

Preamble *[President's Text]*

[...]

Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and conserving the inherent value of biological diversity of areas beyond national jurisdiction;

Convinced of the need to safeguard Underwater Cultural Heritage;

Recalling relevant provisions of the Convention, in particular articles 149 and 303;

[Recalling the United Nations Declaration on the Rights of Indigenous Peoples,]

[Affirming that nothing in these Regulations shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, or of, as appropriate, local communities,]

ALT TO ABOVE [Affirming that these Regulations shall recognized and safeguard the existing rights of Indigenous Peoples, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, or of, as appropriate, local communities,]

CYM Comment: This is a proposal for several new paragraphs for the preamble that, among other things, capture the elements of intergenerational equity and the rights of Indigenous Peoples and of, as appropriate, local communities. The first proposed paragraph is drawn from the preamble of the BBNJ Agreement. Same goes for the last two proposed paragraphs (as well as the alt to the last paragraph). The UCH IWG had differing views on the paragraphs referring to rights, so those paragraphs are in brackets. There might also be a need to refashion the current version of the preamble to read in the manner above, or vice versa.

Part I

Introduction

Regulation 2 *[IWG IM]*

Principles, approaches and policies

[...]

4. Alt. The following principles and approaches shall guide the application of these Regulations:

[...]

(h) The use of relevant traditional knowledge of Indigenous Peoples and local communities where available.

CYM Comment: The UCH IWG expressed support for the language or traditional knowledge in DR 2(4 alt)(h) that was in the Council President’s consolidated draft text of exploitation regulations.

[...]

[Regulation 4bis

Protection and Safeguarding of Underwater Cultural Heritage

1. The Authority, Contractors, and States shall at all times ensure the protection and safeguarding of Underwater Cultural Heritage.
2. No application for a Plan of Work shall be granted which does not [include provisions to] protect and safeguard Underwater Cultural Heritage]

CYM Comment: This is a proposal for a new DR 4bis that establishes an obligation to protect and safeguard UCH. There were differences in the UCH IWG as to whether to have this standalone DR, as well as whether to have the text in paragraph 2 on “include provisions to”. Thus, the entire DR is in brackets, and so is the afore-mentioned text in paragraph 2.

[Regulation 4ter

Committee on Underwater Cultural Heritage

1. A Committee on Underwater Cultural Heritage (“the Committee”) is hereby established to assist the Council in carrying out its responsibility to assist the Council protect and safeguard Underwater Cultural Heritage
2. The Committee shall comprise 11 members elected by the Assembly. Members shall be Members of the Authority or representatives of observers referred to under Rule 82 of the Rules of Procedure of the Assembly. The Committee shall include a majority of representatives from Indigenous Peoples and local communities.
3. Without limiting the powers and functions conferred upon another organ of the Authority the Committee shall:
 - a. Provide recommendations to the Council on matters relating to Underwater Cultural Heritage
 - b. Advise the Legal and Technical Commission on all matters relating to Underwater Cultural Heritage
 - c. Liaise with Indigenous Peoples
 - d. Perform any other duties that the Council directs in writing
 - e. Provide recommendations to the Assembly in its development of general policies of the Authority relating to Underwater Cultural Heritage
 - f. Make recommendations and take decisions as provided in these Regulations
 - g. Make recommendations and take decisions as to the identification of Stakeholders, including Indigenous Peoples and local communities
4. The Committee shall develop its own rules of procedure, which shall be approved by the Council.
5. Decisions of the Committee shall be taken by consensus. If all efforts to achieve consensus have been exhausted, decisions shall be taken by a majority of members present and voting. In the case of a tie, the Chair of the Committee shall have the decisive vote.

6. The Committee shall meet at regular intervals preferably using virtual means.

7. The Secretary-General shall provide such administrative support to the Committee as is required.

CYM Comment: This is a proposal for the establishment of a new Committee on Underwater Cultural Heritage. There are differences of views within the UCH IWG on whether to have establish such a Committee at all or task an existing body of the ISA (e.g., the LTC, the Council) to carry out (some of) the functions listed above. The entire DR is thus in brackets.

Regulation 13 *[IWG IM]* Assessment of applications

[. . .]

4. The Commission shall determine if the proposed Plan of Work foreseeably contributes to realizing the benefits for humankind as a whole and ~~complies is consistent~~ with the fundamental policies and principles contained in Regulation 2, and;

[. . .]

(c) ~~[alt 1. Demonstrates that the Environmental Plans will secure] [alt 2. Provides under the Environmental Plans to secure] [alt 3. Ensures though the Environmental Plans will secure][alt 4. Demonstrates that the Plan of Work and the accompanying plans and information will ensure for~~ the effective Protection of the Marine Environment in accordance with the Convention and the Rules, regulations and procedures of the Authority ~~rules, regulations and procedures adopted by the Authority, in particular the fundamental principles and the relevant policies under regulation as well as taking into account~~ the objectives and measures under the applicable Regional Environmental Management Plan, ~~[and taking into account the cumulative effects of all Rrelevant Aactivities, and climate change]. [For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that:~~

[. . .]

(E) Degradation, or risk of degradation to areas of special biological, scientific, archaeological, ~~or~~ historical or cultural significance;

[. . .]

5. For the purposes of determining effective Protection of the Marine Environment under Regulation 13 (4)~~(c)(e) and (f)~~, the Commission must take into account:

[. . .]

(a) Traditional knowledge or cultural interests relevant to the area under application;

[. . .]

5 bis The Commission shall determine whether the draft plan of work and the accompanying plans and information demonstrate that the proposed activities will not interfere with any

cultural rights or interests][have considered relevant traditional knowledge of Indigenous Peoples and local communities where available or other cultural interests].

CYM Comment: This is a proposal to amend DR 13(4)(e)(E) to specify that the objects of the potential degradation are sites, as well as to include a reference to “cultural” significance. There is also a proposal to amend paragraph 5bis of this DR to clarify that the LTC’s determination should be of whether the proposed activities have considered relevant traditional knowledge of Indigenous Peoples and local communities where available or other cultural interests (similar to language in paragraph 5(a) above) rather than whether those activities will not interfere with any cultural rights or interests. There were differences of views in the IWG on this, so both options are presented as bracketed alternatives to each other.

Regulation 13 Alt.

Assessment of applicants and application

[. . .]

6. The Commission shall determine whether the application meets the following criteria:

[. . .]

(c) The application provides for benefits for humankind, reasonable regard for other activities, effective Protection of the Marine Environment, and Protection of cultural rights or interests, in accordance with paragraphs 7 to 10 of this regulation.

[. . .]

9. In considering whether an application provides for effective Protection of the Marine Environment, the Commission shall determine:

[. . .]

(a) Whether the Plan of Work ensure effective Protection of the Marine Environment, in accordance with all applicable environmental requirements in the Convention, Agreement, and the rules, regulations and procedures of the Authority, taking into account:

[. . .]

(vii) Traditional knowledge or cultural interests relevant to the Protection of the Marine Environment:

[. . .]

10. In determining whether an application provides for the protection of cultural rights or interests, the Commission shall:

(a) Determine whether the application adequately identifies such cultural rights or interests;

(b) Demonstrates that the Plan of Work will not interfere with any cultural rights or interests; and

(c) [Adjust text based on the outcome of the intersessional WG on this topic].

CYM Comment: The UCH IWG expressed support for the UCH-related text in this DR, as highlighted above.

Regulation 15 [IWG IM]

Commission’s recommendation for the approval or disapproval of a Plan of Work

[. . .]

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[. . .]

(b) part or all of the area covered by the proposed Plan of Work is included in:

[. . .]

[(v) any other area **designated** **identified** for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;]

[...]

CYM Comment: This is a proposal to insert “identified” in paragraph 2(b)(v) as an alternative to “designated”, given that the latter could imply a more formal process involving one or more other ISA bodies, whereas the area in question could be identified more readily at least at the outset. There were differences of views in the UCH IWG on this point, hence the presentation of the options as bracketed alternatives to each other.

Part III

Rights and Obligations of Contractors

[...]

Section 2

Matters relating to production

Regulation 28 *[President's Text]*

Maintaining Commercial Production

[...]

3. Notwithstanding paragraph 1 above, the Contractor shall immediately ~~reduce or~~ suspend production whenever such reduction or suspension is required to protect the Marine Environment ~~[from Serious Harm or a threat of Serious Harm]~~ or to protect human health and safety ~~to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety~~ or to protect human remains or sites of archaeological or historical nature Underwater Cultural Heritage. A Contractor shall notify the Secretary-General and the Sponsoring State or States of such a reduction or suspension of production as soon as is practicable and no later than [72] ~~[24]~~ hours after production is reduced or suspended.

[...]

CYM Comment: This is a proposal to reinsert previously deleted text on protecting human remains as well as to insert text on UCH in lieu of the reference to "sites of archaeological or historical nature."

Section 5

Incidents and notifiable events

[...]

~~Regulation 35~~ *[President's Text]*

Human remains and objects and sites of an archaeological or historical nature

1. The Contractor shall ~~[without undue delay]~~ notify the Secretary General in writing within 24 hours of any finding in the Contract Area of any human remains of an archaeological or historical ~~[and paleontological]~~ nature, or any object or site of a similar nature, and its location, including the Preservation and Protection measures taken. The Secretary General shall transmit such information, ~~[within 7 Days of~~

receiving it] to the Sponsoring State [or State], to the State from which the remains, object or site originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. [Such] human remains, object or site in the Contract Area should be disposed of for the benefit of humankind as a whole or preserved, so that no further Exploration or Exploitation shall take place, within a reasonable radius, [to be determined by the Authority in consultation with the Contractor], after taking into account the views of the State from which the remains or objects originated. [If the Council decides that Exploration or Exploitation cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or appropriate waiver of fees.]

2. As part of its decision-making process in paragraph 1, the Authority shall take into account the work of the Authority and the work of the United Nations Educational, Scientific and Cultural Organization with respect to underwater cultural heritage, [particularly as defined in Article 1(a) of the 2001 Convention on the Protection of the Underwater Cultural Heritage].

CYM Comment: This is a proposal to delete DR 35 in its entirety and work instead on the basis of DR 35alt below. There was broad support in the UCH IWG to do so.

Regulation 35alt

Chance discovery of human remains and Underwater Cultural Heritage

1. Exploitation activities in the Area shall be conducted in a way that does not affect human remains and/or Underwater Cultural Heritage.
2. The Contractor shall notify the Secretary-General in writing within 24 hours of any chance discovery of suspected human remains and/or Underwater Cultural Heritage in the Contract Area, and their location. The notification shall include the provisional mitigation and preservation measures taken to avoid any interference with these human remains and/or Underwater Cultural Heritage and their archaeological and natural context and within a reasonable radius thereof.
3. Following the discovery of any such human remains and/or Underwater Cultural Heritage, and in order to avoid their disturbance, no further exploitation shall take place, within a reasonable radius, based on the type of resource and as informed by relevant Standards and taking into consideration relevant Guidelines, until the [Council][Commission] adopts a decision in accordance with paragraph 5. Pending any action by the [Council][Commission], the Secretary-General may suggest to the Contractor further provisional measures to preserve the human remains and/or Underwater Cultural Heritage and their archaeological and natural context taking into consideration [the applicable relevant guidelines][generally accepted underwater archaeological standards][the recommendations of the Committee on Underwater Cultural Heritage].
4. The Secretary-General shall transmit in writing within 48 hours the information concerning the discovery and the provisional measures suggested to the contractor, if any, to all Members of the Authority, the President of the Council, the Director General of the United Nations Educational, Scientific and Cultural Organization, as well as to

any other relevant international organization or other stakeholders having asked the Authority to be notified in such cases.

4 alt. The Secretary-General shall transmit such information in writing, within two (2) days of receiving it:

(a) to all States parties;

(b) to the Director General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and to any other competent international organization; and

(c) to all accredited observers.

4 alt bis. Any State party may declare its interest in being consulted on how to ensure the effective protection of the human remains and/or Underwater Cultural Heritage. Such a declaration, shall be transmitted to the Secretary-General within ten (10) days of the notification of the discovery by the Secretary-General, [and shall be based on a verifiable link to the human remains or Underwater Cultural Heritage concerned,] with particular regard being paid by the declaring State to its preferential rights as a State of cultural, historical or archaeological origin. [The sponsoring State and the flag State of the mother-vessel from which the exploitation is being carried out shall be considered interested States.]

4 alt ter. Within fifteen (15) days of the notification of the discovery by the Secretary-General, a meeting of the interested States referred to in the previous paragraph shall be convened to include the contractor, the Secretary-General, the Director General of the UNESCO and accredited observers. [Only States parties shall have the right to vote, but the views of the Contractor, the Director General of the UNESCO and accredited observers shall be taken into account.]

4 alt quater. Within fifteen (15) days of the convened meeting, the meeting of the interested States shall make to the [Council][Commission] one of the following recommendations:

(a) that the contractor may continue with their exploitation activity;

(b) that further investigation should be necessary to suggest an appropriate recommendation, in which case, the convened meeting shall have an additional fifteen (15) non-extendable days to do so; or

(c) in the case of human remains, that the remains shall be preserved under [relevant][best][generally accepted underwater] archaeological standards or practices, with a proposal made to the Council to create an [Area of Particular Environmental Interest] [Area of Particular Cultural Interest]; or

(d) that other protection measures shall be applied to human remains and/or Underwater Cultural Heritage.

5. After ascertaining the views of Member States, particularly those with preferential rights under Article 149 of the Convention, within sixty 60 days of the notification of the discovery by the Secretary-General, the Council shall make a decision on the termination of exploitation activities within an area surrounding the discovered human remains and/or Underwater Cultural Heritage. The Council may also suggest to the Member States any measure necessary for the preservation and protection of the human remains and/or Underwater Cultural Heritage and their archaeological and natural context taking into consideration [the applicable relevant guidelines][generally accepted underwater archaeological standards][the recommendations of the Committee on Underwater Cultural Heritage].

5alt. After ascertaining the views of Member States, particularly those with preferential rights under Article 149 of the Convention, and all other interested parties identified in paragraph 4 alt ter, and taking into consideration the relevant Guidelines, the Commission shall, at its next meeting and in any case within 60 days of the notification of the discovery by the Secretary-General, make a determination with respect to the discovery of suspected human remains and/or Underwater Cultural Heritage. The determination of the Commission may include one or more of the following:

- (a) confirmation of the nature of the discovered human remains and/or Underwater Cultural Heritage;
- (b) a determination of the buffer zones;
- (c) a requirement for the Contractor to provide additional information or share additional data with the Authority;
- (d) a determination as to the termination of exploitation activities within a clearly defined area surrounding the discovered human remains and/or Underwater Cultural Heritage; or
- (e) any other matters that the Commission determines to be appropriate and necessary in the circumstances and in light of the applicable Guidelines.

The Commission may also suggest to the Member States any measure to preserve the human remains and/or Underwater Cultural Heritage and their natural context taking into consideration the applicable Guidelines.

[5bis. If the Commission determines that exploitation activities cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or appropriate waiver of fees in accordance with the applicable Standard.]

6. *(IF PARA 4 RATHER THAN PARA 4 ALT AND REST OF SERIES IS CHOSEN)* In taking such a decision, the Council will also take into account the views of the United Nations Educational, Scientific and Cultural Organization and of other international organizations mentioned in paragraph 4, as well as the views of any other mentioned stakeholders or non-Member States of the Authority if so decided by the Council.

7. The [Council][Commission] shall forward all information used in making its decision under paragraph 5, including the location of the human remains and/or Underwater Cultural Heritage, to the Secretary-General for inclusion in the Authority's database. Access to such information shall be decided by the Council under Part IX on 'Information-gathering and handling' of this Regulation.

7 bis No decision shall be taken by the Council about the disposal, protection or preservation of a wreck entitled to sovereign immunity and associated human remains without the consent of the flag State.

[...]

CYM Comment: This is a proposal for an alternative approach to the one taken in DR 35. The proposal establishes a multi-part system of protection for the chance discovery of human remains and/or UCH, with various obligations for the respective actors and bodies involved in the system. There remain divergences in the UCH IWG on the role of the LTC versus that of the Council, whether to take the approach in paragraph 4 or the more detailed approach in paragraph 4 alt and its related series of paragraphs, the ability of certain actors/entities (including a new Committee on Underwater Cultural Heritage) to contribute to or otherwise participate in the system of protection, the types of actions/determinations that could be taken under the

system of protection, and whether impacted Contractors are entitled to compensation, among other issues. These points of divergences are captured with the use of brackets as well as alternatives in the proposal.

Part IV

Protection and Preservation of the Marine Environment

Section 1

Obligations relating to the Marine Environment

Regulation 44 *[IWG ENV]*

General Obligations

1. The Authority, Sponsoring States, the Enterprise, Contractors, flag [port States] [and the States of registry of or having authority over installations, structures, robots, and other devices] [where they are members of the Authority] shall take necessary measures to ensure effective Protection of the Marine Environment from harmful effects which may arise [directly or indirectly] from Exploitation in the Area, in accordance with Regulations as well as applicable Standards and taking into consideration Guidelines referred to in Regulation 45 and the relevant Regional Environmental Management Plan and to this end shall, as applicable in their respective areas of competence:

[. . .]

[(c) Apply scientific-based approach and integrate Best Available Scientific Information and [where available, relevant traditional knowledge of Indigenous Peoples and local communities] in decision-making;

CYM Comment: This is a proposal to unbracket the text in paragraph 1(c) on traditional knowledge.

[Regulation 44 ter

Environmental Goals and Objectives

[. . .]

7. The Authority's strategic Environmental Objectives are to:

[. . .]

(1) Prevent degradation [or [reduce the] risk of degradation] to special biological, scientific, archaeological, or historical significance of the Area or the Marine Environment; and

[. . .]

CYM Comment: This is a proposal to either insert the text on reducing the risk of degradation (with the understanding that it is practically impossible to eliminate risk) or delete the entire phrase referring to risk (whether directly or its reduction). There were divergences in the UCH IWG on these points, so they are presented as nesting sets of brackets.

Section 2

The Environmental Impact Assessment Process

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

Environmental Impact Assessment Process

3. The Environmental Impact Assessment [Process] shall:

[. . .]

(b) bis Be based on the best available ~~[science and]~~ scientific information and, where available, 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;

(c bis) Include an underwater survey to identify human remains and/or Underwater Cultural Heritage that are located in or otherwise associated with the areas of the proposed Exploitation activities;

[. . .]

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

[. . .]

(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 Δavailable [science and] sScientific iInformation [and where applicable, relevant traditional knowledge of Indigenous Peoples and local communities];~~

[. . .]

CYM Comment: This is a proposal to open brackets and delete some text in paragraph 3(b bis) to refer to traditional knowledge in the manner referred to elsewhere in the President's consolidated draft text (as well as in the BBNJ Agreement). It is also a proposal to add a new sub-paragraph (c bis) in paragraph 3 to require the inclusion of an underwater survey to identify human remains and/or UCH located in or otherwise associated with areas of proposed Exploitation activities as part of the EIA process.

Regulation 47 ~~bis alt.~~ [IWG ENV]

Environmental Impact Assessment

1. The applicant or Contractor shall, in accordance with the Standards, and taking into ~~consideration~~ ~~account the~~ Guidelines, undertake an impact assessment, ~~[as described in Regulation 46 (4).]~~ based on the Terms of Reference ~~[agreed]~~ in the Scoping report; ~~[to describe the impacts on the marine environment and Underwater Cultural Heritage and to predict the nature and extent of the Environmental Effects of the mining operation, including residual impacts, on the marine environment and Underwater Cultural Heritage, also considering cumulative impacts, including existing and foreseen mining operations, other activities and natural phenomena.]~~ This includes assessing:

[. . .]

(e bis) The extent to which human remains and/or Underwater Cultural Heritage may be altered or otherwise affected by the impact

2. ~~[In]~~ ~~U~~ndertaking the impact assessment, the applicant or Contractor shall complete:

[. . .]

(b) Identification of measures envisaged to ~~[prevent, minimize, control,]~~ **[monitor,]** mitigate and manage Environmental Effects and risks to as low as reasonably practicable, while within acceptable levels in accordance with environmental Standards, including through the development and preparation of an Environmental Management and Monitoring Plan **as well as an Underwater Cultural Heritage Management Plan;**

[. . .]

CYM Comment: This is a proposal to insert a new subparagraph (e bis) in paragraph 1 to specify that an EIA must assess, e.g., the extent to which human remains and/or UCH may be altered or otherwise affected by an impact that is assessed under an EIA. It also inserts a reference to the preparation of a Underwater Cultural Heritage Management Plan (“UCHMP”) in paragraph 2(b).

Regulation 47 ~~bis ter alt.~~ [IWG ENV]

Scoping Report

[. . .]

3. In undertaking the Environmental Impact Assessment scoping process, the applicant or Contractor, shall:

[. . .]

(e) Use the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities.

(e bis) Review the Best Available Scientific Information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and conduct consultations with relevant Stakeholders to identify, to the extent possible, potential areas containing human remains and/or Underwater Cultural Heritage that are located in or otherwise associated with the areas of the proposed Exploitation activities

[. . .]

CYM Comment: This is a proposal for a new subparagraph (e bis) in paragraph 3 to require reviews for and consultations about science and traditional knowledge during the scoping stage of an EIA in order to identify potential areas containing human remains and/or UCH that could then be part of the EIA proper (similar to language in DR 46(3)(c bis) above).

Regulation 48 bis ~~Alt~~ [IWG ENV]

New Environmental Impact Assessment and Revised Environmental Impact Statement [Revision for change or new or increased effect or risk]

1. [If a Contractor becomes aware that any of the circumstances listed in paragraph 2 below have not been addressed by either an Environmental Impact Assessment or an environmental management and monitoring plan, it shall promptly notify the Secretary-General in writing, including:

[. . .]

(c) details of any Environmental Impact Assessment conducted or to be conducted, or proposed modification to the Environmental Management and Monitoring Plan or Underwater Cultural Heritage Management Plan

[. . .]

3. The Secretary-General shall transmit the information received from the Contractor under paragraph 1 above to the Commission. The Commission shall assess the information and determine whether the Contractor shall:

[. . .]

(b bis) prepare a revised Underwater Cultural Heritage Management Plan

4. Where required by the Commission, the Contractor shall submit a revised Environmental Impact Statement or revised Environmental Management and Monitoring Plan or Underwater Cultural Heritage Management Plan to the Commission for review.

CYM Comment: This is a proposal to add references to UCHMPs.

[Section 3 bis

Underwater Cultural Heritage Management Plan

[Regulation 52 bis

Underwater Cultural Heritage Management Plan

1. Each applicant or Contractor shall prepare an Underwater Cultural Heritage Management Plan in accordance with this Regulation.

2. The purpose of an Underwater Cultural Heritage Management Plan is to manage and confirm that observed impacts and effects on Underwater Cultural Heritage are consistent with predicted Effects from the Environmental Impact Assessment and do not breach any of the rules, regulations and procedures of the Authority, including any applicable Standards on Underwater Cultural Heritage. 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 Impacts and Effects and risks of Exploitation on Underwater Cultural Heritage.

3. The Underwater Cultural Heritage Management Plan shall include all elements and matters prescribed by the Authority in Annex xx to these Regulations and shall:

(a) incorporate any recommendations made by the Commission and approved by the Council, including measures and procedures on :

- (i) How Underwater Cultural Heritage will be safeguarded and protected;
- (ii) What the management actions and responses will be to monitoring results and new knowledge;
- (iii) What management and reporting systems will be adopted and followed;
- (iv) Modification of practices based on monitoring results of intangible cultural heritage impacts;
- (v) Incorporation of new information to protect Underwater Cultural Heritage;
- (vi) Measures taken to preserve, protect and actively monitor Underwater Cultural Heritage;
- (vii) Steps to be taken by the applicant or Contractor to engage with Stakeholders and take into consideration Guidelines, during the development of the Underwater Cultural Heritage Management Plan.
- (viii) Ongoing consultation with stakeholders, including Indigenous Peoples and Local Communities, on the protection and safeguarding of intangible Underwater Cultural Heritage, according to the directions of the Underwater Cultural Heritage Committee.

4. The Applicant or Contractor shall submit the draft Underwater Cultural Heritage Management Plan to the Underwater Cultural Heritage Committee and shall implement any additions, changes or deletions as directed by the Committee.]

[Regulation 52 ter

Compliance with the Underwater Cultural Heritage Management Plan

Each Contractor shall, in accordance with these Regulations, implement and adhere to its Underwater Cultural Heritage Management Plan and shall:

(a) Monitor continuously in accordance with applicable Standards on the effects of its activities on Underwater Cultural Heritage, to document the actual effects on Underwater Cultural Heritage and manage all such effects as an integral part of its Exploitation activities as set out in the applicable Standards and taking into consideration any applicable Guidelines

(b) Report annually in writing to the Secretary-General on the implementation and results of the Underwater Cultural Heritage Management Plan. The Secretary-General shall transmit the reports to the Underwater Cultural Heritage Committee and publish such reports in accordance with Regulation 92bis. The Secretary-General shall also transmit annual reports to the Commission and publish them pursuant to Regulation 38(3).

- (c) Provide information on the implementation and compliance of the Underwater Cultural Heritage Management Plan in its annual report in accordance with Regulation 38 for evaluation by the Underwater Cultural Heritage Committee;
- (d) Implement all necessary mitigation and management measures to ensure the Protection and safeguarding of Underwater Cultural Heritage as set out in the Underwater Cultural Heritage Management Plan and applicable Standards and taking into account applicable Guidelines;
- (e) Consult with Stakeholders as needed according to the recommendations and directions of the Underwater Cultural Heritage Committee and at least quarterly;
- (f) Follow the recommendations and directions of the Underwater Cultural Heritage Committee; and
- (g) Monitor compliance with, assess, and maintain the currency and adequacy of its Underwater Cultural Heritage Management Plan during the term of its Exploitation Contract, including as a result of management review or audit or any performance assessment under Regulation 52 quater, and with modification to the Plan of Work under Regulation 57, provided that the Underwater Cultural Heritage Committee may make recommendations or directions to modify the Plan of Work.]

[Regulation 52 quater

Performance assessments of the Underwater Cultural Heritage Management Plan

1. A Contractor shall conduct performance assessments of its Underwater Cultural Heritage Management Plan, in accordance with this Regulation, in consultation with Stakeholders. The Underwater Cultural Heritage Committee shall review the performance assessments of the Underwater Cultural Heritage Management Plan in accordance with the applicable Standard and taking account of the Guidelines. In conducting such a performance assessment of the Underwater Cultural Heritage Management Plan, the Contractor shall assess:

- (a) The compliance of the Exploitation activities with the Underwater Cultural Heritage Management 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) The outcomes of management reviews and audits of the Underwater Cultural Heritage Management Plan;
- (f) The implementation report of the Underwater Cultural Heritage Management Plan, as well as the comments and evaluation from the Commission;
- (g) Any finding of the Inspectors, especially those findings that indicate the noncompliance of the Contractors towards the submitted and approved Underwater Cultural Heritage 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 Underwater Cultural Heritage Management Plan and shall occur at least every 12 months. An additional ad hoc performance assessment 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 Compliance Committee or the Underwater Cultural Heritage 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 applicable Guidelines.

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

5. Where the Underwater Cultural Heritage Committee 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 Underwater Cultural Heritage Committee 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 Underwater Cultural Heritage Committee 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 Underwater Cultural Heritage Committee.

6. Where the Underwater Cultural Heritage Committee has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor consistent with the applicable Standards, the Underwater Cultural Heritage Committee 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 Underwater Cultural Heritage Committee under paragraph 4 above, the Underwater Cultural Heritage Committee concludes that a Contractor has failed to comply with the terms and conditions of its Underwater Cultural Heritage Management Plan or that the plan is determined to be

inadequate in any material respect, the Underwater Cultural Heritage Committee 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 Underwater Cultural Heritage Management Plan, taking into account the findings and recommendations of the Underwater Cultural Heritage Committee. 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 Underwater Cultural Heritage Management Plan is required, the Contractor shall conduct a consultation regarding the revised Underwater Cultural Heritage Management Plan with States and Stakeholders in accordance with Regulations 93bis.

9. The Underwater Cultural Heritage Committee shall report annually to the Commission and 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.]]

CYM Comment: This is a proposal to create a new Section 3bis in Part IV and populate it with three new DRs on UCHMPs, which are modelled on similar DRs on EMMPs in existing Section 3 of Part IV. There were divergences in the UCH IWG on whether there should be such a new Section, and so I have placed the entire Section (as well as its individual DRs) in to brackets.

There has also been a proposal that in lieu of a dedicated section on UCHMPs, existing DRs 50, 51, and 52 as well as Annex VII should be revised to incorporate UCH matters into the broader EMMP system regulated therein. That alternative proposal is replicated in full below, with that entire proposal in brackets and presented as a possible alternative to Section 3bis in its entirety, as well as the UCH-related insertions therein presented in brackets.

[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 [and effects on Underwater Cultural Heritage] are consistent with predicted Environmental Effects [and effects on Underwater Cultural Heritage] 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 [Underwater Cultural Heritage,] 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[, including impacts and effects on Underwater Cultural Heritage,] 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] [, including in relation to Underwater Cultural Heritage];
 - (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, [including newly discovered Underwater Cultural Heritage];
 - (v) What management and reporting systems will be adopted and followed[, including in relation to Underwater Cultural Heritage]; 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[, including in relation to Underwater Cultural Heritage].
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 51 [IWG ENV]

Compliance with the Environmental Management and Monitoring Plan

A Contractor shall, in accordance with these Regulations, implement and adhere to its Environmental Management and Monitoring Plan and shall:

- (a) Monitor continuously in accordance with the applicable Standard, on Environmental Monitoring and on the Environmental Effects of its activities on the Marine Environment, including a comparison between baseline data and monitoring data, as well as a comparison between baseline data and threshold values, to document the actual effects on the Marine Environment and manage all such effects as an integral part of its Exploitation activities as set out in the applicable Standards and taking into consideration Guidelines referred to in Regulation 45;
- (b) Report annually in writing, to the Secretary-General on the implementation and results of the Environmental Management and Monitoring Plan in accordance with Regulation 38, subparagraph 2(g). The

Contractor shall submit to the Secretary General environmental data and information in the required standardized format, in real time or at [monthly intervals]/[annually], consistent with best scientific practices, and in accordance with the applicable Standards, and taking into account the applicable Guidelines. The Secretary General shall release the environmental data and information publicly in accordance with Regulation 92bis. The Secretary-General shall transmit annual reports to the Commission for its consideration pursuant to Article 165 of the Convention and publish them pursuant to Regulation 38(3);

(c) Provide information on the implementation and compliance of the Environmental Management and Monitoring Plan in its annual report in accordance with Regulations 38, subparagraph 2(g), for evaluation by the Commission;

(d) Implement all applicable Mitigation and management measures to ensure the effective Protection of the Marine Environment from harmful effects [and to ensure that exploitation activities are conducted in a way that does not negatively affect Underwater Cultural Heritage], as set out in the [plan and] [applicable] Standards and taking into account [applicable] Guidelines; and

(e) Monitor compliance with, assess, and maintain the currency and adequacy of [its] Environmental Management and Monitoring Plan and its Environmental Management System during the term of its Exploitation Contract, including as a result of management review [or audit] under Regulation 50 bis, [or any] performance assessment under Regulation 52, and with modification to the Plan of Work under Regulation 57.

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 [and newly identified Underwater Cultural Heritage] [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.1) The completeness of documentation and reporting on Underwater Cultural Heritage finds and impacts, including efficacy and sufficiency of protocols for reporting new discoveries of Underwater Cultural Heritage];

(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.

Annex VII [IWG ENV]

Environmental Management and Monitoring Plan

[...]

2. An Environmental Management and Monitoring Plan shall contain:

(a) A non-technical summary of the main conclusions and information provided to facilitate understanding by members of the Authority and Stakeholders;

(a) bis Outline the guiding principles which apply to the monitoring approaches;

(b) A description of the project and the area likely to be affected by the proposed activities and by any suspension plumes they generate, including any known or suspected effect on Underwater Cultural Heritage. Include detailed location maps showing proposed Impact Reference Zones and Preservation Reference Zones as well as locations of other nearby contract areas or known seabed infrastructure, the Preservation Reference Zones, the Impact Reference Zones and the surrounding area with reference to the Regional Environmental Management Plan including any buffer zones to prevent damage to these areas;

(b) ter A description as to how the Environmental Management and Monitoring Plan has been prepared;

(c) The project-specific environmental objectives, indicators and thresholds based on baseline environmental data and applicable Standards;

(c) bis A description of the environmental baseline data, measured baseline values for parameters at the site, including any known or suspected Underwater Cultural Heritage, a characterization of the area proposed to be mined, adjacent areas that could be affected by mining, areas that will be avoided due to their environmental value or due to the presence of Underwater Cultural Heritage;

(d) A description, [prepared in accordance with the applicable Standard and taking into consideration Guidelines] of how the monitoring data will be transmitted during operations, how the data will be labelled and monitored by qualified personnel, and how the data will be stored;

(e) The qualifications and proposed location of the personnel monitoring the [environment];

(f) A description of the procedures for providing the Authority and the Sponsoring State or States access to or receipt of the monitoring data for the purposes of monitoring compliance with the terms of an Exploitation Contract and collection of data.

(g) Details of or cross-references to the Contractor's Environmental Management System documentation;

(i) implementing the measures reflected in the Environmental Management and Monitoring Plan,

(ii) monitoring, recording and reporting fulfilment of the Environmental Management and Monitoring Plan, and

(iii) regularly reviewing and updating the Environmental Management and Monitoring Plan to ensure that it complies with rules, regulations, and procedures of the Authority;

(h) An assessment of the predicted Environmental Effects of the proposed activities on the Marine Environment and Underwater Cultural Heritage, and any significant changes likely to result, consistent with the Environmental Impact Assessment and the Environmental Impact Statement;

(h) bis. A description of uncertainties identified from the Environmental Impact Assessment and the plan to reduce or manage these, [including encountering previously undiscovered Underwater Cultural Heritage and processes for responding to such finds];

(i) An assessment of the significance of the potential Environmental Effects to receptors identified in the Environmental Impact Statement, their key uncertainties, proposed monitoring approach and objectives, and proposed Mitigation measures and management control procedures and responses to minimize, prevent, reduce and control the harm from Environmental Effects, consistent with the Environmental Impact Assessment and the Environmental Impact Statement;

(j) A description of the planned monitoring programme, with reference to the applicable Standard on Monitoring, and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Management and Monitoring Plan, including the necessary risk assessment and techniques for managing these risks, including the use of monitoring data to validate predictive models and reduce uncertainties, and adaptive management techniques, if appropriate, needed to achieve the desired outcomes. Each component should be described separately in a manner consistent with sections 7-10 of Annex IV. Monitoring methodology/results should provide a sufficient degree of confidence that conclusions in the Environmental Impact Statement can be validated and that agreed performance standards are being met (monitoring should have the statistical power to detect changes in environmental state). The components of the monitoring programme should, at a minimum, include those applicable to the Contractor during its Exploration phase to allow for comparison of monitoring data. [Any planned monitoring programme should cover known and suspected Underwater Cultural Heritage];

(k) Details of the proposed monitoring stations across the Contract Area, including the frequency of monitoring and data collection, the spatial and temporal arrangements for such monitoring and the justification for such arrangements, including how in situ validation of modelled results will be carried out. [Where Test Mining was conducted,] proposed monitoring stations should, at a minimum, include the monitoring stations used during [test] mining [];

(l) The location and planned monitoring and management of Preservation Reference Zones and Impact Reference Zones designed in accordance with the criteria contained in Annex X bis, as well as other spatial management planning tools if any;

(l) bis The location and boundaries of planned or established long-term protected areas within the Contract Area as determined in the applicable Regional Environment Management Plan as well as of declared PRZs of neighbouring Contract Areas, if known;

[(l)bis.1 The location and boundaries of planned or established buffer zones around identified Underwater Cultural Heritage;

(l)bis.2 Details of any planned operational controls in accordance with the applicable Standard around identified or suspected Underwater Cultural Heritage;]

(l) ter Details of any plans outside of the Contract Area to increase scientific knowledge and other knowledge/information in the relevant region, including in collaboration with other Contractors or via international cooperation efforts, as well as in collaboration with Indigenous Peoples and local communities, [including in relation to Underwater Cultural Heritage;

(l)quater A description of procedures to implement revisions to the existing measures based on the monitoring results and new knowledge in relation to Underwater Cultural Heritage;]

(m) A description, with threshold levels, of the applicable environmental performance Standards and indicators (trigger and threshold points) to be monitored, including decision rules based on the results of the monitoring of these indicators;

(n) A description of a system for ensuring that the plan shall adhere to [] [] Best Environmental Practices and Best Available Scientific Information, and a description of how such practices are reflected in the proposed Exploitation activities;

(o) Details of the quality control and management standards, and how the effectiveness of management measures will be monitored, assessed and reviewed, including list of reporting deliverables to the Authority

and time schedule, plans for real-time reporting of environmental data to the Authority, internal and external auditing and reporting of environmental performance, and including the frequency of the review of the performance of the Environmental Management and Monitoring Plan for the purposes of Regulation 51;

[(o) bis: A description of a statistically sound comparison of the monitoring results collected within the Contractor's IRZs and PRZs which compare the monitoring results with the baseline as well as between IRZs and PRZs to determine and quantify impacts and recovery of impacted areas.]

(p) A description of the monitoring technology and system to be implemented, including the types of data to be collected and monitored, and frequency of monitoring, in accordance with Good Industry Practice and Best Available Techniques, reflecting the types of data and formats to be collected and monitored, the use of remote monitoring technology and the types of data available in real time together with a description of the procedures for providing the Authority and the Sponsoring State or States access to the monitoring system and data for the purposes of monitoring compliance with the Environmental Management and Monitoring Plan and collection of data;

(q) Details of [all] training programme for all persons engaged or to be engaged in activities in the project [or its] area;

(r) Details of [Mining] Discharges, including those defined and regulated by relevant rules and regulations issued by the International Maritime Organization, within the project area;

(s) Details of ongoing consultation with other users of the Marine Environment;

(s) bis. Details of arrangements made or planned with other marine users, with the aim to ensure due regard to each other's rights and activities;

[(s)bis.1 Details of the procedures and measures to be taken in accordance with the applicable Standard in response to new finds of previously undiscovered Underwater Cultural Heritage encountered during activities in the project area;]

(t) Details of any practicable Restoration and Rehabilitation of the project area and the monitoring of their success;

(u) A plan for further research and studies, [including into Underwater Cultural Heritage];

(u) bis Detail of the process and measures to be taken in case of non – compliance with the Environmental Monitoring and Management Plan.

(u) ter A description of the measures that will be taken to address non-compliance with the Environmental Monitoring and Management Plan, including reporting, recording and response action protocols; (u) quat A description of the document control system that will be used for environmental management documentation;

(v) Details of reporting requirements and timing (<2 years) including details of the methodology to be applied to ensure that monitoring data submitted are provided in an accessible and interpretable format consistent with best scientific practices; and

(x) An overview program (list) of all proposed activities

]

Part VI

Closure plans

Regulation 59 [IWG ENV]

Closure Plan

[. . .]

2. [In developing] The Closure Plan [the Contractor] shall, in accordance with the requirements of Annex VIII, set out the responsibilities and actions of a Contractor during any temporary suspension, and also for the Decommissioning and Closures of activities in a Mining Area, including the post-closure management and monitoring of remaining Environmental Effects. In fulfilling these responsibilities, the Contractor shall, inter alia:

[. . .]

(c) [Identify, quantify, assess and detail the management measures for the] Final environmental condition of the area, including the state of remaining [resources reserves], the oceanographic, geological, biological, socioeconomic and sociocultural condition, and the risks relating to [residual remaining] Environmental Effects are identified, quantified, assessed and managed in accordance with Best Available Scientific Information, Best Available [Techniques Technologies—Best Available Technologies] and Best Environmental Practices, which includes the gathering of information relevant to Closures or suspension;

[. . .]

CYM Comment: Support was expressed by the UCH IWG for the UCH-related text highlighted above.

Part XI

Inspection, compliance, and enforcement

Section 1

Inspections

[. . .]

Regulation 99 *[IWG ICE]*

Inspectors' power to issue instructions

[1. If, as a result of an inspection, an Inspector has reasonable grounds to determine that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of [Serious] Harm to the Marine Environment ~~for to human remains and objects and sites of an archaeological or historical nature and/or Underwater Cultural Heritage~~, the Inspector shall give a written instruction, which will have immediate effect, of a temporary nature considered reasonably necessary to remedy the situation, in accordance with any applicable Standards, including:

[. . .]

CYM Comment: This is a proposal to lift the brackets highlighted above and replacing “sites of an archaeological or historical nature” with UCH.

Annex III bis [IWG ENV]

Scoping Report

An ~~[environmental Impact Assessment]~~ Scoping Report shall include the following:

[. . .]

(c) A description of what is known about the environmental setting, including ~~[any] human remains and/or Underwater Cultural Heritage~~ for the project (Contract Area and regional setting);

[. . .]

(e) A summary of existing environmental baseline studies, and, where available, relevant traditional knowledge of indigenous peoples and local communities;

[. . .]

(g) A ~~[brief]~~ description of the socioeconomic and sociocultural aspects of the project ~~[including sociocultural uses of the project area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities)];~~

[. . .]

CYM Comment: This is a proposal to insert a reference to human remains in paragraph (c) and support the UCH reference there, as well as remove the brackets in paragraph g.

Annex IV [IWG ENV]

Environmental Impact Statement

[. . .]

Executive summary

One of the main objectives of the executive summary is to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers. Information provided in the executive summary should include:

[. . .]

(c) A description of anticipated and cumulative, risks and impacts of the activity, as assessed by experts, (including, but not limited to, oceanographic, geological, biological, socioeconomic and sociocultural) including the expected spatial extent and duration of impacts and cumulative impacts in relation to the identified baselines, and the expected recovery rates of the system to its original state;

[. . .]

3. Description of the proposed project

Provide details of the proposed project and the area of influence of the project or Impact Area, including relevant diagrams and drawings. It is understood that most projects will likely involve the recovery of Minerals from the Area, with the concentrating process(es) occurring on land within a national jurisdiction (outside the jurisdiction of the Authority). While this section should provide a description of the entire project, including offshore and land-based components, the Environmental Impact Statement should focus on those activities occurring within the Authority's jurisdiction (e.g., activities related to the recovery of the Minerals from the Area up to the point of trans-shipment).

Details to be provided under this section should include the headings listed below.

3.1. Project area definition

3.1.1. Location

Include coordinates of the project area, detailed location maps (drawn to scale), showing the relevant sites proposed as Contract Area and Mining Area and any other features that can be usefully marked upon the map at the time of application, including the locations of **I**mpact **R**eference **Z**ones and **P**reservation **R**eference **Z**ones as well as locations of other nearby contract areas or known seabed infrastructure. Provide general location of the project on a regional map.

[Provide a map (drawn to scale), and list the coordinates detailing the location of the project area, with the proposed Contract Area, the sequence of areas planned to be mined (Mined Areas), the Impact Reference Zones (IRZ) and Preservation Reference Zones (PRZ) for each Mined Area, and the presumed impact zones covering the benthic and pelagic extent of sediment plumes created by the Exploitation activities.

Add any other features that can be usefully marked upon the map at the time of application, including the locations of other nearby contract areas or known seabed infrastructure. Provide general location of the project on a regional map.]

The map should indicate Areas of Particular Environmental Interest, Sites/Areas in Need of Protection, or other sites designated for particular status under the rules, regulations, procedures of the Authority, applicable Standards and taking into consideration Guidelines, or relevant Regional Environmental Management Plans ~~of the Authority, [as well as area-based designations. This may also include sites]~~ of other competent authorities, as well as information on any other known conservation or spatial measures and other uses of the Marine Environment (e.g. submarine cables and pipelines, long-standing scientific research sites and established fishing areas) in the vicinity of the project area. The map shall also identify the nearest coastal States and States that may be affected by Exploitation activities, and any adjacent [ISA] contract sites. The map shall also identify areas designated for protection or preservation under the relevant Underwater Cultural Heritage Management Plan. This map may be the same as the map supplied in Annex 1 Section II.

CYM Comment: This is a proposal to insert a reference UCHMP as being referenced in the map in this paragraph.

[...]

3.8 Environmental management measures to Mitigate impact

Provide a summary description of [the sufficiency of information on environmental management measures and] [reasonable] measures taken to [avoid, reduce and] Mitigate adverse impacts to the physical, chemical, geological, biological, socioeconomic, and sociocultural environment, [while developing the project].

CYM Comment: There was support expressed for the UCH-related text here.

[...]

3.15. Methodology for Assessment of potential Environmental Impacts and Environmental Effects to the Marine Environment

For each assessment of potential Environmental Impacts and Environmental Effects in sections 7 and 8 and socioeconomic [and sociocultural] environment in section 9, describe the methodology used to assess impacts and Environmental Effects from proposed operations and alternatives considered in section 3.7. in line with the applicable regulations and Standards and taking into consideration account the applicable Guidelines.

Data [and], predictive models, [and computer code] used to analyse and provide a description of the Marine Environment shall be included in the Annexes to the Environmental Impact Statement or, if the data [and/or], model, [and/or code] has been previously submitted to the Authority, other location where such information has been made available online. Each description of methodology used to assess impacts shall include:

- (a) a description and justification of analyses and models used to summarize the data; and
- (b) any limitations associated with the analysis or results.

~~[In accordance with Regulation 47quater, where predictive models have been used these shall be reviewed by competent independent experts and the relevant review reports shall be provided as annexures to the Environmental Impact Statement.]~~

[...]

CYM Comment: There was support expressed for the UCH-related text referenced here.

6. Description of the existing human activities, socioeconomic and **sociocultural** environment

This section should describe the socioeconomic and **sociocultural** environment aspects and potential impacts of the project on existing human activities. This may include consideration of the scale of effects (such as the creation of jobs and estimates of the risk of Environmental Impacts), extent of duration of impacts in time and space, intensity or severity of social impacts and an assessment of whether impacts are likely to be cumulative. It is important to consider the social equity or distribution of impacts across different populations: in other words, which groups are likely to be affected in which ways.

CYM Comment: There was support expressed for the UCH-related text referenced here.

[...]

6.2. Existing uses

6.2.5. ~~his~~ **Sociocultural values and uses**

List **sociocultural [values and]** uses the project area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities as well as known or suspected objects or sites of an archaeological or historical nature, ~~taking into account the work of the United Nations Educational, Scientific and Cultural Organization referred to in Regulation 35(2).~~

[...]

CYM Comment: There was support expressed for the UCH-related text. It is also proposed to delete the reference to UNESCO, as DR 35(2) has been deleted in favor of DR 35alt.

6.3. Sites of an archaeological, historical **or cultural** significance

List any sites of archaeological, ~~or~~ historical or cultural significance that are known to occur within the potential area of impact. Provide a map as applicable showing known archaeological and historical sites in relation to proposed operations and note any areas of interaction or cumulative impact ~~taking into account the work of the United Nations Educational, Scientific and Cultural Organization referred to in Regulation 35(2).~~ The Authority may decide to limit the public disclosure of the map in order to prevent looting of the sites or similar actions.

CYM Comment: There was support expressed for the UCH-related text referenced here. This is also a proposal to insert the word “cultural” in the title of 6.3, delete the reference to UNESCO (for the same reason as in Section 6.2.5 above), and add text on limiting the public disclosure of the map referenced here in order to prevent looting of the mapped sites.

6.4. Summary of existing socioeconomic and **sociocultural** environment

Summarize key findings regarding the socioeconomic and **sociocultural environment**. It is envisaged that this section will be up to a page in length, and more extensive than the key messages.

CYM Comment: There was support expressed for the UCH-related text referenced here.

[...]

9. Assessment of impacts on the socioeconomic and **sociocultural environment and proposed Mitigation**

Provide a detailed description and evaluation of potential impacts and Environmental Effects of the operation to the socioeconomic and **sociocultural** components identified in section 6. This should include projections on the potential impacts in national waters outside the Mining Area and should also consider the entire lifespan of the project i.e. construction/development (pre-commissioning), operational (including maintenance) and Decommissioning phases. A description of the benefits to humankind may be included. Attitudes towards, and perceptions of, the proposed project are among the variables that should be considered in determining the significance of impacts. The potential for accidental events [and natural hazards] should also be considered.

CYM Comment: There was support expressed for the UCH-related text referenced here.

[...]

9.2. Impact identification

[...]

9.2.2 Impacts on **Sociocultural values and uses**

A description of potential impacts and issues to be addressed pertaining to **sociocultural uses of the area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities), along with proposed management measures and a description of residual impacts.**

CYM Comment: There was support expressed for the UCH-related text referenced here.

[...]

9.3. Impacts on Sites of an archaeological, ~~or~~ historical or cultural nature

Describe, as applicable, potential impacts to sites of archaeological, ~~or~~ historical or cultural significance that are known to occur within the potential area of impact, along with proposed management measures, ~~taking into account the work of the United Nations Educational, Scientific and Cultural Organization referred to in Regulation 35(2).~~

CYM Comment: There was support expressed for the UCH-related text referenced here. This is also a proposal to insert a reference to cultural in the title of Section 9.3 as well as in its body, and to delete the reference to UNESCO (for the same reasons as above).

[...]

9.5. Summary of socioeconomic and **sociocultural environment**

Summarize findings on management measures, residual effects, and any potential impacts and effects, (including to **sociocultural** conditions). A table may be a useful summary format to pull together the above elements in a simple visual mode. Potential cumulative effects should also be included.

[...]

CYM Comment: There was support expressed for the UCH-related text referenced here.

Schedule

Use of terms and scope

[. . .]

“Underwater cultural heritage” includes tangible and intangible underwater cultural heritage.

“Tangible underwater cultural heritage” refers to all traces of human existence found in the Area which have been underwater for at least 100 years, having a cultural, historical or archaeological character, or are associated with intangible underwater cultural heritage, such as human remains, objects of prehistoric character, sites, structures, buildings, artifacts, vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context. [It also refers to objects or sites which are the subject of intangible underwater cultural heritage.]

“Intangible underwater cultural heritage” refers to practices, representations, expressions, knowledge, skills, and traditions that are transmitted from generation to generation – as expressed in the instruments, objects, artefacts, flora, fauna and cultural spaces associated therewith – that communities, groups, or, in some cases, individuals recognize as part of their cultural heritage; and relate to the underwater environment and its interaction with human cultures. This may include, but is not limited to, traditional navigation knowledge, oral histories associated with maritime landscapes, spiritual and ritual practices linked to water bodies, and artisanal fishing techniques.

[. . .]

“Protection” means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to environment, land, ecosystems, or natural resources, [remains, or Underwater Cultural Heritage] by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts.

[. . .]

“Stakeholder” means a natural or juristic person or an association of persons, [including Indigenous Peoples as well as local communities,] 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, [knowledge] or expertise.

[. . .]

CYM Comment: This is a proposal to introduce a new term of art “Underwater Cultural Heritage”, which would be defined as including “tangible underwater cultural heritage” and “intangible underwater cultural heritage”. Each of those two items would then be defined separately, drawing heavily from the 2001 and 2003 UNESCO Conventions on the matters. There were divergences of views in the UCH IWG on whether to tie intangible UCH so closely to tangible UCH, so there are brackets around relevant language in that regard.

This is also a proposal to insert new text in the definition of “Protection” to refer to the protection of human remains and UCH from environmental impacts, as well as to insert a reference to Indigenous Peoples as well as local communities in the definition of “Stakeholder”. There were divergences of views in the UCH IWG on whether to have these two insertions, so they are presented in brackets.