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Analysis of Article 142 of the United Nations Convention on the Law of the Sea on the Rights and Legitimate Interests of Coastal States in respect of the draft Regulations on Exploitation of Mineral Resources in the Area

Note by the Secretariat

I. Introduction

1. During the twenty-eighth session and during the first part of the twenty-ninth session of the Council of the International Seabed Authority (the “Authority”), the issue of the rights and role of, and proposed consultation processes involving coastal States were discussed in the context of the development of the Regulations on Exploitation of Mineral Resources in the Area (the “draft Exploitation Regulations”). Clarity was sought by several delegations concerning the application and scope of Article 142 of the United Nations Convention on the Law of the Sea (the “Convention”). This note has been prepared to assist and support discussions within the Council of the Authority concerning the role and engagement of coastal States in the formulation of the draft Exploitation Regulations.

2. This note provides an overview of the different elements pertaining to the obligations of coastal States as set out in Article 142 of the Convention (*part II*). Hereafter, the note focuses on the treatment of such obligations in the draft Exploitation Regulations (*part III*), leading to further considerations on the possible interpretation of Article 142 of the Convention (*part IV*), including considering the recently adopted third implementing agreement under the Convention, which deals with the Conservation and sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the “2023 Agreement”) (*part V*). Finally, a

number of recommendations are proposed for further consideration of the Council in conclusion of this note (*part VI*).

II. Rights and interests of coastal States under Article 142 of the Convention

3. Article 142 of the Convention addresses the rights and interests of coastal States which may be potentially affected by activities in the Area. The article has the following wording:

“1. Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such deposits lie.

2. Where resource deposits in the Area lie across limits of national jurisdiction, the Authority and the coastal State concerned shall seek to agree upon practical measures to ensure the effective protection of the marine environment and the reasonable regard for the rights and legitimate interests of the coastal State in question.

3. Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.”

4. The first two paragraphs of Article 142 focus on a specific category of coastal States: it establishes a framework of ensuring the rights and interests of coastal States in relation to activities in the Area, where resource deposits in the Area lie across the jurisdiction of a coastal State. The Authority must, in such situations, ensure that due regard is given to these rights and interests by adopting appropriate regulatory measures. The Article does not confer any specific rights on coastal States who do not have such deposits. At the same time, paragraph 3 unequivocally confirms that the rights of such States under Part XII of the Convention, on the protection or preservation of the marine environment, are not affected. Paragraph 3 therefore addresses the position of all coastal States, not only those who have resource deposits traversing the boundary of the Area. A more detailed discussion of the interpretative considerations under Article 142 is provided under Section IV below, following the review of the draft Exploitation Regulations.

5. The question emerging from this framework is whether the rights recognized by Article 142 (including the rights of coastal States under Part XII of the Convention) are sufficient to

preserve the rights and interests of coastal States or whether a specific regime is necessary to be implemented within the framework of the draft Exploitation Regulations to that end.

III. Rights and interests of coastal States in the context of the draft Exploitation Regulations

6. The current version of the draft Exploitation Regulations, as set out in the consolidated text¹, contains several references to the rights and interests of coastal States. For convenience, the full wording of the relevant regulations is extracted and set out in the Annex to this note.

7. As a general matter, the draft Exploitation Regulations incorporate a variety of provisions to ensure that all interested and/or affected parties are properly consulted in connection with the administration of activities in the Area. To begin with, Regulation 4 of the draft Exploitation Regulations provides that potentially affected coastal States, identified as such in the Regional Environmental Management Plan (REMP), should be consulted, in accordance with established protocols, upon submission of an application by a prospective contractor. Regulation 4 further provides that consultations with potentially affected coastal States should continue between the contractor and the coastal State throughout the lifetime of the contracts.

8. The various iterations of Regulation 46 (previously Regulation 47 Alt) on the Environmental Impact Assessment process, provide for consultation with all stakeholders. The term “*Stakeholder*” is a defined term under the draft Exploitation Regulations, which captures not only coastal States, but even particular State organs or entities who have “*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*”. Consequently, to the extent stakeholder involvement in the Environmental Impact Assessment process is guaranteed, all coastal State entities will be entitled to make use of the envisaged consultation process. By ensuring that the relevant coastal State entities are part of this process along other stakeholders, a better and more efficient platform for dialogue is available, including between the relevant coastal State and other stakeholders, compared to a situation where the consultation process with coastal States is isolated from the consultation process with other stakeholders. To the extent a coastal State (or coastal State entity) is concerned that its rights and interests under Part XII of the Convention

¹ [Consolidated text \(ISBA/29/C/CRP.1\)](#), 16 February 2024.

– fully preserved by Article 142(3) of the Convention as addressed above – may be affected by planned activities in the Area, the stakeholder consultation may serve as a useful framework to raise any such concerns in a transparent manner. The same considerations apply to analogous regulations also ensuring stakeholder involvement. In particular, by virtue of Regulation 57, to the extent modifications of the plans of work require a new Environmental Impact Assessment or an alteration of the Environmental Management and Monitoring Plan of the contractors, consultations would be ensured as the procedure under Regulation 46 would have to be followed again.

9. Section 3 in Part IV on environmental monitoring also accommodates consultation to ensure environmental protection. In Regulation 49(4), two different alternatives for consultation have been proposed, ensuring that potentially affected coastal States are consulted. In Regulation 50 (3 bis), it is further suggested that the applicant or contractor must engage with stakeholders during the development of the Environmental Management and Monitoring Plan. In Regulation 52(3) and (4) the consultation process is also regulated, which guarantees that stakeholder involvement is not limited to the preparation of the Environmental Management and Monitoring Plan but extends to its actual implementation in the course of exploitation activities.

10. Regulation 93 bis, as it stands, would function as an overarching procedure on consultations, applying to States and stakeholders alike whenever the Regulations require consultations to take place.

11. Regulation 93 ter was introduced during the twenty-eighth session and sets forth a special consultation regime applicable to coastal States. Regulation 93 ter purports to confer a specific role upon (a) “*adjacent coastal States*” and (b) “*any other coastal States adjacent to the areas of planned activity when they are potentially most affected States*” in respect of consultations relating to exploitation activities. It has been suggested by some delegations that further clarification would be provided with the intended meaning of the different categories, including in Regulation 4. An alternative version of Regulation 93 ter was provided ahead of the first part of the twenty-ninth session.

IV. Interpretative considerations under Article 142 of the Convention

12. There are ongoing discussions in the Council of the Authority on the application of Article 142 of the Convention, and the potential for a specialized consultation mechanism for coastal States² and how this should play together with the current wording of the draft Exploitation Regulations.

13. Interpretation of Article 142 of the Convention should adhere to the Vienna Convention on the Law of Treaties (the “Vienna Convention”) and more particularly, its Article 31, which provides that treaties should *‘be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’*.

14. The respective paragraphs of Article 142 of the Convention are specific in relation to their application. The system of consultation and prior notification is directly set forth in paragraph (2) of Article 142 and covers coastal States where resource deposits cross the borders of national jurisdiction into the Area, and to the extent of the rights and legitimate interests mentioned in Art. 142 (1) of the Convention, i.e. those pertaining to them as States that have jurisdiction over resource deposits reaching into the Area.

15. The environmental protection rights are dealt with in Article 142 (3). Article 142(3) does not confer any right on its own, and its function is distinguishable from Article 142(1) and (2). Article 142(3) does not appear to constitute a self-standing, additional conferral of rights on coastal States to request, nor rights to insist on the necessity of, consultations. This provision merely seems to clarify that Part XI is not intended to derogate from Part XII insofar as the rights of coastal States are concerned, safeguarding the coastal States’ prerogatives. Finally, Article 142(3) of the Convention does not provide a clear basis to establish different categories of coastal States for the consultation process described in Article 142(2). Therefore, the analysis of the “*ordinary meaning*” of Article 142 (1), (2) and (3), respectively, does not seem to suggest a unique consultation regime for coastal States.

16. Hereafter, it is relevant to conduct a supplementary means of interpretation, cf. Article 32 of the Vienna Convention. The *travaux préparatoires* of Article 142(3) of the Convention indicate that it was a deliberate decision to specify that coastal States’ rights “*insofar as they*

² Regulations 4, 93 bis and 93 ter of the draft Exploitation Regulations in the present version of the Consolidated text.

are stipulated in Part XII” are the rights to be preserved by virtue of Article 142(3) of the Convention.³ From the *travaux préparatoires* it appears that it was considered whether the consultation regime (under what is now Article 142(2)) should apply to a situation where resource deposits “are located *near the limits of national jurisdiction*” (emphasis added). The proposal to include such a consultation regime did not find its way into the final formulation of Article 142.⁴

17. In respect of *contextual* considerations, it also seems that the Convention does not impose an express duty to consult on States exploiting the resources of the seabed within *their* jurisdiction (on the basis of Article 77(4) of the Convention). In the analogous context of exercising rights within the exclusive economic zone, international jurisprudence has been reluctant to recognize a categorical and always applicable duty to consult. In the *Chagos Arbitration*, the Arbitral Tribunal addressed this point when interpreting Article 56(2) of the Convention (pursuant to which coastal States should have “*due regard*” to rights and duties of other States in the exercise of their rights within their exclusive economic zone). In resolving the dispute between Mauritius and the United Kingdom, the Tribunal “*decline[d] to find in this formulation any universal rule of conduct*”. According to the Tribunal, the Convention:

“does not impose a uniform obligation to avoid any impairment of Mauritius’ rights; nor does it uniformly permit the United Kingdom to proceed as it wishes, merely noting such rights. Rather, the extent of the regard required by the Convention will depend upon the nature of the rights held by Mauritius, their importance, the extent of the anticipated impairment, the nature and importance of the activities contemplated by the United Kingdom, and the availability of alternative approaches.”⁵

18. At the same time, the tribunal recognized (effectively as a practical observation) that “[i]n the majority of cases, this assessment will necessarily involve at least *some* consultation with the rights-holding State” (emphasis added).⁶ The tribunal accordingly refused to derive a duty for any particular level or category of consultation from Article 56 of the Convention or confirm that a duty to consult *always* exists. It bears noting that, immediately following Article 56(2) of the Convention, Article 56(3) refers to the exercise of rights with respect to the seabed. However, Article 56(3) does not render even the “*due regard*” obligation, appearing in the

³ S. N. Nandan, M. W. Lodge, S. Rosenne (eds), *United Nations Convention on the Law of the Sea 1982; A Commentary*, Vol VI, 2002, pp. 154-156, reflecting the shift from a more general formulation to the specific and narrow reference to Part XII.

⁴ See the draft Article 15(A) appearing in the First Committee Chairmen Proposals in the Report on Articles 1-21 (CP/cab. 7, 31 July 1974), as reproduced in R. Platzöder., *Third United Nations Conference on the Law of the Sea: Documents (Vol. VI)*, 1984, p. 6.

⁵ *Award in the Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland*, 18 March 2015, XXXI UNRIAA, p. 571, para. 519.

⁶ *Ibidem*, p. 571, para. 519.

immediately preceding paragraph, applicable in the seabed context, referring merely to Part VI of the Convention. In turn, Part VI does not incorporate any language analogous to the “*due regard*” requirement in setting out the rights and duties of coastal States when exploiting seabed resources.

19. From the above analysis, there will indeed be an obligation to consult States referenced in Article 142(2) of the Convention. However, further examination seems to reinforce that the Convention does not mandate a uniform duty to consult but requires considerations based on the specifics of each situation, e.g. when States have been identified in a REMP, and that this would follow an established protocol.

20. In the current wording of Regulation 93 ter of the draft Exploitation Regulations, the reference is to “*any other coastal States adjacent to the areas of planned activity when they are potentially most affected States*”. In light of the above interpretation, it seems that the content of Regulations 93 ter goes beyond the scope of Article 142(2), and Regulation 93 ter therefore merely seems to constitute an addition to the system already in place under the Convention.

21. At the same time, as addressed above, it appears to be an uncontroversial premise of the draft Exploitation Regulations that a robust, inclusive and transparent stakeholder consultation process at certain junctures of the administration of applications for plans of work and awarded contracts is paramount: most notably in the context of the preparation of the Environmental Impact Assessment, Environmental Management and Monitoring Plan, and environmental monitoring. In such contexts, without the necessity of introducing a *sui generis* regime for any specific category of stakeholders, coastal States (or their relevant State entities) qualify as stakeholders, along other stakeholders. The provisions of Article 142 of the Convention do not stand at odds with coastal State consultations in this format (especially considering the “without prejudice” provision in its paragraph 3).

V. Rights and interests of coastal States recognized by the 2023 Agreement and of relevance for the draft Exploitation Regulations

22. Some textual proposals received suggest expanding the consultation process as outlined in the 2023 Agreement. It also seems that the current wording of Regulation 93 ter is inspired by the formulation found in this Agreement. The 2023 Agreement is often a reference point in respect of a proposed definition of “potentially affected State” and the consultation mechanism developed in the case of Environmental Impact Assessments.

23. The 2023 Agreement introduces a category of “*potentially most affected States*” in its Article 32 and emphasizes a certain status of “*potentially most affected States*” by recognizing their particular concerns and roles in environmental assessments. The rationale behind this Article aims to ensure that these States have a more pronounced voice in processes that could significantly impact them due to their geographical or environmental vulnerabilities. It does not distinguish between such States, other States or stakeholders for the purposes of consultation, and the 2023 Agreement does not explicitly provide different procedural rights for “potentially most affected States” compared to other States. The intent seems to lean more towards ensuring that the potential concerns of such States are fully taken into consideration rather than establishing a separate procedural framework. The specific reference to “*potentially most affected States*” in the 2023 Agreement appears to be a point of emphasis to highlight the special position of States falling into this category (i.e., a “soft law point”), without however attaching a special procedural status to such States. Article 32(1) of the 2023 Agreement mentions “*potentially most affected States*” separately, while the actual obligation imposed on parties provides that *all* States should be informed of the “*opportunities, as far as practicable, for participation [...] in the environmental impact assessment process*”. Similarly, Article 32(5) of the 2023 Agreement, addressing the treatment of substantive comments received in the consultation process, refers to “*potentially most affected States*”. However, the substantive obligation imposed on the parties does not in fact distinguish between the status of comments received from “*potentially most affected States*” and those received from other parties.

24. To summarize, under Article 32(1) of the 2023 Agreement, the term “potentially most affected States” is recognized, but the specific details of consultations are not spelled out within the Article, which does not contain an exclusive process for these States compared to other parties. The consultation mechanism under the 2023 Agreement in the context of Environmental Impact Assessment, treats “*potentially most affected States*” like all other stakeholders providing comments. The intention and rationale behind Article 32(1) of the 2023 Agreement seems to be catered for in the draft Exploitation Regulations, both in Regulations 4, 46, 93 bis and the alternative version of Regulation 93 ter.

VI. Recommendations

25. The Tribunal in MOX Plant held that, “[t]he duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and that rights arise therefrom.”⁷ As explained above, Article 142(3) preserves the rights of States under Part XII of the Convention, including with respect to this principle. It results from the above that adhering closely to the cooperative spirit and terms of the Convention is key in the development of the Exploitation Regulations. It is of great importance to ensure that the draft Exploitation Regulations reflect the Convention’s intended scope and underlying principles, without creating new international principles or extending the boundaries of existing law through regulations that are subsidiary to the Convention.

26. The duty of co-operation must be adhered to (within the parameters of Part XII of the Convention), and the regulatory responsibilities concerning activities in the Area must be defined and delineated. It is therefore recommended to formulate the draft Exploitation Regulations in a way that meets the concerns in respect of consultation and cooperation of all relevant stakeholders and at the same time reflects and implements the provisions of the Convention in accordance with its intended purposes. In this respect, it is important to settle on a consistent use of terms throughout the draft Exploitation Regulations in respect of coastal States (and potential categories, such as potentially affected coastal States), in order to avoid a multiplicity of inconsistent and overlapping terms of art throughout the draft Exploitation Regulations.

⁷ *MOX Plant (Ir. v. U.K.)*, Provisional Measures, Order, 2001 *ITLOS Rep.* 95 (Dec. 3), para. 82.

Annex

Below is a listing of the relevant regulations of the current version of the draft Exploitation Regulations, as they appear in the consolidated text of 16 February 2024 (ISBA/29/C/CRP.1).

Regulation 3 [IWG IM]

Duty to cooperate and exchange of information

In matters relating to these Regulations:

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

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

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

(d) The Authority shall consult and, where relevant, cooperate with Sponsoring States, coastal States adjacent to the Contract Area, port States, flag States, competent international organizations and other relevant parties as appropriate, to develop measures to implement in these Regulations, including to:

(i) Ensure effective ~~p~~Protection of human life and property at sea, and effective ~~P~~rotection of the Marine Environment, with respect to activities in the Area;

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

(iii) Facilitate access to sites and items that may fall outside the Authority's jurisdiction to be inspected under these Regulations for the purposes of Contractor compliance monitoring and enforcement.

(e) Contractors, the Enterprise, Sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation and related activities on the Marine Environment, including at the regional scale, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority, Sponsoring States, Contractors, and the Enterprise shall, in conjunction with the Authority, cooperate with each other, ~~as well as with other Contractors and national and international scientific research and technology development agencies~~ with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area, including by use of data repositories and open-access databases;

(ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;

(iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;

(iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;

(v) Promoting the advancement of marine scientific research in the Area for the benefit of humankind as a whole; and

(vi) Developing incentive ~~structures~~ mechanisms, including market-based instruments, to support transfer of technology and capacity ~~enhancement~~ building of developing states, and to enhance the environmental performance of Contractors beyond the legal requirements including through technology development and innovation; ~~and~~

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

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the Annex to the Agreement, Contractors and members of the Authority shall enable access to non-confidential information, ~~upon the request by the Secretary General [or the Council], upon the request of the Economic Planning Commission, or other appropriate organs of the Authority~~ to facilitate the Authority's preparation of studies on the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall be in accordance with specific terms of reference and ~~applicable any relevant~~ Standards, and taking ~~into consideration account of~~ Guidelines.

[(h) The Council shall, taking into account recommendations by the Commission, adopt Standards and Guidelines [concerning the duties mentioned in subparagraphs (c) to (g)] which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis [within 3 years after the adoption of these Regulations or before any Commercial Production commences, whichever takes place first];

Regulation 4 [IWG IM]

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

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

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

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

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

3. Contractor measures pursuant to paragraph 2 ~~Such measures by Contractors~~ shall include:

(a) [Targeted and proactive consultations with any potentially affected coastal State in accordance with Article 142 of the Convention, [and as identified in the relevant Regional Environmental Management Plan], prior to submitting an application for approval of a Plan of Work;

(b) Maintaining throughout the term of the contract;

(i) Monitoring of potential transboundary impacts;

(ii) Accurate and precise recording of the operational area; and

(iii) Consultations with any potentially affected coastal State, with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

4. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor or the Enterprise is likely to ~~could~~ cause harm or a threat of harmful effects to its coastline or to the Marine Environment under its jurisdiction or sovereignty, or may result in Exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the [Commission], and the Contractor and its Sponsoring State or States or the Enterprise, of such notification. The Contractor and its Sponsoring State or States or the Enterprise shall be

provided with a reasonable opportunity to examine the evidence, if any provided by the coastal States as the basis for its belief, and submit their observations thereon to the [Secretary-General] in the shortest possible time.

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

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

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to Article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with Regulation 28(3); or

(b) Other harmful effects, or threat of harmful effects, to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and the [Commission] shall recommend that the Council issue a compliance notice pursuant to Regulation 103 or direct an inspection of the Contractor's activities pursuant to Article 165 (2) (m) of the Convention and Part XI of these Regulations.

7. In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of Exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be [strictly] liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired, [and the Authority shall require the Contractor to pay compensation, proportionally to the damage caused] [and taking into account any compensation already claimed against the Contractor in national proceedings brought in accordance with Article 235 of the Convention].

Regulation ~~46~~ 7-alt. *[previously 47 Alt.][IWG ENV]*

Environmental Impact Assessment Process

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

2. The purpose of an Environmental Impact Assessment under this Regulation shall be to [identify and inform the Authority's assessment of an application of a Plan of Work under Regulations 13 to 16, or a Contract's continued adherence to these Regulations and] predict [and evaluate the

~~potential~~ Environmental Impacts, ~~effects and risks~~ anticipated from the proposed activities ~~on the marine environment and identify necessary measures to Mitigate or manage such effects and risks~~, to enable the Authority to assess the potential adverse Environmental Effects ~~and risks~~, with the aim to:

(a) Ensure effective Protection for the ~~M~~marine ~~E~~environment from harmful effects which may arise from such proposed activities;

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

(c) ~~Prevent~~ ~~harm to the Marine Environment arising out of the proposed activities;~~

(d) Ensure, in accordance with ~~article 142 of~~ the Convention ~~and Regulation 4~~, that the Sponsoring State ~~or States~~ and the Contractor, ~~with respect to resource deposits in the Area which lie across limits of national jurisdiction,~~ conduct the Environmental Impact Assessment with due regard to the rights and legitimate interests ~~and duties~~ of ~~adjacent affected~~ coastal States ~~and any other potentially most affected coastal State~~ by maintaining, ~~targeted and proactive~~ consultations ~~in accordance with Regulation 93 ter 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 Convention, the Agreement, the Rules, regulations and procedures~~ of the Authority, ~~general International Law, including the Convention~~ and the applicable Standards and taking into ~~consideration account the relevant applicable~~ Guidelines as well as, Best Available Scientific Information, Best Environmental Practices, and Best Available Techniques.

3. The Environmental Impact Assessment ~~Process~~ shall:

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

~~(a)bis Be based on a Scoping Report;~~

(b) Be carried out by ~~competent qualified,~~ ~~independent~~ experts;

(b) bis Be based on the best available ~~science and~~ scientific information, and, ~~if applicable, taking into account where available,~~ relevant traditional knowledge of Indigenous Peoples and local communities;

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

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

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

(f) Take into account the results from Test Mining, if applicable, in accordance with Regulation 48 ~~ter bis~~;

(g) Be conducted in accordance with the terms of reference developed during scoping in accordance with Regulation 47 ~~bis ter~~;

(h) Identify scientific and other knowledge gaps or data uncertainties, and ~~[assess]~~ the degree to which these influence the assessment; and

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

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

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

(b) A stage for assessment of Environmental Impacts ~~[in accordance with Regulation 47;]~~ including:

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

~~[(ii) — An evaluation of [significant and] harmful effects on the [marine] environment and ecosystem services, [based founded] on [a scientific based approach, including] clear and transparent assessment criteria and a robust evidence base, [using applying] bBest Available [science and] sScientific iInformation [and where applicable, relevant traditional knowledge of Indigenous Peoples and local communities];~~

~~[(iii) — The presentation and evaluation of potential mitigation measures, and subsequent statement of management and monitoring commitments ([together with to inform preparation of the Environmental Management and Monitoring PlanEMMP), to [monitor] mitigate, [manage], avoid and minimize [harmful] effects [to the marine environment], and monitor residual impacts;]~~

(c) A stage on the preparation and submission to the Authority of the Environmental Impact Statement to document and report the results of the Environmental Impact Assessment in accordance with Regulation 47bis, the applicable Standards and taking into ~~consideration account the [relevant]~~ Guidelines;

(d) The ~~[development,]~~ publication and review by the Commission of the Environmental Impact Statement, and publication of the ~~[Commissions]~~ report and recommendations ~~[by the Commission]~~ to the Council pursuant to Regulations 11-15;

(e) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the Environmental Impact Assessment, including any conditions imposed

upon an approval, which decision shall be recorded and published in accordance with Regulation 16, and

~~[(f) A proactive consultation by an applicant or Contractor with Stakeholders at all stages, in accordance with [the applicable relevant] Standards and taking [into] consideration account of Guidelines, which includes:~~

~~[(i) — Providing Stakeholders with access to up to date and comprehensive [environmental data and] information [relating to about] the proposed activities [their and environmental data and] impacts;~~

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

~~[(iii) — Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views;~~

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

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

Regulation 49 *(previously Regulation 46 bis) [IWG ENV]*

Environmental monitoring

[1. A Contractor shall in accordance with the Standards, and taking into consideration Guidelines, [measure,] evaluate and analyse, in accordance with Best Available Scientific information, Best Environmental Practices, and Best Available Techniques, the environmental thresholds contained in the Standards, and the risks to Environmental Effects on the Marine Environment arising from Exploitation.

2. In accordance with this Section 3, the Contractor shall:

(a) Prepare and submit an Environmental Management and Monitoring Plan;

(b) Develop, implement and maintain an Environmental Management Plan;

(c) Monitor and report on the compliance with the Environmental Management and Monitoring Plan; and

(d) Conduct performance assessments of the Environmental Management and Monitoring Plan.

3. Monitoring shall be conducted continuously during all stages of the Exploitation activities until completion of a Closure Plan, to determine whether they are having or are likely to have harmful effects on the Marine Environment.

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

[4. Alt. In implementing paragraph 1, the Sponsoring State or States and Contractor shall maintain targeted and proactive consultations with any adjacent coastal States and other potentially most affected coastal States in accordance with Regulation 93 ter with a view to avoiding infringement of their rights and legitimate interests, in accordance with the Convention.]

[Regulation 50 *(previously Regulation 46 ter)* *[IWG ENV]*

Environmental Management and Monitoring Plan

1. Each applicant or Contractor 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 Impacts and] Environmental Effects are consistent with predicted Environmental Effects from the Environmental Impact Assessment and does not breach any of the rules, regulations and procedures of the Authority, including the applicable Standards on environmental objectives, [the quantitative environmental thresholds] and [the Standards on] [requirements] for the Exploitation activities. The plan shall address any issues that arise under the Environmental Impact Statement and will set out commitments and procedures on how to monitor, mitigate and manage the [Environmental Impacts and] Environmental Effects and risks of Exploitation, including on pollution control and Mining Discharge in Regulations 53 bis and 53 ter.

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

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

(b) Incorporate measurement criteria, in accordance with the applicable Standard and reflect its methodology to determine whether the environmental objectives are being met and that the operation is compliant with rules, regulations and procedures of the Authority;

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

(i) How the [Environmental Impacts and] Environmental Effects of Exploitation will be monitored, in accordance with the applicable Standards;

(ii) How the Mitigation measures, including pollution control and Mining Discharge in Regulations 53 bis and 53 ter, will be implemented;

(iii) How the effectiveness of such measures will be monitored [and evaluated];

(iii) How Preservation Reference Zones and Impact Reference Zones, designated in accordance with Annex X bis, will be utilised and implemented;

(iv) What the management actions and responses will be to the monitoring results and new knowledge;

(v) What management and reporting systems will be adopted and followed; and

(vi) How continual improvement will be promoted, including by testing assumptions and predictions made in the Environmental Impact Statement, improving environmental knowledge, and reducing residual uncertainties remaining from the Environmental Impact Assessment process.

3. bis The Contractor shall conduct monitoring for the entire duration of the Exploitation activities and comply with any post-closure monitoring requirement according to Regulations 59-61 and the applicable Standard.

[3. bis Alt. The applicant or Contractor shall [endeavour to] engage with [potentially directly affected] Stakeholders and in accordance with [Regulation 93 ter,] Standards, and taking into consideration Guidelines, during the development of the Environmental Management and Monitoring Plan.]

[4. The Contractor shall allocate sufficient resources and assign [clear] roles, responsibilities [and management reporting] to implementation of, and compliance with its Environmental Monitoring and Management Plan commensurate with the relevant risks and impacts [of the Exploitation activity]].

Regulation 52 *[IWG ENV]*

Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor shall conduct performance assessments of [its] Environmental Management and Monitoring Plan, [in accordance with this Regulation]. The Commission shall review the performance assessments of the Environmental Management and Monitoring Plan in accordance with the applicable Standard and taking account of the Guidelines. In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall assess:

(a) The compliance of the Exploitation activities with the Mitigation and management measures included in the Environmental Management and Monitoring Plan, as a part of the approved Plan of Work;

(b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto;

(c) The conformity of the plan with measures included in the applicable Regional Environmental Management Plan [including any revisions or updates to the Regional Environmental Management Plan that may be adopted from time to time,];

(d) The accuracy of the findings of the Environmental Impact Assessment as set out in the Environmental Impact Statement;

(e) That any relevant changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities, [that were not taken into account in developing or previously updating the Environmental Management and Monitoring Plan which are relevant,] are reflected [according to Good Industry Practice, Best Available Techniques and Best Environmental Practices];

(f) The [ability of the Environmental Management System effectively to implement the Environmental Management and Monitoring Plan, including the] outcomes of management reviews [and audits] of the Environmental Management System are conducted under Regulation 50 bis (2);

(g) The efficacy, timeliness, relevance and accuracy of flow of] information and data derived from monitoring the Exploitation and its impacts on the Marine Environment, and Impact Area, [including the Mining Area];

(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; and

(g) ter Any finding of the Inspectors, especially those findings that indicate the non-compliance of the Contractors towards the submitted and approved Environmental Monitoring and Management Plan, as well as the recommendations on measures to be taken as shown in the inspection result.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least every 24 months.

2 bis An [additional] ad hoc performance assessment [under this Regulation] may [also] be requested by the [Compliance Committee] following:

(a) An Incident [or Notifiable Event];

(b) Receipt of an unsatisfactory annual report;

(c) Issuance of a compliance notice; or

(d) When deemed necessary by the [Committee following investigation into third-party information submitted to the [Authority].

3. A Contractor shall hire a competent and Independent Auditor to [carry out the performance assessment required for the purpose of this Regulation and shall submit the findings in a] report to the Secretary-General in accordance with, and in the format set out in, the applicable Standards and taking into consideration Guidelines.

4. [The Contractor shall conduct a consultation regarding the Performance Assessment Report with all States and Stakeholders in accordance with Regulation 93bis.]. The Commission shall review the performance assessment report and any stakeholder comments received [within 60 Days of receipt of such report and comments]. The [Commission] shall, where necessary and appropriate, consult external competent, independent experts in its review of the performance assessment.

5. Where the Commission upon review of the report and any submission received in relation to it [under Regulation 93 bis], considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, to the applicable Standards [and Guidelines], the Commission may require, after providing the Contractor with a reasonable opportunity to address any inadequacies, the Contractor to:

(a) Submit any relevant supporting documentation or information requested by the Commission including a revised report; or

(b) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.

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

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

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Commission shall:

(a) Recommend to the [Compliance Committee] to consider issuing a compliance notice under Regulation 103 or;

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be [treated the same way as a modification of a Plan of Work pursuant to Regulation 57 mutatis mutandis]. [If a revised Environmental Management and Monitoring Plan is required, the Contractor shall conduct a consultation regarding the revised Environmental Management and Monitoring Plan with States and Stakeholders in accordance with Regulations 93bis.]

9. The Commission shall report annually to the Council on performance assessments [conducted pursuant to this Regulation,] and any action taken pursuant to paragraphs 5 to 8. Such report shall include any relevant recommendations for the Council's consideration, [and] shall be published on the Authority's website.

10. The Secretary-General shall inform the Sponsoring State or States of any action taken pursuant to this Regulation.

Regulation 58 *[IWG IM]*

Review of a Plan of Work

1. A Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract [or by decision of the Council based on the recommendations of the Commission] in accordance with the applicable Standards and taking into consideration Guidelines, including where any of the following events or changes of circumstance have occurred:

[1. Alt. Activities under a Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:]

[(a) A proposed Material Change in the implementation of the Plan of Work;]

[(a) bis Identification of a new significant environmental risk, or a significant change to existing risk calculations;]

[(a) bis Alt. Information has come to light that was not available when the Plan of Work was approved, including changes in Best Available Techniques or Best Available Scientific Information, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;]

(a) ter An indication that the cumulative effects of Exploitation activities exceed any environmental thresholds established under the applicable Standards [and objectives established under the applicable Regional Environmental Management Plan;]

(a) quat New significant information relevant to the effective Protection of the Marine Environment;

(a) quin Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved;

(a) sexies A request by another international body concerning other activities or measure in the Marine Environment pursuant to Regulation 31;

(b) Any Incident;

(c) Recommendations for improvement in procedures or practices following an inspection report under Regulation 100;

(d) A performance assessment which requires action under Regulation 52(8);

(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;

(f) Significant changes in Best Available Techniques;

(g) Significant changes in Best Available Scientific Information;

(g) bis Significant changes in Best Environmental Practices;

(h) Operational management changes, including changes to subcontractors and suppliers, whereby the Commission, after review with the Contractor of the Contractor's activities under the Plan of Work, shall recommend to the Council whether any modifications to the Plan of Work are necessary; [and][or]

(h) bis Changes in the overall policy of the Authority.

2. A review of activities under paragraph 1 shall be undertaken by the Contractor and verified by an independent expert in accordance with the applicable regulations, Standards and taking into consideration Guidelines. The [Secretary-General][or][and][the Contractor] shall invite the Sponsoring State or States, and relevant coastal States, to participate in the review. The results of the review shall be compiled as a report.

3. The Secretary-General shall forward the report on each review to the Commission and Council, and the Sponsoring State or States. Where, as a result of a review Material Changes need to be made to the Plan of Work, the Commission shall recommend the relevant changes to the Council, and the Contractor shall implement them.

[3. Alt. The person or persons in charge of the review shall report on each review to the Commission and Council, the Sponsoring State or States and the relevant coastal States. Where, as a result of a review, the Council, Commission, Contractor or reviewer identifies that modifications need to be made to the Plan of Work Regulation 57(2) and, where applicable, Regulation 57(3) shall apply.]

4. For the purpose of the review, the Contractor shall provide all information required by the Secretary-General in the manner and at the times as may be necessary for the purposes of this Regulation.

5. Nothing in this Regulation shall preclude the Commission or the Council, the Sponsoring State or States, or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, Exploitation Contract or the activities under the Exploitation Contract in cases other than those listed in paragraph 1.

6. The Secretary-General shall make publicly available the findings and recommendations resulting from a review of activities under this Regulation.

Regulation 93 bis *[President's Text]*

Stakeholder Consultation

1. Consultation with States and Stakeholders shall be inclusive and transparent, be conducted in a timely manner [and in accordance with Regulation 93 ter]

1 bis Where these Regulations require consultation with States and Stakeholders by an applicant, or a Contractor, consultation shall be conducted in accordance with this Regulation, applicable Standards, and taking into consideration Guidelines.

2. The applicant or Contractor shall provide the Secretary General with a list of [potentially directly affected] Stakeholders [and States within scope of Regulation 93 ter].

3. At least 2 weeks before the consultation begins, the Secretary General shall correspond directly with all States and [potentially directly affected] Stakeholders advising that that the consultation will occur and shall publish such advice at the Authority's website.

4. The Secretary General shall determine the consultation period for each consultation, which shall begin on the date of the publication of a notice of consultation and may not be less than:

a) [45]/[60] Days for a consultation relating to a scoping report prepared pursuant to Regulation 47 bis; and

b) [60]/[90] Days for all other consultations.

5. The Secretary General shall prepare a notice of consultation. The notice of consultation shall invite States and Stakeholders 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. The applicant or Contractor 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 at the Authority's website and send written notice of consultation to States and [potentially directly affected] Stakeholders.

7. During the consultation period, the applicant or Contractor shall [endeavour to] conduct engagement with States and [potentially directly affected] Stakeholders public engagement, and in accordance with [Regulation 93 ter] applicable Standards, and taking into [consideration] Guidelines. The Secretary General may direct the applicant or Contractor 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 applicant or Contractor. The applicant or Contractor shall consider the submissions received and may revise the documentation that was the subject of consultation. The applicant or Contractor shall prepare a written response to consultation that collates 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. The applicant or Contractor shall submit the written response, with any revised documentation, to the Secretary-General for transmission to the Commission.

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 at the Authority's website (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 93 ter *[President's Text]*

Consultations with coastal States

[1. Targeted and proactive consultation with adjacent coastal States and any other ~~[coastal States adjacent to the areas of a planned activity when they are]~~ potentially most affected States, shall take place at different stages of a Plan of Work, when documents are being developed and at other appropriate times during and at cessation of Exploitation activities, in particular at the development of:

(a) Environmental Plans;

(b) Any review/update of the Environmental Plans in light of Material Change;

(c) Performance Assessment; ~~[and]~~ [or]

(d) Closure Plans.

2. Potentially most affected coastal States shall be determined by taking into account the potential effects of the planned activity and include:

(a) Adjacent coastal States and any other coastal States ~~[adjacent to the areas of a planned activity]~~ whose exercise of sovereign rights for the purpose of exploring, conserving or managing natural resources may ~~[reasonably]~~ be affected by the activity;

(b) Adjacent coastal States and any other coastal States ~~[adjacent to the areas of a planned activity]~~ whose exercise of jurisdiction with regard to the ~~P~~rotection and ~~p~~reservation of the Marine Environment may be reasonably affected by the activity; and

(c) Coastal States identified as potentially affected by the REMP.

3. ~~[As appropriate.]~~ ~~T~~he Secretariat, ~~[Contractor, Sponsoring State and/or other States or relevant bodies]~~ should assist developing States, including small islands developing States, upon request, to identify potential effects of the planned activity on areas under their jurisdiction.

4. At the different stages indicated in paragraph 1 above, the following steps will be taken:

(a) The ~~C~~econtractor/~~sponsoring State~~ [Sponsoring State or States] informs the Secretary-General that [it] is ready to engage in a targeted and proactive consultation. The ~~e~~Ccontractor must then provide a geographical description of the area to be covered by the Plan of Work and may indicate any coastal State ~~[adjacent to the areas of a planned activity]~~ that [it they] believes to meet the criteria for potentially most affected States based on studies and available knowledge;

(b) The Secretary-General notifies all States, via Note Verbale, that a Plan of Work is being prepared for the area [to be covered by a Plan of Work] ~~[“X”]~~ and requests them to communicate, within ~~1...~~[30] Days, whether they meet the criteria for potentially most affected coastal States;

(c) Coastal States that believe they meet such criteria must justify this based on the criteria outlined above in Section II and other relevant information;

(d) The Secretary-General informs the ~~C~~econtractor/~~sponsoring State~~ [Sponsoring State or States] of the coastal States that have communicated that they meet the criteria for potentially most affected; and

(e) The ~~e~~Ccontractor must then undertake targeted and proactive consultations with the coastal States in question ~~[to be further developed in a standard/guideline]~~, which may address inter alia the following issues:

(i) the provision of access to information to the coastal States in question relating to the Environmental Impacts of the planed activity;

(ii) consideration of the views and comments of the coastal States in question;

(iii) provision of written responses specifically addressing such views and comments, in particular with respect to potential impacts in areas under national jurisdiction; and

(iv) revision of the planned activity, if appropriate].

5. If the planned activity includes resources that lie across limits of national jurisdiction, the ~~C~~econtractor/~~sponsoring State~~ [Sponsoring State or States] must exercise due regard to the rights and legitimate interests of the coastal States across whose jurisdiction such deposits lie, and shall:

(a) Notify the coastal State of the intention to submit a Plan of Work;

(b) Hold regular consultations with the coastal State in question to avoid violation of its rights and interests in the marine resources over which the coastal State exercises sovereignty;

(c) Obtain the prior consent of the coastal States in question if the activity could result in the exploitation of the marine resources over which the coastal State exercises sovereignty; and

(d) Provide opportunity and resources for the coastal State in question to monitor the exploitation activity within the meaning of Article 142 (1) and (2) of the Convention.}

[6. Procedures for consultations with coastal states shall be further developed in Standard and Guidelines.]

[Regulation 93 ter Alt.

Consultations with coastal States

1. Where these Regulations require consultations between a Contractor (which term, for the purposes of this Regulation, include applicant parties) and potentially affected coastal States, consultation shall be conducted in accordance with this Regulation and applicable Standards, and taking into consideration Guidelines. Potentially affected coastal States for the purposes of this regulation should be identified in accordance with Regulation 4.

2. Contractors are required to maintain targeted and proactive consultation with potentially affected coastal States in pursuing their application for the approval of a Plan of Work and during the term of their contract, in particular in relation to:

(a) Environmental Plan(s);

(b) Any review/update of the Environmental Plans in light of Material Change;

(c) Performance Assessment; or

(d) Closure Plans.

3. Consultations between Contractors and potentially affected coastal States should be organised as follows:

(a) Upon the receipt for an application for the approval of a Plan of Work, the Secretary-General notifies all States, via Note Verbale, that a Plan of Work had been submitted, specifying in the notification the area under application defined by geographical coordinates in the Plan of Work (in accordance with Regulation 8) and invite any State considering itself to qualify as a potentially affected coastal state to indicate its position within [21] Days;

(b) Coastal States that believe they meet such criteria must justify this based on Regulation 4;

(c) The Secretary-General shall inform the Contractor and all States of the coastal States that have communicated their position that they qualify as potentially most affected coastal States. Contractors and States are required to raise an objection, if any, to a notification of a State that it considers itself to qualify as a potentially affected coastal State within [21] Days, absent which the State in question should be deemed to qualify as potentially affected coastal State. If such an objection is raised, the Council shall determine whether the State in question qualifies as a potentially affected coastal State;

(d) The Contractor must undertake targeted and proactive consultations with potentially affected coastal States according to the applicable Standards and taking into consideration Guidelines.

4. If the planned activity relates to resource deposits that lie across limits of national jurisdiction of coastal States, the Contractor and its Sponsoring State must exercise due regard to the rights and legitimate interests of the coastal States across whose jurisdiction such deposits lie, and shall:

(a) Notify the coastal State of the intention to submit a Plan of Work prior to the submission of the application for the approval of a Plan of Work to the Secretary-General;

(b) Hold regular consultations with the coastal State in question to avoid violation of its rights and interests in the resource deposits over which the coastal State exercises jurisdiction;

(c) Obtain the prior consent of the coastal States in question if the activity could result in the exploitation of the marine resources over which the coastal State exercises jurisdiction; and

(d) Provide opportunity and resources for the coastal State in question to monitor the exploitation activity within the meaning of Article 142 (1) and (2) of the Convention.

Regulation 96 *quat [IWG ICE]*

Request for inspection in the event of Harm to the Marine Environment

[1. In the event of Harm to the Marine Environment ~~or and~~ the livelihood of any coastal community, ~~the [adjacent] [potentially affected]~~ coastal ~~State or~~ States which have grounds for believing such harm is caused by activities in the Area, shall notify the ~~Chief Inspector through the~~ Secretary-General in writing ~~through appropriate channels~~ of the grounds upon which such belief is based and request an inspection.

2. The ~~Chief Inspector~~~~Secretary-General~~, upon ~~such the~~ notification ~~by~~~~of~~ a Member State, shall ~~examine immediately the grounds for an inspection request and shall~~ promptly initiate inspection ~~where such grounds appear reasonable~~, and invite representatives of ~~the~~ coastal ~~State or~~ States to participate in the inspection, no later than 24 hours after such notification was made by the ~~State or~~ States to ~~facilitate~~ assessment ~~by the Council of~~ whether ~~any~~ [pollution ~~or~~] ~~the~~ harm is attributable to activities in the Area.]

Annex VIII *[IWG ENV]*

Closure Plan

1. The Closure Plan or Final Closure Plan shall be prepared and implemented in accordance with Regulation 7, the Environmental Management System, Standards and taking into consideration Guidelines and the relevant Regional Environmental Management Plan and shall include the following information:

(a) A description of the Closure objectives to ensure that the Closure of Exploitation activities is a process that is incorporated into the mining life cycle, any measures agreed or proposed to implement these, and how these relate to the mining activity and its environmental, socioeconomic and sociocultural setting;

(b) The period during which the plan will be required, which shall be determined by reference to a specified duration, achievement of a specified event or target indicator or compliance with specified terms agreed with the Authority and shall relate to the objectives of the Environmental Impact Assessment, such as recovery of impacted environment;

(c) Coordinates showing the area(s) subject to the Closure objectives accompanied by a map;

(d) A summary of the relevant regulatory requirements, including conditions previously documented, e.g. baselines;

(e) Details of the Closure implementation and timetable, including descriptions of the arrangements for the temporary suspension of Exploitation activities or for permanent Closure as well as Decommissioning arrangements for vessels, Installations, plant and removal of equipment (where applicable);

(f) Summary of data and information relating to environmental baseline for monitoring measures;

(g) A summary of the Environmental Impact Statement entailing an updated Environmental Impact Assessment for the activities that will be undertaken during Closure, if any, together with details of the identifiable remaining Environmental Effects, including any relevant technical documents or reports as well as the expected period until recovery of the environment towards natural state conditions;

(h) [The temporal and spatial intensity of monitoring to be undertaken during and after Closure needs to mirror monitoring efforts prior and during Exploitation using the same methodology to allow for full quantification of the impact as well as of any recovery from impacts]~~Details of monitoring to be undertaken during and after closure (comparable to monitoring efforts prior and during exploitation) that specify the sampling design (spatial and temporal sampling), the methods to be used and the duration of the post-closure activities];~~

(i) Details of the management measures to minimize, control, Mitigate the remaining Environmental Effects;

(j) Details of the remediation, Restoration and Rehabilitation (where possible)] objectives and activities building on those detailed in the Environmental Impact Statement and the Environmental Management and Monitoring Plan;

(k) Documentation of environmental recovery and Details of any anticipated residual impacts that may remain even after Mitigation measures;

(l) Information on reporting and management of data and information post closure including information on how data will be archived and made [publicly] available post-closure, and how the formatting of submitted datasets and reports will be consistent with best scientific practices;

(m) Details of the persons or entity (subcontractor, consultant(s)) that will carry out the monitoring and management measures under the Closure Plan or Final Closure Plan, including their qualification(s) and experience, together with details of the budget, (incl. inflation adjustment for long-term monitoring), project management plan and the protocols for reporting to the Authority under the Closure Plan or Final Closure Plan;

(n) Details of the amount of the Environmental Performance Guarantee provided under these Regulations; and

(o) Details of consultations with Stakeholders in respect of the plan.

2. The level of detail in the Closure Plan or Final Closure Plan is expected to differ between cases involving a temporary suspension of Exploitation activities~~mining operations~~, cases involving unplanned abandonment of work, and cases involving final mine closure. The content of the Closure Plan or Final Closure Plan is to be commensurate with the nature, extent and duration of activities associated with the level of closure and maturity of the project.

Annex IV [IWG ENV]

Environmental Impact Statement

13.5. Stakeholder and coastal State Consultation

Describe how comments received under Stakeholder consultation have been or will be taken into account, or why they have not been taken into account, and the reasons for that decision. The summary should be based on the detailed response of the applicant to each consulted party and be available for review.