key Stakeholders and all States, and lists notice on ISA website.
The applicant/Contractor submits its documents to be consulted on to the Secretary General and everything required for preparing a notice of submission and for Stakeholders to be able to review the submission(s). This needs to include a description of the matters on which submissions are sought and other relevant information.
The Secretary General collates all the documents, sends written notice of the consultation to key Stakeholders and all States and posts the notice on the website of the Seabed Authority (potentially the Seabed Mining Register as a centralised/accessible location). The Secretary General can send to additional Stakeholders it determines [key] in addition to those determined in the applicant/Contractors list provided to the Secretary General. The Secretary General shall also notify and request the Commission to provide its comments on the Environmental Plans within the consultation period
The Secretary General shall set the consultation period to be no less than 90 days. The time starts when the Secretary General publishes the notice of consultation.
During the consultation period, the applicant must engage with Stakeholders (including public) and all States and undertake ‘direct/targeted & proactive’ engagement with key Stakeholders and States. If the Secretary General chooses to, they can direct the applicant/Contractor to do more engagement including meetings and workshops.
The Secretary General acts as a mailbox and receives all comments. It should be made clear on the notice of consultation how to send responses to the Secretary General.
The Secretary General will forward the comments from Stakeholders, all States, the Commission and any comments from the Secretary General to the applicant/Contractor in a timely manner (NB: DR 11 currently stipulates 7 days).
The applicant/Contractor then considers the submissions and will choose whether to revise the document(s) consulted on.

(NB: DR11 currently requires this to be done in 30 days, which can be extended at discretion of SG. Query whether it is necessary to put a time limit on the applicant/Contractor updating their submission, as the clock on LTC consideration doesn't begin until documents have been 'published and reviewed' in accordance with this regulation. Drafting should ensure that the requirement for the LTC to consider the applicant within 120 days starts only from when the applicant/Contractor either a) submits final revised documents or b) chooses not to revise documents, but provides 'written response' as to why they didn't revise documents in light of Stakeholder and/or Commission and/or SG comments)

The applicant/Contractor shall also prepare a report detailing its response to the consultation comments. Such report should provide a summary of the comments received, detailing how they have responded to the substantive comments they received and any changes they made to the documents that were consulted upon because of such comments. This should include where substantive comments have not resulted in an update of the documents consulted upon and why.

The applicant/Contractor can then submit the revised submission(s)/PoW to the Authority (if any) and the written response to consultation (by submission to Secretary General DR7 (1)).

The Secretary General must maintain a permanent public record of all notices of consultation undertaken in the process outlined above, all submissions received, the written response from the applicant/Contractor, and this shall be achieved by putting it on the website of the Authority, and in particular, accessible from the Seabed Mining Register. The only exception is Confidential Information, which can be redacted from such documents before publication, noting Confidential information cannot include Environmental Information (DR89) but where information has been redacted this should be made clear in the public documents..

The Commission shall examine the Environmental Plans or revised plans in the light of the comments made during the process outlined above, together with the written response(s) by the applicant/Contractor, and any additional information provided by the Secretary-General.

The Commission has 120 days to consider this application (DR12 (2)) and the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans and the test mining study have been published and reviewed in accordance with the above process.

Relevant definitions

(see [here](#) Presidents Text March 2023 current drafting definitions):

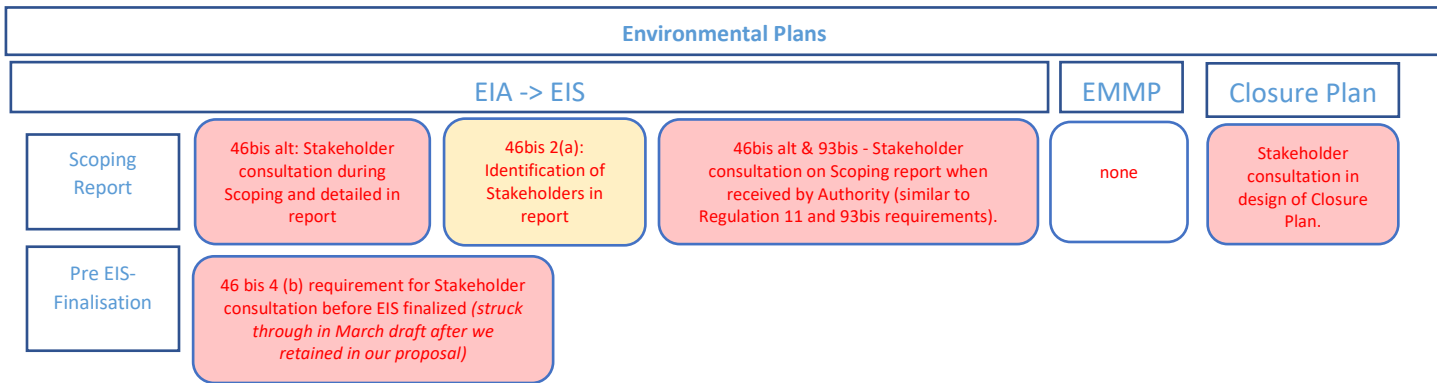
“Stakeholder” means a natural or juristic person or an association of persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information or expertise.

“Environmental Plans” means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

“Material Change” means a [substantial or significant] change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, [changes to harmful effects of activities on the Marine] eEnvironment[al effects or effects on stakeholders]] the availability of new knowledge or technology and changes to operational management that are to be considered in [the] light of the Guidelines

“Confidential Information” shall have the meaning assigned to that term by regulation 89. (see [here](#) for current drafting DR89)

Annex II – flow chart of Stakeholder consultation (adapted from ISBA/27/C/3)

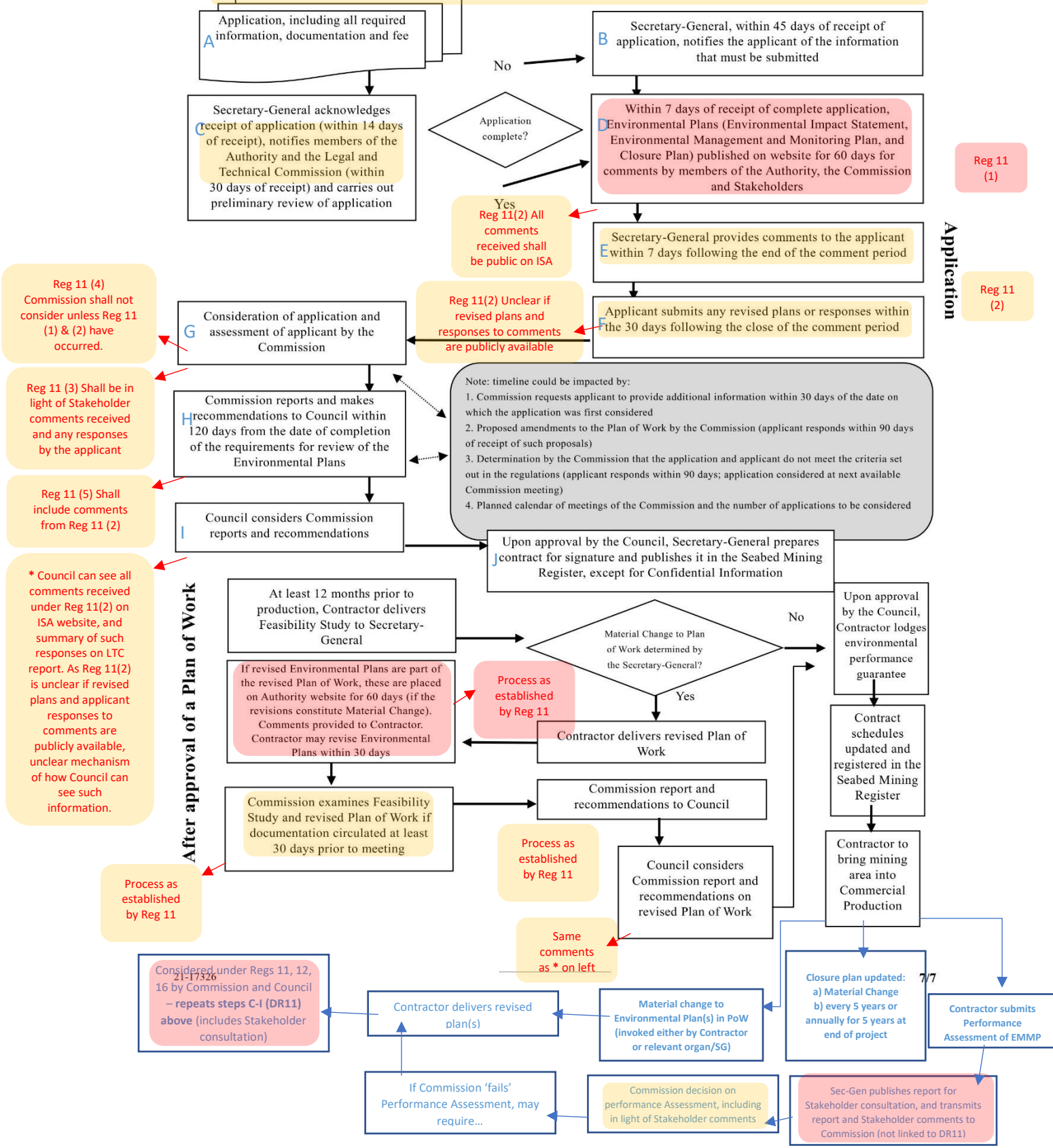


Reg 48bis TEST MINING
 Regarding test-mining, potentially affected States, international organizations and relevant Stakeholders shall be consulted in accordance with the relevant Standards and Guidelines. Unclear when.
 ISBA/27/C/3

Annex II

Application and review process for a Plan of Work for exploitation

Additional detail to Reg 11 process supplemented by IWG proposal for DR93bis (here.) Will need to consider aligning/streamlining.



Reg 31: Throughout process: Consultation/coordination (term unclear) required between Contractors and proponents of other activities in the marine environment.

Reg 44: Throughout process: The Authority, sponsoring States, the Enterprise, Contractors and States competent for vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority to 'ensure Stakeholder participation during assessment, evaluation and management of Environmental Effects and risks from Exploitation

Reg 107 – Stakeholder consultation in review of Regulations

Regs 94 & 95 – Stakeholder consultation in development and review of Standards and Guidelines

DR2, 3, 4: Coastal State consultations (and any other mentions)

DR33 Secretary-General may provide Contractor with instructions how to deal with incident. Such instructions developed in consultation with Sponsoring State or States, flag State, Coastal State or relevant international organisations. Contractor must undertake such instructions promptly.

Outside of mining project but within scope of DR93bis (currently drafted so Organs, SG, Council can be 'Consulting Party')?

DR34: Regarding notifiable events, Secretary-General shall consult with Sponsoring State(s), [relevant coastal States], and other regulatory authorities.

Beyond scope of DR93bis, specific consideration in DR31, DR44 and DR2/3/4 instead?