

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

President's Consolidated Text

2. Name(s) of Delegation(s) making the proposal:

Canada

3. Please indicate the relevant provision to which the textual proposal refers.

DR 27

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

Regulation 27 Commencement of Commercial Production

1. Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, consistent with Good Industry Practice, shall make commercially reasonable efforts to bring the Mining Area into Commercial Production in accordance with the Plan of Work.

1-2. The commencement of Commercial Production shall be based on the maintenance of a certain level of production capacity for a specified number of days in accordance with the relevant Standard.

2alt. The commencement of Commercial Production shall be based on the timing of transportation of Resources recovered from the Mining Area out of the Contract Area in accordance with the relevant Standard.

~~Once the Contractor determines that it is engaging in sustained large-scale recovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards.~~

~~2. The Secretary General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the~~

~~proposal and supporting materials and approve or reject the Contractor's proposed date.]~~

- ~~3. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production under Regulation 27(2).~~
- ~~4. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the Mining Area, that Commercial Production has commenced and the location of the Mining Area.~~
- ~~5. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according paragraph 5 above.]~~

4. Any failure on the part of the Contractor to comply with this regulation and the relevant Standard may be considered under the General anti-avoidance rule established pursuant to Regulation 77 and other applicable Rules, Regulations, and Procedures.

5. The definition of commencement of Commercial Production as provided for pursuant to this Regulation shall apply to exploitation activities in the Area, without prejudice to activities in other areas of the seabed and subsoil thereof.

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

Canada had submitted a proposal (draft regulatory text and an accompanying draft standard) on a definition of the term 'Commencement of Commercial Production' which was considered by the OEWG during the March 2024 Council session. There was some discussion among members, State Parties and observers on the proposal which also included threshold examples based on Canada's domestic mining context (a 60% / 90 days combination) for illustrative purposes.

Following additional on-the-margins discussions in March and July, Canada proposes to set 30-consecutive days as the appropriate threshold for the period of a sustained minimum design capacity for production as outlined in the Draft Standard. While experience in terrestrial mining provides some useful guidance, the realities of commercial production in the context of deep-sea mining are likely to be different. In addition, Contractors will have had the opportunity to test systems during the exploration phase (i.e. under an exploration contract), as well as during the 'Test Mining' phase of the Exploitation Contract. From the perspective of the ISA, the importance of generating revenue as early as possible following the issuance of an Exploitation Contract will be an importance consideration. Moreover, a more generous temporal threshold could provide more opportunities for Contractors to

manipulate the point at which commercial production has commenced and royalty payments become liable.

Al alternative basis for the definition is also proposed in this submission. Considering the above points, as well as the importance of having a definition that is easily measurable and auditable by the ISA, a definition based on the timing of transportation of mineral-bearing ore recovered from the Mining Area being transported out of the permit area is proposed. Such a definition may well be the most straightforward to implement, easiest-to-monitor (e.g. through AIS and other existing remote monitoring electronic systems) definition for this term. The Council should therefore give due consideration to this alternative definition. All changes are highlighted in yellow.

Appendix I

Draft Text for Relevant Standards

1. The commencement of Commercial Production shall be defined as the point in time when the recovery, for commercial purposes, of **Resources** ~~Minerals~~ from the Mining Area has reached at least **[60%]** of the design capacity outlined in initial production phase of the Mining Work Plan for ~~[390]~~ consecutive days.

1alt. The commencement of Commercial Production shall be 30 days following the date on which Resources recovered from the Mining Area for commercial purposes, have been transported out of [the waters superjacent to] the Contract Area.

2. The term [~~'recovery'~~]**['recovered']**, shall be defined as the point at which ~~Minerals~~ **Resources** from the Mining Area are transferred to the vessel hold directly following collection or removal from the Area.

- ~~3.~~ **[Once the Contractor determines that it is engaging in sustained large-scale recovery operations meet the definition of commencement of Commercial Production as established in paragraph [1]**[1alt]** which yield a quantity of materials in excess of the thresholds specified in the Standards,** the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards.

- ~~3.4.~~ **-The Secretary-General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials, as well as a verification of the date determined from inspection information** and approve or reject the Contractor's proposed date.]

- ~~4.5.~~ **Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite**

the Contractor to re-submit its proposed date of commencement of Commercial Production ~~under Regulation 27(2)~~.

~~5.6.~~ Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the Mining Area, that Commercial Production has ~~commenced~~~~begun~~ and the location of the Mining Area.

~~6.7.~~ The date of commencement of Commercial Production, will be the date confirmed to the Contractor according ~~paragraph 5 above to Regulation 27(3)~~.

~~7.8.~~ If the Authority [or Inspectorate] has reasonable grounds to believe that the Contractor's recovery rate does not achieve level defined in their Plan of Work within [6 months] of the start of recovery operations, the Contractor shall be required to Modify its Plan of Work in accordance with Regulation 57.

~~8.9.~~ The Contractor shall submit any additional information requested by the Authority [or Inspectorate] within [30] days of any such request by the Authority in accordance.