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## **Draft regulations on exploitation of Mineral resources in the Area**

### **Revised Consolidated Text**

#### **Explanatory note**

1. A Consolidated text was provided for the twenty-ninth session, on 16 February 2024 (ISBA/29/C/CRP.1). A reading was conducted during the first and second part of the twenty-ninth session.
2. Based on the negotiations during the first and the second part of the twenty-ninth session and the written proposals submitted during this period, this Revised Consolidated Text has been prepared by the President of the Council of the twenty-ninth session. The President has prepared this Revised Consolidated Text to assist discussions of the Council in an informal manner, and to try to harmonize and streamline the draft Regulations better, and all with a view to facilitating the finalization of the work of the draft Regulations.
3. The Revised Consolidated Text represents a revision of the Consolidated Text, and the following working modalities have been applied:
  - (a) Only those proposals in respect of which there has been no express opposition to, are reflected in the Revised Consolidated Text. This is without prejudice to their future consideration or the possibility for delegations to re-introduce textual proposals not incorporated in the present Revised Consolidated Text;
  - (b) The mark-up text in the Consolidated Text has been accepted to the extent that there has been no objection on the content. Where the President was in doubt as to whether there was consensus, the President has added square brackets;
  - (c) The new revisions are reflected as marked-up text against the versions that were provided in the Consolidated Text;
  - (d) Ideas that reflected a general direction in the discussions have been incorporated, although the precise textual formulations proposed by delegations may not have been reflected verbatim, the text presented is an attempt at reflecting a compromise of those ideas and proposals;
  - (e) Where general comments were made but no drafting suggestions were provided or where several drafting suggestions were made going in a similar direction, the President have proposed wording for the consideration of delegations;

(f) Square brackets are introduced for proposals for which conceptual discussions are expected and where further work might be requested by the Council;

(g) Alternatives have been used throughout the text to present alternative conceptual approaches. The order in which options appear in the text should not be taken as indicating any suggested order of priority; and

(h) Boxes contain explanations of revisions and/or the President's comments, where necessary.

4. Recalling that the work and result of this Revised Consolidated Text must be fully consistent with the provisions of the Convention and the 1994 Agreement, and the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional, and sectoral bodies. The Revised Consolidated Text has been prepared in that light.

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## Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”) and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”), the Area and its resources are the common heritage of humankind, and the Exploitation of the resources of the Area shall be carried out for the benefit of humankind as a whole, on whose behalf the Authority acts.

The objective of these Regulations is therefore to regulate the Exploitation of the [mineral] resources of the Area consistent with the Convention, including the duty [to take necessary measures in accordance with the Convention] to ensure effective Protection [of] ~~for~~ the Marine Environment from [harmful effects] [Serious Harm] caused by those activities.

[The Authority acknowledges the current uncertainties and limited knowledge about deep ocean ecosystems and the potential effects of activities in the Area and the need to revise these regulations in light of advancements in scientific knowledge.]

### Comments

- It has been suggested by some delegations to insert reference to “*mineral*” in the second sentence, as this is the resource referred to.
- It has been suggested to replace the convention text, “*harmful effects*” with “*serious harm*”. This must be considered as a cross-cutting issue.
- It has been suggested by one delegation to add paragraph 3 to underline that the draft Regulations are dynamic and subject to amendments in the light of evolving scientific knowledge. It should be discussed whether this addition is necessary or redundant as it might already be clear from the Convention.

## Part I

### Introduction

#### Regulation 1

##### Use of terms and scope

1. Terms used in the Convention shall have the same meaning in these Regulations.
2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These Regulations and references in these Regulations to the Convention are to be interpreted and applied accordingly.
3. [Terms and phrases used in these Regulations are defined for the purposes of these Regulations and the applicable Standards and Guidelines in the Schedule.]
4. [Subject to paragraph 1 and 3~~the Schedule~~, terms used in these Regulations shall have the same meaning as in other rules, regulations and procedures of the Authority.]

~~4. Terms and phrases used in these Regulations are defined for the purposes of these Regulations and the applicable Standards and Guidelines in the Schedule.~~

~~5. Nothing in these Regulations shall affect the rights, jurisdiction and duties of States under the Convention, [including the rights and legitimate interests of the coastal states pursuant to article 142 of the Convention], the right to conduct marine scientific research in the Area pursuant to Articles 143 and 256 of the Convention, and the exercise by States of the freedom of the high seas, in accordance with Article 87 of the Convention.~~

~~65.~~ These Regulations are accompanied by Standards and Guidelines, as referred to in these Regulations and the Annexes thereto, as well as by further rules, regulations and procedures of the Authority.

~~[66. Alt These Regulations are accompanied by Standards and Guidelines, as referred to in these Regulations and the Annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment [alt 1. including regional environmental management plans, [and conservation and management measures]] [alt 2. (6.bis) These Regulations are further complemented by Regional Environmental Management Plans.]~~

7. The Annexes, Appendices and Schedule to these Regulations form an integral part of the Regulations and any reference to the Regulations includes the Annexes, Appendices and Schedule thereto.

8. These Regulations are subject to the provisions of the Convention and the Agreement ~~[and other rules of international law not incompatible with the Convention].~~

~~89. These Regulations shall be applied in a uniform and non-discriminatory manner.~~

~~940. [Nothing in these Regulations shall affect the rights, jurisdiction and duties of States under the Convention, including the rights and legitimate interests of the coastal states article 142 of the Convention, the right to conduct marine scientific research in the Area pursuant to Articles 143 and 256 of the Convention, and the exercise by States of the freedom of the high seas, in accordance with Article 87 of the Convention.]~~

#### Comments

- Delegations continue to disagree on the preferred version for what is now paragraph 5. In respect of the reference to Regional Environmental Management Plans, it bears recalling that proposals in respect of draft regulations 12 and 13 provide for their consideration in the context of submitting and assessing applications.
- Several delegations proposed changing the order of the paragraphs, which has been implemented.
- Delegations disagreed on whether the reference to Article 142 of the Convention should be altered, and no change has been implemented thereto.
- Delegations proposed the removal of the reference to the Agreement in paragraph 7, but there remained disagreement on this. From a legal perspective and in order to ensure consistency of drafting, it is recommended to retain the reference to the Agreement.
- A number of delegations suggested that the reference to non-discriminatory treatment is better suited to appear among the principles set out in draft regulation 2, which is why it is now incorporated therein at draft regulation 2 (4(a quat)).



## Regulation 2

### Principles, approaches and policies

1. These Regulations, and any decision-making thereunder, shall be applied in conformity with the principles governing the Area embodied in Section 2 of Part XI [and in Part XII] of the Convention.

[1. bis These Regulations shall also be applied in accordance with the policies relating to activities in the Area established in Articles 150 and 151 of the Convention and in the Annex of the Agreement.]

2. [Recognizing that the rights in the Resources of the Area are vested in humankind as a whole, on whose behalf the Authority shall act,] exploitation in the Area shall be carried out for peaceful purposes and for the benefit of humankind as a whole, taking into particular consideration the interests and needs of developing States, and [while] ensuring the effective Protection of the marine environment, including biological diversity and ecological ecosystem integrity, from harmful effects which may arise from such activities in the Area consistent with Article 145 of the Convention.

[3. Exploitation in the Area shall not commence until the legal framework intended for the effective protection and preservation of the Marine Environment is adopted and scientific evidence demonstrates that the Exploitation will be conducted in such a manner as not to cause significant and harmful changes to the Marine Environment and its resources and to effectively protect and preserve the Marine Environment pursuant to article 145 and [article 209 of] Part XII of UNCLOS.]

[3. Alt. Exploitation in the Area shall not commence until:

(a) The legal framework intended for the effective protection and preservation of the Marine Environment has entered into force [and the Authority has adopted an environmental policy];

(b) The implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework is well on track in the area beyond national jurisdiction; and

(c) Scientific evidence demonstrates that Exploitation will be conducted in such a manner so as: not to cause significant and harmful changes to the Marine Environment and its resources, [pursuant to Article 196 of the Convention, and] to effectively protect and preserve the Marine Environment, [including biological diversity and ecosystem integrity] pursuant to Article 145 and Part XII of the Convention, [including biological diversity and ecosystem integrity], and not to impede the full implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework in the area beyond national jurisdiction.

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

(a) Intergenerational equity;

(a) bis The principle of the common heritage of humankind

(a) ter The principle of equity and the equitable sharing of benefits;

(a) quat The principle of uniform and non-discriminatory application;

(b) Precautionary principle or precautionary approach as appropriate;

(c) Ecosystem approach;

(c) bis An integrated approach to ocean management;

(d) Polluter pays principle;

- (e) Open access to non-confidential data, and information;
  - (f) Transparency in decision-making, including effective stakeholder involvement and public participation;
  - (g) The use of the scientific methods taking into account the Best Available Scientific Information, as defined by the Council; and
  - (h) The use of relevant traditional knowledge of Indigenous Peoples and local communities where available.]
5. Activities in the Area shall be carried out for the benefit of humankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States.
6. Members of the Authority, Sponsoring States, Contractors, and the Authority shall use best efforts to ensure that the Authority performs its functions.
7. Members of the Authority, Sponsoring States, Contractors, and the Authority shall use best endeavours in their actions to uphold public trust and regulatory integrity of the Authority, and shall not engage on decisions in which they have a conflict of interest.

**Comments**

- Delegations continue to disagree in particular on the necessity of (and if so, the preferred version of) paragraph 3. This text retains the two iterations of paragraph 3 which received some support in the past, with all remaining proposals available online on the Authority’s website.
- The revised draft also implements a number of restructuring proposals, and the text is presented in a clean version.

**Regulation 3**

**Duty to cooperate and exchange of information**

In matters relating to these Regulations:

(a) Members of the Authority, the Enterprise, Applicants and Contractors shall cooperate with the Authority [to facilitate the performance of its duties and responsibilities under the Convention, *inter alia*, by providing the Authority with] [to provide]-such data and information [as is] necessary for the Authority to discharge its duties and responsibilities under the Convention;

(b) [The Authority in cooperation with Sponsoring States shall develop effective and transparent communication, public information and public participation procedures and ensure their implementation][The Authority, and Sponsoring States, flag States, and port States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements];

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

(d) [The Authority shall consult and, where relevant, cooperate with members of the Authority, including Sponsoring States, coastal States, port States, flag States, relevant global, regional, subregional and sectoral bodies to develop measures to implement these Regulations, including to][The Authority shall consult and, where relevant, cooperate with Sponsoring States, coastal States adjacent to the Contract Area,

~~port States, flag States, competent international organizations and other relevant parties as appropriate, to develop measures to implement in these Regulations, including to]:~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(h) The Council shall, taking into account recommendations by the Commission, adopt Standards and Guidelines [concerning the duties mentioned in subparagraphs (e)~~

~~to (g)] which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis [within 3 years after the adoption of these Regulations or before any Commercial Production commences, whichever takes place first].~~

## Regulation 4

### Rights ~~and legitimate interests~~ of coastal States and duty to notify

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

~~[1bis. [The Council shall elaborate standardized criteria for] [A Standard shall govern the] the definition of potentially affected coastal States. During the consideration of an application for Exploitation the Council shall define the list of potentially affected coastal States and address the issue of the relevant rights of coastal States.]~~

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

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

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

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

(b) Maintenance ~~aining~~ throughout the term of the ~~Exploitation C~~ contract;

(i) Monitoring of potential transboundary impacts ~~[to the areas within the jurisdiction of States];~~

(ii) Accurate and precise recording of the operational area ~~[in conformity with these Regulations];~~ and

(iii) Consultations with any potentially affected coastal State, ~~[in conformity with these Regulations and Article 142 of the Convention,]~~ with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

4. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor or the Enterprise is likely to ~~could~~ cause harmful effects or a threat of harmful effects to its coastline or to the Marine Environment under

its jurisdiction or sovereignty, or may result in Exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall ~~[immediately]~~ [promptly] inform the ~~{Commission, the Council}~~, and the Contractor and its Sponsoring State or States or the Enterprise, of such notification. The Contractor and its Sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any, provided by the coastal States as the basis for its belief, and submit their observations thereon to the ~~{Secretary-General}~~ in the shortest possible time [as soon as practicable].

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

[5 Alt. Any State with grounds for believing that harmful effects to the Marine Environment were caused in any location by an activity under a Plan of Work, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall promptly inform the Commission, the Council, and Contractors of relevant Regional Environmental Management Plan Area and their Sponsoring State or States or the Enterprise, of such notification. The Contractors and their Sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, provided by the coastal States as the basis for its belief, and submit their observations thereon to the Authority. The Council shall consider such information.]

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

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and ~~{the Commission}~~ shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to Article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. [Pending the receipt of an emergency order, the Contractor shall take necessary measures in accordance with Regulation 28(3) and where applicable implement its Emergency Response and Contingency Plan pursuant to Regulation 33]~~[Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with Regulation 28(3)]~~; or

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

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

**Comments**

- Delegations continue to diverge on the role and function of Regional Environmental Management Plans (including in the context of this draft regulation). Delegations are invited to consider this matter further.
- A new paragraph 1 bis has been suggested to tackle the position of coastal States. If the Council were to agree to 1 bis, the additional reference to Regional Environmental Management Plans designating the coastal State in question in paragraph 3(a) appears to be unnecessary.
- Further proposed amends are presented based on oral and written proposals received which, to date, has not been expressly opposed.

## Part II

### Applications for approval of Plans of Work in the form of contracts

#### Section 1

#### Applications

#### Regulation 5

#### Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

(a) The Enterprise, on its own behalf or in a joint arrangement; and

(b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of the Convention and these Regulations.

2. Each application shall be submitted:

(a) In the case of the Enterprise, by its Director-General;

(b) In the case of a State, by the authority designated for that purpose by it; and

(c) In the case of any other qualified applicant, by a Designated Representative, or by the authority designated for that purpose by the Sponsoring State or States.

3. Each application by an entity referred to in Regulation 5(1)(b) shall also contain, ~~[the information required by Regulation 7 and Annex I, sufficient to enable the Authority to determine whether or not the applicant is qualified to apply according to Regulation 5(1)]~~ together with the necessary documentation as supporting evidence]:

(a) ~~[The information required by Regulation 7 and Annex I, sufficient to enable the Authority to determine whether or not the applicant is qualified to apply according to Regulation 5(1);]~~

(b) The name of the applicant, and all information necessary to determine the nationality of the applicant or the identity of the State or States by which, or by whose nationals, the applicant is effectively controlled;

~~(c)~~ The principal place of business or domicile and, if applicable, the place of registration of the applicant;

~~{(d) bis All information on the Contractor's principals necessary to allow the Authority to determine their track record in accordance with Regulation 77(4) and as required under Regulation 83 bis All information necessary on the Contractor's principals to allow the Authority to determine their track record in accordance with Regulation 77(4)};~~

~~(e)~~ All information necessary to demonstrate that the applicant has the necessary financial, technical and operational capability to carry out the proposed Plan of Work in accordance with these Regulations, applicable Standards and Good Industry Practice using appropriately qualified [and adequately supervised] personnel;

~~(f)~~ All information necessary to demonstrate the technical capability in environmental management pursuant to Regulation 13(3)(c) and Section III of Annex I

to be able to comply with the requirements of these Regulations and applicable Standards; and

~~[(c) All information necessary to demonstrate that the Contractor will, throughout the term of their contract, for the purposes of Exploitation and ancillary activities, only use vessels flagged to registries of States that are Members of the Authority, and only use ports located in States that are Members of the Authority, except where non-Member States accept to be bound by the rules, regulations and procedures of the Authority relating to compliance and enforcement, to ensure the Authority can rely upon and require the cooperation of those States for the purpose of securing compliance with the rules, regulations and procedures of the Authority.]~~

4. Each application submitted by a partnership or consortium of entities shall contain the information required by these Regulations in respect of each member of the partnership or consortium.

5. In the case of a consortium or any group, the consortium or group shall specify in its application a lead member of the consortium or group.

6. The Authority shall not accept the application if the Sponsoring State or States has not enacted legislation –pertaining to activities in the Area that complies with the requirements referred to in Regulation 105.

#### Comments

- There is some remaining disagreement on paragraph 3(d). Delegations are invited to consider its necessity.
- There was opposition to paragraph 3(e), which is therefore proposed to be removed.

## Regulation 6

### Certificate of sponsorship

1. Each application by an entity referred to in Regulation 5(1)(b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

~~[2 bis. For the purposes of issuance of a certificate of sponsorship, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.]~~

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

- (a) The name, address and contact details of the applicant;
- (b) The name of the Sponsoring State or States;



(c) A statement ~~accompanied by supporting evidence such as a passport, citizenship certificate, certificate of incorporation or other evidence of registration or nationality~~ that the applicant is:

- (i) A national of the Sponsoring State; or
- (ii) Subject to the Effective Control of the Sponsoring State or its nationals.

(d) A statement by the Sponsoring State that it sponsors the applicant, together with a description of the necessary and appropriate measures taken by the State to secure effective compliance pursuant to Article 139(2) of the Convention, and to ensure legal recourse for compensation in accordance with Article 235 (2) of the Convention;

(e) The date of deposit by the Sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and

(f) A declaration that the Sponsoring State assumes responsibility in accordance with Articles 139 and 153 (4) of the Convention and Article 4 (4) of Annex III to the Convention.

4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this Regulation.

## Regulation 7

### Form of applications and information to accompany a Plan of Work

1. Each application for approval of a Plan of Work shall be:

- (a) in the form prescribed in Annex I to these Regulations;
- (b) addressed to the Secretary-General; and

(c) prepared in accordance with these Regulations and the applicable Standards, and taking ~~into consideration~~ ~~account of~~ Guidelines.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept as enforceable ~~during all stages of the process chain~~ and comply with the applicable obligations created by the provisions of Part XI of the Convention, the Agreement, the rules, Regulations and procedures ~~of the Authority~~, ~~including the applicable Standards and taking into account any applicable Guidelines~~ ~~of the Authority~~, the decisions of the organs of the Authority and the terms of its ~~Exploitation Contract with the Authority~~;

(b) Accept control by the Authority of activities in the Area ~~during all stages of the process chain~~ as authorized by the Convention;

(c) Provide the Authority with a written ~~substantiated~~ assurance that its obligations under its ~~Exploitation Contract~~ will be fulfilled in good faith; and

~~Provide the Authority with written undertakings from parent or holding companies of the applicant, if any, to assume joint and several liability for damages to the Authority in the event of liability having been established against the applicant in carrying out of the plan of work.]~~

3. An application shall be prepared taking into account these Regulations, the applicable Standards and Guidelines, as well as the respective Regional Environmental Management Plans.

3. bis. An application shall contain sufficient information to demonstrate that the applicant has ~~[or will have]~~ access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be accompanied by the following:

(a) The data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration ~~C~~eontracts, as Annexed to the relevant Exploration Regulations;

(b) A Mining Work Plan prepared in accordance with Annex II to these Regulations;

(c) A Financing Plan prepared in accordance with Annex III to these Regulations;

(d) An Environmental Impact Statement prepared in accordance with Regulation 48 and in the format prescribed in Annex IV to these Regulations;

(d) bis A Test Mining study prepared in accordance with Regulation 48 ter [In cases where an applicant utilizes mature mining technology that has been internationally validated, there shall be no requirement to conduct Test Mining. Instead, the applicant shall provide supporting materials in relation to the mature mining technology when submitting the application];

(e) An Emergency Response and Contingency Plan prepared in accordance with Annex V to these Regulations;

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with Regulation 30 and Annex VI to these Regulations;

(g) A Training Plan in fulfilment of Article 15 of Annex III to the Convention, prepared in accordance with the Guidelines;

(h) An Environmental Management and Monitoring Plan prepared in accordance with Regulation 48 and Annex VII to these Regulations, ~~[which documents that management and monitoring [are in compliance with [take into account] the applicable Regional Environment Management Plan and based on the result of the Environmental Impact Assessment]; [including information regarding the Environmental Management System that the Contractor will implement in accordance with Regulation 50 bis and the applicable Standards, taking into consideration Guidelines.];~~

(i) A Closure Plan prepared in accordance with Regulation 59 and Annex VIII to these Regulations;

(j) An application processing fee in the amount specified in Appendix II;

~~(k) A copy of the Contractor's code of Conduct or other rules applicable to all staff involved in the execution of a proposed Plan of Work, including policies pertaining to personnel safety, environmental compliance, inclusivity, gender equality and diversity, and sustainability, which shall conform in material respects with the rules applicable to staff of the Enterprise or any other rules proposed by the Authority; and~~

(l) A copy of documents to evidence the applicant's Environmental Performance Guarantee, in accordance with Regulation 26.

4. Where the proposed Plan of Work proposes ~~2~~ two or more non-contiguous Mining Areas, the Commission shall require separate documents under subparagraphs 3 (b), (d), (h), (i) and paragraph 1 for each Mining Area, unless the applicant demonstrates [to the satisfaction of the Commission] that a single set of documents is appropriate, taking account of the relevant Guidelines. A decision can be taken by the Council in relation

to one Mining Area at this time, with subsequent decisions for further Mining Areas being deferred to a later time upon the submission of further documentation.

5. Where a single set of documents is submitted by the applicant proposing a Plan of work for 2 two or more non-contiguous Mining Areas and the Commission considers it is not appropriate, the Commission shall reject the application and request separate documents under subparagraphs 3 (b), (d), (h), (i) and paragraph 1 for each Mining Area.

#### Comments

- There has been opposition to the proposed additions to paragraph 3bis (h) and (k). These opposed previous proposals are now proposed to be removed. Delegations are invited to consider the matter.
- It has been suggested that the bulk of this draft regulation may be better placed in Annex I.
- The proposed paragraph (d) may require further definitions to be considered (on the notion of parent or holding companies).

## Regulation 8

### Area covered by an application

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of geographical coordinates in accordance with Annex 1 to these Regulations.

2. The area under application need not be contiguous and shall be defined in the application in the form of blocks comprising one or more cells of a grid, as provided by the Authority.

3. The area under application shall be an area previously subject to an Exploration Cecontract ~~[for which adequate and satisfactory][and]~~ environmental baseline- ~~[studies carried out according to the Rules, Regulations and Procedures of the Authority.][data is publicly available].~~

~~[4. The area under application must be covered by a relevant Regional Environmental Management Plan pursuant to Regulation 44bis.]~~

~~[5. In the application, the applicant shall provide an overview of other potential legitimate activities in the marine environment covered by the application, and a statement confirming whether the area under application or any part of it has received attention under any other international organisation or treaty regime.]~~

~~5 Alt. For any part of the area under application, to the extent practicable after reasonable investigations, the applicant shall indicate in the application, whether it is designated or managed [or under active consideration] under any international regime or international organization. The applicant will also indicate that it is aware of its obligation of reasonable regard to other activities in the Area in accordance with Article 147.~~

#### Comments

- There has been opposition to both iterations of paragraph 5, which is now proposed to be removed.

- Drafting changes were implemented with a view to refining the text based on discussions and written proposals received during the first part of the twenty-ninth session.

## Section 2

### Processing and review of applications

#### Regulation 9

##### Receipt, acknowledgement and safe custody of applications

The Secretary-General shall:

(a) Acknowledge in writing, within ~~7~~ Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

(b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and

~~(c) Within 30 Days of receipt of an application for approval of a Plan of Work submitted under this Part:~~

~~(i) Notify the members of the Authority of the receipt of such application and circulate to them information of a general nature which is not confidential regarding the application, and information enabling them to access a non-confidential version of the application;~~

~~(ii) Notify the members of the Commission and the Finance Committee of receipt of such application.~~

#### Comment

Paragraph (c) has been reinstated in a slightly revised format based on inputs received during the first part of the twenty-ninth session.

#### Regulation 10

##### Preliminary review of application by the Secretary-General

1. The Secretary-General shall preliminarily review an application for approval of a Plan of Work and determine whether the application contains all the information required by Regulations 5 to 8 for further processing.

~~1. bis. Where the Secretary-General considers that an application does not contain all the information required by Regulations 5 to 8, the Secretary-General shall submit it to the Legal and Technical Commission.]~~

2. Where the ~~Secretary-General~~Commission determines that an application does not contain all the information required by Regulations 5 to 8, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, and a date by which the application must be completed. Further processing of an application will not begin until the ~~Secretary-General~~Commission determines that the

application is complete, which includes all required information ~~that has~~having been submitted by the applicant, including payment of the administrative fee specified in ~~appendix H~~Regulation 86.

3. In case there is a potential applicant who claims preference and priority in the same area and same Resource category under an Exploration ~~C~~econtract in accordance with Article 10 of Annex III to the Convention, the Secretary-General shall, before progressing the original application further, request confirmation of the intention of such a potential applicant to apply for approval of a Plan of Work for exploitation within 30 Days of the original applicant's application. The new applicant shall then lodge their application within a further ~~[270]~~ [60] Days; and the Secretary General shall consider the additional application in accordance with Regulation 10(1) and (2).]

~~[3. Alt. In case an application is lodged for the same area for which an operator has preference and priority in accordance with Article 10 of Annex III first sentence, the Secretary General shall, after having made the determinations under paragraphs 1 and 2 of this Regulation, forward the application to the Commission. The Commission shall make a recommendation as to whether the operator's performance has not been satisfactory in accordance with Article 10 of Annex III based on which the Council shall decide whether the operator's preference and priority shall be withdrawn in accordance with Article 10 of Annex III second sentence.]~~

4. Should there be more than one application for the same area and same resource category or a potential applicant has confirmed their intention to apply for approval of a Plan of Work pursuant to paragraph 3, the Commission shall make recommendations to the Council, and the Council shall determine which applicant has preference and priority in accordance with Article 10 of Annex III to the Convention and section 1, paragraph 13 of the Annex to the Agreement.].

5. Where an application concerns a Reserved Area ~~[that is not or has not been subject to an Exploration Contract]~~; the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with Article 9 of Annex III to the Convention; and Section 2 of the Annex to the Agreement.].

#### Comments

- There has been opposition to the alternative proposed wording for paragraph 3, which is therefore proposed to be removed.
- In respect of the remainder of the Regulation, unopposed proposals concerning the previous text were implemented based on inputs during the first part of the twenty-ninth session. Cross-references are harmonised.

## Regulation 11

### Publication and review of the Environmental Plans

#### [Alt. Publication, notification, and review of the Application]

1. The Secretary-General shall, within 7 Days after determining that an application for the approval of a Plan of Work is ready to progress pursuant to Regulation 10, consult with all States and Stakeholders in accordance with regulation 93bis on the application. The Secretary-General shall request the Commission to provide its comments on the Environmental Plans and the non-confidential parts of the Test Mining study within the consultation period set under 93bis. Based on the assessment of the Commission, if necessary, the Secretary-General shall establish an independent review

team, making use of the roster of competent independent experts, if any, to provide comments to the Commission on the Environmental Plans within the consultation period.

2. The applicant shall consider the comments provided pursuant to paragraph 1 when fulfilling the requirement at regulation 93bis (9). The applicant shall submit any revised documentation and the written response to consultation as required by Regulation 93bis (9) to the Secretary-General within a period of 60 Days following the close of the comment period or such longer period as determined by the Secretary-General following a request by the applicant. The Secretary-General may extend this time period, upon a reasonable request by the applicant to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority's website.

2. bis The Secretary-General shall provide the Environmental Plans, and the non-confidential parts of the Test Mining Study, if applicable, and comments submitted pursuant to paragraph 1(a), together with any responses by the applicant provided pursuant to paragraph 2 bis, and any other relevant additional information to the Commission and request the Commission to provide its comments on the Environmental Plans and the non-confidential parts of the Test Mining Study, if applicable, within 90 Days.

3. The Commission shall, as part of its examination of an application under Regulation 12 and assessment of applicants under Regulation 13, examine the Environmental Plans and the non-confidential parts of the Test Mining Study, if applicable, the comments submitted under paragraph 1(a), taking into account the consultation submissions received under Regulation 93bis, the applicant or Contractor's written response prepared under Regulation 93bis (9), together with any revisions and responses provided by the applicant under paragraph 2 bis, and any additional information provided by the Secretary-General under paragraph 2, and shall provide its comments to the Secretary-General.

3. quat. The Secretary-General shall, within 7 Days after receiving comments from the Commission, provide such comments to the applicant and publish them on the Website of the Authority.

3. quin. The applicant shall consider the comments provided pursuant to paragraph (3) and shall revise the Environmental Plans or provide responses in reply to the substantive comments, and shall submit any revised plans or responses to the Secretary-General within a period of 60 Days after receipt of comments from the Secretary-General. The Secretary-General may extend this time period, upon a reasonable request by the applicant to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority's website.

4. Notwithstanding the provisions of Regulation 12 paragraph 2, the Commission shall not consider an application for approval of a Plan of Work until the application has been published and if necessary, revised in accordance with this Regulation.

5. The Commission shall prepare a report on the Environmental Plans and non-confidential parts of Test Mining Study, if applicable, which shall be published on the Authority's website, and shall be included as part of the reports and recommendations to the Council pursuant to Regulation 15. The report shall include:

(a) Details of the Commission's determination under Regulation 13(4);

(b) Details of the comments and responses submitted under paragraphs (1) and (2 bis);

[(b bis) Details of the consultation submissions comments and responses received under Regulation 93bis (8), the Commission's comments under regulation 11(1)(b), the applicant or Contractor's written response prepared under Regulation 93bis (9).]

(c) Any further information provided by the Secretary-General under paragraph (2);

(d) Any amendments or modifications to the Environmental Plans recommended by the Commission under Regulation 14 and changes subsequently made to application documents by the applicant; and

(e) The relevant rationale for the Commission's determination, with specific explanation as to any comments or responses that are disregarded.

[5. In preparing its report under paragraph 5, the Commission [may]/[shall] seek advice from competent independent experts, as necessary. The experts shall be selected and appointed taking into account the relevant Guidelines.]

6. The report of the Commission on the Environmental Plans or revised plans shall be published on the Authority's website in accordance with Regulation 92, and shall be included as part of the reports and recommendations to the Council pursuant to Regulation 15.

#### Comments

- Several proposals were once again received to substantially revised and refine the draft regulation during the twenty-ninth session, and the text thus contained significant mark-up. For the sake of clarity and aiming to offer a text suitable to attract consensus, the Regulation has been placed in a clean version. Previous iterations and proposals remain available online.
- The text of the draft heavily relies on the outcomes of intersessional work on a Standardized Approach for Stakeholder Consultation, among other inputs.
- While there were various proposals in respect of the title of the Regulation, there was opposition to alternative formulations during the 29<sup>th</sup> session. An alternative formulation is retained for the delegations' consideration.
- Several delegations opposed alternative proposals for paragraph 1, which have been removed but remain available on the website of the Authority.
- Delegations appear to disagree on the necessity of what is now paragraph 5. Delegations are invited to consider this matter.

## Section 3

### Consideration of applications by the Commission

#### Regulation 12

##### Rules for considering applications

1. Subject to Regulation 10 concerning preference and priority among applicants, the Commission shall examine applications in the order in which they are received by the Secretary-General and shall assess applications in accordance with this Regulation and against the criteria contained in Regulation 13, in order to make a report and ~~submit~~ appropriate recommendations to the Council whether the Plan of Work under application should be approved, or disapproved, pursuant to Regulation 15.

1. bis Subject to paragraph 1 ter. and to Regulation 11(4), ~~t~~he Commission shall commence the consideration of an application at its next meeting after its receipt of the application ~~f~~within 30 Days of its receipt of the application ~~}~~ ~~f~~provided that the

notifications and information pursuant to Regulation 11(1)-(2 ter) have been circulated at least ~~[30]~~[90] Days prior to the commencement of that meeting of the Commission. ~~]~~ [The Commission may extend consideration of the application to its next meeting if necessary.]

~~[1. ter The Commission may defer consideration of an application to a subsequent meeting if the complexity of the application so requires.]~~

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date on which the Secretary-General transmits the applicant's or Contractor's written response with any revised documentation, to the Commission.

[2. Alt. [The Commission] and shall endeavour to submit its reports and recommendations to the Council no later than ~~[120]/[180]/[270]~~ Days from whichever date occurs later out of:

(a) The close of the [date of the completion of the review of the Environmental Plans, under Regulation 11]~~[comment period, in accordance with Regulation 11(1)(a)];~~

(b) The date of submission [the completion of the amendments to the proposed Plan of Work under Regulation 14.]~~of a revised plan, in accordance with Regulation 11(2 bis);-or~~

~~—(c) The date the Commission receives additional information or amendments to the Plan of Work requested by the Commission under Regulation 14.~~

[2. bis. Alt. The Commission may delay its reports and recommendations under Regulation 12(2) by a further 90 Days, if additional information or consultations with experts are necessary.]

3. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner, and may not recommend approval of a Plan of Work that does not comply with these requirements.

~~3. Alt. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner, and [apply the principles, policies and objectives relating to activities in the Area as provided for in the Convention, the Preamble, and Part I of these Regulations, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for humankind as a whole in accordance with decisions of the Council and Assembly [including in ensuring the fair and equitable sharing of benefits and ensuring the effective Protection of the marine environment], and may not recommend approval of a Plan of Work that does not comply with these requirements].-~~

3. bis. In the event the Commission evaluates that there are aspects of the proposed Plan of Work that are not covered entirely by its own internal expertise, the Commission shall nominate at least three competent independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector, to review the application and provide comments to the Commission to inform their consideration of the proposed Plan of Work.

4. In considering the proposed Plan of Work, the Commission shall take into account:

(a) ~~R-Any~~ relevant reports from the Secretary-General;

(a) bis Any consultation submissions received under Regulation 93~~bisAny comments made by Stakeholders, together with any revisions and responses provided by the applicant pursuant to Regulation 11(3);~~



~~— (a) ter Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject matter;~~

(a) quat Any information supplied by the Sponsoring State or States.

~~— (b) [Any concern raised by a [relevant] adjacent coastal State [likely to be affected] with respect to the application];~~

(b) bis Any advice or reports in respect of the Environmental Plans sought by the Commission from recognized experts in the field of the protection of the marine environment listed by the Council.~~Any advice or reports sought by the Commission from competent independent experts in respect of the application;~~

(c) Any previous operating record of the applicant, including in relation to Exploitation activities within other jurisdictions, as well as the applicant's performance during the Exploration stage, including the quality of annual reports and baseline data, and the results of test Exploitation activities;

~~— (c) bis The previous operating record of the Sponsoring State(s), and the Sponsoring State(s)' technical resources and enforcement capabilities to monitor and enforce the applicant's compliance with the rules, regulations and procedures of the Authority;~~

[(d) any objectives or measures established in the relevant Regional Environmental Management Plan.]

#### **Comment**

Several proposals were received to refine this draft regulation, including to remove certain parts. These have been implemented, but the amendments remain visible for the consideration of Members. The text of the draft relies in particular on the outcomes of intersessional work on Standardizes Approach for Stakeholder Consultation.

## **Regulation 13 ~~Alt.~~**

### **Assessment of applicants and application**

1. In assessing both the applicant and the application, the Commission shall take into account all information pursuant to Regulation 12(4) and all applicable Standards and Guidelines when making its determinations under this Regulation.

2. The Commission shall determine whether the applicant meets the following criteria:

(a) The applicant is a qualified applicant pursuant to Regulation 5;

(b) The applicant has given the undertakings and assurances specified in Regulation 7(2);

(c) The applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have satisfactorily discharged their obligations to the Authority, including having a satisfactory record of past performance both within the Area and in other jurisdictions;

(d) The applicant has demonstrated that it will meet the requirements in regulation 18 bis;

(e) The applicant has the financial and technical capabilities and capacity to carry out the Plan of Work, meet or exceed environmental performance obligations and to

meet all obligations under an Exploitation Contract, pursuant to the applicable Standard, in accordance with paragraphs 3 and 4 of this Regulation; and

(f) The applicant is under the Effective Control of the Sponsoring State in accordance with paragraph 5 of this Regulation.

3. In considering the financial capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration the Guidelines, whether:

(a) The Financing Plan is compatible with proposed Exploitation activities;

(b) The applicant is capable of committing ~~for raising~~ sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any Exploitation Contract, including:

(i) The payment of any applicable fees and other financial payments and charges in accordance with these Regulations ~~in order to ensure that the project will benefit humankind as a whole~~;

(ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan; and

(iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan, and effective response to an Incident;

(c) The applicant demonstrates that it will purchase insurance products that are appropriate to the financing of exposure to risk in accordance with Regulation 36, and applicable Standards, taking into consideration the Guidelines;

(d) The applicant has proposed an Environmental Performance Guarantee whose amount and form is assessed by the Commission to be adequate, and in conformity with the requirements of Regulation 26 and the applicable Standard, and taking into consideration any Finance Committee report or the Guidelines.

4. In considering the technical capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration the Guidelines, whether the applicant has provided sufficient information to demonstrate it has:

~~[(a) Certification to operate under internationally recognised quality control and management standards;]~~

(b) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice and Best Environmental Practices using appropriately qualified and adequately supervised personnel;

(c) The technology, ~~knowledge~~[data, information], and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, ~~and taking into account~~ the applicable Regional Environmental Management Plan, including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to meet all environmental requirements;

(d) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available techniques, Best Available Scientific Information, and Best Environmental Practices, and these Regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(e) The capability to respond effectively and promptly to Incidents, in accordance with the Emergency Response and Contingency Plan;

(f) The capability and capacity to utilize and apply Best Available Techniques;

(g) A safety management system that meets the requirements of Regulation 30 bis; and

(h) An Environmental Management System that meets the requirements of Regulation 50 bis.

5. In considering whether the applicant is under the Effective Control of the Sponsoring State, the Commission shall determine:

(a) [insert wording based on outcome of intersessional work];

(b) Whether the Sponsoring State has enacted domestic legislation covering activities in the Area that:

(i) is in force and applicable;

(ii) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention; and

(iii) does not contain provisions that exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.

6. ~~[If the applicant meets the criteria set out in paragraphs 1-5.] t~~The Commission shall determine whether the application meets the following criteria:

(a) The application is accompanied by a certificate of sponsorship;

(b) The application is in conformity with these Regulations, the applicable Standards, the relevant Regional Environmental Management Plan and takes into consideration Guidelines;

(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.

7. In considering whether an application provides for benefits for humankind as a whole, the Commission shall determine:

(a) Whether the Plan of Work will provide optimum revenue to the Authority, and taking into account negative externalities caused by any damage to the Marine Environment, will benefit humankind as a whole;

(b) Whether the Plan of Work is consistent with ~~[the fundamental policies and]~~~~[the approached.]~~ principles ~~[and policies]~~ contained in Regulation 2;

(c) Whether the Plan of Work provides for the effective Protection of human life, and health and safety of individuals engaged in Exploitation, in accordance with the rules, regulations and procedures adopted by the Authority, ~~[and by any other competent international organizations]~~

8. In considering whether an application provides for reasonable regard for other activities in the Marine Environment, the Commission shall determine:

(a) Whether the Plan of Work provides for Exploitation to be carried out in line with Regulation 31 and Articles 87 and 147 of the Convention, and in accordance with the applicable Standards and taking into consideration the Guidelines;

(b) Whether the Plan of Work has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment, including to:

(i) identify in-service and ~~(to the extent information is available for the applicant)~~ planned submarine cables and pipelines in, or adjacent to, the area under application using ~~the~~ publicly-available data and resources taking into account the Guidelines;

(ii) identify sea lanes in, or adjacent to, the area under application that are essential to international navigation;

(iii) identify areas of intense fishing activity as may be defined in Standards or Guidelines in, above, or adjacent to, the area under application;

(iv) identify any other activities in or adjacent to the Contract Area in accordance with Regulation 31, including marine scientific research activities, activities relating to marine genetic resources, and environmental Protection measures and area-based management tools established or proposed by competent international organizations; and

(v) where other marine users are identified in relation to the area under application whether listed in the Regional Environmental Management Plan or identified by some other means, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities pursuant to Regulation 31.

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

(a) Whether the Plan of Work demonstrates that it will meet the Authority's Strategic Environmental Goals and Objectives under Regulation 44ter, the regional environmental objectives and measures under the relevant Regional Environmental Management Plan, and the environmental thresholds in the applicable Standards, taking into consideration the cumulative effects of all ~~[Relevant]-[Exploitation]~~ Activities ~~and climate change~~;

(b) Whether the Plan of Work, complies with the principles set out in Regulation 44(1);

(c) Whether the Plan of Work demonstrates that:

(i) it is based on adequate environmental baseline data, in accordance with applicable Standards and taking into consideration the Guidelines;

(ii) it complies with the Standards developed pursuant to Regulation 45;

(iii) the Plan of Work gives full effect to the precautionary principle or approach as appropriate;

~~[(iv) it will not cause Environmental Impacts outside of the relevant Contract Area and will not cause Environmental Impacts to any area designated by the Authority for other relevant authority] as a protected area in terms that prohibit such impact];~~

(v) it includes Preservation Reference Zones and Impact Reference Zones in accordance with the criteria contained in Annex X bis;

(vi) performance of the Plan of Work can be effectively monitored and controlled by the Authority, to minimise Environmental Effects, and ensure compliance with the rules, regulations and procedures of the Authority;

(vii) identifies and manages appropriately the ~~[certainties,] [gaps and]~~ uncertainties ~~[or inadequacies]~~ in the data or information available at the time of application; and

(viii) meets equivalent standards to relevant international rules with regards to any deliberate disposal of vessels, platforms or other man-made structures at sea.

(d) Whether the Plan of Work ensures 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:

- (i) Any Environmental [Impacts and Environmental] Effects ~~[or impact on other activities]~~ of allowing the Exploitation activity;
- (ii) All proposed Mitigation and risk management measures;
- ~~[(iii) An evaluation of harmful effects individually, in combination, as well as cumulatively, including effects from other activities in the area under application;]~~
- (iv) The effects on human health that may arise from Environmental Effects;
- (v) The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;
- (vi) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;
- (vii) Traditional knowledge or cultural interests relevant to the Protection of the Marine Environment;
- (viii) The matters set out at Regulation 46(3)(b);
- (ix) The assessment framework for Mining Discharges as set out in the Guidelines; and
- (x) Any relevant Standards and Guidelines developed in accordance with Regulations 94 and 95.

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

- (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].

#### **Comment**

During the first part of the twenty-ninth session, the alternative wording of Article 13 gained wide support, subject to a number of amendments. This alternative wording is now the only iteration appearing in the revised consolidated text, with the proposed amendments highlighted. As per the explanations accompanying these proposals, they are largely driven by the intention to remove elements deemed redundant by several delegations.

## **Regulation 14**

### **Amendments to the proposed Plan of Work**

1. At any ~~[reasonable]~~ time prior to making its recommendation to the Council and as part of its consideration of an application under Regulation 12, the Commission may:

- (a) Request the applicant to provide additional information on any aspect of the application prior to making a recommendation; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these Regulations.

2. Where the Commission makes a request under paragraph 1, the Commission shall provide to the applicant a brief justification and rationale for such a request. The applicant must respond ~~[within the timeframe requested by the Commission, which shall be at least]~~ [90 Days after the receipt of the request,] by agreeing to the request, rejecting the request, or making an alternative proposal for the Commission's consideration.

3. The timeframe referred to in Regulation 12 (2) shall be extended by the timeframe determined by the Commission pursuant to paragraph 1.

~~4. The [alt 1. Secretary General] [alt 2. Commission] shall publish any amendment, additional information, or revised application received pursuant to paragraph 2 at the website, and where these are significant, shall provide an opportunity for public consultation in accordance with Regulation 11.~~

~~5. The Commission shall then in light of take into account the applicant's response under paragraph 1 and any responses received from public consultation under paragraph 4 into account in making its recommendations to the Council.~~

**Comment**

Several delegations proposed the removal of paragraphs 4 and 5, which have now been proposed to be deleted.

## Regulation 15

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

1. If the Commission determines that the application and the applicant meet the criteria set out in Regulation 13, it shall recommend approval of the Plan of Work to the Council.

[1. Alt. The Commission may recommend approval of a proposed Plan of Work if the Plan of Work complies with all requirements stipulated in Regulation 13, and the Commission has sufficient information to determine that all requirements in Regulation 13 have been met.]

1. bis. The Commission shall provide with any recommendation for approval made under paragraph 1:

(a) a report in accordance with Regulation 11(5);

(b) a summary of the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as divergences of opinion in the Commission, if any;

(c) bis a summary of any uncertainties inherent in the Plan of Work and how the applicant has proposed to address these;

(d) any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and

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

(a) the Plan of Work does not comply with all requirements stipulated in Regulation 13 and Regulation 12(4);

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

(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant and for which the Council has decided to maintain the operator's preference and priority in accordance with Article 10 of Annex III;

(ii) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(iii) An area disapproved for Exploitation by the Council pursuant to Article 162(2)(x) of the Convention; or

(iv) an Area of Particular Environmental Interest or any other protected site disapproved for exploitation by the Council [or in respect of which the Council has set a spatial or temporal protective measure as indicated in the applicable Regional Environmental Management Plan];

(v) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these Regulations made in respect of a Reserved Area;

(vi) An area that has not been subject to prior Exploration activities;

(vii) An area not covered by a Regional Environmental Management Plan.

(c) Bis Such approval would undermine or contradict the binding goals, objectives or measures set out in other global frameworks and agreements related to the protection of the Marine Environment;

[(d) There is inadequate environmental baseline information for the area covered by the proposed Plan of Work.]

2. bis. The Commission shall not recommend approval of a proposed Plan of Work if the applicant, or its predecessor in law previously violated the general obligations of Contractors in a non-negligible way.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to Monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work in accordance with applicable Standards, taking into consideration Guidelines; or

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

(i) 75,000 square kilometres in the case of polymetallic nodules;

(ii) 2,500 square kilometres in the case of polymetallic sulphides; or

(iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts; or

4. If the Commission determines that it will not recommend approval of the Plan of Work pursuant to paragraphs (1)-(3) it shall inform the applicant in writing, providing the reasons for this determination, and shall provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the

applicant. During this period the Commission shall not make a recommendation to the Council on the application.

5. At its next available meeting, the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting.

**Comment**

Several proposals were made to this draft regulation, resulting in a considerable amount of edits. A clean text is proposed which aims to accommodate and reconcile the proposals, while retaining some of the alternative wordings on which delegations diverged.

## Section 4

### Consideration of an application by the Council

#### Regulation 16

##### Consideration and approval of Plans of Work

1. The Council shall consider the reports and recommendations of the Commission and any other relevant subsidiary body established in accordance with the Convention and the Agreement, relating to approval of Plans of Work in accordance with paragraph 11 and paragraph 12 of Section 3 of the Annex to the Agreement, after due consideration, and within 60 ~~D~~days unless the Council decides to provide for a longer period, the Council shall approve or disapprove the Plan of Work.

[2. If the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 ~~D~~days or such other time period as has been established by the Council, the Plan of Work shall be deemed to have been approved by the Council at the end of that period.]

~~[3. The Council shall disapprove a plan of work if any requirement of Regulation 13 is not fulfilled.]~~

~~3. Alt. The Council shall, when approving a Plan of Work, request the Secretary General to ensure that the contract to be concluded incorporates all conditions outlined in the draft Plan of Work and the accompanying plans, as well as any additional conditions requested by the Commission or the Council.]~~

~~4. The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of Section 3 of the Annex to the Agreement.]~~

**Comment**

Several delegations proposed the removal of paragraph 3, 3 Alt. and 4 on the basis that their stipulation is redundant/unnecessary. These are now proposed to be deleted.



## Part III

### Rights and Obligations of Contractors

#### Section 1

#### Exploitation Contracts

#### Regulation 17

##### The Exploitation Contract

1. ~~[After the]~~ ~~[Upon the]~~ Council's approval of a Plan of Work, [and upon Council's request], the Secretary-General shall prepare an Exploitation Contract between the Authority and the applicant in the form prescribed in Annex IX to these Regulations.
2. The Exploitation Contract shall be signed on behalf of the Authority by the Secretary-General or duly authorized representative. The Designated Representative or the authority designated under Regulation 5 (2) shall sign the Exploitation Contract on behalf of the applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each Exploitation Contract.
3. The Exploitation Contract and its schedules is a public document, and shall be published [by the Secretariat] ~~[without undue delay]~~ within 7 Days in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

##### Comments

- During the first part of the twenty-ninth session, it was suggested to insert a requirement in paragraph 1, stipulation that the Council actively is requesting the issuance of the Exploitation Contract. Such a proposal has thus been inserted.
- Delegations reached consensus during the first part of the twenty-ninth session on setting a deadline of "*within 7 Days*". The phrase "*Without undue delay*" has thus been deleted.
- A reference to "*by the Secretariat*" has been suggested inserted to clarify who will practically publish the information.

#### Regulation 18

##### Rights and exclusivity under an Exploitation Contract

1. An Exploitation Contract shall confer on a Contractor [or the Enterprise] the exclusive right to:
  - (a) Explore for the specified Resource category in accordance with these Regulations and the approved Plan of Work; and
  - (b) Exploit the specified Resource category in the Contract Area in accordance with [these Regulations and] the approved Plan of Work [including Regulations 18 bis and 18 ter, and subject to prerequisites prescribed under Regulation 25(3)].

~~[2. The Authority shall not permit any other entity to exploit or explore for the same Resource category in the Contract Area for the entire duration of an Exploitation Contract.]~~

~~[3. [Notwithstanding the right to conduct marine scientific research in areas beyond national jurisdiction,] The Authority, in consultation with a Contractor, [and with the cooperation of States Parties to the Convention,] shall ensure, that no other [Contractor] [entity] operates in the Contract Area for a different category of Resources [or otherwise] in a manner which might interfere with the rights granted to, [or operations of] the Contractor.]~~

[3. Alt. The Authority, with the cooperation of States Parties to the Convention, shall ensure, to the extent possible, that no other entities operating in the Contract Area interfere with the rights granted to or operations of the Contractor.]

4. An Exploitation Contract shall provide for security of tenure and shall not be ~~[revised, suspended, or]~~ terminated except in accordance with [the terms set out in Articles 18 and 19 of the Annex III of the Convention.]~~[the terms set out in Regulation 18.ter.]~~

5. An Exploitation Contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources ~~[or any other part of the Marine Environment]~~, other than those rights expressly granted by the terms of the Exploitation Contract or these Regulations ~~[nor limit any freedoms of the high seas].~~

[5 bis. Adverse [Environmental] Impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract Area].

6. The Contractor shall, subject to Regulation 20, have the exclusive right to apply for an ~~[extension] [renewal]~~ of its Exploitation Contract.

7. In relation to Exploration activities in the Contract Area conducted under an Exploitation Contract, [the applicable Exploration Regulations shall continue to apply. The Contractor:]

(a) ~~The Contractor m~~[M]ay conduct Exploration activities within the Contract Area, in accordance with the proposed Exploration programme included in the Mining Workplan;

(b) ~~The applicable Exploration Regulations shall continue to apply and the Contractor S~~ shall exercise due diligence in conducting Exploration activities in the Contract Area and shall report the results of its Exploration activities to the Authority in accordance with Regulation 38(2)(k) and applicable Standards, taking into consideration the Guidelines; and

(c) ~~The Contractor S~~ shall also take into account:

(i) any recommendations issued by the Commission pursuant to the Exploration Regulations; and

(ii) provisions of the Exploration Regulations that relate to the Protection and Preservation of the Marine Environment, and environmental baselines and monitoring.

8. In order to proceed with Exploitation on a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new Eenvironmental Iimpact Statement and revised Plan of Work, in accordance with regulation [48 bis] and which must be approved by the Authority in accordance with regulations [11 to 16].

## Comments

- It has been suggested to insert a reference to the Enterprise in paragraph 1. It is reminded, that as the definition of a “*Contractor*” currently is set out in the Schedule, the Contractor also entail the Enterprise. It is a cross-cutting issue that needs to be discussed and resolved.
- One delegation has suggested to delete paragraphs 2 and 3 with the rationale that the Authority cannot ensure that other entities will not interfere under an activity in the Contract Area. On the other hand, it has been suggested to insert an alternative paragraph 3 that underlines that the Authority shall ensure that no other entities operate in the Contract Area in a manner that interferes with the Contractor’s rights or operations. Paragraphs 2 and 3 are thus placed in brackets, and an alternative version of paragraph 3 has been inserted. Further discussions will be needed in this respect.
- More delegations have suggested to delete the reference to marine scientific research, as this seems to contradict the original intention of this draft regulation, which were to ensure that there are no mutually conflicting exploration or exploitation activities in a particular Contract Area.
- Several delegations suggested during the first part of the twenty-ninth session to reinsert the reference to “*Contractor*” instead of “*entity*” in paragraph 3. In the same paragraph it has been suggested to delete the reference to “*or otherwise*” as it is unclear what this refers to.
- In paragraph 4, it has been suggested to delete the reference to “*revised*” and “*suspended*”, to align the provision with draft regulation 18 ter., that regulates termination, only.
- Several delegations and observers have suggested to reinsert paragraph 5 bis.
- In draft regulation 7(b), several delegations have suggested to delete the reference to the application of the Exploration Regulations, as there might be cases where the Exploration Regulations will not apply, and thus create uncertainty.
- Paragraph 8 is a reinsertion of previous para 7(d), which has been requested by several delegations and observers.

## Regulation 18 bis

### Obligations of the Contractors

1. Contractors shall comply with the terms and conditions of their Exploitation Contract and the rules, regulations and procedures of the Authority, [as well as the applicable Regional Environmental Management Plans.] [as amended from time to time] in a manner consistent with the Convention and the Agreement.

1. bis A Contractor shall carry out activities under a Plan of Work in accordance with Good Industry Practice, Best Available Scientific Information and Best Environmental Practices, using appropriately qualified and adequately supervised personnel and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Information [Best Environmental Practices] and Best Available Techniques.

[1. ter Contractors shall comply with the national laws, Regulations and administrative measures of the Sponsoring State or States made pursuant to Articles 139 and 153(4) of the Convention and Article 4(4) of Annex III to the Convention.]

[1. ~~quat~~ Contractors shall throughout the term of their Exploitation Cecontract, for the purposes of activities in the Area and ancillary activities, only use vessels flagged to registries of States that are States Parties to the Authority, and only use ports located in States that are States Parties to the Authority. In cases where the Contractor seeks to use flags or ports of non-member States of the Authority, the prior approval of the Council is required and is conditional upon receiving a written commitment from such non-member State or States to enforce the rules, regulations and procedures of the Authority against the Contractor and to cooperate with the Authority for the purposes of securing compliance with the rules, regulations and procedures of the Authority, where required.] [Contractors shall remain current in their implementation of Best Environmental Practices and Good Industry Practices, and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Evidence and Best Available Techniques.]

2. [In accordance with the Exploitation Contract or the Parent Company Liability Statement, as the case may be,] [The Cecontractor [and its Managing Company], [its holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships] shall have responsibility or liability for any damage arising out of [wrongful acts in the conduct of its] [(a) the Contractor's] operations [or (b), the operations of its subsidiaries or sub-contractors in the performance of the Plan of Work,] [account being taken of contributory acts or omissions by the Authority,] and shall be held liable for the actual amount of damage.

3. In the event that Contractors fail to comply with their payment obligations under these Regulations, [holdings and Ultimate Parent Companies] [their Managing Company] shall be held responsible to effect such payments to the Authority on behalf of Contractors.

4. The Contractor shall allocate sufficient resources and assign roles and responsibilities to ~~implement~~ ation of their obligations under these Regulations.]

[5. Sponsoring State shall take all legislative and administrative measures to assure that Contractors have all material, operative, and financial means to comply with the Exploitation Contract and these Regulations and that no corporate limitation shall present Contractors, holding and Ultimate Parent Companies to compensate damages and make the payment required by the Contractors under the Exploitation Contract and these Regulations.]

#### Comments

- It has been suggested by some delegation to include a reference to Regional Environmental Management Plans in paragraph 1. Other delegations have suggested to delete the reference here, as Regional Environmental Management Plans should not be considered legally binding documents for the Contractor to abide by. It has thus been placed in square brackets for further consideration.
- One delegation has suggested to insert language in paragraph 1 ~~quat~~ to ensure Contractors use of best available techniques. On the other hand, it has also been suggested by several delegations to delete paragraphs 1.ter and 1. ~~quat~~, as it could be considered too restrictive and contain jurisdictional difficulties. Further considerations should be given to this paragraph and whether it should be omitted.
- One delegation has provided suggestions for paragraph 2 to ensure that parent companies of Contractors are jointly and severally liable towards the Authority for damage caused by a Contractor. A “*Parent Company Liability Statement*” is introduced, including a new Annex XI, which will form a compulsory schedule to the Exploitation Contract.

- Several delegations have asked for the deleted paragraph 4 to be reinserted. Given the updated numbering, the para is inserted as a new paragraph 5. There seems to not be agreement as to the placement of the paragraph, and considerations are needed in relation of the most appropriate placement hereof.

## Regulation 18 ter.

### Suspension or tTermination of an Exploitation Contract

1. An Exploitation Contract can only be terminated:

(a) By the mutual consent of the parties;

(b) By reason of termination of State sponsorship, pursuant to Regulation 21 and without the Contractor having secured an alternative sponsorship;

(c) By the Contractor in accordance with the terms of the Exploitation Cecontract, as covered by section 10 of ~~the~~ Annex X to these Regulations;

(d) By the Authority in accordance with the terms of the Exploitation Cecontract, as covered by section 12 of ~~the~~ Annex X to these Regulations; [or]

[e) By expiry of the term of the Exploitation Cecontract, without extension.]

2. Any [suspension or] termination of an Exploitation Cecontract by the Authority shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. [Unless a different time period is indicated in these Regulations.] tThe [suspension or] termination shall be effective [60 Days] after such written notice, unless the Contractor within such period disputes the Authority's right to [suspend or] terminate the Exploitation Cecontract in accordance with Part XI, Section 5, of the Convention, in which case the Exploitation Cecontract shall only be [suspended or] terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

[3. Nothing in this regulation shall relieve a Contractor of any of its obligation or liability under its Exploitation Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of his obligations under its Exploitation Contract in the event of any termination.]

#### Comments

- Different views appear on the reference to suspension in draft regulation 18 ter. Either the draft regulation should be updated to fully include suspension, including updating the title and cross reference to draft regulation 29 bis. and align with this draft regulation. Alternatively, and proposed by a delegation, all references to suspension should be removed from draft regulation 18 ter. to create clarity and underline that the draft regulation is limited to instances of termination. The processes for suspension are already dealt with under draft regulation 29 bis. This should be discussed and settled.
- Some delegations have suggested to retain paragraph 1(e). It has been retained in square brackets.
- Several delegations have raised concern that the 60 Days notice period does not align with particular circumstances in which suspension or termination are envisaged under the Regulations. Consequently, the phrase “*Unless a*

*different time period is indicated in these Regulations”* have been proposed inserted to accommodate for any concerns.

- Paragraph 3 is a proposal received from a Regional Group during the first part of the twenty-ninth session, which gained support from several delegations.

## Regulation 19

### Joint arrangements

1. Exploitation Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protections ~~[against revision, suspension or termination]~~ as Exploitation Contracts with the Authority.

2. The Council shall enable the Enterprise to engage in [exploration or exploitation activities] ~~[seabed mining]~~ effectively at the same time as the entities referred to in Article 153, paragraph 2 (b), of the Convention.

2. bis. Before approving any Exploitation Contract with an entity referred to in Article 153, paragraph 2(b), of the Convention, the Authority shall adopt Standards and Guidelines

(a) providing for joint arrangements between a Contractor and the Enterprise, pursuant to Article 11 of Annex III of the Convention; and

(b) in relation to financial terms, to further the objective of enabling the Enterprise to engage in exploration or exploitation activities, pursuant to Article 13(1)(e) of Annex III of the Convention.

#### Comments

- It has been suggested by a delegation amending paragraph 1 to refer more generally to “*protections*” without limiting that to “*revision, suspension and termination*”.
- Several delegations have asked for the reinsertion of draft regulation 2 bis.
- The reference to “*seabed mining*” has been suggested changed to “*exploration or exploitation activities*”.
- In the context of intersessional work, it has been raised whether more detailed, technical rules on joint ventures are required. As reflected in paragraph 2 bis, such more detailed rules are proposed to be incorporated into Standards.

## Regulation 20

### Term and ~~renewal~~[extension] of Exploitation Contracts

1. The maximum initial term of an Exploitation Contract is 30 years ~~{from the commencement of Commercial Production}~~ {from execution of the Exploitation Contract}. ~~{Each extensionrenewal period shall be a maximum of [5] years}~~.

2. An application to ~~extent~~renew an Exploitation Contract shall be made in writing addressed to the Secretary-General and shall be made no later than [2] years before the

expiration of the initial period [~~or extension/renewal~~ period] of the Exploitation Contract.

3. ~~When submitting an application to extend an Exploitation Contract, t~~The Contractor shall supply a revised Plan of Work, a revision of all accompanying plans in accordance with Regulation 7, as well as any such documentation as may be specified in the Standards and Guidelines. ~~If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes according to Regulation 57, the contractor shall submit a revised Plan of Work [and a revision for all accompanying plans in accordance with Regulation 7].~~ ~~The [Secretary-General][Contractor]~~ shall conduct a consultation process on the revised Plan of Work, with all States and Stakeholders in accordance with Regulation 93 bis and 93 ter.

4. The Commission shall consider the application to ~~extend/renew~~ an Exploitation Contract, along with any revised documents or responses prepared by the Contractor pursuant to Regulation 93 bis (9) [at its next meeting] provided the documentation required under paragraph 3 or pursuant to Regulation 93 bis (9) has been circulated at least ~~[30]~~[60] Days prior to the commencement of that meeting of the Commission.

4. ter The Commission shall submit its report and recommendations to the Council regarding an application to extend an exploitation contract no later than 120 Days from the date of the completion of the requirements for review of updated Environmental Plans, in accordance with Regulation 11, or from the date of the completion of the amendments to the revised or a new Plan of Work, in accordance with Regulation 14, if any, whichever date occurs later.

5. In making its recommendations to the Council under paragraph 6 below, the Commission shall examine and assess applications in accordance with Regulation 12, against the criteria contained in Regulation 13, and take account of any report on the review of the Contractor's activities and performance under a Plan of Work under Regulation 58, as well as any other relevant information from, inter alia, performance assessments, annual reports, and environmental reports, inspection reports, compliance reports, ~~[and] monitoring~~~~–[and compliance data]~~, ~~[third party or whistle blower complaints]~~, and legal actions against the contractor.

6. The Commission ~~[shall]~~ [may] recommend to the Council the approval of an application to ~~extend/renew~~ an Exploitation Contract, and an Exploitation Contract ~~[shall]~~ [may] be ~~extended/renewed~~ by the Council provided that:

(a) ~~Alt.~~ [The term of ~~extension/renewal~~ reflects the expected economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability.]

(b) The Contractor is in compliance with the terms of its Exploitation Contract and the rules, regulations and procedures of the Authority;

(b) bis The Contractor's [final] report sufficiently demonstrates that the Contractor has met and complied with all Strategic Environmental Goals ~~and~~ Objectives, and thresholds] and ~~can~~ demonstrates that the PRZs and IRZs met their objectives, and that the Contractor's application for an extension includes designation of suitable PRZs and IRZs for the extension period in accordance with Annex X bis.

(c) The Exploitation Contract has not been terminated earlier;

[c) bis The Contractor is able to demonstrate that all related contractual obligations, such as the requirement to maintain insurance coverage at all times during the conduct of Exploitation activities, will extend or continue to remain in force for the duration of the extension period.]

(d) The Contractor has paid the applicable fee in the amount specified in appendix II;

(e) ~~(f)~~ [The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.]

~~78.~~ Any ~~extension~~~~renewal~~ of an Exploitation Contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the Designated Representative or the authority designated under Regulation 5(2). The terms of an ~~extended~~ ~~renewed~~ Exploitation Contract shall be those set out in the standard Exploitation Contract annexed to these Regulations that is in effect on the date that the Council approves the ~~extension~~~~renewal~~ application.

~~89.~~ An Exploitation Contract in respect of which an application for ~~extension~~~~renewal~~ has been made [shall] ~~[may]~~, despite its expiry date, remain in force until such time as the ~~extension~~~~renewal~~ application has been considered and its ~~extension~~~~renewal~~ has been granted or refused.

#### Comments

- It has been suggested to use “extension” instead of “renewal” to better align with the wording of other draft regulations.
- During the first part of the twenty-ninth session, there seemed to be most support for the commencement date to be linked to the execution of the Exploitation Contract. Also, most delegations supported an extension period of 5 years.
- It has been suggested by several delegations that applications to extend Exploitation Contracts should require that the Contractor submit a revised work plan in all instances, not only when the Contractor deems that changes amount to a material change.
- In paragraph 2 most delegations supported the proposal of a period of two years before the expiration of the initial period or extension period. It has been updated to plural to align with the remaining revised consolidated text.
- It has been suggested to remove the brackets around the final sentence of paragraph 3.
- It is not clear what “*compliance data*” refers to in paragraph 5 and whether it is something different or additional to the compliance reports. Therefore, it is suggested to delete the reference to “*compliance data*”.
- Previous draft regulation 20(6)(b)bis has been placed in the revised suspense document.

## Regulation 21

### Termination of sponsorship

1. Each Contractor that is not the Enterprise or a State Party shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the Exploitation Contract in accordance with Article 153(2)(b) of the Convention and Regulation 6, and to the extent necessary that it complies with Regulations 6 (1) and (2).

[2. Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship, if a State ~~[or States]~~ terminates its sponsorship of a Contractor, it shall ~~[promptly]~~~~[within 7 Days]~~ provide the Secretary-



General with a written notice describing the reasons for such termination and the date the termination is to take effect. ~~[, and no earlier than the following timeframe:]~~

~~(a) Termination due to a Contractor's material non-compliance under its terms of sponsorship: termination to takes effect [no earlier] [no later than] [6] months after the date of receipt of the notification by the Secretary-General; [or]~~

~~(b) Termination due to reasons other than those listed in paragraph (a) above: termination to takes effect no [earlier] [later] than 12 months after the date of receipt of the notification by the Secretary-General.]~~

[2. bis If the reasons for termination of sponsorship include [material] non-compliance under with its terms of sponsorship, the Contractor must [immediately], ~~[if instructed to by the Secretary-General based upon their determination that the reason for termination justify suspension]~~, suspend its Exploitation activities until the Council has considered the matter in accordance ~~with paragraph 6 below~~ regulation 29ter.]

3. In the event of termination of sponsorship the Contractor may, ~~[prior to the termination date referred to in paragraph 2 above]~~ obtain another Sponsoring State or States in accordance with the requirements of Regulation 6, and in particular in order to comply with Regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with Regulation 6. The Exploitation Contract terminates automatically if the Contractor fails to obtain a Sponsoring State or States within the required period ~~[unless the Contractor has sought the Council's consent to transfer its rights and obligations under the Exploitation Contract pursuant to Regulations 23].~~

3. bis In the event that the Contractor is able, within the relevant period, to obtain another Sponsoring State or States in accordance with paragraph 3, the Authority shall deal expeditiously with any consents that are required as a result under Regulations 23 or 24.

4. A Sponsoring State ~~or States~~ is not discharged from any obligations accrued while it was a Sponsoring State by reason of the termination of its sponsorship nor shall such termination affect any legal rights and obligations created during such sponsorship.

5. The Secretary-General shall ~~[promptly]~~ [within 7 Days] notify, the members of the Authority of a termination or change of sponsorship.

6. After a Sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission [and the Compliance Committee], which shall take account of the reasons for the termination of sponsorship, especially where the termination of sponsorship also equates to a material breach of the terms of the Exploitation Contract, ~~[may]~~ require the Contractor pursuant to Regulation 103 to take remedial action or other steps including to suspend its Exploitation activities. Such remedial action or suspension shall continue until such time as [the Contractor has proved to the satisfaction of the Council that the [material] breach of ~~compliance with~~ the Exploitation Contract has been addressed and a new certificate of sponsorship is submitted [and that the Contractor has proved that it is operating in compliance with the Exploitation Contract].

7. ~~[Nothing in this Regulation shall relieve a Contractor of any obligation or liability under its Exploitation Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its Exploitation Contract in the event of any termination of sponsorship.]~~

8. [If a Sponsoring State terminates its sponsorship of a Contractor, this [is without prejudice too] ~~[has no impact on]~~ the sponsorship ~~of for~~ that Exploitation Contract ~~or~~ by any other Sponsoring State.]

## Comments

- On a general note, it has been suggested to consider what constitutes “*the terms of sponsorship*”, and it has been suggested to clarify that here or in the Schedule. This should be considered and resolved.
- It has been suggested to delete sub-paragraphs (a) and (b) of paragraph 2. It has been put forward by some delegations that imposing specific time limits on the State’s termination of sponsorship will not be appropriate. For the time being, it has been placed in the revised suspense document.
- In paragraph 2 bis, it has been suggested by several delegations to reinsert the previous reference to “*immediately*” and delete the text in square brackets.
- It has been suggested to delete the final sentence of paragraph 3, as transfer of rights is not a figure intended to be used under failure of sponsorship requirement conditions.
- In paragraph 5, delegations have presented divergent views in respect of the timing and whether it should be “*promptly*” or “*as soon as practicable*”. Delegations are encouraged to agree on the period.

## Regulation 22

### Use of Exploitation Contract as security

1. The Contractor may, [solely for the purpose of raising financing to effect its obligations under an Exploitation Contract and only with the prior consent of the Sponsoring State or States and of the Council [which consent shall not be unreasonably withheld or delayed], based on the recommendations of the Commission], mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an Exploitation Contract.

2. The Contractor shall, when seeking the consent of the Council, and in its annual reports submitted in accordance with Regulation 38, disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the Exploitation Contract in the event of any default by the Contractor.

3. As a condition to giving consent under this Regulation, the Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above [~~shall agree~~] [agrees] either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the Exploitation Contract and these Regulations, in which case the beneficiary must fulfil the requirement of paragraphs 4 and 5 of Regulation 23 or that such a beneficiary shall transfer the mortgaged property only to a Transferee that fulfils the requirements of paragraphs 4 and 5 of Regulation 23 as determined by the Commission.

[4. The Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

(a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted including environmental and social governance standards, with reference to relevant Standards and Guidelines where relevant; or and

(b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.]

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an Exploitation

Contract, part of an Exploitation Contract or any interest in an Exploitation Contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an Exploitation Contract. Nothing in this Regulation shall relieve a Contractor of any obligation or liability under its Exploitation Contract.

6. The Authority shall ~~[not] [not be obliged to]~~ provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an Exploitation Contract.

#### Comments

- In the Consolidated Text it was suggested to delete the bracketed text in paragraphs 1 and 4 in its entirety. It was suggested by many delegations to reinstate those elements, which has been done.
- In paragraph 6, it has been suggested by several delegations to insert direct language that makes clear that the Authority “*shall not*” provide any funds or guarantees in respect of contract financing. It has thus been updated.

## Regulation 23

### Transfer of rights and obligations under an Exploitation Contract

1. A Contractor may transfer its rights and obligations under an Exploitation Contract in whole or in part only with the prior written consent of the [Sponsoring State, and the Council [such consent not to be unreasonably withheld], based on the recommendations of the Commission [and with notification to the Sponsoring State].

2. The Contractor and Transferee shall jointly inform the Secretary-General of any application to transfer the rights and obligations under an Exploitation Contract. The Secretary-General shall transmit that application to the Commission, which shall give its recommendation to the Council.

3. The Commission shall consider and [decide whether to] recommend to the Council ~~to that the Council~~ consent to the application for consent to transfer [within 90 Days of the date it receives the application] ~~at its next available meeting,~~ provided that the documentation has been circulated at least 30 Days prior to that meeting~~].~~

~~4.~~ An application to transfer the rights and obligations under an Exploitation Contract shall be subject to the requirements under Regulations 5-16~~].~~

4. bis If at the time of the transfer a Material Change arises this should be addressed in accordance with Regulation 57.

5. The Commission shall not recommend approval of the transfer if it would:

(a) Involve conferring on the Transferee a Plan of Work, the approval of which would be forbidden by Article 6 (3) (c) of Annex III to the Convention; or

[b) Allow the Transferee to Monopolize the conduct of activities in the Area [with regard to the Resource category covered by the Exploitation Contract or to Monopolize or significantly control the production of any single Mineral or metal produced globally; or]]

(c) If any circumstances under Regulations 15(2) or (3) are applicable.

6. Where the Exploitation Contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

~~[6. bis A Contractor shall pay~~The Authority shall levy a Transfer Profit Share, which shall be levied on a pro rata basis by the Authority on any gain gains realised from the direct or indirect transfer of rights under an Exploitation Contract.]

~~[6. ter e The effective operation of the Transfer Profit Share referenced in the above paragraph shall follow the provisions included in the applicable Standard~~The Authority shall publish a Standard for the effective operation of the Transfer Profit Share.]

7. Where the Commission determines that the requirements of paragraphs 4, 5, ~~and 6 and 7 of this Regulation~~ ~~above~~ have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with Article 20 of Annex III to the Convention, the Council shall not withhold consent to a transfer if the requirements of this Regulation are complied with. Once the Council has received a recommendation from the Commission, the Council ~~will~~ shall inform the Contractor of the Council's decision within 30 Days.

8. A transfer is validly effected only upon:

(a) Execution of the assignment and novation agreement between the Authority, the transferor and the Transferee;

(b) Payment of the prescribed transfer fee pursuant to appendix II; and

(c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.

~~[(d) Payment of the Transfer Profit Share in accordance with paragraph 6bis7 of this Regulation and the applicable Standard.]~~

9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the Transferee by their duly authorized representatives.

10. The Exploration Regulations on Transfer of Rights and Obligations are hereby amended as set out in the provisions of this Regulation and all applicable Standards and relevant Guidelines. These amendments supersede and replace the relevant Exploration Regulations on Transfer of Rights and Obligations. In the event of any inconsistency between the two sets of Regulations and applicable Standards, the Exploitation Regulations above shall prevail.

## Regulation 24

### Change of Control

12. Where there is a Change of Control of the Contractor, or there is a Change of Control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, as soon as reasonably practicable but no later than 24 hours, notify the Secretary-General and the Sponsoring State in advance of such Change of Control. The Contractor shall provide the Secretary-General and the Sponsoring State with such details as he or she shall reasonably request of the Change of Control [including whether or not the Change of Control affects the Contractor's nationality or State of Effective Control]. [On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall ~~[promptly]~~ [within 7 Days] notify the Commission and the Council.]

23. After [considering information and documents and] consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Commission shall:

(a) Determine whether, following a Change of Control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will

continue to be able, to meet its obligations under the Exploitation Contract or Environmental Performance Guarantee, in which case the Exploitation Contract shall continue to have full force and effect;

[(b) In the case of a Contractor, treat a Change of Control as a transfer of rights and obligations in accordance with the requirements of these Regulations, in which case Regulation 23 shall apply be it that, further to Regulation 23, the party that will come to qualify as the Contractor's Managing Company shall issue a Parent Company Liability Statement effective as of the Change of Control;]

[(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with Regulation 26, within such time frame as the ~~[Secretary-General]~~ [Commission] shall stipulate];

(d) Confirm with the Sponsoring State, [through the Secretary-General,] whether its sponsorship continues, or require a written notice under Regulation 21 bis. where sponsorship has terminated; and

[(e) Provide a report on any developments pertaining to this paragraph to the Council at its next meeting.]

3. The Contractor, if applicable, shall provide the Secretary-General confirmation of the Sponsoring State that its sponsorship continues. On receipt of such confirmation, the Secretary-General shall promptly notify the Commission and the Council. If the Sponsoring State decides to terminate its sponsorship, a written notice under Regulation 21 is necessary. A Contractor shall obtain a sponsorship of another Sponsoring State or States in accordance with the requirements of Regulations 6 and 21(3).

4. Where the [Commission] determines that, following a Change of Control, a Contractor may not have the [operational or] financial capability to meet its obligations under its Exploitation Contract [or its Managing Company will not have the capability to meet its obligations under the Parent Company Liability Statement], the Commission shall submit a report of its findings and recommendations to the Council. [The Council shall consider the matter at its next meeting with a view to taking a decision.]

#### Comments

- The definition of “*Change of Control*” in paragraph 1, has been placed in the Schedule. Delegations and observers supported this replacement during the first part of the twenty-ninth session, and requested that further discussions will be conducted on the definition, once the Schedule will be discussed. In particular it was suggested that the definition be tightened to ensure clarity in situations where there are changes in the identities of majority ownership and not just 50 percent or more of the Contractor.
- It has been suggested by a delegation to introduce a so-called “*Parent Company Liability Statement*”, this to ensure a contractual basis for joint and several liability towards the Authority for damage caused by the Contractor. The impact of such statement has thus been implemented in this draft regulation, paragraphs 2 and 4.
- A new paragraph 3 has been suggested to also regulate cases of possible termination of sponsorship after Change of Control.

## Section 2

### Matters relating to production

#### Regulation 25

##### Documents to be submitted prior to production

1. At least 12 months prior to the proposed commencement of Commercial Production ~~[in a Mining Area]~~ [Sustained Large-scale Recovery Operations], the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with ~~[Annex -X]~~ and Good Industry Practice, and the applicable Standard, taking into ~~[consideration]~~ [account the applicable] Guidelines [as well as the results of the Test [Pilot] Mining study pursuant to Regulation ~~[48 ter bis]~~, paragraph 2 or 3, as applicable, and in accordance with Annex [IV ter]. ~~and the Secretary General shall submit this matter to the Commission.~~

1.bis. The Contractor shall conduct consultation on the Feasibility Study with all States and Stakeholders in accordance with Regulation 93 bis.

1.ter. Provided the procedure under Regulation 93 bis has been completed, ~~If~~ the Commission shall review the Feasibility Study and determine whether ~~considers that~~ any Material Change needs to be made to the Plan of Work, [and it should promptly inform the Contractor, which ~~the Contractor~~ shall prepare and submit to the Commission ~~[through the Secretary-General]~~ a revised Plan of Work ~~accordingly~~.

2. Regulation 57 shall apply to a revised Plan of Work submitted by the Contractor under paragraph 1.

3. The Contractor ~~may~~ [shall] not commence Commercial Production in any part of the Area covered by the Plan of Work until either:

(a) The Commission has determined that no Material Change to the Plan of Work needs to be made [pursuant to paragraph 1 ter] ~~[in accordance with Regulation 57 (2) and this has been approved by the Council]~~; or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph ~~25~~ above [Regulation 57]; and the [Authority has confirmed lodgement of] an Environmental Performance Guarantee in accordance with Regulation 26.

##### Comments

- Some delegations and observers have enquired whether it would be helpful to have a discussion on the policy intent of a feasibility study and the inclusion of an Annex or Standard indicating the required content of a feasibility study. This discussion is still outstanding. The outcome of such discussions might have an impact on the wording of draft regulation 25.
- It has been suggested to distinguish between Test Mining and Pilot Mining, and proposals to that effect have been inserted in draft regulation 48 ter Alt. It has been inserted in brackets in para 1 to align herewith.
- During the first part of the twenty-ninth session, most delegations supported the alternative version of paragraph 2, and it has thus been replaced. For the time being, the original paragraph 2 has been placed in the revised suspense document. The same is the case for paragraphs 3-5, which also was suggested deleted.

## Regulation 26

### Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority [and no later than [30 Days before] the commencement date of Commercial Production] / [on execution of the Exploitation Contract] in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be [assessed and recommended by the Commission and] determined [by the Council] [at the time the Council approves the Plan of Work for Exploitation activities] according to the applicable Standards and take into consideration Guidelines, and shall reflect the forecasted costs required for [implementation of the Contractor's Closure Plan and Emergency Response and Contingency Plan.±

~~[(a) The premature Closure of Exploitation activities;~~

~~[(b) The Decommissioning and final Closure of Exploitation activities, including the removal of any Installations and equipment; and~~

~~[(c) The post-closure monitoring and management of residual Environmental Effects.]~~

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period [or a Performance Security provided by the qualified commercial bank]. [In such cases, commercial production may only commence once the full amount has been provided.]

~~[3.bis. The Environmental Performance Guarantee shall take the form of a letter of credit or security bond guaranteed by a reputable financial institution and meet the financial criterias set out in the applicable Standard and take into consideration Guidelines.~~

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated [every five years]:

(a) Where the Closure Plan is updated in accordance with these Regulations; or

(b) As the result of:

(i) A performance assessment under Regulation 52;

(ii) A modification of a Plan of Work under Regulation 57; or

(iii) A review of activities under a Plan of Work under Regulation 58;

~~[(iv) [After consultation with a Contractor,] the Authority considers that the likely cost of the activities outlined in (2) have substantially increased;] and~~

(c) At the time of review by the Commission of a Final Closure Plan under Regulation 60.

~~[(d) At least every [five] years to consider whether the likely cost of the activities outlined in paragraph 2 have substantially increased, taking into account inflation and other market or economic conditions that may impact on the amount of the Environmental Performance Guarantee that must be held.~~

~~[(e) At each extension of the Exploitation Contract;~~

~~[(f) Any time that the Environmental Performance Guarantee, or any part of it, is used or drawn upon, and]~~

(g) Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and submit this calculation to the Secretary General for forwarding to the Commission for their review. [The Commission shall promptly assess and make appropriate recommendations to the Council, which shall determine the revised amount. Within 30 Days, the Contractor shall] lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

(a) The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor ~~of~~with its obligations that are the subject of the Environmental Performance Guarantee; or

(b) The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.

[(c) The replenishment of any Environmental Performance Guarantee, or part thereof, by the Contractor should the Authority need to make recourse to the Environmental Performance Guarantee.]

7. The requirement for an Environmental Performance Guarantee under this Regulation shall be applied in a uniform and non-discriminatory manner.

8. ~~[The lodging of an Environmental Performance Guarantee does not relieve the Contractor of its obligations that are subject of this Regulation.] [Refusal or reluctance on the part of the Contractor to fulfil such obligation shall be subject to the relevant compliance measures under these Regulations].~~ The provision of an Environmental Performance Guarantee by a Contractor [shall not affect] [does not limit] the responsibility and liability of the Contractor under its Exploitation Contract [in the amount of such guarantee][and does not relieve the Contractor of its obligations that are subject of this Regulation]. ~~[Should the Authority be compelled to make recourse to the Environmental Performance Guarantee due to any non-compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee, the Contractor remains liable to the Authority for any direct, incidental or additional costs incurred by the Authority.]~~

**Comments**

- One regional group has suggested that the guarantee is renamed to a “Decommissioning Bond”, and that policy discussions are needed in respect of whether it should be a financial instrument or a fund.
- In paragraph 1, several delegations have suggested to refer to the date of the execution of the Exploitation Contract rather than the commencement of Commercial Production. Both alternatives have thus been inserted and placed in square brackets. Delegations are encouraged to settle on one of the alternatives.
- In paragraph 2, it has been suggested to specify that the Environmental Performance Guarantee (“EPG”) must be in place at the time the Council approves the Plan of Work for Exploitation, this in order to ensure that the conditions of the EPG are clear at the outset and incorporated into the Plan of Work. Furthermore, it has been suggested that the sub-paragraphs of paragraph 2 be replaced with a reference to the implementation of the Contractor’s Closure Plan.



- Paragraph 3 bis. was suggested deleted in the previous version of the Consolidated Text. No delegations objected to the deletion, but it has been placed in the Revised Suspense Document for the time being.
- It has been suggested to reinsert regulation on inflation in paragraph 4.
- For paragraph 6, it has been suggested that it should also cover replenishment by the Contractor in cases where the EPG is diminished.
- In paragraph 8, it has been suggested by a delegation to retain the second sentence to clarify the available compliance measures under the Regulations.

## 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 reasonable efforts to bring each Mining Area into Commercial Production in accordance with the Plan of Work.

~~[2. bis Once the Contractor determines that it is engaging in Ssustained Llarge scale Rrecovery 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. 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 [Contract Area] [Mining Area], that Commercial Production has begun and the location of the Mining Area(s).]~~

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

#### Alt. to paragraphs 2 – 5 above

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 applicable Standard.

3. Any failure on the part of the Contractor to comply with this Regulation and the applicable Standard may be considered under the General anti-avoidance rule established pursuant to Regulation 77 and other applicable rules, regulations, and procedures of the Authority.

#### Comment

During the first part of the twenty-ninth session, the new paragraphs 2 and 3 were generally supported to substitute the previous wording. Elements of the previous wording will be retained within the draft Standard to which paragraph 2 refers.

## Regulation 28

### Maintaining Commercial Production

1. ~~[Except for circumstances described in Regulation 33,]~~ ~~t~~The Contractor shall maintain Commercial Production in accordance with the Exploitation Contract and the Plan of Work annexed thereto, ~~and~~ these Regulations, and ~~[taking into account]~~ market conditions. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates ~~contemplated~~ included in the ~~[Mining Workplan]~~[Feasibility Study].

2. The Contractor shall notify the Secretary-General and the Sponsoring State or States if it:

(a) Fails to ~~[comply with the Plan of Work]~~[maintain Commercial Production]; or

(b) Determines that it will not be able to ~~[adhere to the Plan of Work]~~-[maintain Commercial Production] in future.

[2. bis. In accordance with Regulations 29 bis, the Secretary-General shall transmit the notification made under paragraph 2 and any supporting documentation to the [Compliance Committee]/[The Commission] for review and to make a recommendation to the Council.]

~~[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. 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.]~~

4. A Contractor shall notify the Secretary-General [and Sponsoring State] as soon as it recommences any [Commercial Production], and no later than ~~[72]~~ [24] hours after such recommencement, and, where necessary, shall provide to the Secretary-General ~~[and Sponsoring State]~~ such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

#### Comments

- It has been suggested to clarify the content of paragraph 2. A new paragraph 2. bis. has been provided to clarify what happens if or when a Contractor notifies non-compliance.
- During the first part of the twenty-ninth session, divergent views were presented in relation to the reference to serious harm in paragraph 3. It has been argued that the reference should be kept, cf. Article 165 (2)(k) of the Convention. It has thus been retained but in square brackets and stroked out.
- Furthermore, it has been suggested to delete paragraph 3 as it overlaps with draft regulation 33. A cross reference to draft regulation 33 has been

inserted in paragraph 1 to accommodate for that and paragraph 3 has been suggested deleted.

## Regulation 29

### Reduction or suspension in production

1. Notwithstanding Regulation 28, a Contractor may temporarily reduce or suspend production [ but shall notify in writing the Secretary-General and the Sponsoring State] thereof [and provide the rationale for such a reduction or suspension] [as soon as practicable thereafter]/within 7 Days from the date of the reduction or suspension. Such reduction or suspension may be for a period of up to 12 months.
2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time.

#### Comments

- Several delegations supported the suggested deletions in paragraph 2 and paragraphs 3-4 in their entirety. The text has been placed in the Revised Suspense Document in order for it to feed into relevant Annexes, Standard and Guidelines.
- It has been suggested by a delegation to insert a specific time period in paragraph 1 for the notification to be given.

## Regulation 29 bis

### Procedure for suspensions in Exploitation activities

1. Any time that there is a suspension of Exploitation activities under these Regulations, the Secretary-General shall within 7 Days notify the Council and publish the notice on~~at~~ the Authority's website when activities have been suspended, which shall include the rationale for the suspension, and when the activities have recommenced.
2. Where the Authority requires a suspension of Exploitation activities in accordance with these Regulations, ~~[is required for any reason by the Authority,]~~ the Authority [Council upon a recommendation of the Commission] will provide the Contractor with a suspension notice to specify the reasons for the suspension, what operations under the Plan of Work must cease, and which, if any, may continue, and any other relevant terms and conditions for the suspension.
3. During a suspension of Exploitation activities for any reason:
  - (a) A Contractor shall notify the Secretary-General as soon as it intends to recommence any or all of the suspended activities no later than [72 hours] before such commencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a suspension has been addressed; or
  - (b) A Contractor shall report to the Secretary-General on at least a monthly basis with regards to the reasons for continuing the suspension, providing such information as is necessary to justify that the issue triggering a suspension continues.

4. The Secretary-General shall supply all information received pursuant to paragraph 3 to the Commission for review and to make a recommendation to the Council. The Council shall determine when the relevant Exploitation activities should recommence, giving the Contractor no less than 60 Days' written notice where resumption of activities is required.

5. In making its review under paragraph 4, the Commission shall take into account the recommendations of the Economic Planning Commission where applicable, and shall examine whether the reasons for the suspension are reasonable, and whether a continued suspension or a recommencement of activities, would be in the best interests of humankind in the circumstances.

6. Throughout the duration of any suspension in Exploitation activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the relevant section of the Closure Plan.

7. Where a suspension in Exploitation activities continues for a period of more than 12 months, the Commission may require the Contractor to submit a Final Closure Plan in accordance with Regulation 60.

8. Where the Council requires recommencement of Exploitation activities after a suspension under this Regulation, and the Contractor does not comply with that requirement, this shall be treated as a serious violation of a fundamental term of the Exploitation Cecontract and these Regulations, and the Authority shall take appropriate compliance action.

9. In the event that a Contractor elects to suspend all Commercial Production for more than five consecutive years, the Council may after discussion with the Contractor decide that Commercial Production has ceased, and require the Contractor to implement the Final Closure Plan.

10. The procedure under this Regulation shall also apply mutatis mutandis to reductions that result in failure to maintain Commercial Production.

#### **Comments**

- Many delegations and observers supported the insertion of draft regulation 29 bis. It was suggested to add a paragraph 10 that would address reduction.
- It has been suggested by one delegation that draft regulation 29 bis. could be divided into two separate regulations, distinguishing between reductions due to the Authority's request contra reduction due to the Contractors decision.

### **Regulation 29 ter**

#### **Certification of origin**

1. The Authority, upon the receipt of an application from the Enterprise or the Contractor, shall certify the origin for the Minerals removed from the Area, in accordance with the applicable Standard.

2. Any certification of the origin of Minerals in accordance with the applicable Standard shall be automatically accepted by the member States of the Authority.

#### Comment

Based on the Commission's proposal. Please refer to [ISBA/29/C/7](#), Section IV.A and the annex.

### Section 3

#### Safety, labour and health at sea

#### Regulation 29 ~~ter~~ quater

##### Risk reduction principles

1. [Harm or danger of harm to people, the [\[marine\]](#) environment or material assets shall be prevented or limited in accordance with the Regulations and any applicable Standards, and taking into consideration the Guidelines.] The Contractor shall [~~work to further~~] reduce the risk [\[of accidents, incidents and other hazards\]](#) as much as reasonably practicable, to the point where the cost of further risk reduction would be [\[grossly\]](#) disproportionate to the benefits of such reduction.
2. The reasonable practicability of risk reduction measures shall be kept under review in the light of new knowledge and technology developments and Good Industry Practice, Best Available Techniques and Best Environmental Practices. In assessing whether the time, cost and effort would be [\[grossly\]](#) disproportionate to the benefits of further reducing the risk, consideration shall be given to best practice risk levels compatible with the operations being conducted.
3. A Contractor shall maintain the necessary risk assessment and risk management systems in accordance with Good Industry Practice, Best Available Techniques and Best Environmental Practices and shall report annually to the Secretary-General on such systems in accordance with Regulation 38(2)(h).

#### Comments

- It has been pointed out by some delegations that further discussions are needed in respect of the wording of in particular the first sentence of paragraph 1 in respect of the allocation of obligations. Furthermore, it has been pointed out that more clarification is needed since the reference to incidents have been stroke out.
- It has been suggested to reinstate the reference to “*grossly*”.

#### Regulation 30

##### Safety, labour and health standards

1. The Contractor shall ensure at all times that:

(a) All vessels, [\[crewed submersibles\]](#) and Installations engaged in Exploitation activities are in good repair, in a safe and sound condition in accordance with the requirements, specifications and preventive or corrective maintenance plans of the respective manufacturers, and adequately [crewed], and comply with paragraphs 2 and 3 below; and

(b) All vessels, crewed submersibles and Installations [engaged] in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the Exploitation Contract.

(c) [The Health and Safety Plan and Maritime Security Plan ~~[annexed to the Plan of Work]~~ are kept up-to-date and effectively implemented.]

2. The Contractor shall ensure compliance with the [applicable] [relevant] [mandatory] international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea, the training of seafarers, maritime labour conditions and the treatment of crew members, as well as [the rules, regulations and procedures of the Authority on these matters.]

2. bis. For the purpose of paragraph 2, international maritime safety and navigational rules shall apply to all ships on all voyages engaged in activities in the Area.

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their Sponsoring State or States in the case of Installations; and

(b) Comply with the national laws of its Sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker rights for non-crew members and human health and safety that pertains to the mining process rather than to ship operation.

4. The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.

5. The Contractor shall ensure that:

(a) All of its personnel, before assuming their duties, have the necessary experience, training and qualifications [and safety equipment] and are able to conduct their duties safely, competently and in compliance with the rules, regulations and procedures of the Authority and the terms of the Exploitation Contract;

(b) [Implementation of ~~[the Environmental Plans, and]~~ the Health and Safety Plan and Maritime Security Plan shall include awareness-raising programmes for personnel about the duties arising from those plans, and a programme] to inform all personnel engaged in Exploitation activities as to the occupational ~~[and environmental]~~ risks which may result from their work and the manner in which such risks are to be dealt with; and

(c) Records of the experience, training and qualifications of all of its personnel are kept and made available to the Secretary-General upon request.

#### Comments

- During the first part of the twenty-ninth session, it was suggested that reference should be made to “*crewed submersibles*” in order to clarify that it also falls under draft regulation 30.
- Several delegations and observers supported the insertion of paragraph 1(c). It has been suggested to delete the reference to the Annex in paragraph 1(c) since the Health and Safety Plan and Maritime Security Plan are separate plans.
- It has been suggested to replace “*applicable*” with “*relevant*” in paragraph 2, as international rules may be applicable to state parties but no other contractor entities.

- It has been suggested to delete the reference to Environmental Plans in paragraph 5(b) since the Environmental Plans do not cover safety, labour and health standards.
- Further discussions might be needed in relation to the interrelations between different relevant laws and the mandates of relevant international organizations in this respect. Reference is made to the ISA Technical Study number 25.

## [Regulation 30 bis

### Human health and safety management system

1. When conducting its operations, a Contractor shall develop, implement and maintain a safety management system, taking into consideration the Guidelines.

2. A Contractor's safety management system shall:

(a) Be capable of delivering site-specific safety objectives and meeting performance requirements specified in the Health and Safety Plan and Maritime Security Plan;

(b) Cover occupational health and safety and process safety, including the selection or design of assets, facilities, equipment and materials;

(c) Permit effective reporting to the Authority in connection with safety performance;

[(c) bis Be independently verified annually by an internationally recognized provider of verification services acceptable to the Authority, in accordance with relevant Standards;]

(d) Promote inclusivity and gender equality; and

(e) Be in accordance with Good Industry Practice and internationally recognised standards.

~~[3.— A proposed change to a Contractor's safety management system shall be treated the same as a modification of a Plan of Work, pursuant to Regulation 57 mutatis mutandis.~~

4. Compliance with this Regulation is a fundamental term of the Exploitation Contract, for the purposes of Regulation 103.]

#### Comments

- The reference to an independent verification has been reinserted.
- It has been suggested by a delegation to delete paragraph 3 as it would require a Contractor to follow the process set out in draft regulation 57, which would risk delaying the updates to the safety management system. Also, it is put forward that the content runs contrary to best practices in relation to monitoring and updating safety management systems. Another suggestion has been to insert a reference to a proposed "material" change to qualify it better.

## Section 4

### Other activities in the Marine Environment

#### Regulation 31

##### Reasonable ~~R~~egard for other activities ~~[and infrastructure]~~ in the Marine Environment

1. Contractors shall, consistent with any applicable Standards and taking into consideration the Guidelines, carry out ~~[[Exploration and] exploitation]~~ [activities] under an Exploitation Contract with reasonable regard for other activities ~~[and infrastructure]~~ in the Marine Environment, in accordance with Articles ~~87 and~~ 147 of the Convention, [the Plan of Work,] ~~and~~ the approved Environmental Management and Monitoring Plan, [Regional Environmental Management Plan] and Closure Plan]. ~~[taking into account the Regional Environmental Management Plan.] [and any applicable international rules and standards established by competent international organizations].~~

~~1. bis Each Contractor shall exercise due diligence to ensure that it does not cause damage to [known] submarine cables or pipelines or interfere with other activities in the Contract Area or surrounding Marine Environment. In particular, the Contractor shall:~~

~~(a) Comply with the measures it agreed with the operators undertaking other [activities in the Contract Area [or surrounding Marine Environment, including operators]] and of submarine cables and pipelines] to reduce the risk of damage to any in-service cables and pipelines;~~

~~(a) bis Identify current and planned uses or activities in the Marine Environment transiting, overlapping, or proximate to the Contract Area through publicly available data and resources and any other reasonable means, including but not limited to marine scientific research, submarine cables or pipelines, fishing, navigation, activities related to marine genetic resources, and environmental protection measures and area-based management tools established or proposed by competent international organizations;~~

~~(a) ter Coordinate directly with the responsible organisations for, or operators of, these activities in the Marine Environment in order to reduce the risk of interference and damage to any structure or the Marine Environment; and~~

~~(b) Ensure that any activities it conducts will not interfere with the route of a planned submarine cable or pipeline, recognized sea lanes essential to international navigation, or areas of intense fishing activity.~~

~~2. To further the due and reasonable regard obligations in Articles 87 and 147 of the Convention, the [Secretary-General], in conjunction with member States, shall facilitate early-stage coordination between the Contractors and the proponents of the other known activities in the marine environment, including through the identification of other marine users in the relevant Regional Environmental Management Plan, which shall be periodically updated. Where the relevant other activities involve competent international, regional, or sectoral bodies, the Authority shall, in conjunction with member States, cooperate with such bodies to coordinate activities in the Marine Environment.~~



## **[Regulation 31 bis**

### **Reducing risk of damage to submarine cables and pipelines**

The Contractor shall endeavour to reduce the risk of damage to submarine cables or pipelines, including as appropriate, through:

- (a) Complying with the measures that the Contractor has agreed with the operators of submarine cables or pipelines in the Contract Area to reduce the risk of damage to any in-service submarine cables and pipelines;
- (b) Identifying current and planned uses or activities relating to submarine cables or pipelines in the Marine Environment transiting, overlapping, or proximate to the Contract Area through publicly available data and resources and any other reasonable means;
- (c) Coordinating directly with the responsible organisations for, or operators of, submarine cables or pipelines in the Marine Environment;
- (d) Promoting awareness of Exploitation activities, including but not limited to using geospatial alert systems; and
- (e) Other measures in accordance with the applicable Standards, and taking into consideration the Guidelines.]

#### **Comments**

- In paragraph 1, it has been suggested to delete the words “*exploration and Exploitation*” as this appears to be redundant.
- It has been suggested to delete the word “infrastructure” from para 1 as it is not consistent with the language of Article 147(1) of the Convention. Furthermore, it has been suggested to delete the reference to Article 87 of the Convention, as the Article is a general provision that deals with freedom of the High Seas.
- It has been suggested to move draft regulation 31(1)bis and (2) to a new stand alone draft regulation 31 bis concerning reduction of risk of damage to submarine cables and pipelines. This is due to the fact that damage to submarine cables and pipelines is distinct from the obligations to have reasonable regard for other activities in the marine environment.

## **Section 5**

### **Emergency Response and Contingency Plan, Incidents and Notifiable Events**

#### **Comment**

During the second part of the twenty-ninth session, many delegations proposed that draft regulation 53 concerning Emergency Response and Contingency Plan should be replaced from the section concerning the Protection and Preservation of the Marine Environment, since the draft regulation covers a broader scope. Since the regulation is interrelated to draft regulation 33 concerning Incidents, it has been proposed to place the draft regulation here in regulation 32 (which was moved to Section 3, and now is regulation 29ter) The heading of Section 5 has therefor also been updated.

## Regulation 32 *[new placement – previously Regulation 53]*

### Emergency Response and Contingency Plan

1. An ~~[Applicant]~~ or Contractor shall ~~[prepare]~~ ~~[develop]~~ an Emergency Response and Contingency Plan ~~[as part of its work]~~ ~~[in accordance with this Regulation, Annex V, applicable Standards, prior to]~~ the development and application of ~~[its] Plan of Work, [taking into account the result of the Environmental Impact Assessment]~~ ~~[and]~~ ~~[in accordance with the applicable Standard and]~~ taking into account the applicable Guidelines, ~~and the result of the Environmental Impact Assessment~~. Furthermore, a Contractor shall maintain:

(a) The currency and adequacy of its Emergency Response and Contingency Plans based on the identification of potential Incidents and in accordance with Good Industry Practice, Best Available Techniques, Best Environmental Practices and the applicable Standards and Guidelines, as well as the implementation and monitoring results of the Environmental Management and Monitoring Plan, which shall be reviewed annually and tested at least ~~[quarterly]~~ ~~[annually]~~ [once a year]; and

(b) Such resources, training and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority including on-vessel presence for rapid emergency response.

2. The Secretary General shall facilitate the exchange of knowledge, information and experience relating to Incidents between Contractors and States, and shall draw on the advice of other relevant international organizations ~~[for the purposes of supporting:] so that such knowledge and information can be used to prevent, reduce and control pollution and other hazards to the Marine Environment, [including the coastline], by [supporting]:~~

(a) Contractors to meet their requirements, inter alia under Regulation 53(1); and

(b) the Authority ~~[in the development, revision and dissemination of]~~ ~~[to prepare and revise]~~ applicable Standards and Guidelines and ~~[to develop and disseminate]~~ other appropriate materials.

3. Following an Incident, ~~[the Contractor [must]/[shall] follow the steps set out in Regulation 33.] [a Contractor must submit a detailed report on whether the Emergency Response and Contingency Plan was adequate and to what extent it was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.]~~

## Regulation 33

### Preventing and responding to Incidents

1. The Contractor shall ~~[suspend Exploitation activities and follow the procedures set forth in Regulation 29 bis]~~ ~~[not proceed or continue with Exploitation]~~ if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, ~~[or reduce]~~ or prevent the effective management of ~~such an~~ Incident.

[1.bis. A Contractor shall maintain an Incident Register on board any mining vessel or Installation.]

2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its Sponsoring State or States, [States adjacent to the ~~C~~contract ~~A~~area likely to be affected] and the Secretary-General ~~[without undue delay]~~ [at the earliest time possible immediately, but no later than 24 hours] ~~from the moment the Contractor becomes aware of the Incident;~~

(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the Sponsoring State or States, flag State, [States adjacent to the Contract Area likely to be affected] or relevant international organizations, as the case may be;

(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident;

(e) Record the Incident in the Incidents Register, ~~[which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under Regulation 34];~~ and

(f) Following resolution of an Incident, provide the [Secretary-General and its Sponsoring State or States] with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor's response, ~~[findings] [and lessons learned]~~ [and any proposed measures to minimise or reduce the risk of similar Incidents occurring in the future].

3. The Secretary-General shall promptly report any Contractor that fails to comply with this Regulation to its Sponsoring State or States, [States adjacent to the Contract Area [likely to be affected] and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

~~[4. The Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting, [and publish a copy of the Incident report at the Authority's website].]~~

[4. bis. Alt. The Secretary-General shall:

(a) before issuing instructions under this regulation, request instruction from the Compliance Committee, and consult with the Sponsoring State or State, and other relevant State or international organisations, insofar as it is feasible to do so taking account of the urgency in the situation;

(b) follow any relevant Standards and Guidelines on the issue of instructions under these regulations;

(c) report such Incidents and measures taken to the Commission and the Council at their next available meeting.

5. The Secretary-General shall publish copies of Incident reports ~~on~~ at the Authority's website, [subject to ensuring that confidential information is protected].

#### Comments

- The definition of “*Incident*” has, upon request by several delegations, been updated in the Schedule.
- In paragraph 2(a) it has been proposed to re-insert language on adjacent coastal States in order to reflect the clear interest of such States in knowing about incidents, as well as to ensure consistency with paragraph 3.

- It has been suggested by a delegation to continue the negotiations based on paragraph 4. bis. Alt. It has also been suggested that paragraph 5 should be retained as it is interrelated to paragraph 4. bis. Alt.

## Regulation 34

### Notifiable events

1. A Contractor shall immediately notify its Sponsoring State or States, ~~[[States adjacent to the contract area likely to be affected] [other relevant stakeholders]]~~ and the Secretary-General of the occurrence of any of the Notifiable Events ~~[-[listed in appendix I to these Regulations].]~~

2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such Notifiable Event:

(a) Provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken ~~[-(including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan)]~~ and any planned action to be taken ~~[-];~~ and

(b) Record the Notifiable Events in the Incidents Register ~~[-];~~

3. Upon receipt of notification under paragraph 2, the Secretary-General shall consult with the Sponsoring State or States, States adjacent to the Contract Area [likely to be affected] ~~[and other regulatory authorities as necessary];~~ [and shall seek the instructions of the Compliance Committee/Council.]

~~4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate.~~

~~45.~~ Where a complaint is made to a Contractor concerning a matter covered by these Regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within 7 Days of the complaint being received.

### Comments

- It has been suggested to re-insert language on adjacent coastal States. It has been pointed out that the language in relation to coastal States should be updated, once the work of the intersessional working group concerning coastal States is more solid.
- It has been suggested to reinstate the reference to the Compliance Committee in the last sentence of paragraph 3.
- It has been suggested to reinsert paragraph 4, and to clarify which organs that should be notified. It has been attempted to insert the requirement of consultation and seeking instruction from the Compliance Committee and/or the Council in paragraph 3 to accommodate for this. Paragraph 4 is still retained in the text, but in deleted form.
- It is reminded that Appendix 1, listing notifiable events, should be revisited to ensure whether the items qualify as “events” that warrant notification or whether some of these may rather constitute “incidents”.

## Regulation 35

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

1. ~~[The Contractor shall immediately cease exploitation activities within [X] radius of any finding of Underwater Cultural Heritage in the Contract Area.]~~ 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,]~~ [Underwater Cultural Heritage] and its location, including the Preservation and Protection measures taken.

2. The Secretary-General shall transmit such information, ~~[within 7 Days [48 hours] of receiving it]~~ to the [Council, the] Sponsoring State ~~[or State from which the Underwater Cultural Heritage originated, ]~~ ~~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.

~~[3. The Authority shall work with relevant States and the United Nations Education, Scientific and Cultural Organization to compile a record of proposals relating to the protection of any finding of Underwater Cultural Heritage referred to in paragraph 1. Subject to paragraph 5 below, the Council shall decide, not later than 90 Days after the first Council meeting following its receipt of a notification in accordance with paragraph 2, whether, and if so, how the Underwater Cultural Heritage found shall be protected for the benefit of humankind as a whole. The Council decision shall include a determination as to whether, and if so, where within the radius in which exploitation had immediately ceased following the finding, exploitation may re-commence.][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.]~~

~~[4. The Contractor shall not be entitled to compensation for any measures required by this regulation.]~~

~~5.2.~~ As part of its decision-making process in paragraphs 1-3, the Authority shall take into account the work of the Authority and the ~~work~~ [views of the Secretary-General] 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].

~~[6. In relation to the finding by a Contractor of a shipwreck which has sovereign immunity, no decision shall be taken about the disposal, protection or preservation of the shipwreck and associated human remains without the consent of the flag State.]~~

#### Comments

- It has been attempted to include in the regulation a system for the protection of human remains and cultural heritage under the sea on the basis of notification and cooperation. Furthermore, great focus has been on describing the different stages to be taken when findings are identified.

- It has been proposed to include a definition of Underwater Cultural Heritage that follows the definition in Article 1(a) of the 2001 UNESCO Convention.
- It has been questioned by some delegations whether it is appropriate to reference the 2001 UNESCO Convention since the Convention has limited subscription and making an express reference would not future proof the regulation.
- An alternative version has also been provided below by the intersessional working group on underwater cultural heritage (See draft regulation 35 Alt.).

### Regulation 35 Alt

#### 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;

(c) to all accredited observers.

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

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].

5 Alt. 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.

#### **Comments**

- The intersessional working group on underwater cultural heritage has provided valuable and significant input on several draft regulations that has an implication on underwater cultural heritage. The outcome of the group's current work can be accessed [here](#).
- In this revised consolidated text, the President has included the group's alternative version of draft regulation 35. Furthermore, the President invites for discussions hereof, and in general, resolution of the cross-cutting issue of how to handle underwater cultural heritage. Since the remaining proposals from the group very much depends on such discussions and that it has an implication on many regulations, the updating of other draft regulations still remain.
- The group has suggested an alternative version of draft regulation 35. It is suggested by the group that discussions are carried out on the basis of this alternative version of draft regulation 35.
- The alternative proposal establishes a multi-part system of protection for the chance discovery of human remains and/or underwater cultural heritage, with various obligations for the respective actors and bodies involved in the system.



## Section 6

### Insurance obligations

#### Regulation 36

##### Insurance

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable Standards [and taking into consideration the Guidelines] ~~[and applicable international maritime practice,]~~ consistent with Good Industry Practice.

~~{~~1. bis The insurance required under paragraph 1 shall:

(a) Be proposed at the time of applying for approval of a Plan of Work of exploitation to allow the Commission and Council to assess the satisfactoriness of the proposed insurance ~~policy~~ against this Regulation and the ~~[applicable][relevant]~~ Standard, ~~[and taking into account the relevant]-[and]~~ Guidelines; and

(b) Be in effect from the start date of the Exploitation Contract, until such time as the Environmental Performance Guarantee has been released back to the Contractor in full by the Authority.

~~[(c) cover all [potential] harms to people, property, natural resources, and environment that may occur, wherever located, or howsoever caused, as a result of the Contractor's activities in the Area].~~

2. Contractors shall include the Authority as an additional assured. A Contractor shall ~~[use its best endeavours to]~~ ensure that all insurances required under this Regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.

3. The obligation under an Exploitation Contract to maintain insurance as specified in these Regulations and the applicable Standards ~~[and Guidelines]~~ is a fundamental term of the Exploitation Contract. Should a Contractor fail to maintain the insurance required under these Regulations, the ~~[Contractor shall immediately suspend Exploitation activities pursuant to Regulation 29bis. The {Compliance Committee} Secretary-General upon being notified of such a suspension, shall consider what additional compliance action is needed, if any, pursuant to issue a compliance notice order under Regulation 103. [The Contractor must safely suspend Exploitation activities as soon as it no longer fulfils the obligation to maintain insurance]. The Secretary-General shall notify the Council immediately [at its next available meeting] of such failure, and the corrective measures taken by the Contractor.]~~

4. A Contractor shall not make any Material Change to or terminate any insurance policy related to its Exploitation activities in the Area without the prior consent of the Council.

5. A Contractor shall notify the ~~{Compliance Committee through the}~~ Secretary-General ~~[as soon as practicably possible]~~ [immediately] ~~[without any delay]~~ if the insurer terminates the policy or modifies the terms of insurance, ~~[in which case paragraph 3 shall apply, as relevant].~~

6. A Contractor shall notify the Secretary-General ~~[as soon as practicably possible]~~ ~~[within 24 hours]~~ upon receipt of claims made under its insurance.

7. A Contractor shall ~~[provide the Secretary-General at least annually with]~~ ~~[include]~~ evidence of the existence of ~~such~~ insurance in accordance with Regulation 38 (2) (i) ~~[to its annual report to the Authority and shall inform the Secretary-General immediately of any change of insurer].~~

#### Comments

- More delegations have suggested to delete the reference to international maritime practice in paragraph 1, since this is not sufficiently specific.
- Several delegations have suggested to remove the brackets around paragraph 1. bis.
- One delegation suggested to retain paragraph 1. bis. (c) as it describes the scope of insurance required. Other delegations suggest removing such information to the Standard so that it can be more easily amended in response to prevailing trends in insurance products offered in the industry. Other delegations highlight concern over the content as it appears to be contradictory to current industry practice. It has been suggested to reassess the content of the sub-paragraph according to the reality of the coverage of existing insurance products in the industry. It has been put forward that it would appear to cover all consequential loss to the umpteenth degree and that it would not be possible to obtain such type of insurance. Paragraph 1. bis. (c) has therefore been retained in square brackets for further consideration.
- The last sentence of paragraph 3 has been deleted since the notification already is covered by draft regulations 29bis and 103.
- One regional group had suggested to insert a paragraph 8 that would stipulate the minimum coverage requirements and a paragraph 9 that would regulate the review and adjustments. Other delegations have suggested that such information should be included in the applicable Standard. It is thus to be decided where to place such information.

## Section 7

### Training commitment

#### Regulation 37

##### Training ~~Plan~~ Obligations

1. The Contractor shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under Schedule 8 to the Exploitation Contract, these Regulations and ~~any training~~ [applicable] ~~[Standards, and taking into consideration]~~ Guidelines.

2. The Contractor, the Authority and the Sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account ~~[the shortage of any skills and requirements of the industry in the undertaking of activities in the Area]~~ [the special needs of developing States, in particular geographically disadvantaged States and landlocked States] and ~~[the training]~~ [applicable Standards, and taking into consideration] Guidelines.

~~[3. Any mutually agreed modification of or amendment to the Training Plan shall become part of Schedule 8 to the Exploitation Contract.]~~

~~[4. [In the case of specific training on Mitigation and the prevention of pollution from the Area, participation of representative of the adjacent coastal State should be ensured.]]~~

[5. The Contractor shall in the Training Plan:

(i) include measures to ensure the protection of the health, safety and rights of trainees, and

(ii) demonstrate how gender equality, inclusivity, non-discrimination, and diversity are implemented in the Contractor's approach to training opportunities. ]

#### **Comments**

- Many delegations stressed the importance of having a Standard on training in place, and the draft regulation has thus been updated throughout to reflect this.
- Paragraph 2 has been updated to better align with the language of the Convention.
- Paragraph 4 is suggested deleted since the Convention does not contain any provisions or indirect obligations to train representatives of adjacent coastal States. During the second part of the twenty-ninth session, some delegations asked for the retention of paragraph 4, and it has thus been retained for further discussion.
- A new paragraph 5 has been included to ensure the protection of trainees' health and safety.

### **[Regulation 37 bis**

#### **Transfer of Technology**

The Contractor shall adhere to and implement the commitments set out in the Plan of Work for the transfer of technology, in line with the applicable Standards, and taking into account Guidelines.]

#### **Comment**

It has been suggested to insert a new draft regulation 37 bis. to highlight the importance of the obligations related to transfer of technology, cf. articles 144 and 274 of the Convention and section 5 of the Annex to the Agreement. Further discussion on inclusion, content and placement will be welcomed.

## Section 8

### Annual reports and record maintenance

#### Regulation 38

##### Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General regarding its activities in the Contract Area and reporting on compliance with the terms of the Exploitation Contract.

2. Such annual reports shall be in accordance with applicable Standards and taking into consideration the Guidelines and include:

(a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against and noting variance from the approved Plan of Work;

(b) ~~The quantity and [quality] [dry metal content] of the Details on the rResources derived from the Area [recovered]/[extracted], and on during the period and the [volume]/[tonnage] [in dry metric tons and wet metric tons] of Minerals and metals [produced]/[recovered], marketed and sold during the Calendar Year, reported against the [Plan of Work]/ and the [Mining Workplan] The information to be included in royalty returns pursuant to Regulation 71.;~~

(c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, if different from the Plan of Work;

(d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable by the Contractor to the Authority, governments, state enterprises, and other contractors, as well as payments and other forms of financial benefit received by the Contractor from Sponsoring States, and reported against the Financing Plan;

(e) Information on compliance with health, labour and safety standards;

(e) bis Details of any accidents or Incidents arising during the period [including a description of the necessary corrective actions that have been taken into account];

(f) Details of training carried out in accordance with the Training Plan;

(g) The actual results ~~[and data]~~ obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against [the Strategic Environmental Goals and Objectives in Regulation 44ter, the relevant Regional Environmental Management Plan including its Regional Environmental Objective and] [where applicable, any criteria and] [thresholds included in the applicable Standards, and against the Environmental Management and Monitoring Plan], together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;

~~[(g) bis A statement indicating whether and how the results obtained from environmental monitoring programmes help to reduce knowledge gaps, particularly with respect to Environmental Impacts of activities in the Area, [and help to support the identification and improvement of Environmental Practices.];~~

~~{(g) ter Details on the actions taken yearly for the reduction of the following environmental footprints: air pollution, discharges of waste-water and generation of waste (including details concerning the operating costs associated with such actions); of all revenues and operating costs associated with activities in handling and processing, including carbon emissions, to the degree available to support transparent identification of Best Environmental Practices;}~~

(h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons, ~~{appointed or employed by the Contractor};~~

(i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;

(j) Details of any ~~{material}~~ changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;

~~{(j) bis Details about any changes made to the Contractor's business structure or collaborations, including but not limited to their subcontractors, holding, subsidiaries, affiliates and ultimate parent companies, agencies and partnerships;}~~

(k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves and applicable Standards and taking into consideration the Guidelines;

(l) A statement that the Contractor's Financing Plan is adequate for the following period;

~~[(m) Details of any ~~{proposed}~~/~~{significant}~~ modification to the Plan of Work ~~{and the reasons for such modifications}~~];~~

(n) Details of any changes made to the Contractor's Environmental Management System in accordance with Regulation 50 bis;

(o) Details of any consultations carried out with coastal States, other marine users, or any other Stakeholders, including pursuant to Regulations 31;

(p) A summary of any complaints or whistleblowing reports received during the reporting period and details of how these have been dealt with;

(q) A summary of any performance assessments pursuant to Regulation 52, or review of activities pursuant to Regulation 58 during the reporting period;

(r) A summary of how the Contractor has dealt with any inspection reports, Inspector instructions, Compliance Notices, monetary penalties or any other regulatory monitoring ~~{compliance}~~, or enforcement action taken by the Authority or the Sponsoring State ~~{or States}~~ in relation to contractor compliance during the reporting period;

(s) Evidence that the Environmental Performance Guarantee has been paid or maintained in accordance with the ~~{contract terms}~~ and the ~~{rules, regulations and procedures of the Authority}~~;

(t) A summary report of the discharges registered in accordance with Regulation 53 ter; and

(u) The ~~{indicative}~~ planned date of Closure, and an explanation of any changes to the date, if applicable, in accordance with Regulation 59.

~~2. bis~~ The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment. ~~}~~

[2. ~~bis-Altter~~. The Commission shall review annual reports received, and shall prepare and submit to the Council a summary report which shall record any trends or findings from the review, and any related recommendations for the Council's consideration. The report should include any information relevant to the formulation by the Authority of rules, regulations and procedures concerning Protection of the marine environment and health and safety.]

[2. ~~fFer. Alt. Fer~~ In reviewing annual reports, the Commission shall prepare for the Council a report that summarises trends or findings from the annual reports, including but not limited to any knowledge and information relevant to the continuous improvement of the Regulation and the management of activities in the Area, with a particular emphasis on information relevant to better understanding marine ecosystems and the impacts of activities in the Area on such ecosystems [as well as safety and mining equipment.]

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. ~~{~~To this end, Contractors shall structure the annual reports such that any Confidential Information can be clearly identified and extracted.~~}~~

#### Comments

- The amendments to paragraphs 2(e)bis, 2(g)bis and 2(g)ter reflect new proposals from several Delegations.
- The President further proposes simplifications across the text of the provisions, with particular regard to the fact that implementing Standards and Guidelines are envisaged to incorporate more technical details on reporting.
- Paragraph 1(b) is proposed to be amended to ensure consistency of language with (and avoid duplication in the light of) the rules governing royalty payment forms.
- The President proposes to remove brackets from the parts of the provision which were not opposed by delegations. Delegations are invited in particular to consider the various formulations in paragraph 2.

## Regulation 39

### Books, records and samples

1. A Contractor shall keep a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses ~~fall revenue and~~ actual and direct expenditures ~~liabilities~~ for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.

[1. bis. The Contractor shall keep the books, account, and records pursuant to paragraph 1 at a place agreed between the Contractor and the [Compliance Committee]] [at a place specified in the Exploitation Contract], and shall make them available for inspection and audit in accordance with these Regulations.]

2. A Contractor shall maintain maps, geological, mining and Mineral analysis reports,

production records, processing records, records of sales or use of Minerals, ~~records of port inspections, customs records, processing plant receipt data or records,~~ environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with ~~Standards and taking into consideration the Guidelines.] [the Authority's data and information management policy].~~

3. ~~[To the extent practical, a]~~ [A] Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, ~~from each sample collection period identified in the applicable [relevant] Standard [s] and [Guidelines, together with biological samples, obtained in the course of Exploitation until the termination of the [Exploitation Contract] [Closure Plan].~~ Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

4. Upon request of the ~~[Secretary-General or]~~ [Inspectors, or Compliance Committee,] the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.

5. A Contractor shall, subject to reasonable notice, permit full access by the ~~[Secretary-General or ]/[Inspectors]/[Compliance Committee]~~ to the data, information and samples.

#### Comments

- There is disagreement between the delegations as to whether Paragraph 1. bis is necessary. The President considers that, if this provision is retained, it is preferable to designate the place of the storage of the relevant documentation in the contractual framework, as opposed to deferring that issue to a further agreement, to be negotiated separately, between the competent organ of the Authority and the contractor.
- Delegations are also invited to consider the relationship between paragraph 1. bis- and the similar provisions of draft regulation 74.
- Across the remainder of the text, it is proposed to remove brackets in the case of proposals not opposed to.
- Paragraphs 1. bis. 4 and 5 might need to be updated based on the outcome of discussions in respect of the compliance mechanism.

## Section 9

### Miscellaneous

#### Regulation 40

##### Prevention of corruption

1. A Contractor shall not ~~[offer or promise or]~~ make ~~[nor attempt to make]~~ any gift or reward ~~[or personal favour]~~ to any officials, agents or employees or ~~Contractors~~ contractors or subcontractors of the Authority or other individuals operating under the auspices of the Authority to induce or reward such persons for any acts undertaken in accordance with their duties ~~[under these Regulations]~~ [under the Rules of the Authority].

[1.bis. A Contractor shall not make gifts or rewards directly to the Authority, to procure a benefit that it would not be entitled to under the Exploration Contract or the Exploitation Contract.]

[1.ter. A Contractor shall not encourage, instruct or allow any other person or government to offer, promise or make any such gift or reward or personal favour referred to in paragraph 1.]

[1. quat. Contractors shall prepare and publish an anti-corruption policy setting out how they manage corruption risk, including how they collect and take risk-based steps to use beneficial ownership data of joint venture partners, subcontractors and suppliers in their process.]

2. The Contractor acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled and shall conduct its activities under the Exploitation Contract in accordance with its obligations under such anti-bribery and anti-corruption laws, ~~[including in accordance with the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises].~~

3. Any act in contravention of paragraph 1 shall be deemed a serious and wilful violation of the fundamental tenet of these Regulations and the Exploitation Contract, and the Secretary-General, upon becoming aware of any such act or relevant allegation, shall refer the information immediately to the Compliance Committee for their consideration, including possible action pursuant to Regulation 103, and shall notify the Sponsoring State, safe for the event that the Compliance Committee is implicated in the act or allegation, in which case the Secretary-General shall refer the matter to the Ombudsperson.

4. This regulation shall equally apply to Applicants and prospective Contractors. If the Authority determines that this provision has been contravened, the application for the approval of a plan of work shall be dismissed, or the approval shall be reversed in instances where approval has already been granted, as the case may be.

#### Comments

- Several proposals have been received for amending paragraph 1 in relation to its specificity. It has been attempted to incorporate the various intentions.
- It has been suggested to delete the final sentence of paragraph 2 since not all States are parties to the OECD recommendations.
- It has been suggested to insert paragraphs 3 and 4 to handle the consequences of an act of corruption, bribe or attempted bribe. In addition, it has been suggested to introduce an ISA Ombudsperson that can handle cases where the Compliance Committee or its members potentially could be involved in allegations covered by paragraph 1.

## Regulation 41

### Other Resource categories

1. The Contractor shall notify the Secretary-General within ~~[30 Days]~~ [immediately] if it finds, within its Contract Area, Resources other than the Resource category to which the Exploitation Contract relates. The Secretary-General shall inform the Council about



such notification during the next ~~[regular session]~~ [available meeting] of the Council. [This notification shall include a detailed description of the resources found].

2. ~~Alt. [The]~~ Any Exploration for and Exploitation of Resources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority.

[3. The application must include a detailed exploration and exploitation plan, an Environmental Impact Assessment, compliant with all relevant Regulations, and Standards, a timetable for the proposed activities.]

[4. Until the separate application is approved, the Contractor shall take necessary measures to avoid any exploitation of the newly discovered resources. Any interim exploration activities must be non-intrusive and comply with environmental protection standards.]

#### **Comment**

It has been suggested by some delegations to set out the details of the application and interim measures in new paragraphs 3 and 4. Other delegations suggest refraining from that since the requirements of such application already will be governed by other parts of the Regulations.

## **Regulation 42**

### **Restrictions on advertisements, prospectuses and other notices**

1. No statement shall be made in any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor ~~[or with its implied permission, in which it is stated or suggested]~~, or with the express or implied permission of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of Exploitation in the Contract Area.

[2. If there is any indication or reason to believe that this regulation has been contravened, the Compliance Committee shall take the matter up for urgent consideration, including to determine if any measures against the Contractor under Regulation 103 would be appropriate, as well as whether to recommend to the Council that an investigation be carried out against all person or persons involved. The Secretary-General shall gather and forward all available and potential information and evidence in support of such allegation to the Compliance Committee. The Secretary General shall also notify the relevant sponsoring State, who shall cooperate with the Authority as well as consider further action pursuant to its national legislation.]

[3. This Regulation shall equally apply to Applicants and prospective Contractors. If the Authority determines that this provision has been contravened, the application for the approval of a plan of work shall be dismissed, or the approval shall be reserved in instances where approval has already been granted, as the case may be.]

#### **Comment**

It has been suggested by one delegation to insert paragraphs 2 and 3 to describe the procedure to follow if the provision is contravened, and that the consequences also apply to Applicants and prospective Contractors.

## Regulation 43

### Compliance with other laws and regulations

1. Nothing in an Exploitation Contract shall relieve a Contractor from its ~~[lawful]~~ obligations under any national law to which it is subject, including the laws of a Sponsoring State and flag State. ~~[Contractors shall comply with all laws and regulations, whether domestic, international, or other, that apply to its conduct of activities in the Area.]~~
2. Contractors shall maintain the currency of all permits, licences, approvals, certificates, [insurance policies,] and clearances not issued by the Authority and that may be required to lawfully conduct Exploitation activities in the Area. [Contractors must conduct regular reviews to ensure that all necessary documents are up to date and valid].
3. Contractors shall notify the Secretary-General promptly when a permit, licence, approval, certificate, [policy] or clearance connected with its activities in the Area is terminated, [changed] or suspended. [The Secretary-General shall upon notification confer with the relevant States to determine how the termination, changes or suspensions may impact the Contractors activities in the Area. The Secretary-General shall then report any information provided by the Contractor and relevant States to the Compliance Committee for their consideration of whether any regulatory action is warranted or additional information from the Contractor or relevant State is required.]

#### Comment

- It has been suggested by many delegations to delete the word “*lawful*” in paragraph 1.
- Some delegations suggest retaining the last sentence of paragraph 1. Other delegations suggest deleting it, as the content is unnecessary and unclear. It has been retained in deleted format for the time being.
- A group and one delegation have suggested to insert regulation on what is expected in case a notification is received under para 3.

## Part IV

### Protection and Preservation of the Marine Environment

#### Section 1

#### Obligations relating to the Marine Environment

#### Regulation 44

##### General Obligations

1. The Authority, Sponsoring States, the Enterprise, Contractors, flag ~~States and~~ 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 ~~the~~ Exploitation in the Area, in accordance with Regulations as well as applicable Standards and [the relevant Regional Environmental Management Plan], taking into consideration the 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:~~

(a) Apply the precautionary [principle or precautionary] approach, [as appropriate];

~~(a) bis Apply~~ and an Ecosystem-based Approach to [the assessment management and prevention of risk of harm [in order to prevent and reduce of risk of harm] [avoidance of risk of harm][the prevention, assessment and management of risk of harm] to the Marine Environment from Exploitation in the Area;

(b) Apply ~~the Best Available Techniques and~~ Best Environmental Practices ~~[and ensure the availability of sufficient information];~~

~~[(c) Apply scientific-based approach and~~ integrate use the Best Available Science and Scientific Information;

~~(c) bis Ensure the availability of sufficient science and scientific information for the purpose of decision-making;~~

~~(c) ter Use and [where available,~~ relevant traditional knowledge of Indigenous Peoples and of local communities] in decision-making, where available;

(d) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks ~~from Exploitation in the Area~~, [including but not limited to ~~stakeholder consultation and~~ public access to environmental information, public participation, and access to justice;]

(e) Apply the polluter pays principle ~~[approach]~~ ~~[having due regard to the public interest];~~

~~[(e) Alt. Take into account the approach that the polluter should bear the cost of pollution, endeavour to promote practices whereby those engaged in Exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest;]~~

~~[(f) Elaborate and implement measures to ensure that~~ damage or hazards [harmful changes] to the Mmarine Eenvironment are not transferred, ~~[directly or indirectly,]~~ from

one area ~~of the environment~~ to another or from one type of pollution into another one [and to prevent, reduce and control interference with the ecological balance of the marine environment]. Special attention should be paid to avoiding toxic, persistent and bio accumulative substances; and]

~~[(g) Apply the Mitigation hierarchy to avoid, minimize, mitigate, and should it become feasible in the future, remediate and restore the Marine Environment from harm caused by activities in the Area.]~~

[(h) Ensure ~~that Exploitation in the Area under an Exploitation Contract is carried out with~~ reasonable regard for climate change mitigation and ~~to minimise impact on avoidance of impacts on~~ the ocean's capacity to function as a climate carbon sink.]

[(i) Apply the mitigation hierarchy to avoid, minimize, mitigate, and should it become feasible in the future, remediate and restore the Marine Environment from harm caused by activities in the Area];

2. The Commission shall make recommendations ~~[to the Council]~~ on the implementation of paragraph 1 as required.

3. No ~~Regulation in this Part~~ thing in these Regulations shall be interpreted as preventing ~~[sponsoring] States from applying environmental or other laws and regulations, or [Parties]~~, the Enterprise and Contractors from taking, ~~individually or jointly, more stringent~~ measures that are more stringent than those in the rules, regulations and procedures of the Authority relating to the protection of in accordance with international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the Marine Environment.

[4. Exploitation in the Area and obligations relating to the Marine Environment shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies.]

#### Comments

- There seems to be divergent views on the entities that should be referenced in the chapeau of paragraph 1. It is thus necessary to consider which entities should be referenced here.
- Many delegations have proposed to delete the reference to “*directly or indirectly*” in the chapeau, as this reference is redundant.
- Several delegations have suggested to revise this draft regulation to better align with other international instruments and frameworks, including the recently adopted BBNJ Agreement, and this has been attempted throughout this draft regulation.
- In para (1)(b), the reference to “*Best Available Techniques*” have been deleted since this is included in the definition of “*Best Environmental Practices*”
- One delegation has proposed to insert a new paragraph 4, which has the intention to mirror the language of Article 5(2) of the BBNJ Agreement.
- There are ongoing discussions on whether a mitigation hierarchy should be included in this general regulation or in a specific regulation. The feasibility of certain stages of the mitigation hierarchy needs to be discussed and applied uniformly across the Regulations.

## Regulation 44 bis [IWG ENV]

### Regional Environmental Management Plans

1. The Commission shall ~~{only}~~ consider an application for a Plan of Work ~~{if a}~~ Regional Environmental Management Plan ~~{has been adopted}~~ by the Council for the particular area and type of resource concerned [in line with the Council approved procedures and template].
2. In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article b and c of the Agreement].

~~[Regulation 44 ter~~

### ~~Environmental Goals and Objectives~~

- ~~1. In performing their roles and obligations under the Convention, the Agreement, and all relevant rules, regulations and procedures of the Authority, Contractors, the Enterprise, the Authority and its organs, and Sponsoring States shall be guided by the Strategic Environmental Goals and Objectives, set out in paragraphs 6 and 7.~~
- ~~2. The Council shall ensure that the Strategic Environmental Goals and Objectives pursuant to paragraphs 6 and 7 are operationalized through regionally and Mineral specific environmental objectives in Regional Environmental Management Plans.~~
- ~~3. The Council shall ensure that the Strategic Environmental Goals and Objectives pursuant to paragraphs 6 and 7 and the regionally and Mineral specific environmental objectives in Regional Environmental Management Plans pursuant to paragraph 2 are further operationalised through environmental thresholds, developed pursuant to Regulations 45(2) and 94, prior to the assessment of the first application for a Plan of Work for exploitation.~~
- ~~4. Contractors, [the Enterprise, Sponsoring States] applicants, the Council and the Commission shall ensure that a proposed Plan of Work reflects and contributes to the achievement of the Authority's Strategic Environmental Goals and Objectives pursuant to paragraphs 6 and 7 as well as the relevant regionally and Mineral specific environmental objectives pursuant to paragraph 2.~~
- ~~5. The Authority shall keep its Strategic Environmental Goals and Objectives under periodic review and ensure amendments to reflect advances in scientific research and knowledge. Where the Authority's Environmental Objectives are revised, the Commission shall:
  - ~~(a) inform Contractors and Sponsoring States and discuss whether any modification of a Plan of Work is required pursuant to Regulation 57; and~~
  - ~~(b) recommend to the Council any necessary amendments to other relevant instruments, including Standards, Guidelines, and Regional Environmental Management Plans.~~~~
- ~~6. The strategic Environmental Goals are to sustain marine (benthic and pelagic) ecosystem integrity, including the physical, chemical, geological and biological environment, and contributing to restoring ecosystem integrity.~~
- ~~7. The Authority's strategic Environmental Objectives are to:~~

- ~~(a) Prevent loss of genetic diversity, species richness, habitat or community types, and structural complexity;~~
- ~~(b) Maintain the ability of populations to replace themselves, including ensuring population connectivity and the preservation of suitable habitat;~~
- ~~(c) Prevent significant changes in the distribution, abundance or productivity of species of flora and fauna;~~
- ~~(d) Prevent further jeopardy to endangered or threatened species or populations of said species;~~
- ~~(e) Prevent the degradation of ecosystem functions (e.g. the long-term natural productivity of habitats, elemental cycling, trophic relationships);~~
- ~~(f) Prevent non-negligible risks of Contamination by pollutants, damage to flora and fauna, or other harmful effects to ecosystem integrity during any phase of the mining process;~~
- ~~(g) Prevent significant changes in the atmosphere, climate and weather patterns, the terrestrial environment, or the Marine Environment;~~
- ~~(j) Prevent significant adverse effect on [air] and water quality;~~
- ~~(h) Maintain resilience to prevent regime shift, and to support recovery from cumulative impacts, including mining, that can affect source populations and communities, connectivity corridors, life-history patterns and species distributions;~~
- ~~(i) Sustain ecosystem services, including carbon sequestration, recognizing that many are yet to be discovered;~~
- ~~(k) Prevent non-negligible risks that will undermine the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment;~~
- ~~(l) Prevent degradation, or risk of degradation to special biological, scientific, archaeological, or historical significance of the Area or the Marine Environment; and~~
- ~~(m) Preserve vulnerable and unique marine ecosystems.]~~

**Comment**

The content of draft regulation 44 ter. was welcomed by many delegations. However, many delegations suggested that this content would be better handled within a policy framework that would apply to the Authority as a whole and not just for Exploitation Contracts. The content has, for the time being, been placed in the Revised Suspense Document for further consideration and further work on the general policy on environmental matters.

**Regulation 45**

**Development of environmental Standards and Guidelines**

1. Environmental Standards and Guidelines developed under this Regulation shall have the purpose of ensuring the effective Protection of the Marine Environment from harmful effects, in accordance with Article 145 of the Convention.
2. The Council shall, based on the recommendations of the Commission, adopt environmental Standards, [resourced and region specific, where appropriate] [in accordance with Regulation 94], inter alia on the following subject matters:

- (a) ~~[Baseline]~~ Environmental studies;
- (b) Environmental quality objectives;
- (c) ~~[Resource and region specific]~~ [geological, physical, chemical and biological] indicators and [associated] quantitative [environmental] thresholds [values], including but not limited to;

[i. Toxicity]

ii. Turbidity and settling of resuspended sediments

iii. Underwater noise

iv. Light pollution

v. Habitat loss

vi. Greenhouse gas emissions

vii. biodiversity status and ecosystem structures, functions and services]

~~[(i) biodiversity status and ecosystem structures, functions and services;~~

~~[(i) bis Physical properties of water (temperature, salinity, turbidity);~~

~~(i) ter Chemical properties of water;~~

~~(i) quad Chemical properties of sediments;]~~

~~(ii) plume characteristics (in particular, composition and characteristics of dissolved and suspended matter, plume dispersion, composition, sedimentation rates);~~

~~(iii) Physico-chemical Characteristics of seawater and sediment, including water chemistry and temperature~~

~~(iv) light emissions;~~

~~(v) noise and vibrations emissions and~~

~~[(vi) greenhouse gas emissions.]]~~

(d) Monitoring procedures;\_

(e) Mitigation Measures; [including restoration measures]

(f) Minimum technical requirements for environmental protection with regard to all the equipment, [operational procedures and processes [taking place onboard the vessel]] used for the Exploitation activities, [including criteria for the assessment methodology to be used.]

(g) [Procedure for the management and] Assessment of accidental events and natural hazards leading to environmental emergencies as well as environmentally hazardous discharges and residual effects of such emergencies, including preparation and implementation of Emergency Response and Contingency Plans.

(h) Procedural and substantive requirements relating to submissions or reports required by these Regulations, including but not limited to: Plans of Work, Environmental Management Systems, Environmental Impact Assessments, ~~[Environmental Impact Assessment Scoping Report,]~~ Environmental Impact Statements, Environmental Management and Monitoring Plans and Closure Plans.

~~[3. The Authority shall not approve any Exploitation unless the environmental Standards and Guidelines have been adopted.]~~

4. In addition to the environmental Standards, Guidelines on environmental matters may be developed, in accordance with Regulation 95.

5. The application of this Regulation shall be without prejudice to the function of the ~~[Council], [upon recommendation of the] [Commission] to develop other~~ **adopt Standards [for the purpose to ensure the effective protection of the marine environment from harmful effects, in accordance with Article 145 of the Convention.]** ~~[[and Guidelines] on the protection [and conservation] of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment, taking into account the development of the Exploitation activities in the Area. Environmental Standards and Guidelines shall be regularly reviewed and updated in response to advancements in scientific knowledge and experience and new contributions from Indigenous Peoples and local communities.]~~

#### Comments

- Some delegations have suggested to reinsert the reference to restoration measures in paragraph 2(e).
- A joint proposal has been made to update the listing in paragraph 2(c). The listing represents a summary of resources and region-specific indicators and quantitative environmental thresholds.
- It has been proposed by several delegations to delete paragraph 3 since this would not be in accordance with the Convention and the Agreement.
- One regional group has suggested to update paragraph 5 to better align with Article 145 of the Convention.

## Section 2

### The Environmental Impact Assessment Process

#### Regulation 46

##### **Environmental**~~The~~ Impact Assessment Process

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

2. The purpose of an Environmental Impact Assessment ~~[Process] [under this Regulation]~~ shall be to [identify and inform the Authority's assessment of an application of a Plan of Work under Regulations 13 to 16, ~~[or a Contract's continued adherence to these Regulations]~~ and predict [and evaluate the potential] Environmental Impacts, ~~[effects and risks] [anticipated from] [of]~~ the proposed activities ~~[in the Area]~~ [on the marine environment and identify necessary measures to Mitigate, ~~[prevent], [minimise]~~ or manage [them] ~~[such effects and risks]~~, to enable the Authority to assess the potential adverse Environmental Effects ~~[and risks]~~, with the aim to:

(a) Ensure effective Protection for the Marine Environment from harmful effects which may arise from such proposed activities;

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

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

(d) Ensure, in accordance with the Convention, that the Sponsoring State [or States] and the Contractors, conduct the ~~[Plan of Work for Exploitation]~~ [Environmental Impact Assessment] with due regard to the rights and legitimate interests of ~~[adjacent] coastal~~



~~States and~~ any ~~other~~ potentially most affected coastal State by maintaining, [timely] [targeted and proactive] consultations in accordance with Regulation 93 ter; and

(e) Ensure that the proposed activities are carried out in accordance with [the Convention, the Agreement], the Rules, regulations and procedures of the Authority [~~general International Law and other international and regional seas Conventions~~] and the applicable Standards and taking into consideration the Guidelines as well as, Best Available Scientific Information, Best Environmental Practices, and Best Available Techniques.

3. The [process for Environmental Impact Assessment][~~Environmental Impact Assessment [Process]~~] shall:

(a) Be based on relevant [and representative] environmental baseline data [based on sufficient scientific information] in accordance with [applicable] Standards [and Regional Environmental Management Plans] and taking into consideration the Guidelines [~~and the objectives and measures of the [relevant] Regional Environmental Management Plan~~];

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

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

(b) bis Be based on the Best Available [Science and] Scientific Information, and, [~~if applicable, taking into account~~] [where available,] relevant traditional knowledge of Indigenous Peoples and [of] 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 [in accordance with]~~] the relevant Regional Environmental Management Plan;

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

[(d) bis Provide for consultation with all States and Stakeholders in accordance with Regulation 93 bis, relevant Standards and taking into account the relevant Guidelines.]

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

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

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

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

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

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

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

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

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

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

~~[(e) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the Environmental Impact Assessment, including any conditions imposed upon an approval, which decision shall be recorded and published in accordance with Regulation 16, and]~~

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

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

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

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

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

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

#### Comments

- It has been suggested to rename the regulation to “*The Impact Assessment Process*” as the title currently does not include e.g. social, economic and cultural effects, which currently is anticipated in the draft Standard and Guidelines for the Environmental Impact Assessment Process (ISBA/27/C/4).
- Paragraph 3(e) is suggested deleted as this is a matter for consideration by the Legal and Technical Commission. The Legal and Technical Commission might empower experts to engage with this assessment, if necessary. Paragraph 4(e) has been suggested deleted since it does not concern the EIA process. Also, paragraph 4(f) has been suggested deleted since the stakeholder consultation has been updated in paragraph 3 (d) and (d) bis.
- It should be recalled that the informal Working Group on revising the EIA Process has suggested the move of points (i)-(v) of litra (f) in paragraph 4 to a relevant Standard.

## Regulation 47

### Environmental Impact Assessment

1. The applicant or Contractor shall, in accordance with the Standards, and taking into [account] the Guidelines, undertake an impact assessment, [as described in Regulation 46 (4),] based on the terms of reference [agreed] in the Scoping Report. This includes assessing:

(a) The intensity or severity of the impact at the [area being affected];

(b) The spatial extent of the impact relative to the availability of the habitat type affected;

(c) The sensitivity [and] vulnerability of the ecosystem to the impact;

(d) The ability of an ecosystem to recover from harm, and the rate of such recovery;

(e) The extent to which ecosystem functions may be altered by the impact; and

[(f) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.]

2. [In] undertaking the impact assessment, the applicant or Contractor shall complete:

(a) An analysis of reasonable alternatives to the planned activity, including the no-action alternative;

(b) An Environmental Risk Assessment, which adds to the preliminary Environmental Risk Assessment required during scoping by Regulation 47 bis(3)(b);

(c) An analysis of the results of the Environmental Risk Assessment, including identification of risks requiring particular focus, including in the Environmental Management and Monitoring Plan;

(d) Identification of measures to monitor Environmental Effects to identify measures to [prevent], mitigate and manage such effects and risks to as low as reasonably practicable, while within acceptable levels in accordance with environmental Standards, including through the development of an Environmental Management and Monitoring Plan;

[(e) Provide for engagement with [potentially directly affected] Stakeholders and in accordance with [Regulation 93 ter], applicable Standards and taking into consideration Guidelines;]

#### Comment

- Draft regulation 47. bis Alt gained most support during the third part of the twenty-eight session and has thus been retained and the numbering has been updated to draft regulation 47. Joint proposals by several delegations and observers have also been inserted (Joint proposal: [https://www.isa.org.jm/wp-content/uploads/2023/10/Joint\\_proposal\\_DR47\\_48bis\\_ENV.pdf](https://www.isa.org.jm/wp-content/uploads/2023/10/Joint_proposal_DR47_48bis_ENV.pdf)).
- Several delegations have suggested to delete the newly inserted paragraph (2)(e), as it is put forward that according to the non-discrimination provision of Article 141 of the Convention, stakeholder consultations should be open to all States without distinction, and preparing a list would be in contradiction to Article 141 of the Convention.

- The Contractor must first undertake an ERA, and then proceed to identify measures to mitigate such risks. Therefore, it has been suggested to place paragraphs 2(c) and (d) before paragraph 2(b). The numbering of the subparagraphs has been updated.
- Due to the many suggestions and structural changes, the draft regulation has been placed in a clean version.

## **Regulation 47 bis**

### **Scoping**

1. An applicant or Contractor shall undertake scoping and prepare and submit to the Secretary-General a Scoping Report in accordance with this Regulation, Annex III bis, the applicable Standard and taking into account the applicable Guidelines.
2. An applicant or Contractor shall use Environmental Impact Assessment scoping to identify and prioritize the main activities and potential impacts associated with the proposed Exploitation, in order to focus the Environmental Impact Assessment and Environmental Impact Statement on the key environmental issues.
3. In undertaking the Environmental Impact Assessment scoping, the applicant or Contractor, shall:
  - (a) Review available data and knowledge, and propose additional data to be collected and studies needed to complete an Environmental Impact Statement in accordance with these Regulations;
  - (b) Undertake a preliminary impact analysis and Environmental Risk Assessment which will be updated as the Environmental Impact Assessment proceeds;
  - [(c) Identify [potentially affected] Stakeholders in accordance with [the applicable] Standards and taking into consideration the Guidelines;]
  - (c) bis Engage with [potentially affected] Stakeholders, and in accordance with [Regulation 93 ter.,] Standards and taking into consideration the Guidelines;
  - (d) Identify and evaluate feasible alternative means of carrying out the project that will be [further] examined in the Environmental Impact Assessment;
  - (e) Use the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;
  - (f) Identify terms of reference for the Environmental Impact Assessment; and
  - (g) Prepare a report on the outcomes of scoping described above, including the terms of reference (“Scoping Report”).
4. The applicant or Contractor shall consult on the Scoping Report, with all States and Stakeholders in accordance with Regulation 93 bis [before submission for approval].
5. The Commission shall consider a Scoping Report submitted in accordance with this Regulation, and taking into account the consultation submission received under Regulation 93 bis (8), the applicant or Contractor’s written response prepared under Regulation 93 bis (9), any additional information provided by the Secretary-General, and in accordance with [the applicable] Standards and taking into consideration the Guidelines. Based on this review, the Commission shall either approve a Scoping Report, disapprove it or make recommendations to the applicant or Contractor under paragraph 7.
6. The Commission may recommend that the applicant [or Contractor]:

(a) revise the preliminary Environmental Risk Assessment, terms of reference or other aspects of the Scoping Report;

(b) Submits the report for further consideration; or

(c) Further consults under Regulation 93 bis on any revised Scoping Report, particularly if the recommendations are likely to lead to a Material Change in the Scoping Report.

7. The applicant or Contractor must obtain the Commission's approval of the Scoping Report under paragraph 6 before proceeding with the next steps of the Environmental Impact Assessment pursuant to Regulation 47.

#### Comment

- Several proposals were received to refine this draft regulation, and reallocate elements to the Annex on Scoping Report. The text thus contained significant mark-up. For the sake of clarity, the draft regulation has been placed in a clean version. It is now renumbered to draft regulation 47 bis.
- It has been suggested to replace draft regulation 47 bis with draft regulation 47, and delete draft regulation 47. Another suggestion has been to change the current order, and interchange draft regulation 47 with draft regulation 47 bis. Draft regulation 47 bis. concerns Scoping, and according to draft regulation 46 (4), the Scoping Report is the first step of the EIA, and the EIA is the second step.
- At the negotiations during the twenty-eighth session, most support were provided for applying the alternative version in relation to the Environmental Impact Assessment Scoping Report. Furthermore, the Informal Drafting Group on restructuring the Environmental Impact Assessment Process regulations of Section 2, has focused on utilizing the alternative version. This version has been updated and include those proposals received from the Informal Intersessional Working Group on a Standardized Approach for Stakeholder Consultation. Amendments to paragraphs 3. (c) and (c) bis., 4 (l), 4 (m), 5, 6, 7 and the minor textual correction to paragraph 8, reflect the input from the group.

## Regulation 48 ~~Alt.~~

### Environmental Impact Statement

1. An applicant or Contractor, ~~[as the case may be,]~~ shall prepare an Environmental Impact Statement in accordance with this Regulation, ~~[Annex IV, the applicable Standards and taking into account Guidelines]. [The] [Such] [an] Environmental Impact Statement [will] [shall] be considered by the Authority in accordance with Part II or Regulation 57, [which include a consultation with States and Stakeholders on the Environmental Impact Statement, by the applicant or Contractor and in accordance with Regulation 93 bis], and is required for an application for a Plan of Work pursuant to Regulation 7(3)(d).~~

2. The Environmental Impact Statement shall document and report the results of the Environmental Impact Assessment carried out in accordance with Regulation 47 ~~ter~~ and shall provide the ~~[International Seabed]~~ Authority, its member States and other Stakeholders with ~~[unambiguous] [clear]~~ documentation of the potential Environmental Effects based on ~~[the Best Available Scientific Information,]~~ Best Environmental

Practices, ~~[and Best Available Techniques,]~~ and Good Industry Practice ~~[on which the Authority can base its decision, and any subsequent approval that may be granted].~~

2.bis. The applicant or Contractor shall ~~[endeavour to]~~ engage with potentially directly affected Stakeholders, and in accordance with ~~[Regulation 93 ter]~~ applicable Standards, and taking into consideration Guidelines, during the development of the Environmental Impact Statement.

~~[2.ter. The applicant or Contractor shall consult with all States and Stakeholders in accordance with Regulation 93bis on the Environmental Impact Statement before submission for approval.]~~

3. The Environmental Impact Statement shall be in a form prescribed by the Authority in ~~[Annex IV]~~ and the ~~[applicable]~~ ~~[relevant]~~ Standard and ~~[in accordance with the relevant]~~ ~~[taking into consideration the applicable]~~ Guidelines, ~~[and shall]:~~

(a) Detail the results of the Environmental Impact Assessment including the methodology used, ~~[the sufficiency of information]~~ and evaluation of the identified Environmental Impacts;

(b) Demonstrate that the proposed Exploitation is in accordance with all relevant environmental Standards and the Authority's environmental objectives and ~~[taking into consideration]~~ ~~[in accordance with the requirements of]~~ the relevant Regional Environmental Management Plan, ~~[environmental baseline data]~~ as well as any additional objectives as set by the Contractor and any results of the performed Test Mining Study, where applicable;

(c) ~~[Describe engagement and consultations undertaken and]~~ ~~identify substantive~~ ~~[and relevant]~~ comments received through ~~public~~ consultation ~~[with all States and Stakeholders]~~ on the Environmental Impact Assessment and ~~[include the written response prepared under Regulation 93bis(9); explain how [such] [each] comments have been incorporated or otherwise addressed,~~

~~[(c) bis Demonstrate it has conducted consultation with Stakeholders, in accordance with [Regulation 93 ter] [and Regulation 93 bis] and the applicable Standards, and taking into consideration the Guidelines.]~~

(d) Be prepared in clear ~~[and non-technical]~~ language and in an official language of the Authority together with an English-language version, where applicable,

~~[(e) Be peer reviewed by competent independent experts, before submission,]~~

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

~~[4. The Environmental Impact Statement shall, but not limited to, entail the following elements, which are described in greater detail in Annex IV[/ Standard]:~~

~~(a) An executive summary to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers;~~

~~(b) A description of the proposed project, [including information on location, associated activities, required infrastructure, mineral resources (type, size, shape, tonnage, volume, grade), technologies and (mining-)equipment to be used, project scale overview (spatial, temporal, operational depth), transport and handling of materials, on-site processing, commissioning, construction and operating standards, design codes, health and safety aspects, workforce, decommissioning and closure, a timetable for the entire operation project proponents as well as a description of the report, including its~~

~~scope and structure and overview of the stakeholder consultation process and consultation.]~~

~~[(b)bis A description of applicable national and international legislation, procedures and policies, and other applicable standards, principles and guidelines, for example the Convention including the 1994 Agreement relating, relevant rules from the International maritime Organization and International Law in general.]~~

~~[(b)ter A summary of the Commission's recommendations on the scoping report and the agreed terms of reference for the applicant's Environmental Impact Assessment submitted to the Commission, and justification for any deviation either from those terms of reference, or from the Commission's recommendations.]~~

~~(e) [A description of] Methodologies, [for collecting and analyzing baseline and 'test mining' data and assessing the potential environmental impact and Environmental Effects from the proposed operations and alternatives considered.]~~

~~(d) A description of the existing oceanographic, physiochemical and geological environment;~~

~~(e) A description of the existing biological environment, [including information on prior research/Exploration studies, biological properties and communities and ecosystem that could be impacted by proposed activities.]~~

~~(f) A description of the socioeconomic and socio-cultural environment, including existing human activities, [on fisheries, marine traffic, submarine cables, tourism, ongoing scientific research, socio-cultural use, and sites of cultural or historical significance.]~~

~~(g) An assessment of [environmental] impacts on the physical, chemical and geological environment and proposed Mitigation, [including description of the impact source, potential impact categories and pathways, receptors and impacts, any potential Cumulative Environmental Effects, unavoidable residual impacts and effects that may remain, and the extent to which any potential impacts and effects may occur in areas under a State's national jurisdiction.]~~

~~(h) An assessment of [environmental] impacts and Environmental Effects on the biological environment and proposed Mitigation, [including description of the impact source, potential impact categories and pathways, receptors and impacts, any potential Cumulative Environmental Effects, unavoidable residual impacts and effects that may remain, and the extent to which any potential impacts and effects may occur in areas under a State's national jurisdiction.]~~

~~(i) An assessment of impacts on the socioeconomic and socio-cultural environment and proposed Mitigation, [including description of potential impact categories and pathways and impact identification of existing use (fisheries, marine traffic, submarine cables, tourism, ongoing scientific research, socio-cultural use, area-based management tools, sites of cultural or historical significance, ecosystem services), impact on gender and residual impacts.]~~

~~[(i bis) An assessment of any uncertainties associated with assessments detailed in paragraph 4 subparagraphs (g), (h), and (i) under this regulation, including the implications of those uncertainties for the Environmental Impact Assessment and its findings, measures taken to reduce uncertainties in those findings to as low as reasonably practicable and manage any remaining uncertainties.]~~

~~(j) An [description outline] of hazards arising from natural, accidental and discharge events, for example related to extreme weather, natural hazards, accidental events, maritime safety, emergency response,~~

~~(k) An [description outline] of waste management,~~

~~(l) A summary of key issues in the Environmental Impact Statement and how they will be addressed in the Environmental Management, and Monitoring Plan and Closure Plan,~~

~~(m) ~~[An overview of the downstream supply chain A description of responsible product stewardship] related to the intended use of the mineral-bearing ore once it leaves the [Contract] Area, [including how the Contractor will minimize effects on health, safety, environmental as well as socioeconomic and socio-cultural impacts,]~~~~

~~(n) A [description summary] of [the nature, extent, participation and outcomes of] consultations [that have taken place with Stakeholders, and how their comments have been addressed in the environmental impact assessment, and stakeholder engagement and methods.]~~

~~[(o) A summary of the study team outlining the people involved in the environmental impact assessment studies and in writing the Environmental Impact Statement.]~~

5. The Environmental Impact Statement of every project, including any revisions, ~~[shall] be [made] available on the [official website of the International Seabed] Authority's website. [by the Secretary General] in the interests of transparency of the whole process in accordance with Regulation 92.~~

#### Comments

- During the twenty-eighth session, most support were provided for applying the alternative version of draft regulation 48 and the informal drafting group also focused on utilizing the alternative version. Based on the above, the original version of draft regulation 48 has been omitted, and the alternative version is now the new draft regulation 48.
- The Informal Drafting Group suggested moving the content of para 4 of regulation 48 Alt. to Annex IV. Please note the outcome of the Informal Drafting Group, in particular the document entitled “*Annex III – Outline of merging alignment task*” as this document diligently explains, and lays out the specifics of, the proposed replacements.
- Regulation 48 has also been amended to reflect the input from the “Informal Intersessional Working Group on a Standardized Approach for Stakeholder Consultation”. Amendments to paras 1 and 3 (d) and the insertion of 3 (d) bis and 3 bis reflect the input from the group.
- The Informal Drafting Group on revising the EIA Process suggests moving the content of paragraph 4 of draft regulation 48 Alt. to Annex IV as stated in Annex 3 of the Intersessional Working Group’s report (“*Annex III – Outline of merging alignment task*”).

## Regulation 48 bis

### **[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 Plan, it shall promptly notify the Secretary-General in writing, including:

- (a) a detailed description of the circumstance;
- (b) details of the potential effect on or risk to the Marine Environment; and



(c) details of any Environmental Impact Assessment conducted or to be conducted, or proposed modification to the Environmental Plans.

2. The relevant circumstances for the purpose of paragraph 1 are:

(a) A change to an existing Plan of Work is proposed which is likely to [significantly] increase the adverse Environmental Effects [or risks] caused by the activities, and is not covered by Regulation 57(3);

(b) Environmental monitoring demonstrates that impacts significantly exceed the impact predictions made in the Environmental Impact Statement;

(c) An activity described in the Plan of Work is predicted to [consistently and persistently] exceed the impact thresholds set out in the Standards on environmental thresholds [in a manner that results in demonstrated non-compliance with these Regulations];

(d) An applicable Standard, activity or predicted impact has not already been addressed by an Environmental Impact Statement; or

(e) A review of existing Environmental Impact Assessment or Environmental plans is otherwise deemed necessary by the Commission or Council, in accordance with applicable Standards and taking into consideration the Guidelines, including following its review of a Contractor's activities contained in an annual report submitted pursuant to Regulation 38 or review of a Plan of Work pursuant to Regulation 58.

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 undertake an Environmental Impact Assessment and [propose] a revised Environmental Impact Statement; or other modification to the Plan of Work in accordance with Regulation 57.

4. For the avoidance of doubt, any Environmental Impact Assessment and revision to an Environmental Impact Statement conducted pursuant to this Regulation shall be subject to the full processes prescribed in these Regulations.

**Comment**

- During the twenty-eighth session, most support were provided for applying the alternative version of draft regulation 48 bis. Furthermore, the Informal Drafting Group on restructuring Section 2, has focused on utilizing draft regulation 48 bis Alt. instead of draft regulation 48 bis.
- One delegation submitted proposals to insert a new paragraph 1 (making the previous paragraph 1 the new paragraph 2) and also insert new paragraphs 3-5.
- Draft regulation 48 bis. has also been amended to reflect the input from the “Informal Intersessional Working Group on a Standardized Approach for Stakeholder Consultation”. The insertions of paragraphs 2 and 3 reflect the input from the group.
- Significant streamlining has been conducted to e.g. avoid the draft regulation inappropriately overlapping and undermining other regulations that interrelates with this matter. The revised draft regulation has thus been placed in a clean version since it was overwritten.

## Regulation 48 ter

### Test Mining

1. Subject to this Regulation, [an Applicant or a Contractor] shall conduct Test Mining [prior to submitting an application for a Plan of Work for Exploitation]/[before starting any commercial mining under an Exploitation Contract]. Information gathered through Test Mining shall be compiled in a Test Mining report in accordance with Annex IV, be in accordance with the [applicable] Standard and [taking into consideration] Guidelines [and shall inform on the application for a Plan of Work for Exploitation in particular with regard to the protection of the environment].

~~2. "Test mining" means an *in situ* testing of the integrated system of all equipment and [all related] process steps [e.g. including collector, raiser and release techniques] for Exploitation [activities] in a Contract Area under [appropriate] [such] technical, spatial and temporal conditions which [allows the "Test Mining" for the provision of] [provides] evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission [and the Council] in its evaluation of the application [against the criteria contained in Regulation 13 and 15.] [to demonstrate that the proposed mining equipment is technically and operationally appropriate, and that assumptions regarding impacts on the Marine Environment is effectively protected from harmful effects, can be validated. Data collected during test mining can be used to validate numerical models and predict cumulative effects, in accordance with Article 145 of the Convention. "Test mining" should also be undertaken in order to optimize the integrated system with regard to its potential effects on the Marine Environment.]~~

[2. ~~bis~~ The purpose of the Test-Mining is to validate that the proposed mining equipment is technically appropriate and the effects of the Exploitation activity, in particular with regard to the Protection of the environment, [do not harm the marine environment and] operates as described in the Environmental Impact Statement/Plan of Work.]

3. Test Mining in the Area requires a prior approval by the [Commission] and shall be carried out with reasonable regard for other activities in the Marine Environment, in accordance with ~~Articles 87 and~~ 147 of the Convention, and in accordance with the applicable Standards and taking into consideration the Guidelines and Recommendations [issued by the Commission under the Exploration Regulations], in particular to ensure that the Marine Environment is effectively protected from [harmful effects]/[Serious Harm], including the cumulative effects, in accordance with Article 145 of the Convention.

4. Test Mining does not have to be undertaken if the [information] pursuant to paragraph [2] has been provided through other Test Mining undertaken by the Applicant, [Contractor], by other contractors, or in the context of another approved Plan of Work for Exploration or Exploitation. Where the Applicant or [Contractor] relies on such information it shall compile the information in its Test Mining report and explain why this information is sufficient evidence for the purpose of paragraph [2]. The Commission shall, in its review of an [application] [request] assess whether the information provided by the applicant in the Test Mining report pursuant to paragraph 1 above is sufficient to demonstrate compliance with the requirements set out in paragraph [2] above and report to the Council pursuant to Regulations 11-15.

5. [Before commercial mining may commence in accordance with Regulation 25], a validation monitoring system shall be established by the Contractor, in line with the Environmental Management and Monitoring Plan, in order to monitor whether the requirements of the Plan of Work are complied with. In case of non-compliance, Regulation 52 will apply.

6. Any gains from Mineral resources which have been collected during Test Mining shall be paid to the Environmental Compensation Fund, as established by Regulation 54. [To this and prior to the commencement of Commercial Production, a Contractor shall provide the Secretary-General with a Test Mining royalties report containing the information specified in the applicable Standards and Guidelines in respect of any minerals collected during Test Mining. Royalties in respect of mineral resources that have been collected during Test Mining shall be paid at the time the Contractor makes its first payment or royalties after the date it commences Commercial Production.]

7. If a Material Change has been determined in accordance with Regulation 25 and 57 (2), the Commission shall consider and determine whether and on which aspects any additional Test Mining may have to be undertaken in order to provide sufficient information to satisfy the requirements of paragraph [2] above. In this case, paragraphs 1 and 3 above apply.

8. After the Test Mining, the Contractor shall submit to the Commission a Test-Mining report. The Test Mining report shall provide information on the findings from the Test-Mining, in accordance with the Standards and taking into consideration the Guidelines. The Test-Mining report shall provide the Commission with sufficient information to review the results in light of the Environmental Impact Statement/Plan of Work.

9. The Commission shall, without undue delay, review the findings of the Test-Mining study in light of the Environmental Impact Statement/Plan of Work. If the findings of the Test Mining are in accordance with the Environmental Impact Statement/Plan of Work, the Commission shall notify the Contractor, and the Contractor may commence Commercial Production in accordance with the Exploitation Contract.

#### Comments

- In paragraph 1, “*prior to submitting an application*” is placed in square brackets, as a proposal has also been received to replace it with “*before starting any commercial mining under an Exploitation Contract*”.
- The definition of Test Mining in paragraph 2, has been placed in the Schedule.
- In paragraph 3, it is suggested to change the reference to effectively protecting the Marine Environment against “*harmful effects*” to protecting it against “*serious harm*”. It is proposed to keep the original wording (“*harmful effects*”) as it covers a broader term, but it is currently placed in square brackets.
- For the first part of the twenty-ninth session, the Intersessional Working Group on Test Mining provided a report on the current status of the work of the intersessional work: [Report on intersessional outcomes](#), which was followed up with a [report of 4 July 2024](#) summarizing the main discussions taking part in the period from March to July 2024.
- Please also see alternative resolution in draft regulation 48 ter. Alt. below.

### Regulation 48 ter. Alt.

#### Pilot Mining

1. Subject to this Regulation, a Contractor shall conduct “Pilot Mining” before starting any Commercial Production under an Exploitation Contract. Information gathered

through Pilot Mining shall be compiled in a Pilot Mining report in accordance with the applicable Standard and taking into consideration the Guidelines.

2. Pilot Mining is conducted by a Contractor in its preparation for commencement of Commercial Production, and to assist the Commission in its evaluation of the Feasibility Study.

3. The purpose of the Pilot Mining is to validate that the proposed mining equipment is commercially and technically appropriate and the effects of the activity, in particular with regard to the Protection of the environment, operates as described in the Environmental Impact Statement/Plan of Work.

4. Pilot Mining in the Area requires a prior approval by the Commission and shall be carried out with reasonable regard for other activities in the Marine Environment, in accordance with Articles 87 and 147 of the Convention, and in accordance with the applicable Standard and taking into consideration the Guidelines, in particular to ensure effective protection for the marine environment from harmful effects in accordance with Article 145 of the Convention.

5. Any gains from Mineral resources which have been collected during Pilot Mining shall be paid to the Environmental Compensation Fund, as established by Regulation 54.

6. If a Material Change has been determined in accordance with Regulation 25 and 57 (2), the Council shall determine whether and on which aspects any additional Pilot Mining may have to be undertaken based on the recommendations of the Commission in order to provide sufficient information to satisfy the requirements of paragraph 2 above. In this case, paragraphs 1 and 3 above apply.

7. After the Pilot Mining, the Contractor shall submit to the Commission a Pilot Mining report. The Pilot Mining report shall provide information on the findings from the Pilot Mining, in accordance with the Standards and taking into consideration the Guidelines. The Pilot Mining report shall provide the Commission with required information to review the findings in light of the Environmental Impact Statement/Plan of Work. The Commission shall, without undue delay, review the findings of the Pilot Mining study and make recommendations to the Council.

8. The Council shall, without undue delay, consider the findings of the Pilot Mining study in light of the Environmental Impact Statement/Plan of Work based on the recommendation of the Commission. If the findings of the Pilot Mining are in accordance with the Environmental Impact Statement/Plan of Work, the Council shall make an affirmative decision and notify the Contractor through the Secretary-General. Thereafter, the Contractor may commence Commercial Production in accordance with the Exploitation Contract.]

**Comment**

It has been suggested to insert an alternative draft regulation concerning pilot mining, instead of draft regulation 48 ter. This draft regulation proposes a framework for the preparatory phase after the signing of the Exploitation Contract and before the commence of the Commercial Production.

## Section 3

### Environmental Management and Monitoring

#### Comments

- A conceptual discussion was held during the second part of the twenty-ninth session in respect of environmental management and monitoring. A restructuring proposal was presented and welcomed by a significant number of delegations. Also, many delegations welcomed further intersessional work in respect of streamlining and updating the substance of this new section 3.
- Significant proposals have been provided for further restructuring and streamlining, and the text has been updated and kept in a clean format due to the extensive mark-up. Reference is in particular made to the [joint proposal](#) on section 3 that was submitted by Norway and Pew during the second part of the twenty-ninth session and in particular the [joint proposal](#) of the intersessional working group on Environmental Management and Monitoring that was delivered ahead of the first part of the 30th session.

## Regulation 49

### Environmental Management and Monitoring

1. A Contractor shall [continuously][continually] monitor and manage the [Environmental Impacts and] Environmental Effects [and risks] of its activities on the Marine Environment[, in accordance with the Environmental Management and Monitoring Plan and the Closure Plan].
2. A Contractor shall monitor the [Environmental Impacts and] Environmental Effects [and risks] of its activities on the Marine Environment [to determine whether they are having or are likely to have harmful effects on the Marine Environment] to assess compliance with the [Environmental Impact Assessment and] Environmental Impact Statement and Environmental Management and Monitoring Plan and Closure Plans[ and to avoid risk of serious harm to the Marine Environment]. Such monitoring shall include a comparison of monitoring data against environmental threshold values and a comparison between monitoring data and the effects predicted in the Environmental Impact Statement, to measure, analyse, and document the actual effects on the Marine Environment.
3. [Continuous][Continual] monitoring shall be conducted until completion of a Closure Plan.
4. The Contractor shall Mitigate and manage Environmental Impacts and Environmental Effects [and risks] to ensure that these are consistent with the [threshold values,] Standards and the Exploitation Contract and its schedules [including the predictions made in the Environmental Impact Statement].
5. If the Contractor identifies harmful effects on the Marine Environment that breach the terms and conditions of its Exploitation Contract or the relevant rules, regulations and procedures of the Authority, including the applicable Standards, [taking into [account relevant][considering the Applicable] Guidelines,] the Contractor shall

determine whether the matter is an Incident or Notifiable Event and proceed in accordance with Regulation 33 or 34.

## **Regulation 50**

### **Environmental Management and Monitoring Plan**

1. The purpose of an Environmental Management and Monitoring Plan is to set out how a Contractor shall meet its management and monitoring obligations under Regulation 49.

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

(a) Incorporate project specific environmental objectives and environmental performance standards, [including environmental threshold values] which are designed to achieve the environmental policy and objectives of the Authority [including those set out in Regulation 44ter] and [are compatible with] applicable Standards and [taking into account] the relevant Regional Environmental Management Plan;

(b) Incorporate appropriate measurement criteria, in accordance with the applicable Standard and reflect its methodology to determine whether the environmental objectives [and Environmental Performance standards] are being met and that the operation is compliant with the Exploitation Contract and its schedules and the relevant rules, regulations and procedures of the Authority;

(c) Incorporate measures and procedures on:

(i) How the [Environmental Impacts and] Environmental Effects of Exploitation will be monitored;

(ii) How the Mitigation and Management measures, including pollution control and Mining Discharge in Regulations 53 bis and 53 ter will be implemented and how the effectiveness of such measures will be monitored [and evaluated];

(iii) How spatial and temporal measures, including Preservation Reference Zones and Impact Reference Zones, will be utilised and implemented;

(iv) How, if the monitoring results in new knowledge, the Contractor will take such knowledge into account;

(v) A description of the Environmental Management System and

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

(d) Contain a monitoring programme for at least the first seven years of commercial production to be conducted in compliance with the applicable Standards and taking into account the Guidelines.

[2 Alt. The Environmental Management and Monitoring Plan shall be in accordance with the Authority's environmental policy and objectives [including those set out in Regulation 44ter] and [are compatible with] applicable Standards and [taking into account][consideration]] the relevant Regional Environmental Management Plan, the relevant Guidelines, and be based on the Environmental Impact Statement, and shall include all elements and matters prescribed by the Authority in Annex VII to these Regulations, and shall:

- (a) Set project specific environmental objectives and environmental performance standards;
- (b) Set measurement criteria and methodology;
- (b)bis [How spatial and temporal measures, including Preservation Reference Zones and Impact References Zones, will be utilised and implemented;]
- (c) Commit to specific measures and procedures on;
  - (i) Monitoring the [Environmental Impacts and] Environmental Effects of Exploitation;
  - (ii) Mitigation and management, including pollution control and Mining Discharge in Regulations 53 bis and 53 ter;
  - (iii) [Monitoring the effectiveness of monitoring and management, as the relevant measures and procedures are implemented];
  - (iv) Taking corrective action and responding to monitoring results and new knowledge with the aim of continuous improvement;
- (d) Describe what monitoring data and reports will be submitted to the Authority, including details of: frequency, format, medium, and data integrity standards;
- (e) Provide a description of the Environmental Management System. ]

[3. A draft Environmental Monitoring and Management Plan or proposal by a Contractor to amend an existing plan shall be subject to Stakeholder consultation in accordance with Regulation 93bis. Coastal states shall be engaged in accordance with Regulation 93ter].

4. The Contractor shall assess and maintain the currency and adequacy of its Environmental Management and Monitoring Plan including its continual improvement during the term of its Exploitation Contract, including as a result of management review and audit under Regulation 50 bis, and performance assessment[s] under Regulation 52, [and any modification to the Plan of Work under Regulation 57]. In conducting such an assessment, the Contractor shall assess the efficacy, timeliness, relevance and accuracy of flow of information and data derived from implementation of the Environmental Management and Monitoring Plan, and the efficacy of management measures taken.

## **Regulation 50 bis**

### **Reporting on Environmental Monitoring and Management**

1. The Contractor shall 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).
2. The Contractor shall submit to the Secretary General environmental data and information at required intervals, to the required data integrity quality, and in the required standardized format as set out in the Environmental Management and Monitoring Plan, in accordance with the applicable Standards, and taking into account the relevant Guidelines.
3. The Secretary General shall publish 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);

## **Regulation 50 ter**

### **Environmental Management System**

1. A Contractor shall have in place, implement and maintain an Environmental Management System in accordance with the relevant Standard taking into account the relevant Guidelines, for the purpose of monitoring, [controlling,][managing,] and continuously improving its environmental performance, including through implementing the Environmental Management and Monitoring Plan.

2. The Environmental Management System shall be detailed in the Environmental Management and Monitoring Plan in accordance with Regulation 7 (3) bis (h). An Environmental Management System shall refer to the following iterative process to:

(a) Establish environmental objectives and processes necessary to deliver results in accordance with the Authority's environmental objectives in the Contract Area, including those reflected in the applicant's Environmental Management and Monitoring Plan and the relevant Regional Environmental Management Plan;

(b) Implement and monitor the processes as planned and report the results to the Secretary- General; the reporting is reflected in the delivery of the annual reports pursuant to Regulation 38, including details of any accidents or incidents and notifiable events;

(c) Evaluate the performance of the environmental management system by fulfilling the requirements in Regulation 52 and by seeking confirmation of the [annual] assessment through an independent audit, undertaken every three years by a recognized and accredited international or national organization, in accordance with applicable Standards;

(d) Take actions to continually improve the performance of the Environmental Management and Monitoring Plan and report these actions in the next annual report submitted to the Secretary-General pursuant to Regulation 38.

3. The Contractor shall assess and maintain the currency and adequacy of [its] Environmental Management System [An Environmental Management System shall be subject to continual and systematic improvement] during the term of its Exploitation Contract, including [through frequent] management review [and audit] under Regulation 50 bis (4), performance assessment under Regulation 52[, or any modification to the Plan of Work under Regulation 57]. In conducting such an assessment, the Contractor shall assess the ability of the Environmental Management System to implement effectively the Environmental Management and Monitoring Plan.

4. [The Contractor shall ensure that its Environmental Management System shall be reviewed and undergo periodic audits by an independent recognized and accredited international or national organization, in accordance with applicable Standards. The results of the audit and any changes made to a Contractor's Environmental Management System shall be included in the Contractor's annual reports.

5. A Contractor shall, in its annual reports and in the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52 demonstrate the continual and systematic assessment of the Environmental Management System and its improvement, including through the output of management reviews and audits under paragraphs 3 and 4.

<b>Comments</b>
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- A new para 2 has been proposed inserted to better align with international standards dedicated to the Environmental Management System, such as ISO 14001:2015).
- The draft standard and guidelines on the development and application of environmental management systems (ISBA/27/C/7) is recalled in respect of the continued discussions of this draft regulation.

## **Regulation 51**

### **Compliance with the Environmental Management and Monitoring Plan**

1. The Commission shall review the data submitted by the Contractor [monthly/annually] pursuant to regulation 50 bis (2) [upon receipt].
2. The Contractor shall review the implementation of the Environmental Management and Monitoring Plan on a [regular] basis. Such review shall include:
  - (a) The efficacy, timeliness, relevance and accuracy of flow of information and data derived from monitoring the Exploitation activities and its impacts on the Marine Environment, and Impact Area, [including the Mining Area]; and
  - (b) The accuracy of the findings of the Environmental Impact Assessment as set out in the Environmental Impact Statement.]
3. If the Commission considers that [the environmental] monitoring data submitted pursuant to regulation X(2), or its quality, indicates that the Contractor does not meet its obligations, the Commission shall refer the matter to the Compliance Committee without undue delay. The Secretary-General shall notify the Contractor, the Sponsoring State, and the Council that the matter has been referred.
4. Where, as the result of the review by the Commission under Regulation 52 paragraph 7, the Commission concludes that a Contractor has failed to comply with [the terms and conditions of][any commitment in] its Environmental Management and Monitoring Plan, the Commission shall refer the matter to the Compliance Committee. The Secretary-General will notify the Contractor, Sponsoring State and Council that the matter has been referred.
5. The [Compliance Committee] shall assess any matter referred to it under this Regulation paragraph 4 and 5 and take any necessary actions consistent with regulation 102 and 103. [This may include:
  - (a) Requesting the Commission to provide further information as to the facts and circumstances giving rise to the referral of this matter;
  - (b) Convening, with the support of the Secretary-General, a process to liaise with the Contractor [and to agree any corrective and timebound action];
  - (c) Exercising the powers conferred upon the Committee under paragraph 1 of Regulation 103; or,
  - (d) Inviting the Council's attention to the matter.]

## Regulation 52

### Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor [In addition to the continual internal assessment required pursuant to regulation 50(4), a][A] Contractor shall [also periodically] conduct [or commission a formal] performance assessments of its Environmental Management and Monitoring Plan, [in accordance with this Regulation[, the applicable Standard and taking into consideration the applicable Guideline]]. In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall [, using an Independent Auditor,] assess:

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

(b) The conformity of the plan with [the objectives and] 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,];

(c) The accuracy of the findings of the Environmental Impact Assessment as set out in the Environmental Impact Statement[, upon which the Environmental Management and Monitoring Plan was based];

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

(e) The reports of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission to the reports in accordance with Regulation 48 above, and any comments received by the [Commission/Compliance Committee] in accordance with Regulation 51.

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.

3. 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) Issuance of a compliance notice under Regulation 103; or

(c) When deemed necessary by the [Committee following investigation into third-party information submitted to the [Authority] or following investigation into matters referred by the Commission under regulation 51[ that results in sufficient evidence to suggest a breach of compliance has occurred].

[3.bis. The Contractor shall engage with [potentially directly affected] Stakeholders, and in accordance with [Regulation 93 ter], Standards and taking into consideration Guidelines during the development of the performance assessment;]

4. A [Contractor] shall submit the results of a performance assessment in a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the applicable Standards and taking into consideration Guidelines[, and shall, as a minimum contain the following information:

(a) information regarding the period applicable to the performance assessment;

- (b) the scope of the assessment;
  - (c) the procedure used for the assessment;
  - (d) the evaluation criteria used during the assessment.]
5. [Before submission of the performance assessment report, the Contractor shall conduct a consultation on a draft performance assessment report in accordance with Regulation 11.]
6. The Commission shall review the performance assessment report in accordance with the applicable Standard and taking account of the Guidelines. [within 60 Days of receipt of such report and comments]. The Commission may, where necessary and appropriate, consult external competent, independent experts in its review of the performance assessment.
7. Where the Commission upon review of the report, considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, the Commission may, after providing the Contractor with a reasonable opportunity to address any inadequacies, require 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.
8. [Where, as a result of paragraph 7 above, a revised assessment and report is produced, a new consultation in accordance with Regulation 93 bis shall be conducted on the revised assessment.]
9. Where, as the result of a review by the Commission under paragraph 6 above, the Commission concludes that the Environmental Management and Monitoring Plan is determined to be inadequate in any material respect, the Commission shall 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].
10. The Commission shall report annually to the Council on performance assessments [conducted pursuant to this Regulation,] and any action taken pursuant to paragraphs 6 to 9. Such report shall include any relevant recommendations for the Council's consideration, [and] shall be published on the Authority's website.

## **Section 4**

### **~~Pollution control and management of waste~~**

#### **Regulation 53**

#### **~~Emergency Response and Contingency Plan~~**

[Regulation 53 is moved to Section 5 concerning Incidents and Notifiable Events – now Regulation 32]

[Regulations 53 bis. and ter. are moved to Section 3 concerning Environmental Management and Monitoring, and Section 4 is removed]

## Regulation 53 bis

### Pollution control

A Contractor shall take ~~[all the]~~ necessary ~~[and appropriate]~~ measures to protect and preserve the Marine Environment, ~~[including the coastline]~~ ~~[from harmful effects, in accordance with Article 145 of the Convention,]~~ ~~[including]~~ by preventing, reducing and controlling pollution ~~[and other hazards; [including marine litter and underwater noise,] [directly or indirectly]]~~ resulting from its activities in the Area. This is to be done ~~[in accordance with the Standards]~~, [pursuant to] its Environmental Management and Monitoring Plan, and all relevant rules, regulations and procedures of the Authority, ~~[and taking into account]the relevant~~ Regional Environmental Management Plans, and ~~taking [into] account~~ the applicable Guidelines.

#### Comments

- Several delegations have supported the placement of draft regulation 53 bis. in Section 3.
- Divergent views have been put forward in respect of the “*including the coastline*”. Some delegations have suggested to omit it since it is already covered by the definition of Marine Environment.
- It has been put forward that the reference to “*marine litter*” and “*underwater noise*” could be omitted since these are sources of pollution, and therefore there is no specific need for referencing them here.

## Regulation 53 ter

### ~~[Restriction on] Mining Discharges~~

1. A Contractor shall not ~~[introduce any Mining Discharge] [dispose, dump or discharge]~~ into the Marine Environment ~~any Mining Discharge, [except where such [Mining Discharge] disposal, dumping or discharge is permitted in accordance with:]~~

(a) The assessment framework for Mining Discharges as set out in the ~~[applicable]~~ Standard;

(b) The ~~[Plan of Work and]~~ Environmental Management and Monitoring Plan; ~~and~~

~~(c) [Relevant internationally agreed rules, standards and recommended practices and procedures, [as set out in the applicable Standard] [and established by the International Maritime Organization, where applicable].]; and~~

~~[(de) Alt. These Regulations.]~~

2. Notwithstanding paragraph 1, a Contractor may make such ~~disposal, dumping or discharge~~ ~~Mining Discharge~~ into the Marine Environment where it is necessary for the safety of the vessel or Installation or the safety of human life, provided that such ~~disposal, dumping or discharge~~ ~~Mining Discharge~~ is conducted so as to prevent harm to human life and to the Marine Environment. ~~If h~~~~Harm to the Marine Environment occurs as a result of disposal, dumping or discharge, the Contractor shall, [after ensuring] [upon] safe working conditions [are in place] [being restored,] monitor, mitigate and [remediate] the impacts of such harm, and shall report forthwith about such disposal,~~

~~dumping or discharge to the Authority. [Such disposal, dumping or discharge shall constitute a notifiable event under Regulation 34 and Appendix 1.]~~

~~[3. The disposal, dumping or discharge into the Marine Environment of any Mining Discharge that is not permitted in accordance with paragraphs 1 [and 2] above is considered an unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.]~~

[4. A Contractor shall keep a register of mining discharges, to be updated immediately after any discharge event where possible, that shall be reported annually to the Authority under Regulation 38, as part of the [Contractor's] ~~[mandatory]~~ annual report that must be prepared throughout the operation.]

[4. Alt. The applicant or Contractor must continuously monitor its Mining Discharges and maintain a register that is reported to the Authority at least weekly in addition to the mandatory annual report pursuant to Regulation 38.]

## **Section ~~5~~ 4**

### **Environmental Compensation Fund**

#### **Regulation 54**

##### **Establishment of an Environmental Compensation Fund**

1. The Authority hereby establishes the Environmental Compensation Fund. Referred to as “the Fund” ~~[in the following]~~ [for the purposes of these Regulations].

2. The rules and procedures of the Fund shall be established by the Council on the recommendation of the Finance Committee before the [approval of a first Plan of Work for an Exploitation Contract] under these Regulations. ~~These~~ rules and procedures shall include, inter alia:

(a) ~~A mechanism for financing~~ [The requirements and modalities governing contributions to] the ~~Ffunds~~ in accordance with Regulation 56, including [modalities for] replenishment [of the Fund] upon disbursement;

~~[(a) bis The minimum size of the Ffund;]~~

(b) A description of how the ~~Ffunds~~ and any interest generated will be managed and by whom;

(c) ~~[The process for accessing the funds]~~ [Modalities for administering claims against the Fund, including determining entities eligible to access the Fund, which may include States, international organizations and private entities that have suffered damages, as well as the Authority];

(d) The type of damages and purposes eligible for claims against the ~~Ffunds~~ in accordance with Regulation 55;

(e) The standard of proof required for claims against the ~~Ffunds~~;

~~[(f) A policy on refunds of Contractor payments into the funds;]~~

~~[(f) Temporal scope of the funds];~~

(g) A process for determining disbursements ~~[or refunds]~~ from the ~~Ffunds~~; and

(h) The promotion of the participation of affected persons or other Stakeholders in decisions about disbursement of funds.]

3. The Secretary-General shall, in consultation with the Finance Committee, within 90 Days of the end of a Calendar Year, prepare an independently audited statement of the income and expenditure of the Fund for ~~[circulation to the members of the Authority.]~~[submission to the Assembly for their consideration, and to be made publicly available on the Authority's website].

### ~~[Regulation 55 Alt.~~

#### ~~Purpose of the Environmental Compensation Fund~~

~~— The [purpose of the] Environmental Compensation Fund [is to function as a “last resort” compensation fund only in the event that there is [unlawful] environmental damage caused by contractor activities that were not [foreseen in the Plan of Work or that arise from a breach of any condition of approval], then in accordance with the polluter pays principle the Contractor shall bear liability for the financing of any measure to mitigate that [unlawful] environmental damage and shall also be liable for compensation to any person affected by that [unlawful] environmental damage. [] If the Contractor is unable to meet that liability in full, [and the Sponsoring State is not liable under Article 139 (2) of the Convention] then, as a last resort, the environmental compensation fund may be called upon.~~

### ~~Regulation 55 Alt.2-~~

#### ~~Purpose of the Environmental Compensation Fund~~

~~[13. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for any loss or damage to the Marine Environment, coastal states, [or damage caused to third parties] arising from activities conducted under an Exploitation Contract [that was not foreseen in the Plan of Work or that arise from a breach of any condition of approval]. The Fund shall cover at least 2 situations:~~

~~(a) Where there is damage caused by contractor activities that were not ~~consented~~authorized; or~~

~~(b) Where there is unforeseen damage caused by contractor activities that were ~~consented~~authorized activities or where the Contractor acted negligently.~~

~~24. Based on the polluter pays principle and as reflected in these Regulations, it is the responsibility of the Contractor to pay for any necessary measure to limit, mitigate, remedy and compensate any damage arising from the activities conducted under an Exploitation Contract.~~

~~32. In cases where situations may arise, where a Contractor does not meet its liability in full while the Sponsoring State is not liable under Article 139 (2) of the Convention, the compensation fund may be used as a last resort after exhausting all other possibilities.~~

4. Compensation to ~~[any]~~[a] person affected by damage pursuant to paragraph 3 shall include the costs ~~for~~of implementation of any necessary measures designed to mitigate any damage to the marine environment and its resources.

5. The Fund shall be subject to periodic review, including the consideration of whether Restoration has become technically and economically feasible and could be carried out in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be.]

## Comments

- Several delegations supported the inclusion of the new alternative hybrid version of draft regulation 55. It has thus been retained.
- It was suggested to change the order of paragraphs 1-3, so that the purpose is clearly set out in the first para.

## Regulation 56 Funding of the Environmental Compensation Fund

1. ~~[In adherence to]~~ [Consistent with] the polluter-pays principle the Fund will consist of, but not be limited to, the following monies:

(a) The prescribed percentage or amount of ~~[fees]~~ [contribution] paid ~~in~~ to the Fund ~~[by Contractors or the Enterprise]~~ after approval of a Plan of Work and prior to the commencement ~~[of activities]~~ ~~[in the Area]~~ under an Exploitation Contract ~~[of Commercial Production]~~ ~~[by Contractors or the Enterprise to the Authority];~~

(b) The prescribed percentage of any penalties paid by Contractors or the Enterprise to the Authority;

~~(c)~~ Any [other] monies paid into the Fund at the direction of the Council, based on recommendations of the Finance Committee;

~~(d)~~ Any income received by the Fund from the investment of monies belonging to the Fund;

~~(e)~~ An annual levy paid by Contractors or the Enterprise to the Fund [pursuant to a decision of the Council]; and

~~(f)~~ Any [voluntary] contributions [from the Authorities member states];

~~(g)~~ [Any contributions] paid by Sponsoring States to the Fund; ~~and;~~

[(h) Donations or grants from international organisations, non-governmental organisations or other entities committed to environmental protection and sustainability.]

## Part V

### Review and modification of a Plan of Work

#### Regulation 57

##### Modification of a Plan of Work by a Contractor

1. A Contractor shall not modify the Plan of Work annexed to an Exploitation Contract, except in accordance with this Regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor ~~[and the Commission]~~, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under Regulations 12 and 16, and before such Material Change is implemented by the Contractor.

~~[2 Alt If a Contractor wishes to modify a Plan of Work, it shall notify the Secretary-General. The Secretary-General shall [inform the Council and] transfer the request] to the Commission, to consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the applicable Standard. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor shall seek the seek the prior approval of the Council based on the recommendation of the Commission under Regulations 12 and 16, and before such Material Change is implemented by the Contractor.]~~

~~3. Where the proposed modification under paragraph 2 may have a potential impact on the Environmental Management and Monitoring Plan or Closure Plan, [for the Environmental Impact Assessment, the Contractor shall endeavour to engage with potentially directly affected Stakeholders and in accordance with [DR X,] the Standards, and taking into consideration the Guidelines, during its preparation of the modified plans. The Contractor shall also conduct a consultation on such [the modified] plans [in accordance with regulation 93bis] [shall be dealt with in accordance with the procedure set out in Regulation 11,] prior to any consideration of the modification by the Commission.~~

~~[3 Alt. Where the proposed modification under paragraph 2 is determined to constitute a Material Change, the Council, based on the recommendations of the Commission, shall determine whether the Contractor is required to undertake an Environmental Impact Assessment and prepare an Environmental Impact Statement of the proposed modification in accordance with Regulations [47] and [48], respectively. The Environmental Impact Statement, and any revisions to the Environmental Management and Monitoring Plan or Closure Plan, shall be dealt with in accordance with the procedure set out in Regulation 11, prior to any consideration of the modification by the Commission.]~~

4. Notwithstanding paragraph 2, ~~Tt~~the Secretary-General ~~may propose to~~ and the Contractor may agree to a change to the Plan of Work that is not a Material Change in accordance with the applicable Standards, to correct minor omissions, errors or other such defects. ~~[After consulting the Contractor, the Secretary General may make the change to the Plan of Work, and the Contractor shall implement such change.]~~The Secretary-General shall so inform the Commission and the Council at ~~its~~ their next meeting. The Council may decide to apply the procedure as provided in paragraph 2.



~~[4. bisAlt. The Commission for the Secretary-General] may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. The Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting.]~~

~~[5. All modifications to a plan of work under this regulation shall be recorded in the Seabed Mining Register.]~~

#### Comments

- There has been considerable support expressed for the alternative iteration of paragraph 3. However, it has been pointed out that the references to draft regulations 48 and 49 are not required on the basis that the modification of a Plan of Work does not entail an entirely new process, merely an ‘update’ of the initial Plan of Work. Delegations are invited to identify which iteration of paragraph 3 is preferred.
- Several delegations requested the reconsideration of the previous paragraph 2 Alt., which is therefore inserted. At the same time, proposals have also been made with respect to paragraph 2, suggesting that the reference to the Commission’s involvement there is satisfactory.
- Several delegations expressed support for the procedure in paragraph 4 to apply in circumstances where the underlying change does not qualify as a Material Change. Paragraph 4 is therefore presented in a clean format.
- It has been suggested that both paragraph 4 and the previous paragraph 4 Alt. should be retained, as they address different scenarios. The previous paragraph 4 Alt. is therefore proposed to be retained as paragraph 4 bis, and it now governs a scenario where a “proposal” emanates from the Commission, while paragraph 4 continues to address the situation where the Contractor or the Secretary-General propose minor changes not qualifying as a Material Change.
- A new paragraph 5 has been proposed and supported by a number of delegations.
- It has been proposed that draft regulation 57 should be swapped with draft regulation 58, as a matter of logical sequence, but there has been limited support for this proposal, and such a swap has currently not been done.

## Regulation 58

### Review of a Plan of Work

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

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

[1. A Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract, or more frequently by decision of the Council

based on the recommendations of the Commission, in accordance with the applicable Standards and taking into consideration the Guidelines, including where any of the following events or changes of circumstance have occurred:]

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

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

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

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

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

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

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

(b) Any Incident;

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

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

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

(f) Significant changes in Best Available Techniques;

~~(g) Significant changes in Best Available Scientific Information;~~

~~(g) bis Significant changes in Best Environmental Practices;~~

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

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

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

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

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

~~{3. Alt 2. The organ in charge of the review shall report on each review to the Commission and Council, the sponsoring State or States and the relevant coastal states. Where, as a result of a review, material changes need to be made to the Plan of Work, the Commission shall recommend said changes to the Council, and the Contractor shall implement such changes as soon as viable. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3)}~~

3. The Secretary-General shall forward the report on each review to the Commission and Council, and the Sponsoring State or States. Where, as a result of a review a Material Change needs to be made to the Plan of Work, Regulations 57(2) and (3) shall apply.

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

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

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

#### Comments

- There has been support for the alternative formulations of paragraph 1. A more recent written proposal, refining the text of the alternative version of paragraph 1, is presented now to the Council, while the erased previous iterations remain visible. Similarly, a refined and streamlined version of paragraph 3 is presented based on recent written proposals, while the previous iterations remain visible in the event the Council wishes to reconsider those iterations.
- There was considerable support for the alternative iteration of paragraph 1(a) bis, subject to some refinement of the text.
- On paragraph 1(a)ter, it has been suggested that the reference to the “objectives” of Regional Environmental Management Plans is not suitable in the light of the language in ISBA/29/C/10. Delegations are invited to consider this position. Proposals have been presented to the effect that paragraphs 1(g), 1(g) bis and 1(h) bis are not necessary in the light of the fact that paragraph 1(a) bis (in its alternative iteration) already captures them.
- Proposals have been made to paragraph 2 to the effect of the exclusion of independent expert review and a specific designation of coastal States. Delegations are invited to consider the position.

## Part VI

### Closure plans

#### Regulation 59

##### Closure Plan

1. A Contractor shall develop a Closure Plan for the Mining Area, in accordance with Regulation 7(3) and 93 bis, Annex VIII to these Regulations, and [consistent with] other Environmental Plans of the Contractor, as well as Standards, [the applicable Regional Environmental Management Plan], and taking into consideration the Guidelines.

1.bis The objectives of a Closure Plan are to ensure that:

(a) The marine environment is effectively protected from environmental harm;

(b) The marine environment, human health and safety are ensured during Closure [or any temporary suspension] of Exploitation activities;

[(c) the Marine Environment will have a clear and healthy status following the end of Exploitation;]

(d) The adverse Environmental Effects arising from Closure are Mitigated;

(e) Remaining Environmental Effects continue to be monitored, [managed, including remediation, restoration and rehabilitation] and reported for the period prescribed in the Closure Plan; and

[(f) The Mining Area is returned, where [the Contractor in consultation with the Commission determines it to be technically feasible, to a condition resembling its pre-mining condition through active Restoration. Where active Restoration is determined to not be feasible, the Mining Area is rehabilitated, to the extent it is technically feasible to facilitate passive Restoration.]

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 Closure 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*:

(a) Undertake activities and the scheduling of studies, based on available baseline data, to inform about Closure before and throughout Exploitation;

(a) bis Undertake a gap analysis of existing environmental data to determine if additional information and/or surveys will be required;

(a) ter Utilise [Good] Industry Practice and Best Environmental Practices;

(b) Set a date of cessation or suspension of Exploitation, at which point a management and monitoring plan must also be in place for the period prescribed in the Closure Plan and in accordance with the applicable Standards and taking into consideration the Guidelines and results obtained in previous monitoring activities;

(b) bis Undertake timely discussions with the [Authority] so that [the Authority is duly informed of] the likely timing of Closure;

(c) Final environmental condition of the area, including the state of remaining [resources, the oceanographic, geological, biological, socioeconomic and sociocultural condition, and ensure the risks relating to residual Environmental Effects are identified,

quantified, assessed and managed in accordance with Best Available Scientific Information, Best Available Techniques and Best Environmental Practices, which includes the gathering of information relevant to Closure or suspension;

(d) Comply with health and safety requirements related to Closure activities;

(e) Report [to the Authority] on the identification, monitoring, and quantification of significant remaining Environmental Effects [to the Authority], including data to inform about recovery or lack thereof, over a period established in the Closure Plan, and [that necessary] management responses are implemented in a timely manner, including plans for further surveys, data collection, Mitigation, or remediation where appropriate in accordance with the applicable Standard and taking into account the Guidelines;

(f) Make and fulfil required disposal, Restoration and Rehabilitation commitments in accordance with the [applicable] Standards and taking into consideration the Guidelines;

(f) bis Remove completely any Installations and equipment, or parts therefrom, from the Mining Area with any kind of waste abandonment explicitly prohibited. The Closure Plan should include an assessment of options leading to the identification of the Contractor's preferred Decommissioning solution for Installations and equipment, as well as parts therefrom; and

(g) Ensure that the Exploitation activities are closed or suspended efficiently and safely.

2. bis The Contractor shall [ensure] transparency during the Closure process and in fulfilling these responsibilities, the Contractor:

(a) Shall consult with all States and Stakeholders in accordance with Regulation 93bis on the Closure Plan and any revisions as required under Regulation 57 before submission for approval; and

(b) During the development of the Closure Plan, shall engage with [potentially directly affected] Stakeholders, and in accordance with Regulation 93 ter, Standards, and taking into consideration the Guidelines, consult Stakeholders in the Closure Plan, design, review, and implementation.

3. A Contractor shall maintain and update its Closure Plan [on the basis of analysis of data and results obtained from implementation of the environmental monitoring and] in accordance with these Regulations, Good Industry Practice, Best Environmental Practices, [Best Available Techniques, Best Available Scientific Information] and the applicable Standards and taking into consideration the Guidelines.

[4.] In the five years preceding the planned end of the period of Exploitation, or any other period, the Closure Plan shall be updated [annually] and, if necessary, be updated and be finalized in accordance with Regulation 60(1). Details on the procedures of review of the Closure Plan, including conditions requiring updates thereof, shall be further elaborated in the applicable Standards and taking into consideration the Guidelines.

5. If a revised Closure Plan is required, the Contractor shall demonstrate it has engaged with [potentially directly affected] Stakeholders, in accordance with Regulation 93 ter, the applicable Standards, and taking into consideration the Guidelines, in its preparation of the revised Closure Plan. The Contractor shall also demonstrate it has conducted consultation with States and Stakeholders regarding the revised Closure Plan in accordance with Regulation 93bis.]

[6. Provided that the procedure under Regulation 93bis has been completed, the Commission shall, at its next meeting, provided that the documentation has been

circulated at least 30 Days before the meeting, examine the revised Closure Plan in the light of any submissions received on the revised Closure Plan in accordance with Regulation 93bis.]

**Comment**

Draft regulation 59 has been subject to significant discussions during the second part of the twenty-ninth session. Also, several written proposals have been provided. The discussions and proposals have been implemented to the extent possible and the draft regulation is presented in a clean version to ensure better clarity.

**Regulation 60**

**Final Closure Plan: Cessation of production**

1. A Contractor shall, at least 24 months prior to the planned end of Commercial Production submit to the Secretary-General, for the consideration of the Commission, an updated Closure Plan.

[1. bis. Alt. The Contractor shall conduct [consultation on the Final Closure Plan with all States and Stakeholders in accordance with Regulation 93bis.]

2. The Commission shall examine the Final Closure Plan and any comments received pursuant to paragraph 1[bis Alt] [within 90 Days of receipt of comments from the stakeholder consultation.

3. If the Commission determines that the Final Closure Plan meets the requirements of Regulation 59, it shall recommend approval of the Final Closure Plan to the Council.

4. If the Commission determines that the Final Closure Plan does not meet the requirements of Regulation 59, the Commission shall require the Contractor to make and submit amendments to the Final Closure Plan as a condition for recommendation of approval of the plan in accordance with paragraph 3 of this Regulation.

5. The Commission shall give the Contractor written notice of its decision under paragraph 4 above and provide the Contractor with the opportunity to make representations or to submit a revised Final Closure Plan for the Commission's consideration, within 90 Days of the date of notification to the Contractor.

6. The Commission shall consider any such representations made, or [any] revised Final Closure Plan submitted by the Contractor when preparing its report and recommendations to the Council.

7. The Commission and Finance Committee shall review the amount of the Environmental Performance Guarantee provided under Regulation 26 and include the results of that review and any recommendations in [the Commission's] report to the Council on the Final Closure Plan.

8. The Council shall consider and take a decision [based] on the report and recommendation of the Commission relating to the approval of the Final Closure plan and the amount of the Environmental Performance Guarantee.

9. Any reports and recommendations submitted to the Council and decisions made by the Council under this Regulation shall be published on the Authority's website within [7] Days of a submission or decision being made.

## Comments

- It has been suggested by a delegation to handle temporary suspension in a separate regulation since this regulation should focus on cessation. The handling of temporary suspension in the context of closure must be discussed and resolved, so that this draft regulation can be updated in that regard. For the time being, temporary suspension has been omitted from paragraph 1 as it is already governed in draft regulation 59. The term “Temporary Suspension” has been added to the Schedule to ensure that the understanding hereof, and the triggering hereof, is being set out.
- Reference to technical expertise in para 2 has been omitted since that is already evident from the Commission’s mandate. Also reference that is already contained in the extensive provisions of draft regulation 59 has been omitted here if there were any overlaps.
- Considering the extent of proposals and changes to the regulation, the regulation has been presented in a clean version.

## Regulation 61

### ~~Post-closure M~~onitoring pursuant to Closure Plans / [Closure Monitoring]

~~1. A Contractor shall implement the Final Closure Plan in accordance with Best Environmental Practices and Good Industry Practice and shall report to the Secretary-General on the progress of such implementation on an [annual] [two year] basis [after an initial 5 year period] [or on a case by case basis agreed by the Council on recommendation from the Commission]. This report shall include a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the post-closure monitoring programme, and management actions taken in response to any adverse Environmental Effects identified through monitoring, until completion [of execution] of the Final Closure Plan.~~

1. ~~At~~ A Contractor shall implement the Final Closure Plan and shall report to the Secretary-General on the progress of such implementation, including a summary of the results of monitoring, conducted in accordance with the applicable Standard and pursuant to the monitoring programme, and management actions taken in response to any [residual][remaining] adverse Environmental Effects identified through monitoring, until completion of execution of the Final Closure Plan. Such report will be submitted in accordance with the following schedule: on an annual basis during the first [3]/[5] years after cessation of mining activity, on a two-year basis during the next [4]/[6] years, on a five-year basis during the remaining term of the Closure Plan. This schedule [may] be adjusted by the Council based on recommendations from the Commission. If significant adverse Environmental Effects are detected, the Contractor shall report more frequently as required by the Council.

[1. bis The purpose of ~~post~~-closure monitoring is:

(a) To obtain evidence that the contractor fulfilled its obligations under these Regulations including with regards to the effective protection of the Marine Environment ~~[including any remediation measures required by the Closure Plan]~~, and to verify that there are no more impacts from the Exploitation activities arising after Closure cessation;

[(b) To ~~implement~~ [accompany and document] the restoration and rehabilitation (wherever possible) of the Marine Environment; and]

(c) To get new knowledge and data about ecosystems and possibility of their restoration and rehabilitation.]

2. The Contractor shall continue to monitor the Marine Environment for ~~a such~~ period defined in the Closure Plan after the cessation of activities until the Closure objectives have been achieved as set out in the Closure Plan. ~~[and for the duration provided for in the Standards and taking into account Guidelines.]~~

2. bis Monitoring data, [collected by the Contractor pursuant to this Regulation, Regulation 92 bis and its Closure Plan,] shall be released publicly in an accessible format, according to the applicable Standard and taking into consideration Guidelines. ~~[at in] intervals [set out defined] in the Final Closure Plan, [according to the Standard, adhering to internationally recognized data principles, consistent with Best Scientific Practices, [in annual intervals].~~

3. Upon completion of implementation of the Final Closure Plan, the Contractor shall, in accordance with the procedure described in the applicable Standard, hire a ~~an~~ competent, independent and accredited Independent A auditor to conduct a final compliance assessment and submit a final compliance assessment report, according to the applicable Standards and taking into consideration the Guideline, to the Secretary-General to ensure that the Closure objectives contained in the Final Closure Plan has been [successfully delivered] ~~[met]~~. Such reports shall be reviewed by the Commission at its next meeting, provided that it has been published on the website of the Authority ~~circulated~~ at least 30 Days in advance of the meeting.

3. bis The Commission shall provide a report and recommendations to the Council for consideration, who shall decide whether, the objectives of the Final Closure Plan have been achieved, which decision shall be relevant to the retention, release, forfeiture or use by the Authority of the Contractor's Environmental Performance Guarantee. The report shall be published at the Authority's website in accordance with Regulation 92.

4. If, on the basis of the auditor's report and Commission's recommendations provided pursuant to paragraphs 3 and 3bis, the Council decides that a Contractor has failed to meet the [conditions of, or deadlines related to] ~~[objectives of]~~ the Final Closure Plan and reporting hereon, the Council shall direct the Contractor [what further action must be taken to achieve satisfactory delivery of the Closure Plan] to take the necessary action to achieve the objectives of the Final Closure Plan.

#### Comments

- One regional group and several delegations preferred paragraph 1 Alt over the original paragraph 1.
- It has been proposed by several delegations that paragraph 1 bis might be better placed in draft regulation 59 which sets forth the objectives of the closure plan. Furthermore, it has been suggested to delete sub-paragraph 1 bis (b) as this relates to implementing restoration and rehabilitation and not post-closure monitoring. This should be discussed and resolved.



## Part VII

### Financial terms of an Exploitation Contract

#### Section 1

##### General

#### Regulation 62

##### Equality of treatment

The Council ~~shall~~, based on the recommendations of the Commission, apply the provisions of this Part ~~in accordance with Article 13 of Annex III of the Convention,~~ in on a transparent, uniform and non-discriminatory basis, and ~~shall ensure equality of financial treatment and comparable financial obligations for Contractors,~~ to counter any disparity arising out of any grossly incomparable concentration of given resources.

#### Regulation 63

##### Incentives

~~1. The Council, taking into account the recommendations of the Commission and the Economic Planning Commission, may provide [financial] incentives [to Contractors and/or] pursuant to Article 11 of Annex III to the Convention, to Contractors entering into joint arrangements with the Enterprise, in accordance with the applicable Standards and taking into consideration Guidelines rules set out in Standards.~~

~~[1. Alt. The Council may, taking into account the recommendations of the Commission and the Economic Planning Commission in accordance with the applicable Standard, provide for incentives, including Financial Incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in Article 13(1) of Annex III to the Convention.]~~

2. Those incentives shall be applied on a uniform and non-discriminatory basis, to further the objectives set out in Article 13(1) of Annex III to the Convention [including, where applicable, the objective of stimulating the transfer of technology to, and training the personnel of, the Authority and of developing States.]

3. The Council shall ensure that, as a result of the Financial Incentives provided to Contractors, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to other Contractors and/or land-based miners.

4. Any incentives shall be fully compatible with the policies and principles under Regulation 2, any applicable Standards and shall take into consideration the relevant Guidelines.

5. A Financial Incentives Registry shall be established, maintained and published through the Seabed Mining Register, pursuant to Regulation 92.

#### **Comment**

There has been support for the alternative wording of paragraph 1, which is now retained (with the removed previous iteration remaining visible). Minor refinements to the language have been suggested for the purposes of ensuring better drafting and consistency in terminology.

There have been continued discussions between Members as to whether incentives other than financial incentives should be addressed in this Regulation (and more generally in the Regulations). Members are invited to consider this point further.

## **Section 2**

### **Liability for and determination of royalty**

#### **Regulation 64**

##### **~~[Contractor shall pay royalty]~~ [Royalty payment]**

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the Mineral-bearing ore sold or removed without sale from the Contract Area as determined pursuant to paragraph 1 of Section 8 of the Annex to the Agreement in accordance with the applicable Standard. [This provision is without prejudice to Article 10(3) of Annex III to the Convention.]

#### **Comment**

In the context of intersessional work, the position of the Enterprise in respect of royalty payments has been considered, and there have been discussions as to whether a separate provision addressing this issue is warranted. Given that Article 10(3) of Annex III to the Convention addresses this matter, delegations are invited to consider whether a separate reference to that provision here is required for the avoidance of doubt. It has also raised suggested that certain parts of Article 10(3) of Annex III (such as the reference to a “self-supporting” Enterprise) may require further, more detailed provisions. Delegations are invited to consider whether implementing Standards may be suitable to include such further technical rules.

##### **[Regulation 64bis]**

##### **Equalization measure**

A Contractor, from the date that its Plan of Work has been approved, shall pay the equalization measure as determined in accordance with the applicable Standard governing the equalization measure.]

#### **Comment**

While the technical rules of the financial terms, including the issue of the equalization measure, is envisaged to be regulated by the applicable Standard(s), it has been suggested that the Regulations clearly stipulate that an equalization measure will be in place.

In the context of intersessional work, delegations addressed the issue of whether an equalization measure should be devised assuming that certain forms of subsidies are permissible. Since the applicable Standard is now proposed to deal with further, technical rules of this issue, no Draft Regulation addresses this now, and the consideration of relevant regulatory text, including on subsidies (if any), is proposed to happen in the context of work on the draft Standard. Relevant, detailed analyses from intersessional work are available to the delegations.

## **Regulation 65**

### **Secretary General may issue Guidelines**

[Omitted]

## **Section 3**

### **Royalty returns and payment of royalty**

## **Regulation 66**

### **Form of royalty returns**

A royalty return lodged with the Secretary-General shall be in the form prescribed by the applicable Standard and taking into consideration the Guidelines and signed by the Contractor's designated official.

## **Regulation 67**

### **Royalty return period**

A royalty return period for the purposes of this Part is a half-year return period, from:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

## **Regulation 68**

### **Lodging of royalty returns**

1. A Contractor shall lodge with the Secretary-General a royalty return for the Contract Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the Exploitation Contract.
2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted for the Contract Area by the joint venture or consortium.
3. A royalty return may be lodged electronically.

## Regulation 69

### Error or mistake in royalty return

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

## Regulation 70

### Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged [in accordance with the applicable Standards].
2. A Contractor shall declare the currency to be used in the payment of royalties in the Exploitation Contract. The Contractor may only change the currency to be used in the payment of royalties if approved by the Council or otherwise on the anniversary of the ~~5<sup>th</sup> fifth~~ year of Commercial Production and at the end of every subsequent ~~5<sup>th</sup> fifth~~ year of Commercial Production.
3. All payments made to the Authority shall be made net and shall be free of any deductions, transmission fees, levies or other charges.
- [4. The Council may approve the payment by way of instalment of any royalty where it determines that any circumstances of ~~F~~orce ~~M~~ajeure exist, that justify payment by instalment, in accordance with ~~{relevant}~~ ~~{applicable}~~ Standards, [and ~~taking~~ into consideration the Guidelines.]

## Regulation 71

### Information to be submitted

1. A royalty return shall include the following information for each royalty return period, in accordance with Standards and taking into ~~{consideration}~~ ~~[account the]~~ Guidelines:
  - (a) The quantity in wet metric tons and dry metric tons of ~~{Mineral-bearing}~~ ore recovered from each Mining Area;
  - (b) [The quantity by Mineral in wet metric tons and dry metric tons and value by Mineral in dry metric tons of the Mineral-bearing ore shipped from the Contract Area]; The value, [grades] and the basis of the valuation (by Mineral and Metal) of the Mineral-bearing ore sold or removed without sale from the [Contract Area], as verified by a Suitably Qualified Person and supported by a representative chemical analysis of the ore by a Certified Laboratory, with the cost of weighing and testing to be borne by the Contractor;
  - (c) Details of all Exploitation Contracts [and amendments to Exploitation Contracts] and sale or exchange agreements relating to the [Mineral-bearing ore] sold or removed without sale from the Contract Area; and
  - (d) A calculation of the royalty payable ~~[in accordance with section 3]~~, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.
  - [(e) Details of all revenues and operating costs associated with activities in handling and processing, to the degree available.]
2. In respect of a final royalty return period ending on the date of ~~expiry, surrender or~~ termination of the Exploitation Contract, the Contractor shall provide:

- (a) A final calculation of the royalty payable;
  - (b) Details of any refund or overpayment of royalty claimed; and
  - (c) The quantity and value [(by Mineral and Metal)] of all closing stocks of the Mineral-bearing ore.
3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the Sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:
- (a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
  - (b) Complies with these Regulations and is accurate and correct.

## **Regulation 72**

### **Authority may request additional information**

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, which shall be no later than 90 Days from the date of the notice, information to support the matters stated in the royalty return.

## **Regulation 73**

### **Overpayment of royalty**

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment. Contractors will must properly demonstrate that an overpayment was made, and support their claim with all necessary documentation and justifications.
2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part, or, if the Exploitation Contract has expired, refund the amount within 90 Days.
3. Any request to reduce a royalty-related amount paid by a Contractor must be made within 1 year of an applicable financial report after the Day the relevant royalty return was lodged with the Authority.
4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount within 90 Days provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such a refund is correct and due to a Contractor.

### **[Regulation 73bis**

#### **Underpayment of royalty**

1. Where a royalty return shows any underpayment of royalties, the Secretary-General must demand payment from the Contractor within 7 Days.
2. If no payment is received, the Authority shall add the payment due to the next period of royalty collection.

3. Proper measures shall be taken against Contractors who do not pay the underpaid royalty in due time.]

## **Section 4**

### **Records and audit**

#### **Regulation 74**

##### **Proper books and records to be kept**

1. A Contractor shall keep and maintain, [at a place agreed by the Contractor and the Secretary-General] [at a place specified in the Exploitation Contract], complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles ~~and~~ ~~that that~~ verify, in connection with each Mining Area and the Contract Area, inter alia:

(a) Details of the quantity and grade of the Minerals, by Metal, recovered from ~~each Mining Area~~ and the Contract Area;

(b) Details of sales, shipments, transfers, exchanges and other disposals of Minerals, by Metal, from ~~the Mining Area~~ ~~each Mining Area and the Contract Area~~ each Mining Area and the Contract Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;

(c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability incurred in ~~each Mining Area~~ and the Contract Area or in direct support of activities within ~~each Mining Area and the Contract Area~~; and

(d) Details of all revenues and operating costs associated with activities in ~~the Mining Area~~ ~~each Mining Area and the Contract Area~~ each Mining Area and the Contract Area.

3. A Contractor shall supply and file such records at such times as may be required by the Authority under these Regulations and within 60 Days of the receipt of any such request from the Secretary-General.

4. A Contractor shall maintain all records for the duration of the Exploitation Contract and a period of 10 years following the completion of the Closure Plan, and make such records available for [inspection and] audit under Regulation 75.

#### **Regulation 75**

##### **Audit by the Authority**

1. The Council, on its own initiative, or upon the request of the Secretary-General or the Commission, may request an audit of the Contractor's books and records and all subcontractors' books and records associated with the Exploitation activities in the Area.

2. Any such audit shall be undertaken at the Contractor's sole cost and shall be performed by a qualified Independent Auditor approved by the [Council] ~~[Secretary-General]~~ in accordance with applicable Standards ~~and~~ taking into consideration the

Guidelines}.

3. An ~~[Independent]~~ Auditor may, in connection with a liability for a royalty payment:

(a) ~~[Audit all corporate offices, plants and~~ the mining and on-board processing facilities with a view to verifying the accuracy of all information reported and the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area};

(b) Audit any relevant documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;

(c) Require any duly authorized representative of the Contractor to answer any relevant questions in connection with the audit and provide any missing documents, papers, records and data; and

(d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the audit and provide a Contractor with a list of such copies or extracts.

~~1. [3. bis An Independent Auditor may, in connection with a liability for a royalty payment require assistance from the Inspectors, through the Secretary General, and the Inspectors shall assist the auditors in discharging their functions under this part.]~~

4. For the purposes of an audit the Contractor shall make available to an ~~[Independent]~~ ~~A~~ auditor such financial records and information contemplated as reasonably required by the relevant organ of the Authority to determine compliance with this Part.

5. Members of the Authority, in particular a Sponsoring State or States, shall, cooperate with and assist the relevant organ of the Authority and any ~~[Independent]~~ ~~A~~ auditor in the carrying out of any audit under this Regulation, and shall facilitate access to the records of a Contractor by an auditor and assist in the exchange of information relevant to a Contractor's obligations under this Part.

#### Comments

- It has been suggested by several delegations that the scope of the audit regulated in draft regulation 75 cannot exceed the competence allotted to the Authority, hence excluding the audit, for example, of processing plants or of "all" corporate offices. There was no opposition to this observation on the floor during the twenty-ninth session. Paragraph 3 (a) is proposed to be adjusted on this basis, removing the reference to "corporate offices" and "plants".
- References to the auditor has been made consistent in the Revised Consolidated Text as "Independent Auditor".
- Paragraph 2 needs to be updated when the Inspection Mechanism has been settled.
- Several delegations expressed concerns about or opposition to paragraph 3 bis.

## Regulation 76

### Assessment by the Authority

1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any

additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

~~4. bis~~ If the Contractor is not satisfied with the Secretary-General's confirmation or revision of the assessment, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then ~~re-consider and either~~ affirm, revise, or revoke the assessment, taking into account the further information provided by the Contractor, within 60 Days. ~~]~~

~~4. ter~~ The Secretary-General shall provide the Council with each approving assessment confirmed or revised according to paragraphs 4 and 4bis above. ~~The Secretary-General shall provide the Contractor the written notice of the decision of the Council.]~~

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4 ~~for~~, where applicable, paragraph 4bis]. ~~[In case of appropriate decision of the Council, the Contractor shall pay any such royalty liability within 30 Days of the date of the written notice provided by the Secretary General under paragraph 4ter above.]~~

#### Comments

- It has been suggested that paragraph 4ter unnecessarily refers to an unspecified Council decision, the second part of the paragraph is therefore proposed to be removed. A corresponding edit has been proposed to paragraph 5.

## Section 5 Anti-avoidance measures

### Regulation 77

#### General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for ~~[any]~~ payment ~~[of a royalty]~~ under this Part;



(b) Have not been carried out for bona fide commercial purposes; ~~or~~

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for [any] payment ~~[of a royalty]~~; or

(d) The Secretary- General shall determine the liability for a ~~royalty~~ [payment under this part] as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The ~~[Secretary-General]~~ shall consider such representations and shall determine the liability for a royalty for the original or revised amount. [If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary-General/the Council] to consider. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then re-consider and either affirm, revise, or revoke the decision made by the [Secretary-General].]

[2. Alt. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The [Secretary-General] shall consider such representations and shall determine the liability for a royalty for the original or revised amount. [If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary-General/the Council] to consider. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then reconsider and either affirm, revise, or revoke the decision made by the [Secretary-General].]

2 bis 2 The Sponsoring State shall be informed at the beginning of any procedure potentially leading to a determination according to this Regulation, and may provide written representations to the Secretary-General, the Council or the Finance Committee.

3. The Contractor shall pay any such liability [under this part] within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

[4. If the Contractor is in [gross and persistent breach] [serious, persistent and willful violation] of any payment obligations in accordance with this Part, the Council [shall] [may] suspend or [terminate] the Exploitation Contract pursuant to Regulation 103 of these Regulations and the Contactor's company principals shall be barred from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years].

## Regulation 78

### Arm's-length adjustments

1. For the purposes of this Regulation:

(a) "Arm's length", in relation to Exploitation Contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not Related Parties and without one party influencing another; and

(b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not Related Parties, would agree to in a competitive environment.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a Related Party, the Council may adjust the value of such costs, prices and revenues to reflect an arm's-length value, taking into account the recommendations of the Commission, in accordance with internationally accepted principles.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. If the Contractor submits written representations, the Secretary-General shall affirm, amend or revoke the adjustment, taking into account the further information provided by the Contractor, within 60 Days of being provided with that further information.

## Section 6

### Interest and penalties

## Regulation 79

### Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains wholly or partly unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, in accordance with the applicable Standard, at an annual rate calculated by:

(a) Adding ~~{5}~~ per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable for the first month of non-payment;

(b) Adding ~~{10}~~ per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable for the second and third months of non-payment; and

(c) Adding [15] [20] per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable for any further period of non-payment.

#### Comment

Delegations are invited to consider the appropriate rate under paragraph (c), which appears to be the only open textual issue on draft regulation 79.

## **Regulation 80**

### **Monetary penalties**

~~[Subject to] [Without prejudice to] Regulation 103(6) and according to the applicable Standards, the Council may impose a monetary penalty proportionate to the seriousness of the violation.]~~

#### **Comment**

It has been suggested that all contractual breaches should be tackled under draft regulation 103. Delegations are invited to consider whether that is sufficient. It is recalled that draft regulation 103 also provides for monetary penalties.

## **Section 7**

### **Review of payment mechanism**

## **Regulation 81**

### **Review of system of payments**

1. The system of payments adopted under these Regulations and pursuant to paragraph 1(c) of Section 8 of the Annex to the Agreement, shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter ~~[in accordance with the applicable Standards]~~ ~~[as well as all observed Environmental Impacts]~~.
2. The Council, based on the recommendations of the Commission and following a review under paragraph 1, may decide to adjust the existing system of payments or introduce a new system of payments, taking into account the level of maturity and development of Exploitation activities in the Area, as well as the principles under Article 13 of Annex III to the Convention and Section 8 of the Agreement.
3. Without limiting the scope of any review by the Council, a review under this Regulation may include an adjustment to an existing system of payments, or an introduction of a new system of payments, and may consider changes to all applicable rules, regulations and procedures of the Authority [including any applicable Standards and taking into consideration the Guidelines].
4. A review of the system of payments shall consider all resource categories unless otherwise decided by the Council.
5. A change to the system of payment shall only apply by agreement between the Authority and the Contractor for Contract Areas that have already commenced Commercial Production.

#### **Comment**

A number of delegations proposed the removal of the separate reference, in this context, to “*Environmental Impacts*”. Since paragraph 1 refers to the applicable Standards, the categories of environmental impacts which may be relevant for the purposes of this paragraph may be enumerated in the applicable Standard.

## Regulation 82

### Review of rates of payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter in accordance with applicable standards.
2. The Council, based on the recommendations of the Commission, may decide to adjust the rates of payments [taking into account the Resource Category and the level of maturity and development of Exploitation activities in the Area, as well as the principles under Article 13 of Annex III to the Convention and Section 8 of the Agreement].
3. A review of the rates of payments shall consider all Resource Categories unless otherwise decided by the Council.
4. An adjustment to the rates of payments shall ~~apply to all Contract Areas, but shall only apply by agreement between the Authority and the Contractor for Contract Areas where both of the following conditions are met:~~
  - ~~(a) The first five years of Commercial Production in the Contract Area have not elapsed; and~~
  - ~~(b) The Contractor does not hold rights to another Contract Area of the same Resource Category for which the first five years of Commercial Production has elapsed.~~
5. Without limiting the scope of any review by the Council, a review under this Regulation may include an adjustment to the [rate associated with any payment mechanism adopted under the [rules, regulations, and procedures of the Authority,] [including any applicable Standards and taking into account any applicable Guidelines] including the manner and basis of their calculation, as well as the establishment of rates of payments for new relevant metals or Minerals that are likely to be commercially exploited during the next review cycle.]

#### Comment

Valuable intersessional work has been carried out on providing one suggested proposal for draft regulation 82. It has been suggested that paragraph 4 should be simplified, which suggestion has been implemented in the text.

## Section 8

### Payments to the Authority

## Regulation 83

### Recording in Seabed Mining Register

1. All payment figures made by the Contractor to the Authority under this Part are publicly available.
2. Details of [a]All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.

## Regulation 83 bis

### Beneficial Ownership Registry

1. A Contractor shall submit information ~~as~~ part of its annual report pursuant to Regulation 38 ~~to~~ the Secretary-General to be included in a Beneficial Ownership Registry in accordance with ~~relevant~~ ~~applicable~~ Standards and ~~taking into consideration~~ Guidelines.

[1. Alt. Contractors shall submit detailed beneficial ownership information as part of their annual report, in compliance with regulation 38, to the Secretary General. This information must be compiled in the Beneficial Ownership Registry, adhering to all applicable Standards and taking into consideration the Guidelines.]

2. The Beneficial Ownership Registry shall be published through the Seabed Mining Register.

#### Comment

It has been suggested by a number of delegations that information concerning ultimate beneficial ownership is to be included in the application for a Plan of Work. That issue is proposed to be considered in the context of draft regulation 7 and Annex I.

## Part VIII

### Annual, administrative and other applicable fees

#### Section 1

##### Annual fees

#### Regulation 84

##### Annual reporting fee

1. A Contractor shall pay to the Authority, from the ~~[effective date]~~[date of the signature] of an Exploitation Contract [by all parties] and for the term of the Exploitation Contract and any [extension]~~[renewal]~~ thereof, an annual reporting fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee.

2. The annual reporting fee is due and payable to the Authority at the time of submission of the Contractor's annual report under Regulation 38.

~~[3. Where the effective date is part way through a Calendar Year, the first payment shall be pro-rated and made within 30 Days after the effective date of an Exploitation Contract.]~~

4. Where an annual reporting fee remains unpaid after the date it becomes due and payable:

~~—(a) This constitutes a violation of the fundamental terms of the contract for the purposes of Regulation 103, and~~

~~(b)~~—A Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

##### Comment

A number of delegations suggested the removal of paragraph 3 and paragraph 4(a). In respect of the latter point, it has been suggested that qualifying any delay as the violation of fundamental terms may be excessive; and that draft regulation 103 in any event incorporates a detailed mechanism to deal with the violations of contract terms.

#### Regulation 85

##### Annual fixed fee

1. A Contractor shall pay to the Authority, ~~[Alt 1. from the date of commencement of Commercial Production in a Contract Area]~~ [Alt 2. from the effective date of the signature of an Exploitation Contract and for the term of the Exploitation Contract and any extension thereof] an annual fixed fee. The amount of the fee shall be established by the Council as required under paragraph (1)(d) of Section 8 of the Annex to the Agreement, on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the Authority's management of the Exploitation Contract,

including staffing the Secretariat and conducting inspection and enforcement activities.

2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year.

3. Where the date of ~~[commencement of Commercial Production]~~ ~~[the signature of the Exploitation Contract]~~ occurs part way through a Calendar Year, a prorated annual fixed fee shall become due and payable to the Authority within 30 Days of such commencement date.

3. bis Where an annual fixed fee remains unpaid after the date it becomes due and payable:

~~(a) This constitutes a violation of the fundamental terms of the contract for the purposes of Regulation 103; and~~

(b) A Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

~~[4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these Regulations.]~~

#### Comments

- It has been suggested that paragraph 4 is unnecessary, several delegations urged its deletion.
- Delegations continued to disagree on whether the commencement of commercial production or the date of the signature of the Exploitation Contract should trigger the payment obligations. Delegations may wish to consider [ISBA/29/C/CRP.5](#) further.

## Section 2

### Fees other than annual fees

#### Regulation 86

##### Application fee for approval of a Plan of Work

1. An applicant for the approval of a Plan of Work, ~~[when submitting the application for the approval of a Plan of Work]~~, shall pay an application fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee.

~~2. If the administrative costs incurred by the Authority in processing an application, which may include the costs of recruiting competent independent experts, are less than the amount paid in accordance with paragraph 1 [alt 2. Amount specified by the Council][alt 3. Fixed amount in appendix II], the Authority shall refund the difference to the applicant.~~

~~2. bis If the administrative costs incurred by the Authority in processing an application are more than [alt 1. Amount paid in accordance with paragraph 1 the amount paid in accordance with paragraph 1 alt 2. Amount specified by the Council][alt 3. Fixed amount in appendix II] the applicant or Contractor shall pay the difference to the Authority, provided that any additional amount to be paid by the applicant or Contractor~~

~~shall not exceed 10 per cent of the [alt 1. Amount set in accordance with paragraph 1] amount set in accordance with paragraph 1. [alt 2. Amount specified by the Council][alt 3. Fixed fee specified in appendix II].~~

3. Taking into account any criteria established for this purpose by the Finance Committee ~~or in a case by case basis,~~ the ~~[Secretary-General]/[Finance Committee][Legal and Technical]-[Commission]~~ shall determine whether there is a difference between the amount of the application fee the amount of such differences as indicated in paragraph 2, and the administrative costs incurred by the Authority in processing an application, and notify the applicant or Contractor of ~~the~~<sup>its</sup> amount of any such difference. The notification shall include a statement of the expenditure incurred by the Authority. In the event the amount of the application fee falls short of the administrative costs of the Authority, the difference The amount due must be paid by the applicant ~~or reimbursed by the Authority~~ within 90 Days of the ~~effective date~~<sup>signature</sup> of the Exploitation Contract. [In the event the amount of the application fee exceeds the administrative costs of the Authority, the difference must be reimbursed to the applicant within 90 Days of the signature of the Exploitation Contract.]

3. The Secretary-General shall not process any application until the applicable fee under this Part has been paid.

#### Comments

- Revisions are proposed based on the discussion during the second part of the twenty-ninth session with a view to presenting a simplified draft. There have been suggestions to the effect that it is not necessary to retain paragraphs 2 and 2 bis, and paragraph 3 could accommodate all the necessary provisions.
- In paragraph 3, based on the suggestions of a number of delegations, it is proposed that the Secretary-General carries out the administrative tasks related to the administrative costs of the Authority. In the event of a dispute, the orderly dispute settlement mechanism remains available for the Contractor.
- A new paragraph 4 is proposed based on text that previously appeared in draft regulation 88. As a number of delegations have pointed out, the relevant rule pertains specifically to the issue of application fees, hence better addressed in this draft regulation.

## Regulation 87

### Other applicable fees

~~{A Contractor shall pay other prescribed fees in respect of any matter specified -by the Council, based on the recommendations of the Finance Committee,- in accordance with the applicable rules, regulations and procedures of the Authority.}~~

## Section 3

### Miscellaneous



## Regulation 88

### Review and payment

1. The Council shall review and determine on a regular basis the amount of each of the annual, processing and other applicable administrative fees ~~specified in appendix II~~ in order to ensure that they cover the Authority's expected administrative costs for the service provided.
2. ~~A Contractor shall pay fees in full at the time of the submission of the relevant application, request, document, or other event except as provided for in this part [].~~ Except as provided for in this Part, fees will be a fixed amount expressed in United States dollars or its equivalent in a freely convertible currency, ~~and are to be paid in full at the time of the submission of the relevant application, request, document or other event as specified in this Part.~~
3. Fees paid under this Part are not refundable upon the withdrawal, rejection or refusal of an application.

#### Comment

Revisions have been implemented based on discussions during the second part of the twenty-ninth session. In particular, it has been pointed out that certain parts of paragraph 2 were redundant and repetitive, with the relevant rules already appearing in the preceding paragraphs specifying the time of the payment of various fees.

## Part IX

### Information-gathering and handling

#### Regulation 89

##### Confidentiality of information

1. ~~{There shall be a presumption that any}~~ Data and information regarding the Plan of Work, Exploitation Contract, its schedules and annexes or the activities taken under the Exploitation Contract ~~{are}~~ {shall be} public, other than Confidential Information.

2. “Confidential Information” means:

(a) ~~{Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;}~~

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the ~~{Secretary-General}~~ {the Data Committee Legal and Technical Commission} in accordance with the applicable Standard~~}~~ on the basis that there would be substantial risk of serious or unfair economic prejudice if the data and information were to be released~~; and.~~

~~—{(e) Documents exempt from disclosure due to attorney-client privilege.}~~

3. “Confidential Information” does not mean or include data and information that:

(a) Are generally known or publicly available from other sources;

(b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;

(c) Are already in the possession of the Authority with no obligation concerning its confidentiality;

(d) Are required to be disclosed under the ~~r~~Rules, regulations and procedures of the Authority [to protect the Marine Environment or human health and safety];

(e) Are necessary for the formulation ~~{from time to time}~~ by the Authority of ~~r~~Rules, ~~r~~Regulations, ~~and~~ ~~p~~Procedures ~~{and decisions}~~ ~~{of the Authority}~~ concerning the Protection and ~~P~~reservation of the Marine Environment and safety, other than equipment design data;

(f) Relate to the Protection and ~~P~~reservation of the Marine Environment, ~~{provided that}~~ ~~{unless}~~ the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release;

{(f) Alt. Relate to the Protection and Preservation of the Marine Environment, provided that the Secretary-General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its

release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council;]

~~— [f) Alt. 2. Are environmental data, including all baseline and monitoring information;]~~

(g) Are an award or judgment in connection with activities in the Area ~~[save in relation to any Confidential Information contained in such award or judgment which may be redacted];~~

(h) [Relate to Contractor payments to the Authority, governments, state enterprises, other Contractors, as well as payments and other forms of financial benefit received by the Contractor from Sponsoring States;

(i) Relate to beneficial ownership of Contractors;

~~(j) [Relate to Sponsorship Agreements or other contractual arrangements between Contractors and Sponsoring States;]~~

(k) The Contractor to which the data and information relates has given prior written consent to its disclosure;

(l) The area to which the data and information relates is no longer covered by an Exploitation Contract; provided that following the expiration of a period of 10 years after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the ~~[Secretary-General]~~; [in accordance with the applicable Standard and taking into consideration the relevant Guidelines] and save any data and information relating to personnel matters under paragraph 2 (b) above; or

[m) Are in a category designated by the Council as not being Confidential Information.]

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with Regulation 90 and shall not be disclosed to any third party ~~[without reasonable cause]~~ without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's Secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information [describing, in general and non-prejudicial terms, any information redacted or required to be withheld from publication on the basis of confidentiality with an explanation of the reasons. The Secretariat shall publish a copy of any such notice received upon receipt]. If the Secretary-General, [a Member State, or another Stakeholder] objects to such designation [within a period of 30 Days from the publication of the notice], the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this Regulation, ~~[and consult the Data Committee as appropriate]~~. During the consultations, the Secretary-General shall ~~take into account any relevant [policy guidance from the Council]~~ [apply the applicable Standards and taking into consideration Guidelines]. [The Secretary-General shall report to the Council regarding the types and quantities of data that are designated confidential in accordance with this paragraph.] Any dispute arising as to the nature of the data and information shall be dealt with ~~[through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures]]~~ [in accordance with Part XII of these Regulations].

6. [Nothing in these Regulations shall affect the rights of a holder of intellectual property.]

### Comments

- Revisions have been implemented based on discussions during the second part of the twenty-ninth session.
- The reference to attorney-client privilege has been removed since in circumstances where a document is shared with the Authority, any such privilege must already be deemed to have been waived.
- Delegations continue to diverge on whether to retain paragraph 2(a).
- Delegations continue to diverge on whether paragraph 2(f) or 2(f)alt is preferred.
- Several delegations urged a simplified paragraph 5, but no textual proposals have been put forward to that effect.
- Several delegations urged the removal of any reference to the Data Committee, which is no longer an organ envisaged.

## Regulation 90

### Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information [held by the Authority] and shall not ~~(, except where legally obliged to do so, [following a legal direction or] with [a lawful cause or] [good cause or] on the basis of Rules, Regulations or Procedures of the Authority, on the basis of the directions of a competent court or tribunal, or with~~ the prior written consent of a Contractor [concerned], release such information to any person external to the Authority. To ensure the confidentiality of such information, the ~~[Secretary General] [Council]~~ shall establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information ~~[by members of the Secretariat, members of the Commission, members of the Council]~~ [by organs of the Authority], and any other person participating in any activity or programme of the Authority. Such procedures shall include:

(a) The maintenance of Confidential Information in secure facilities and the development of security procedures to prevent unauthorized access to or removal of such information; and

(b) The development and maintenance of a classification, log and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition.

2. A person who is authorized pursuant to these Regulations to access Confidential Information shall not disclose such information except as permitted under the Convention and these Regulations. The Secretary-General shall require ~~[such persons]~~ any person who is authorized to access Confidential Information to make a written declaration witnessed by the Secretary-General or duly authorized representative to the effect that the person so authorized:

(a) Acknowledges his or her legal obligation under the Convention and these Regulations with respect to the non-disclosure of Confidential Information; and

(b) Agrees to comply with the applicable Regulations and procedures established to ensure the confidentiality of such information.

3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these Regulations or an Exploitation Contract issued under these Regulations. In accordance with the provisions of Article 163(8), of the

Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Article 14 of Annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose or use, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with Article 14 of Annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their employment with the Authority.

5. Taking into account the responsibility and liability of the Authority pursuant to Article 22 of Annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who breaches any of the obligations relating to confidentiality contained in the rules, regulations and procedures of the Authority.

6. In the case of any breach of obligations relating to Confidential Information held by the Authority, the Authority, ~~upon becoming aware of the breach,~~ shall notify the relevant Contractor and Sponsoring State ~~for States~~.

#### **Comment**

A number of delegations pointed out the imprecise formulation of ‘*lawful cause*’ or ‘*good cause*’ or ‘*legal direction*’. Alternative wording is now proposed. It has been suggested that ‘*legal direction*’ should be confined to court or tribunal order for disclosure, which is now reflected. It bears noting, however, that orderly courts or tribunals would not have jurisdiction to compel the Authority to disclosure. This reference should be therefore construed as reference to courts or tribunals acting in accordance with jurisdiction conferred upon them under international law, including over the Authority. It has been proposed to use the phrase “*where legally obliged*” to do so, to capture all relevant scenarios, which is now proposed for the consideration.

## **Regulation 91**

### **Information to be submitted upon expiration or termination of an Exploitation Contract**

1. Upon expiration of an Exploitation Contract; or if an application for ~~extension~~~~renewal~~ is refused after the original expiration date, upon the date of the refusal; or if an Exploitation Contract is terminated before its expiration date, upon the date of the termination the Contractor shall transfer to the Authority, ~~to the extent feasible~~ within ~~90~~~~180~~ Days ~~from the date of the expiration of the Exploitation Contract, the date of the refusal of an application for extension/renewal, or date the termination of the contract~~, all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this Regulation and the ~~applicable~~ ~~Standard~~~~s~~, and taking into consideration Guidelines. [This includes, but is not limited to, the provision of geological data, Environmental Impact Statements, the transmission of the samples kept in accordance with Regulation 39(3) to storage in accordance with the applicable Standard, and records of any Incidents or breaches of the Contractor’s obligations that occurred during the Contract Period.]

~~[(1) bis Any Confidential Data transmitted pursuant to paragraph 1 shall continue to be dealt with in accordance with Regulations [89 (4)-(5) and 90.]~~

~~[(1) ter The information and data submitted by the Contractor in accordance with paragraph (1) shall be accompanied by a report providing a summary of the exploitation activities, including on the Contractor's compliance with its obligations and any Incidents].~~

~~[2. Upon termination or expiration of an Exploitation Contract, the Contractor and the Secretary-General shall consult together and, in accordance with the provisions of this Regulation and the ~~applicable~~ Standard~~s~~ and taking into consideration~~the~~ Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority.~~

#### **Comment**

Various textual proposals have been raised on the floor on this draft regulation during the twenty-ninth session, which the proposed text aims to accommodate. It bears noting that detailed technical rules on the data transfer and on the continued storage of samples may be tackled in the Standard to which the draft regulation refers.

## **Regulation 92**

### **Seabed Mining Register**

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the applicable Standards and taking into consideration Guidelines. Such register shall contain the following information ~~except to the extent it is Confidential Information~~:

(a) The names of the Contractors and the names and addresses of their Designated Representatives;

(b) The applications made by ~~each~~ ~~the various~~ Contractors and the accompanying documents submitted in accordance with Regulation 7 including any revisions, ~~during the term of a contract~~;

(c) A copy of each Council decision to award, extend, suspend or terminate, ~~an Exploitation C~~contract including the rationale, and the terms of the various Exploitation Contracts in accordance with Regulation 1, ~~including copies of the approved Plans of Works, and any substantial modifications to the plans of work~~;

~~[(c) bis The Exploitation Contract and its schedules in accordance with Regulation 17:]~~

(d) The geographical extent of Contract Areas and Mining Areas to which each relate;

(e) The category of Mineral Resources to which each relate;

~~[(e) bis Annual reports, including the amount of Mineral Resources mined, and details of any Incidents, Notifiable Events, Compliance Notices or other compliance-related interventions taken by the Authority;~~

(e) quat. Inspection reports;

(f) All payments made by Contractors to the Authority under these Regulations ~~and~~ copies of royalty returns submitted in accordance with Regulation 71];

(g) Any encumbrances regarding the Exploitation Contract made in accordance with Regulation 22;

(h) ~~[Instruments of Transfer or Assignment]~~~~[Any instruments of transfer];~~

(h) bis All other documents required by these Regulations relating to Contract Areas, including documents required before, during or after application for a Plan of Work, documents required during the term of the Exploitation Cecontract, and revised documents, except for Confidential Information which shall be redacted;

(h) ter Copies of all reports, recommendations and decisions of the Authority relating to each Contract Area, before, during or after application for a Plan of Work and throughout the term of the Exploitation Cecontract, except for Confidential Information which shall be redacted;

(i) All reports submitted to the Authority by the Contractor, including annual reports submitted under Regulation 38, Incident reports submitted under Regulation 33(2)(f), environmental monitoring reports submitted under Regulation 39bis(3) and (4), and performance assessment reports submitted under Regulation 52;

(j) copies of notifications made under Regulation 34 of Notifiable Events;

(k) Reports of reviews of activities under plans of works under Regulation 58;

(l) A copy of inspection reports prepared under Regulation 100;

(m) A copy of the compliance record for every Contractor, prepared under Regulation 100bis;

(n) A copy of every Cecompliance Notice issued under Regulation 103 and, where applicable, the corresponding improvement plan;

(o) copies of each Contractor's documents validating, declaring, and confirming the Environmental Performance Guarantee;

~~[(p) Any other details which the Secretary-General considers appropriate save for Confidential Information;]~~

[(q) The documents in the Beneficial Ownership Registry;]

[(r) Any other details as may be directed by the organs of the Authority from time to time.]

2. The Seabed Mining Register shall be publicly available ~~[free of charge]-ona~~t the Authority's website.

3. [Following receipts of information comma, the Secretary-General shall publish it in the Seabed Mining Register within seven days][The Secretary-General shall publish the information in the Seabed Mining Register as soon as practicable following its receipt by the Secretary-General.]

#### Comments

- It has been suggested to remove paragraph 1(e)ter., as its contents are already captured by paragraph 1(i).
- A new paragraph 1(r) has been proposed which captures also paragraph 1 (p).
- Proposed revisions to paragraph 3 have been implemented.

## **Regulation 92 bis**

### **Publication of environmental data and information**

The Secretary General shall publish all environmental data and information relating to a Contract Area as well as environmental data and information obtained outside the Contract Area, but in connection with the activities in the Contract Area, whether ~~produced~~ collected before, during or after application for a Plan of Work, or during the term of the Exploitation Contract, including any revisions to that data or information, on a central data repository that is publicly accessible via the Authority's website ~~as soon as practicable~~, and in accordance with the Rules, Regulations and Procedures of the Authority, ~~and~~ applicable Standards and taking into consideration the Guidelines. Any new environmental data and information shall be published on the central data repository at regular intervals defined in the applicable Standards~~s~~.

#### **Comment**

Delegations have raised a number of questions pertaining to the technical implementation of this draft regulation. It bears recalling that the relevant Standard may further specify such details. Textual revisions have been implemented based on the discussions during the second part of the twenty-ninth session.



## Part X

### General procedures, Standards and Guidelines

#### Regulation 93

##### Notice and general procedures

1. ~~[Replaced to the Schedule]~~ [This regulation shall apply to all Communications by and with the Authority].

~~[2. Any Communication shall be made by the Secretary-General or by the Designated Representative of the applicant or Contractor, as the case may be. [If the Communication is transmitted orally, it will be followed up by a written confirmation at the earliest time convenient].]~~

3. ~~[All]~~ ~~[Service of any]~~ Communication must be made [in writing and served]:

(a) By hand, fax, registered mail or email containing an authorized electronic signature; and

(b) To the Secretary-General at the headquarters of the Authority or to the Designated Representative at the address stated on the Seabed Mining Register, as the case may be.

4. The requirement to provide any information in writing under these Regulations is satisfied by the provision of the information in an electronic document containing a digital signature.

5. Delivery by hand is deemed to be effective when made, [if a receipt is provided] ~~[accompanied with an acknowledgement copy]~~. Delivery by fax is deemed to be effective when the “transmit confirmation report” confirming the transmission to the recipient’s published fax number is received by the transmitter. Delivery by registered mail is deemed to be effective 21 Days after posting. Delivery by email is deemed to be effective when the email enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and is capable of being retrieved and processed by the addressee.

6. Notice to the Designated Representative of the applicant or Contractor constitutes effective notice to the applicant or Contractor for all purposes under these Regulations, and the Designated Representative is the agent of the applicant or Contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

7. Notice to the Secretary-General constitutes effective notice to the Authority for all purposes under these Regulations, and the Secretary-General is the Authority’s agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

#### Regulation 93 bis

##### [State and] Stakeholder Consultation

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

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

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

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

4. The Secretary General shall determine the consultation period for each consultation, which shall begin on the date of the publication of a notice of consultation and may not be less than [90] Days.:

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

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

5. The Secretary General shall prepare a notice of consultation. The notice of consultation shall invite States and Stakeholders to make submissions to the consultation, describe the matters on which submissions are sought, include the documentation that is the subject of consultation and other relevant information, and specify the final date for submissions. The applicant or Contractor shall provide the Secretary General with all information and documentation required to prepare a notice of consultation.

6. The Secretary General shall publish the notice of consultation ~~on~~ the Authority's website and send written notice of consultation to States and ~~[potentially directly affected]~~ Stakeholders.

7. During the consultation period, the applicant or Contractor shall ~~[endeavour to]~~ conduct engagement with States and ~~[potentially directly affected]~~ Stakeholders ~~[public engagement,]~~ and in accordance with [Regulation 93 ter] applicable Standards, and taking into ~~[consideration]~~ Guidelines. The Secretary General may, [in consultation with the relevant applicant or Contractor,] direct the applicant or Contractor to conduct such meetings, workshops and engagement [or facilitate such meetings, workshops and other forms of engagement].

[7. bis. The applicant or Contractor shall organize at least one public meeting during the consultation period to allow stakeholders to ask questions and express their concerns directly.]

8. The Secretary General shall receive all submissions [and transmit all submissions to the applicant or Contractor.]

9. ~~[The Secretary General shall transmit all submissions to the applicant or Contractor.]~~ The applicant or Contractor shall consider the submissions received and ~~[may]~~ [shall] revise the documentation that was the subject of consultation. The applicant or Contractor shall prepare a written response to consultation that collates and responds to the ~~[substantive]~~ comments expressed in submissions and includes an explanation of any revisions to the document and how those revisions respond to ~~[substantive]~~ comments expressed in the submissions. ~~The applicant or Contractor shall submit the written response, with any revised documentation, to the Secretary General for transmission to the Commission.~~

10. The Secretary-General shall maintain a permanent public record of the notice of each consultation conducted under this Regulation, all submissions, and the written

response to consultation, by publishing the notice, submissions and response ~~on~~ at the Authority's website (except for Confidential Information which shall be redacted from documents before publication). The Secretary-General shall ensure that such consultation records relating to a specific **Exploitation Contract** are included in, or are accessible from, the relevant entry in the Seabed Mining Register, in accordance with Regulation 92.

10. bis. The results of each consultation shall be summarized in a public report, including an analysis of the key points raised by stakeholders and how these key points were addressed.

## **Regulation 93 ter**

### **Consultations with [potentially most affected][coastal] States**

1. [Meaningful] consultations, including a system of prior, active, timely and effective notification] with States potentially most affected by the planned exploitation activity [with a view to avoid infringement of their rights under the Convention and/or achieving acceptable solutions regarding measures to be adopted in order to prevent significant harm in their territory or in other places under their jurisdiction or control], shall take place, [following standards and taking into account the guidelines, at appropriate stages of preparation and execution of a plan of work by the contractor. The outcomes of such consultations shall be included in the] different stages of preparing a Plan of Work, and at appropriate times during and at cessation of Exploitation activities, at the development of:

(a) Scoping [report];

[(b) Environmental Impact Assessment;]

[(c) Environmental Impact Statement;]

[(d) Environmental Management and Monitoring Plans;]

[(e) Performance Assessment of the Environmental Management and Monitoring Plan;]

[(f) Closure Plans;]

[(g) Any review/update of the above documents [in light of][required by] Material Change].

2. States should self-identify as being potentially most affected taking into account the potential effects of the [activity carried out in the area covered by the Plan of Work] planned activity and shall include:

(a) [Adjacent] coastal States, [which may include those that are adjacent to the area covered by the Plan of Work], whose sovereign rights for the purpose of exploring and exploiting, conserving or managing Marine natural resources [in accordance with the Convention] may be affected.

(b) [Adjacent] coastal States, [which may include those that are adjacent to the area covered by the Plan of Work] whose exercise of jurisdiction with regard to the Protection and Preservation of the Marine Environment [in accordance with the Convention] may be affected.

[(c) States that carry out, in the area of the planned Exploitation activity, any activities, including economic activities, or Marine Scientific Research, that may be believed to be affected.]

[Alt. (a) States whose rights under the Convention may be denied, impaired or otherwise affected by the activity carried out in the area covered by the Plan of Work.

(b) States that may suffer significant harm to persons, property or the environment in their territory or in other places under their jurisdiction or control, as a result of the activity carried out in the area covered by the Plan of Work.]

3. [As appropriate,] the Secretariat, [Contractor, Sponsoring State and/or other States or relevant bodies] should [provide technical, financial and advisory support] to developing States, including small islands developing States, upon request, to identify potential effects of the planned activity on Marine areas and their resources under their jurisdiction.

[4. This support should encompass an assistance mechanism, along with training and mentorship programs, to bolster local capacities].

[5. Procedures for consultations with potentially most affected States shall be further developed in Standards and Guidelines].

[6. The [Contractor] (Sponsoring State) shall develop contingency plans for responding to emergencies, in cooperation with the Authority and potentially most affected States.]

[7. The [Contractor] [Sponsoring State] shall, without delay and by the most expeditious means at his disposal, notify potentially most affected States of an emergency concerning a planned activity and provide them with all relevant information]

8. Consultations with coastal States across whose jurisdiction resource deposits lie, shall take place, pursuant to article 142(1) and (2) of the Convention and in accordance with Regulation 93 quarter.

#### Comments

- During the second part of the twenty-ninth session, several delegations supported the retention of draft regulation 93 ter and had the wish to continue the negotiations based on the original version of the draft regulation. The alternative version has thus been deleted.
- The current version of the text has been updated with [textual proposals](#) from the intersessional working group on rights and interest of coastal States. Considering the number of changes, the draft regulation has been provided in a clean version.

## **Regulation 93 quarter**

### **Consultations with coastal States pursuant to Article 142(1) and (2) of the Convention**

1. If the planned activity includes resources deposits in the Area that lie across limits of national jurisdiction, the [Contractor [Sponsoring State or States] shall conduct such activity with due regard to the rights and legitimate interests of the coastal States across whose jurisdiction such deposits lie

2. In this respect, the [Contractor] [Sponsoring State] shall maintain meaningful consultations, including a system of prior, active, timely and effective notification with the State concerned with a view to avoid infringement of such rights and interests. Consultations shall continue until the planned activity is completed.

[3. In cases where the planned activity may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State [must be conducted] [shall be require]].

**Comment**

Draft regulations 93 quarter is a new **proposal** from the intersessional working group on rights and interests of coastal States.

**[Regulation 93 quinquies**

**Sovereignty, sovereign rights or jurisdiction**

Identification of and consultations with coastal States pursuant to Article 142 of the Convention, including any acts, measures, decisions or activities undertaken on the basis thereof, shall be without prejudice to, and shall not be relied upon as a basis for asserting or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto. In no case shall the implementation of these procedures nor the abovementioned acts and activities be interpreted as recognition or non-recognition of any claims to sovereignty, sovereign rights or jurisdiction.]

**Comment**

Draft regulations 93 quinquies is a new **proposal** from the intersessional working group on rights and interests of coastal States.

**Regulation 94**

**Adoption of Standards**

1. The Commission shall, taking into account ~~[the views of [recognized experts identified in accordance with Annex X], Stakeholders and relevant]~~ existing internationally accepted standards, ~~[where applicable,]~~ make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to, inter alia:

(a) Operational safety;

(a). bis The effective protection of human health and safety, and labour matters;

(b) The conservation and Exploitation of the Resources; and

(c) The Protection of the Marine Environment, including standards or requirements relating to the Environmental Effects ~~[and impacts]~~ of Exploitation activities, as referred to in ~~Article Regulation~~ 145 ~~of the Convention~~.

1. bis Standards shall describe [and determine] how the Authority and Contractors shall implement these Regulations, and shall aim for:

(a) A uniform and non-discriminatory operating environment for all Contractors;

(b) A consistent approach by all parties to reduce Environmental Impacts and human health and safety risks to as low as reasonably practicable; and

(c) An outcomes-based approach to regulation ~~[where feasible]~~, which prescribes rigorous environmental outcomes while affording flexibility for the processes by which these outcomes are achieved to enable continuous improvement, particularly as technology advances.

2. The Council shall consider [~~and provisionally adopt approve~~], upon the recommendation of the Commission and taking into account [~~statements~~][~~comments~~] submitted by Stakeholders during a public consultation, the Standards, [~~provided that~~] [~~including whether~~] such Standards are consistent with the intent and purpose of the rules, regulations and procedures of the Authority, including the decisions of the Council and the Assembly and, to the extent relevant, developed on the basis of Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice. If the Council does not [~~approve~~] [~~adopt~~] such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. The Standards [~~approved~~] [~~adopted~~] by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3. The Standards contemplated in paragraph 1 above ~~must~~ [~~shall~~] include both qualitative and quantitative standards, if applicable, and must include all the methods, processes and technology required to implement the Standards.

4. Standards or amendments thereto adopted by the Council [~~and approved by the Assembly~~] shall be legally binding on Contractors, member States and the Authority from the date of their adoption and the Commission shall review these Standards at least every [~~five~~] years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology [~~and new contributions from Indigenous Peoples and local communities~~], as to whether any revision is required].

4. bis Standards adopted or revised may incorporate an appropriate transition period for implementation by existing Contractors.

[4.ter. For the avoidance of doubt, compliance with Standards is a fundamental term of the Exploitation Cecontract, for the purposes of regulation 103.]

5. In the event of any conflict between the provisions of these Regulations and the provisions of a Standard, the Regulations shall prevail. The Authority [~~Council~~] should be notified of the conflict. [~~and shall provide additional guidance as necessary.~~]

#### Comment

It has been suggested by one delegation to place the content of draft regulation 45 concerning environmental standards into paragraph 1(c) in order to avoid overlaps and consolidate the regulations.

## Regulation 95

### Issuancee of Guidelines

1. The Commission [~~or other subsidiary organs of the Authority~~], shall, from time to time, [where appropriate or upon request by the Council,] develop Guidelines of a technical nature, in order to assist in the implementation of these Regulations, taking into account the views of Stakeholders.

1. bis The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, in order to assist in the implementation of these Regulations, taking into account instructions from the Council and the views of the Commission as well as other Stakeholders.

2. The full text of [~~such~~] Guidelines [or any revisions thereto] shall be reported to the Council [~~immediately~~]. Should the Council find that a Guideline is inconsistent with

the intent and purpose of the rules, regulations and procedures of the Authority, it may direct that the Guideline be modified. ~~[by the Commission] [or withdrawn].~~

3. The Commission or other subsidiary organ, in the case of technical Guidelines, and the Secretary-General, in the case of administrative Guidelines shall keep under review such Guidelines which shall be reconsidered, and revised subject to Council approval as needed, at least every five years from the date of their adoption or revision, and in the light of improved knowledge or information.

~~{4. [Notwithstanding the non-binding and recommendatory nature of Guidelines, Contractors are expected to observe all Guidelines issued by the Authority to the furthest extent possible. The Council may request Contractors to explain any divergence from the Guidelines.] [Guidelines are only of a recommendatory nature, yet Contractors shall ensure they are apprised of the Guidelines and take them into account in their performance of functions under these regulations and their contract. The observance of a Guideline by a Contractor may serve as supporting evidence of compliance by that Contractor with the relevant Rules of the Authority to which the Guideline relates. The Authority may also request applicants or Contractors to identify and explain departures from Guidelines].~~

## Part XI

### Inspection, compliance, and enforcement

#### Section 1

#### Inspections

#### Regulation 96

##### The inspection mechanism

[1. The [Council] shall establish a Compliance Committee, [within the Commission], pursuant to Regulation ~~[102]96-bis~~. [The Compliance Committee shall oversee the Authority's inspection, compliance and enforcement function pursuant to these Regulations, and shall approve and keep updated the Authority's Compliance Strategy.

2. The ~~[Secretary-General]/[Compliance Committee]~~ shall appoint an officer with suitable qualifications to be Chief Inspector. The ~~[Chief Inspector]/[Inspector]~~ shall [report to the Compliance Committee and shall] undertake the day-to-day management and administration of a roster of Inspectors and inspection programme in accordance with the Authority's Compliance Strategy.

3. The Council shall, on the basis of the recommendations of the Commission, approve and maintain a code of conduct for Inspectors [based on the principles of independence, transparency, accountability, [proportionality, expertise, probity] and non-discrimination.]

#### Regulation 96 ~~ter~~ bis

##### ~~Access to i~~ Inspections

[1. The Inspector decides upon the manner of execution of the inspections. Inspections may be carried out announced, unannounced, remotely, virtually or onsite, or a combination of these.

1. bis. The ~~[Chief Inspector]/[Inspector]~~ shall give reasonable notice, [which may vary depending upon the chosen manner of execution pursuant to paragraph 1, to a Contractor of the inspection. This notice shall contain:

(a) information about the manner of execution of the planned inspection;

(b) the projected time and duration of inspections;

(c) the ~~number~~ ~~names~~ of the Inspector(s); and

(d) any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor. ~~The activities of the Inspector(s) should in any case not impede activities in the Area unless otherwise provided in these Regulations.~~

2. [Where the Compliance Committee or the Chief Inspector have reasonable grounds to consider the matter to be so urgent that reasonable notice cannot be given, the Compliance Committee or the Chief Inspector shall instruct an Inspector to conduct an [impromptu] inspection, notwithstanding paragraph 1. bis., without prior notification to



~~a Contractor [without prior notification,]~~ and shall cooperate with a Contractor to conduct the inspection as soon as practically possible.]

2. bis. [The Inspector shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State or other party concerned when carrying out the inspection.]

3. Inspectors may, [in accordance with these Regulations,] inspect any relevant documents, ~~for items,]~~ personnel or digital information necessary to monitor a Contractor's compliance under its Exploitation Contract and the rules, regulations and procedures of the Authority which include inter alia, all recorded data and samples and any ships or Installations used by the Contractor to carry out Exploitation activities and activities related to such Exploitation activities in the Area, including its log, equipment, records and facilities, as well as interview relevant personnel. [The Inspector shall have the authority to take copies or samples as needed for further analysis].

4. The Contractor, ~~its subcontractors, agents and employees~~ shall cooperate with Inspectors and give full assistance to Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of ships and Installations used to carry out Exploitation activities and activities related to such activities in the Area by Inspectors;

(a) bis Keep the Chief Inspector and Sponsoring State or States notified of proposed ship schedules including support and supply vessels, and when feasible, inform the Chief Inspector before any ship commences its voyage to a Contractor's Contract Area to facilitate the conveyance of Inspectors and representatives of Sponsoring States, where appropriate and to keep the Chief Inspector informed if there is a change to proposed ship schedules due to operational, logistical or unforeseen circumstances;

(a) ter Within 7 Days of the Chief Inspector informing the Contractor that the Inspector(s) would like to conduct an [announced] inspection of a Contractor's ship or Installation, the Contractor shall inform the Chief Inspector of the next date a ship will commence its voyage to the Contractor's Contract Area;-

(b) Cooperate with and assist in the inspection of any ships or Installations or equipment used to carry out Exploitation activities and activities related to such activities in the Area conducted pursuant to this Regulation and comply with the requests of an Inspector;

(b) bis Provide reasonable facilities, financed by the Contractor, including, food and ~~[where feasible]~~ [suitable and secure] accommodation, to Inspectors;

(c) Provide access [at all reasonable times] to all relevant areas, items and personnel [engaged in activities relating to Exploitation activities in the Area, and to relevant areas, items and personnel on ships and Installations engaged in Exploitation activities in the Area; [or on ships and Installations engaged in used to carry out Exploitation activities related to such Exploitation activities in the Area at all reasonable times;]

(d) Provide access to relevant monitoring and surveillance systems and equipment, books, documents, papers and records [regardless of where they may be located] to determine compliance with terms and conditions of an Exploitation Contract and these Regulations;

(e) Answer fully and truthfully any questions put to them;

(f) Accept the deployment of remote real-time monitoring and surveillance equipment in a uniform manner and as required by the Council, the Compliance Committee, or the Chief Inspector;

(f) bis Facilitate the activities of Inspectors to observe the Contractor’s monitoring operations; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties, or representatives of Sponsoring States, State, or other party concerned who accompany these Inspectors.] [Contractors shall also establish and communicate internal procedures to ensure that all personnel are aware of any comply with inspection requirements.]

**Comment**

There still seems to be disagreement as to whether it should be possible to carry out inspections without prior notifications. This element is thus retained in square brackets in paragraph 2. Furthermore, a joint proposal has been provided to offer more forms of inspections, including the possibility to use remote supervision technologies.

**Regulation 96 ~~quat~~ ter**

**Request for inspection in the event of [harmful effects] ~~Harm~~ to the Marine Environment**

[1. In the event of [harmful effects] ~~[Harm]~~ [or risk of harmful effects] to the Marine Environment ~~[or the livelihood of any coastal community, the~~ [adjacent]/- [potentially affected]] [coastal State or States] [any coastal community] which have grounds for believing such harmful effects are ~~is~~ caused by activities in the Area, shall notify the [Chief Inspector [and the relevant Contractor] through the] Secretary-General in writing of the grounds upon which such belief is based and request an inspection. [The notification shall include all relevant evidence, all documentation supporting the belief that the harmful effects are caused by activities in the Area.]

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

**Comment**

It has been suggested to use “*harmful effects*”, “*serious harm*” or “*incidents*” instead of “*Harm*”, as this is not a defined term in the Regulations. “*harmful effects*” have been used as this is in accordance with Article 145 of the Convention.

**Regulation 97**

**Inspectors: Appointment and supervision**

1. The Council, shall on the basis of the recommendations of the [Commission] [Compliance Committee], determine the relevant qualifications and experience for Inspectors to be included in the Roster of Inspectors appropriate to the areas of duty of an Inspector under this Part.

1 bis States Parties may, subject to the requirements of this Regulation, nominate ~~[its nationals as]~~ ~~[individuals for]~~ ~~[Inspectors for consideration, and]~~ ~~[individual applications may be submitted directly for]~~ inclusion in the Roster of Inspectors. Nominees ~~[and applicants]~~ will be considered against the qualification and experience requirements. Equitable geographical representation and gender balance will also be considered, in line with the Convention principle. Subject to considerations of protection of personal data, the roster of Inspectors shall be made publicly available ~~on~~ the Authority's website.

2. The Compliance Committee shall make recommendations, to the Council on the appointment, supervision and direction of Inspectors included in the Roster of Inspectors, and on an inspection programme and schedule for the Authority in accordance with any applicable Standards and taking into account any applicable Guidelines.

3. The inspection programme shall be ~~[adopted]~~ ~~and~~ ~~[overseen]~~ by the Council, ~~overseen and~~ ~~[managed]~~ ~~[administrated]~~ by the Compliance Committee, ~~[and implemented by the Chief Inspector and the Inspectors]~~.

4. The Inspectors shall be independent in the fulfilment of their tasks and shall comply with the Inspector Code of Conduct. ~~[be guided by transparency, accountability and non-discrimination]~~

~~[5. The Authority will~~ ~~[cooperate]~~ ~~[engage]~~ with the Sponsoring State or States to ensure that inspections performed by Inspectors are aligned with enforcement at the national level. Inspectors shall report to the Compliance Committee in writing regarding any difficulties relating to the enforcement of the measures.]

6. Inspectors may be required to undertake relevant training programmes, [including but not limited to project and ship instructions, health and safety, as well as undergo fit for work medical evaluations], at the request of the Council, based on the recommendations of the Compliance Committee. The Secretariat shall facilitate the requisite trainings and evaluations.

7. The Compliance Committee shall keep the Roster of Inspectors under review and updated. The Council may, ~~[following non-compliance with the Inspector Code of Conduct],~~ remove an Inspector from the Roster of Inspectors, on the basis of the recommendations of the Compliance Committee.

#### Comment

There seems to be disagreement as to whether the nominations should solely be state nominated or whether self-nomination also should be possible. This is a topic that needs further discussion and resolution. The text in paragraph 1 bis is thus still retained in square brackets and stricken through.

## Regulation 97 bis

### Inspectors' Functions and Responsibilities

1. ~~[In conducting the inspections, the]~~ Inspectors shall:

(a) Carry out inspections in accordance with internationally accepted principles of good seamanship so as to avoid ~~[as much as possible]~~ risks to the safety of life at sea, and follow reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor and the master of the ship ; ~~with due regard to the observance of good seamanship and~~

(b) Avoid [as much as possible] interference with the safe ~~[and normal]~~ operations of the Contractor and of ships and Installations.

(b) bis Comply with the Inspectors Authority's Code of Conduct for Inspectors and inspections established pursuant to draft Regulations 96 (21) bis.

(d) Indicate in their reports all ships, Installations, equipment, facilities, data and samples monitored or otherwise examined, all documents reviewed or copied, all questions posed to the Contractor or any personnel.

2. [Omitted. Contained in Regulation 96 quater, paragraph 2]

3. An Inspector ~~shall be bound by strict confidentiality provisions and~~ must have no conflicts of interest in respect of all duties undertaken and shall conduct his or her duties in accordance with the Inspectors Code of Conduct.~~Authority's code of conduct for Inspectors and inspections.~~ Inspectors shall have no financial interest in any activity relating to Exploration and Exploitation in the Area. They shall not disclose, even after the termination of their functions, any industrial secret, proprietary data or other Confidential Information coming to their knowledge by reason of their functions ~~duties~~ under these Regulations.

#### Comment

It has been suggested by some delegations to include the text of draft regulation 97 bis in the Inspectors Code of Conduct. For the time being it is retained here for further discussion.

## Regulation 98

### Inspectors' powers

1. ~~An~~ Inspectos may, for the purposes of monitoring or enforcing compliance with the rules, regulations and procedures of the Authority and the terms of the Exploitation Contract:

(a) Question any [relevant] person [who is deemed relevant by the Inspector and is] engaged by the Contractor in the conduct of [Exploration and] Exploitation activities on any matter [regulated by] the rules, regulations and procedures of the Authority relate;

(a) bis Conduct an announced or unannounced, remote, virtual or onsite visit to the ship and installations used by the Contractor;

(b) Subject to any legal requirement, obligation or duty that would prevent disclosure:

(i) Require any person who has control over, or custody of, any [relevant] document, whether in electronic form or in hard copy, including a plan, book or record, to produce a copy of that document to the Inspector [immediately] or at any other [reasonable] time and place required by the Inspector in writing;

(ii) bis Inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any ship or Installation ~~engaged used~~ [into carry-out] Exploitation activities and activities related to such Exploitation activities in the Area including its log, equipment, records and facilities and question [relevant] personnel.

(iii) [(+) [Seize] documents, articles, substance or any part or sample of such for [further] examination or analysis that the Inspector may reasonably require;]

(c) Request from any person referred to in subparagraph (b) above the reason for any entry or non-entry in any ~~[relevant]~~ document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect ~~[and/or test]~~ any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities;

~~[(f) [Seize] [Acquire copies of] [relevant] documents, articles, substance or any part or sample of such for [further] examination or analysis that the Inspector may reasonably require;]~~

[(g) ~~[Remove]~~ [Label] representative samples or [acquire] copies of assays of such samples from any ship or equipment used for or in connection with the Exploration and Exploitation activities that the Inspector may reasonably require;]

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed [reasonably] necessary by the Inspector; and,

[(h) bis Issue a "do not disturb notice", in writing, in order to allow the further inspection, examination or measurement of, or the conducting of tests concerning, any ship, Installations, equipment or facilities engaged in Exploitation activities and activities related to such Exploitation activities in the Area.]

(i) ~~An Inspector may~~ Performs any other prescribed function of the Authority as its representative in accordance with written authorization of the Council.

[3. Before an Inspector may seize any document under subparagraph 1(f) above, the Contractor may copy it.]

[4. When an Inspector seizes or removes any item under this Regulation, the Inspector shall issue a receipt for that item to the Contractor.]

5. An Inspector shall document any site visit or inspection activity and shall use any means to do so, including video, audio, photograph or other form of recording.

## **Regulation 99**

### **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~~ [harmful effects] to the Marine Environment [or to human remains and objects and sites of an archaeological or historical nature], 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:

(a) A [written] instruction requiring a Contractor to undertake specific tests or monitoring and to furnish the Chief Inspector with the results or report of such tests or monitoring within a set period;

(b) A [written] instruction placing a requirement to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances; and

(c) A [written] instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition.

2. An instruction under paragraph 1 above must be given [in writing] to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the ship or Installation to whom the instruction can be issued. An Inspector may issue an instruction orally under paragraph 1 in urgent situations where the issue of a written instruction is impracticable. Where an instruction is issued orally, the Inspector must confirm it in writing and give it to the designated person at the earliest opportunity.

2. bis The Inspector shall report immediately and provide a copy of the instruction to the Compliance Committee, the Secretary-General and through the Secretary-General to the Contractor's Sponsoring State or States and, if applicable to the relevant [adjacent] coastal State or States and flag State, that an instruction has been issued under paragraph 1 above.

2. ter ~~[Unless otherwise stated, an instruction issued pursuant to this regulation shall have immediate effect and]~~ [An instruction] shall specify the information to be provided to the Inspector by the Contractor to demonstrate the steps being taken to implement the instruction within the specified period.

3. An instruction issued shall be for a specified period not exceeding 7 Days. Where still necessary to remedy the situation identified in paragraph 1, the Chief Inspector may extend such period by an additional 7 Days and shall report any such extension to the Compliance Committee.

3. bis Within 3 Days of the expiry of the specified period or any extension thereto under paragraph 3, the Chief-Inspector shall assess whether the issue given rise to the instruction has been satisfactorily resolved and shall report immediately to the Compliance Committee.

3. ter The Compliance Committee may:

(a) Request the [Chief] Inspector to provide further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration;

(b) ~~[where identifying a material flaw in substance or procedure,]~~ revise or set aside an instruction issued under paragraph 1 above as soon as practicable, ~~[stating the reasons];~~

(b) bis Exercise the powers conferred upon it under paragraph 1 of Regulation 103, including where a Contractor has failed to comply with a written instruction; or

(c) Invite the Council's attention to any cases of non-compliance with the terms of an Exploitation Cecontract.

3. quat In the case of a written instruction ~~[issued under subparagraph 1(d)],~~ where the circumstances giving rise to a suspension are not resolved or are unlikely to be resolved, ~~the Compliance Committee shall following consultation with the Contractor, notify the Council immediately together with any recommendation as to whether such suspension should continue. The~~ Council shall decide if the suspension should continue, including the placing of conditions on any recommencement of Exploitation activities, ~~taking into account any recommendations of the Compliance Committee.~~

4. Nothing in this Regulation shall preclude the Council from issuing emergency orders pursuant to Article 162, subparagraph 2(w) of the Convention.]

## Regulation 100

### Inspection Reports

1. No later than 30 Days after the end of a ~~an~~ [routine] inspection [and 7 Days after the end of urgent inspection], the Inspector shall ~~[prepare]~~[deliver] a report in accordance with the template and other requirements set out in the applicable Standards setting out ~~the~~ findings and [seeking clarification and providing] ~~[any]~~ recommendations for improvements in performance, procedures or practices by a Contractor. The ~~[Chief]~~ Inspector shall send the report to the Compliance Committee and the Secretary General, ~~[who shall send a copy of the report to the Contractor and its Sponsoring State or States, as well as the relevant adjacent coastal State or States or flag State referred to in paragraph 2bis of Regulation 99].~~

1. bis The Contractor and the Sponsoring State or States, [as well as the relevant adjacent coastal State or States or flag State referred to in paragraph 2 bis of Regulation 99] ~~[shall]~~ ~~[may]~~ within- 30 Days [after the end of a routine inspection and 7 Days after the end of urgent inspection] ~~[of the date of receipt of the Inspector's report,]~~ provide to the Secretary-General comments on the findings and [seeking clarification and providing] recommendations, including details of any action taken or to be taken in accordance with the findings and recommendations of the Inspector's report. The Secretary-General shall transmit ~~[any]~~ [such] comments to the Compliance Committee.

2. The Compliance Committee shall pursuant to Regulation [102 bis] ~~[96 bis paragraph 6]~~, ~~[in their annual]~~ [from time to time] report to the Council ~~[and]~~ include details on the findings and recommendations following the inspections conducted in the prior Calendar Year and shall make any recommendations to the Council on any enforcement action to be taken by the Council under these Regulations and an Exploitation Contract and taking account of any regulatory action taken by the ~~S~~sponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.

3. The ~~[Chief Inspector]~~ shall report to the Compliance Committee and the Secretary-General on any acts of violence, [bribery, intent to bribe] intimidation, or abuse against or the wilful obstruction or harassment by any person of an Inspector, or a representative of a Sponsoring State, State, or other party concerned who accompanies the Inspector in the course of their duty, or the failure by a Contractor to comply with paragraph 4 of Regulation 96 ~~terbis~~.

3. bis The Secretary-General shall report any- such acts or failure to comply with Regulation 96 ~~terbis~~ immediately to the Sponsoring State or States and the flag State of any ship or Installation concerned, and to the national State of the Inspector for consideration of the institution of proceedings under national law. Appropriate measures may also be taken by the Compliance Committee in accordance with Regulation 103.

#### Comment

It has been requested by several delegations that a paragraph should be inserted that covers what the Compliance Committee should do with the information provided, including what immediate measures needs to be taken in response to the Inspector's findings and recommendations. In this respect there is a need for agreement on the policy and process that is to be followed.

## Regulation 101

### Complaints relating to Inspections

[1. A Contractor who considers that an Inspector has acted unreasonably or outside of the scope of their powers under this Part may complain in writing to the Secretary-General, who will transmit the complaint promptly to the Compliance Committee who shall consider the complaint as soon as practicable.]

1. [bis] A person aggrieved by an action of an Inspector [or a Contractor][or any organ or official of the Authority] under this Part may complain in writing, [providing evidence] to the [Secretary General]/[Compliance Committee], [who shall report to the [Compliance Committee]/[Commission]/[Chief Inspector] [or where the Compliance Committee is implicated in the complaint to the Ombudsperson] to consider the complaint as soon as practicable.

[1. ter The Secretary-General shall acknowledge in writing, within 7 Days, receipt of every complaint submitted under this Regulation, specifying the date of receipt.]

2. The [Compliance Committee]/[in consultation with the Chief Inspector] [shall] [may] take such [reasonable]/[appropriate] action as is necessary in response to the complaint, in accordance with applicable Standards and the [Authority's] Inspectors' Code of Conduct.

3. The Compliance Committee shall [submit] a report to the Council describing the complaint and the action taken in response to such a complaint. [The Council can review the report and decide on what additional actions to be taken.]

[4. The Secretary-General shall provide, as soon as possible, information to the complainant on the follow-up given to the complaint.]

[5. Disputes concerning the handling of complaints shall be settled in accordance with Regulation 106].

#### Comments

- It has been suggested to support and complement the procedure for handling the complaints, in particular in relation to the complainants, and therefore paragraphs 1 ter, 4 and 5 has been inserted.
- It has been suggested to broadening the scope of paragraph 1 bis to reflect that various ISA staff may take action in relation to inspection and compliance.
- It has been suggested to include an Ombudsperson in paragraph 1 bis.



## Regulation 101bis

### Whistle-blowing procedures

Any complaints received from whistleblowers shall be dealt with under the mechanism and procedures established by the Authority for this purpose.

#### Comments

- The suggested whistle-blowing procedure is currently placed in the revised suspense document. During the second part of the twenty-ninth session, many delegations supported the need for a general policy in respect of whistle-blowing. However, most delegations supported that such procedures should be a general policy of the Authority.
- One delegation has suggested the above formulation to point to this. Other delegations have suggested to refrain from regulating whistle-blowing in this part or the Regulations since it is a general matter of the Authority, and not for the Regulations, as such.

## Section 2

### Compliance

#### Regulation 102

##### Compliance Committee

1. A Compliance Committee (“the Committee”) is hereby established to assist the Council in carrying out its responsibility to exercise control over activities in the Area as provided for under Part XI of the Convention. All instances of non-compliance shall be brought to the attention of the Committee, which shall report to the Council. The Committee shall comprise 15 members [with appropriate regulatory compliance and enforcement expertise]. Each regional group shall designate 2 members from among Council members, who shall serve for a period of 2 years, with the possibility of extension. The remaining 5 members shall be designated by the Commission taking into account geographic representation and from among those with appropriate expertise within the Commission to carry out the functions of the Committee in accordance with this Regulation.

2. Without limiting the powers and functions conferred upon another organ of the Authority the Committee shall:

(a) Administer and manage the roster of Inspectors and matters relating to inspection, compliance and enforcement in accordance with relevant policies or directions issued by the Council;

(b) Provide recommendations to the Council on matters relating to inspection, compliance, and enforcement including clarifying what constitutes non-compliance;

[(c) Appoint Inspectors as required from the approved roster of Inspectors, according to the approved inspection programme and schedule or as may be required;]

[(d) Establish procedures and routines for investigation of possible instances of non-compliance;]

(e) Review the annual reports of Contractors, as examined by the Commission, and consider any instances of non-compliance;

(f) Examine reports and recommendations from the Chief Inspector and Inspectors, and other relevant data and information and consider any instances of non-compliance;

(g) Report to the Council the results of inspections and resulting recommendations for enforcement action, in a timely and comprehensive manner and coordinate compliance matters with other organs of the Authority that play a role in inspection, compliance and enforcement;

(h) Investigate allegations from members of the Authority, members of the Commission, relevant [adjacent] coastal States or the Secretary-General, as well as from observers of the Authority and other Stakeholders on possible instances of Contractor non-compliance~~[-, including through any whistleblowing procedures under Regulation 101 bis-];~~

(i) Convene, with the support of the Secretary-General, a process to liaise with Contractors in cases of non-compliance or complaints, including conducting oral hearings and conduct an inquiry into any Incident;

(j) Consult and cooperate, through the Secretary-General with Sponsoring States, flag States, port States and competent international organizations [and any other relevant stakeholders] as regards compliance and enforcement measures;

(k) Issue Compliance Notices under Regulation 103, and in urgent cases, take any appropriate interim measures where necessary;

(l) Examining complaints under Regulation 101 and making any recommendations to the Council;

(m) Make recommendations to the Council for the issue of emergency orders and appropriate penalties; and

(n) Undertake in collaboration with the Secretary-General compliance promotion activities to promote understanding of and compliance with the rules, regulations and procedures of the Authority, including dissemination of best practice arising from inspection activities;

(o) Appoint, where time is of the essence, a competent independent person to perform any or all of the functions of an Inspector where the nature or subject matter of an inspection requires specialist knowledge or experience that is not available on the approved roster of Inspectors; and

(p) Perform any other duties that the Council directs in writing.

2. bis Any recommendations from the Commission to the Council pursuant to Article 165(i), (j) and (k) of the Convention, as well as any instances of non-compliance identified by the Commission or the Secretariat in the course of carrying out their functions or otherwise, shall be promptly forwarded to the Committee in the form of a report for consideration and further action as appropriate. With the exception of complaints made against the Committee, all complaints received pursuant to Regulation 101 and 101bis shall also be immediately forwarded to the Committee for consideration and further action as appropriate. Nothing in this provision shall limit the right of the Committee to commence its own investigation of non-compliance. In cases where

complaints are made against the Committee, the Council shall directly address such complaints and determine how to proceed.

3. The Committee shall develop its own rules of procedure, including for the convening of hearings, which shall be approved by the Council.

4. Decisions of the Committee shall be taken by consensus. If all efforts to achieve consensus has 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.

~~5. The Committee shall meet at regular intervals preferably using virtual means, and in urgent cases involving possible instances of non-compliance, shall convene virtually and on short notice. Members of the Committee shall rotate among themselves on a monthly basis in order to ensure that one member is always available "on call" in cases of non-compliance that require urgent action. In addition, the Committee shall appoint its own chair and vice chair. Unless otherwise determined by the Committee, the Chair of the Commission, the Chief Inspector and a member of the Secretariat designated by the Secretary General shall be invited to attend the meetings of the Committee but without the right to vote. The Secretary General shall facilitate the meetings of the Committee.~~

6. Within 3 months of the end of a Calendar Year the Committee shall complete an annual inspection, compliance and enforcement report, together with a non-technical summary, and submit the report and summary to the Council for its consideration.

[7. The report shall include details of any regulatory action taken by a Sponsoring State or States as advised in writing ~~[to]~~[by] the Chief Inspector or Secretary-General [Council/Compliance Committee], any corrective action undertaken by a Contractor and any recommendations as to any enforcement action to be taken by the Council to which Regulation 100(2) refers. The report shall also include any findings and recommendations arising from inspections that may contribute to the development of Good Industry Practice, Best Environmental Practices and Best Available Techniques.]

8. The Secretary-General shall make publicly available a copy of the Committee's report and summary ~~on~~at the Authority's website, with any Confidential Information redacted.

9. The Council shall review and ratify any interim measures imposed by the Committee, and consider any of its recommendations as soon as practicable or at its next meeting. A member of the Bureau of the Council shall be on-call and shall convene a virtual meeting of the Council in the case of matters for urgent consideration, including the issue of emergency orders by the Council.

10. The Secretary-General shall provide such administrative support to the Committee and the Chief Inspector as is required, including the processing of all formal Communications and notifications to or from the Committee. All notifications to the Committee shall be addressed to the Secretary-General who shall promptly transmit them to Chair of the Committee.]

#### Comments

##### General comment:

- This regulation is subject to divergent views and are currently under discussion, including in the intersessional working group on an appropriate inspection mechanism. The proposal is pending further discussion and resolution. The above proposal is provided by one delegation during the

twenty-eighth session and gained support from some delegations. Below, an alternative proposal has been provided, which is submitted by the intersessional working group.

Specific comments:

- It has been proposed by a delegation that the appointments in para 2 (c) and (d) should be conducted by the Council and not the Commission. Both sub-paras have been placed in square brackets for further considerations.
- It has been suggested to place the content of para 5 in the ROP. For the time being, the content is placed in the revised suspense document. It should also be considered to place the details in para 7 concerning the content of the report in a Standard.

**[Regulation 102 Alt.**

**Inspection, Compliance and Enforcement Chamber**

1. The Council shall amend the Rules of Procedure of the Commission to establish the Inspection, Compliance, and Enforcement (ICE) Chamber consistent with the provisions of this Regulation.

2. Within the Commission, the ICE Chamber shall have exclusive responsibility over inspection, compliance and enforcement matters.

3. The ICE Chamber shall direct the Authority's Inspection Programme, in line with any relevant guidance and directives that the Commission receives from the Council, and consistent with all applicable Regulations and relevant Standards and taking into considerations Guidelines in this Part.

4. The ICE Chamber shall draft reports and develop recommendations on all matters regarding inspection, compliance, and enforcement that will be submitted to Council through a dedicated Commission Co-Chair.

5. The Council shall only consider a recommendation or report related to inspection, compliance, or enforcement from the Commission that has been endorsed by the ICE Chamber.

6. Pursuant to the Rules and Procedures of the Commission, the Council shall elect ten members with appropriate expertise in regulatory compliance, inspection, or enforcement to serve in the ICE Chamber, giving due consideration to the principle of equitable geographic representation.

7. A State Party's representation in the ICE Chamber shall constitute its representation on the Commission.

**Comments**

- This alternative version of draft regulation 102 is submitted by the intersessional working group concerning an appropriate inspection mechanism.
- The proposal entails a division of the Legal and Technical Commission into two chambers. The rationale is to address the need for an independent compliance body and inspectorate reporting directly to the Council, while using existing governance structures and expertise.
- In this group, substantial parts of the "original" version of draft regulation 102 is also supported, but it was suggested by some delegations to defer

these parts of the text in “original” draft regulation 102 to the Standards and/or Guidelines.

## Regulation 102 bis

### Ship notification, electronic monitoring and data reporting

1. All Installations, ships and mining collectors engaged in Exploitation activities under the Exploitation Contract shall be fitted with an electronic monitoring [and tracking] system, which shall record [continuously and], where technically feasible in real time, inter alia, the date, time and position of all Exploitation activities, and environmental data. [The electronic monitoring system shall also be capable of detecting and recording any unauthorized activities.] The details and frequency of reporting shall be in accordance with the Standards and taking into consideration the Guidelines.
2. ~~All~~The Installations, ships, ~~and~~ mining collectors [and other service operating units] shall be fitted with a satellite tracking system to enable identification of each ship and determination of its position, navigation status, course and speed. [This system shall also include Redundancy Measures to ensure continuous tracking in case of primary system failure]. The detail and frequency of reporting shall be in accordance with the Standards and taking into consideration the Guidelines.
3. The Compliance Committee shall issue a Compliance Notice under Regulation 103 to a Contractor, where there is reasonable evidence to suggest based on the data transmitted to the Authority that unapproved Exploitation activities have occurred or are occurring. [The Contractor shall be required to provide a detailed explanation and corrective action plan within 7 Days].
4. All data received and transmitted to the Authority under this Regulation shall be transmitted to the Sponsoring State or States.

#### Comment

It has been suggested to place this draft regulation elsewhere since it seems to focus on contractual and environmental obligations of the Contractor. It has been suggested to place the draft regulation in part three concerning rights and obligations of Contractors. This should be further discussed and resolved.

## Section 3

### Enforcement and penalties

#### Comment

It has been suggested by one delegation to insert regulation on public complaints, in order to ensure that the Council/Compliance Committee develops and implements public complaints procedures to facilitate reporting to the Authority by persons/entities concerned about activities in the Area. Such inclusion should be discussed, and if relevant, also the specific placement within Part XI of these Regulations.

## Regulation 103

### **Non-compliance Notice, Suspension, and Termination of Exploitation Contract**

1. At any time, if it appears to the Compliance Committee based on reasonable grounds, ~~including which may include~~ a report from an Inspector, or failure to comply with a written instruction under Regulation 99, that a Contractor is in breach of, the terms and conditions of its Exploitation Contract, provisions of the Convention related to activities in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Compliance Committee shall issue a ~~C~~ompliance ~~N~~otice to the Contractor requiring such action [necessary to remedy the breach] as may be specified in the ~~C~~ompliance ~~N~~otice and shall report immediately to the Council on the issue of such notice. [The Compliance Committee shall, through the Secretary-General provide a copy of the ~~C~~ompliance ~~N~~otice to the Sponsoring State or States within 24 hours].
2. A ~~C~~ompliance ~~N~~otice shall:
  - (a) Describe the breach and the factual basis for it; and
  - (b) Require the Contractor to take remedial or corrective action or other such steps as the Compliance Committee considers appropriate to ensure compliance within a specified time period and may include:
    - (i) the implementation of an improvement plan setting out actions to be taken to return to compliance, how the actions' effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue; or
    - (ii) agreeing with the Contractor a modification to the Plan of Work in accordance with Regulation 57.
2. bis Actions specified in the ~~C~~ompliance ~~N~~otice should be commensurate with the gravity, frequency or other circumstances of the breach.
3. For the purposes of Article 18 of Annex III to the Convention, a ~~C~~ompliance ~~N~~otice issued under this Regulation constitutes a warning by the Authority.
4. The Contractor shall be given a reasonable opportunity not exceeding 30 Days to make representations in writing to the Secretary General concerning any aspect of the ~~C~~ompliance ~~N~~otice, who shall transmit same to the Compliance Committee. Having considered any such representations and taking account of any enforcement action taken or to be taken by the Sponsoring State or States, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the ~~C~~ompliance ~~N~~otice.
5. If a Contractor, in spite of one or more warnings by the Authority, fails to implement the measures set out in a ~~C~~ompliance ~~N~~otice and has conducted its activities in such a way as to result in [serious, persistent and wilful] violations of the fundamental terms of the Exploitation Contract, provisions of Part XI of the Convention, the Agreement or the rules, regulations and procedures of the Authority, the Council [may] suspend or terminate the Exploitation Contract, pursuant to regulation 29 terquater, by providing written notice of the suspension or termination to the Contractor [and notification of such suspension or termination to the sponsoring State or State] in accordance with the terms of the Exploitation Contract.
- [5. ~~bis~~Alt. The Secretary-General shall, ~~[subject to the confidentiality requirements of Regulation 90]~~ make public any ~~C~~ompliance ~~N~~otice issued to a Contractor, any response received from the Contractor or Sponsoring State or States. The Compliance Committee shall include in their annual report to the Council a summary of any ~~C~~ompliance ~~N~~otices issued.]

6. In the case of any violation of an Exploitation Contract not covered by paragraph 5 above, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation which must be in line with indicative penalties set out in the applicable Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.

7. Except for emergency orders under Article 162(2)(w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

7. bis The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

## **Regulation 104**

### **Power to take remedial action**

1. Where a Contractor fails to take action required under Regulation 103, the Authority:

(a) Shall notify the sponsoring State and coordinate with relevant officials of that State on further action that may be taken to enforce compliance by the Contractor; and

(b) May carry out any remedial works or take such measures as it considers reasonably necessary to prevent or mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an Exploitation Contract. The Council shall, ~~[after consultation with the Contractor]~~ ~~[and sponsoring State]~~ ~~[and]~~ [based on the recommendations of the Commission], determine the nature of such works or measures and the manner in which they are to be carried out.

2. If the Authority takes remedial action or measures under paragraph 1 (b) above, the ~~[actual and reasonable]~~ costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor and, to the extent it is liable, the sponsoring State, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.

## **Regulation 105**

### **Sponsoring States**

Without prejudice to Regulations 5, 6 and 21, and to the generality of their obligations under Articles 139 (2) and 153 (4) of the Convention and Article 4 (4) of Annex III to the Convention, States sponsoring Contractors shall, in particular, take ~~[all necessary and appropriate]~~ measures to secure effective compliance by Contractors whom they have sponsored in accordance with Part XI of the Convention, the Agreement, rules, regulations and procedures of the Authority and the terms and conditions of the Exploitation Contract.

### **Regulation 105 ter**

#### **Other member States**

Without prejudice to their obligations under Article 153(4), Part XI and Annex III of the Convention, member States shall, in particular, take all necessary and appropriate

measures available to them to ensure that their natural and judicial persons, and ships flying their flags, do not prevent or impair Contractors from effectively complying with and performing their obligations, and enjoying their rights, under Part XI of the Convention, the Agreement, rules, regulations and procedures of the Authority and the terms and conditions of the Exploitation Contract.

**Comment**

It has been suggested to add a regulation to make clear that all member States must exercise jurisdiction and control over their natural and jurisdictional persons to prevent interference with Contractor rights.

## Section 4

### Periodic review of inspection mechanism

#### Regulation 105 bis

#### Periodic Rreview of Inspection, Compliance and Enforcement Mechanism

1. [Every 5 years from the date of establishing the Compliance Committee,] the Council shall review the Authority's inspection, compliance and enforcement mechanism to ensure that the manner of its operation and activities accords to ~~best~~ international standard of best regulatory practice and for the purpose, request information from the Compliance Committee and the Secretary-General.

1. bis The report of the periodic review shall be published ~~on~~ the Authority's website, ~~with any Confidential Information redacted.~~

2. In the light of the review, the Council may, taking into account any recommendations of the Commission, Chief Inspector[and the Compliance Committee], adopt amendments to the mechanism.

**Comment**

During the second part of the twenty-ninth session, several delegations raised the need for a discussion of the review period and whether it should be 5 years, and also the need for conformity with Article 55 of the Convention was raised.



## Part XII

### Settlement of disputes

#### Regulation 106

##### Settlement of disputes

1. Disputes concerning the interpretation or application of these Regulations and an Exploitation Contract shall be settled in accordance with section 5 of Part XI of the Convention.~~[ Part XV and Annex 6 of the Convention. [and the rules of procedure adopted by the International Tribunal for the Law of the Sea for the conduct of expedited hearings concerning the Rules of the Authority.]~~

~~1. bis Nothing in this Regulation shall prejudice the ability of the Authority or a Sponsoring State to act pursuant to Section 3 of Part XI of these Regulations.~~

2. Any final decision rendered by a court or tribunal having jurisdiction under the Convention and the Rules, Regulations and Procedures of the Authority relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of each State party to the Convention as if it were a final judgment of a court in that State~~affected thereby.~~

#### Comments

Several delegations suggested the removal of the second part of paragraph 1 and of the entirety of 1 bis, as being redundant.

It has been suggested to provide some further specificity on the enforcement mechanisms under the applicable local laws, to clarify how the enforcement of the decisions would be ensured. Language is proposed to this effect based on analogous wording of other international conventions concerning enforcement of the decisions of international courts of tribunals.

## Part XIII

### Review of these Regulations

#### Regulation 107

##### Review of these Regulations

1. Five years following the approval of these Regulations by the Assembly, the Council shall undertake a [comprehensive][full] review of the manner in which the Regulations have operated in practice ~~and may also undertake such a review at any time thereafter.~~

[1. Alt. The Council shall take a full review of these Regulations. This review shall, at least, include:

(a) The manner in which the Regulations have operated in practice;

(b) The effectiveness and enforceability of the Regulations;

(c) The manner in which the Regulations have ensured compliance with the principles, approaches, and policies pursuant Regulation 2, and the general obligations relating to the marine environment pursuant Regulation 44. 1bis.

1. Alt bis The first review shall take place five years following the approval of these Regulations by the Assembly, and no later than ten years after the adopted of these Regulations by the Council.

1. Alt ter After the review pursuant to paragraph 1bis, the Council may also undertake such a review at any time thereafter, but shall do so at least every ten years.]

2. Any State party, the Commission, the Enterprise, any Contractor (through its Sponsoring State), or Stakeholder (through a State party) may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.

[2. Alt Any State party and any organ of the Authority-, the Commission, the Enterprise, may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.]

3. The Council shall establish a process of public consultation and participation that gives ~~Contractors and Stakeholders~~ adequate time and opportunity to comment on proposed revisions to these Regulations, save for the making of an amendment to these Regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

4. In the light of that review, the Council may in accordance with the Convention and the Agreement adopt and apply provisionally, pending approval by the Assembly, amendments to these Regulations, taking into account the recommendations of the Commission or other subordinate organs.

[5. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an Exploitation Contract with the Authority.]

[5 Alt Amendments to these Regulations shall be implemented by existing Contractors, subject to any limitations in the Convention and the Agreement. The Council may provide for a transition period for implementation by existing Contractors of amendments to these Regulations.]

~~[5 Alt 2. The Council may incorporate an appropriate transition period for implementation by existing Contractors of any amendments to these Regulations.]~~

**Comments**

The previous iteration of the Consolidated Text proposed the removal of various alternative wordings, and delegations generally did not oppose those suggestions. The discussions during the second part of the twenty-ninth session are reflected in the revised draft.

## Annex I

### Application for approval of a Plan of Work to obtain an Exploitation Contract

#### Section I Information concerning the applicant

1. Name of applicant.
  2. Street address of applicant.
  3. Postal address (if different from above).
  4. Telephone number of applicant's Designated Representative.
  5. [omitted]
  6. Email address of applicant's Designated Representative.
  7. Name of applicant's Designated Representative.
  8. Street address of applicant's Designated Representative (if different from above).
  9. Postal address (if different from above).
  10. Telephone number.
  11. Fax number.
  12. Email address.
  13. If the applicant is a juridical person:
    - (a) Identify applicant's place of registration;
    - (b) Identify applicant's principal place of business/domicile; and
    - (c) Attach a copy of applicant's certificate of registration.
    - [(d) Identify the identities and locations of the applicant's:
      - (i) management including any members of its board of directors;
      - (ii) ownership, including any persons or entities holding [5 percent] or more of the applicant's equity, if different from the place of registration/domicile, for example in the case the applicant is a subsidiary of a parent company located in a different jurisdiction and
      - (iii) an organisational chart of the group structure.]
      - (vi) holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships at the time of application]
- ~~[13. bis. — Where the applicant is a company, provide an organisational chart or other description of any company group structure, including parent, subsidiary or other associated companies.]~~
- [13.ter. Provide any additional information to assist determine the nationality of the applicant, or by whose nationals the applicant is effectively controlled.]
14. Identify the Sponsoring State or States.
15. In respect of each Sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law

of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.

[15.bis. Provide information about relevant national laws and administrative measures that would apply to the applicant in its conduct of Activities in the Area, including on compensation mechanisms in respect of harmful impact from such activities damage caused by pollution of to the Marine Environment.]

~~[15.ter. A description of the Contractors and the Sponsoring States (or States) compliance enforcement strategies, and how these align with the Rules of the Authority.]~~

16. Attach a certificate of sponsorship issued by the Sponsoring State or States.

16. bis. Attach information on all the flag States and port States that are proposed to be involved in activities under the Exploitation Contract, in accordance with Regulation 5(2)(e).

## Section II

### Information relating to the area under application

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the [World Geodetic System 84] [and a georeferenced file and a map with the limits of the requested area]

## Section III

### Technical information

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.

19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards and is able to apply its policies in a non-discriminatory and gender-sensitive way.

20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities. ~~[Provide organograms of staffing, and staffing data provided should be disaggregated by gender].~~

20. bis. [Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures discussed or agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines].

~~[20.ter. Provide evidence that the applicant has demonstrated a satisfactory record of past operational performance and compliance, both within the Area and in other States' jurisdiction].~~

## Section IV

### Financial information

21. Attach such information, in accordance with the applicable Standards and taking into consideration the Guidelines, [to enable the Council to determine] [to assist the Authority in determining] whether the applicant has [or will have] access to the

financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:

(a) If the application is made by the Enterprise, attach certification by its [competent authority] [Director-General] that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed Plan of Work;

(b) If the application is made by a State or a State enterprise, attach a statement by the State or the Sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed Plan of Work; and

(c) If the application is made by an entity, attach copies of the applicant's audited financial statements, including balance sheets and income statements and cash flow statements for the most recent 3 years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, noting that:

(i) If the applicant is a newly organized entity and a certified balance sheet is not available, attach a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) If the applicant is a subsidiary of another entity, attach copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the Plan of Work; and

(iii) If the applicant is controlled by a State or a State enterprise, attach a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the Plan of Work.

22. If, subject to Regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing [and the predicted debt-to-equity ratio].

23. Provide details of any Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with Regulation 26.

## **Section V**

### **Undertakings**

24. Attach a written undertaking that the applicant will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;

(b) Accept control by the Authority of activities in the Area as authorized by the Convention; and

(c) Provide the Authority with a written assurance that its obligations under the Exploitation Contract will be fulfilled in good faith.

## **Section VI**

### **Previous contracts with the Authority**

25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:

- (a) The date of the previous contract or contracts;
- (b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or Contractors;
- (c) The date of termination of the contract or contracts, if applicable;
- (d) [The final report on the results of Exploration and baseline investigations, including results of testing equipment and operations in the Exploration area.]

## **Section VII**

### **Attachments**

26. Attach the following attachments and Annexes:

## Annex II

### Mining Workplan

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration Contracts), should cover the following subject matters:

(a) A comprehensive statement of the Mineral Resource delineated in the relevant Mining Area(s), including details, or estimates thereof, of all known Mineral reserves reported in accordance with the ~~applicable Standard, International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves (see ISBA/21/LTC/15, annex V)~~, together with a comprehensive report of a ~~S~~suitably ~~Q~~qualified ~~and experienced P~~person that includes details of and validation of the grade and quality of the possible, proven and probable ore reserves, as supported by a pre-feasibility study or a Feasibility Study, as the case may be;

(a). bis. A description and schedule of any Exploration activities planned to be conducted following approval of the Exploitation Plan of Work, including a description of the equipment and methods expected to be used;

(b) A chart of the boundaries of the proposed Mining Area(s) (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the [most recent applicable international standards used by the Authority];

(c) A proposed programme of ~~Exploitation activities mining operations~~ and sequential mining plans, including applicable time frames, schedules of the various implementation phases of the Exploitation activities and expected recovery rates;

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of ~~[Test Mining]~~ conducted, ~~[as applicable]~~ and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, [and electricity or other energy supply] together with details of any certification from a conformity assessment body;

(e) A technically and economically justified estimate of the period required for the Exploitation of the Resource category to which the application relates;

(f) A detailed production plan, showing, in respect of each Mining Area, an anticipated production schedule that includes the estimated maximum amounts of Minerals that would be produced each year under the Plan of Work;

(g) An economic evaluation and financial analysis of the project;

(h) The estimated date of commencement of Commercial Production;

(i) Details of ~~principal~~ subcontractors ~~[and suppliers of goods and services]~~ to be ~~used directly engaged~~ for Exploitation activities, together with information about their compliance records;

(j) Details on how many vessels are proposed to ~~will~~ be involved in the ~~Exploitation activities mining operations~~, including how and to where the collected ores will be transported from the mining site to shore for processing; and

(k) Details relating to onshore processing, if applicable.



## Annex III

### Financing Plan

A Financing Plan should include [supported by written evidence ~~[or other relevant source]~~]:

(a) Details and costing of the mining technique, technology and production rates applicable to the proposed Exploitation mining activities;

(b) Details and costing of the technological process applicable to the extraction and on-board processing of Mineral ore;

(c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed Exploitation mining activities;

(d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;

(e) Details regarding other relevant costing, including capital expenditure requirements;

(f) Details of advance agreed sales, and all expected revenue applicable to the proposed Exploitation mining activities;

(g) A detailed cash-flow forecast and valuation, excluding financing of the proposed Exploitation mining activities, clearly indicating applicable regulatory costs;

(h) Details of the applicant's resources or proposed mechanisms to finance the proposed Exploitation mining activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast and debt-to-equity ratio;

(i) Details of any loans or planned loans, and the institutions making the loans, with an indication whether those institutions apply ~~[relevant best practice international standards or their equivalent]~~ [the Equator Principles or the International Finance Corporation performance standards, or equivalent.]; and

[(j) Details of any insolvency proceedings, currently disqualification from acting as a company director or trustee of any fund organisation, unspent convictions for any financial crime or offence involving dishonesty, in any jurisdiction, involving key personnel from the Contractor's management, senior staff, ownership, parent company, subsidiaries or sub-contractors.]

## Annex III bis

### Scoping Report

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

(a) A brief description of the proposed Exploitation activities; ~~[and any ancillary features]~~

(b) A description and overview of tentative timelines and deadlines for the proposed environmental baseline studies and Environmental Impact Assessment conducted under the Exploration ~~C~~contract and any associated activities;

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

(d) A description of data gaps, potential data gaps or data with a large uncertainty associated with it for the project, ~~[including environmental baseline data, and a plan describing the methodology for collecting and analyzing that information prior to commencement of Exploitation activities and to inform the Environmental Impact Assessment];~~

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

(f) A description of the technical, spatial and temporal boundaries for the Environmental Impact Assessment;

(g) A ~~[brief]~~ description of the socioeconomic and sociocultural aspects of the project ~~[including sociocultural uses of the Mining 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)];~~

(h) Any assumptions ~~and on~~ how they are being addressed, and assessment of their implications to the Environmental Risk Assessment findings;

(i) A preliminary impact analysis which categorizes the important issues into high-risk, medium-risk and low-risk for the Environmental Impact Assessment to address and evaluates the need for further information, taking into account the Environmental Risk Assessment; ~~[which includes:~~

~~(i) The identification of potential hazards;~~

~~(ii) The environmental consequence for each identified potential impact(s) (the magnitude of the impact(s), the duration of the impacts, and the receptor characteristics), and the likelihood of the consequence occurring;~~

~~(iii) A description of the cumulative effects of the project, combined with other authorized, ~~[anticipated, or expected]~~ activities, and actions, or natural phenomena;~~

~~(iv) The confidence levels of experts, in order to account for uncertainty and a precautionary approach; and~~

~~(v) A description of the methodology employed in the Environmental Risk Assessment.]~~

(j) A preliminary Environmental Risk Assessment;

(k) A description of the results of the Environmental Risk Assessment, including identification of high priority risks for local and regional ecosystem functioning over

short and long term, requiring particular focus in the subsequent impact assessment phase of the Environmental Impact Assessment;

(l) A ~~[preliminary Stakeholder]~~ list ~~[of potentially directly affected]~~~~that proactively identifies likely~~ ~~[key]~~ Stakeholders, ~~[and States within the scope of Regulation 93 ter]~~ and ~~[an indicative]~~ schedule and methodology for engagement with ~~[such]~~~~key~~ Stakeholders ~~[and States during]~~~~throughout~~ the Environmental Impact Assessment ~~[process and development of the Environmental Impact Statement]~~, taking into account ~~[to not to publish privacy concerns related to the publication of]~~ personal information of identified Stakeholders;

(m) A report of ~~[any written]~~ consultations undertaken during scoping;

(n) A consideration of reasonable alternative means of carrying out the project that will be examined in detail ~~[as in]~~ the Environmental Impact Assessment ~~[proceeds]~~, including a no-action alternative, and any others that have ~~[not]~~ been ~~[not]~~ carried forward for further analysis at this stage, and the reasons for that selection;

~~(n) bis An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and sufficient to propose mitigation and management strategies and monitoring methodology; and~~

(o) A ~~draft~~ ~~[Terms of Reference]~~ for the Environmental Impact Assessment, which identifies the activities and studies planned for the ~~[subsequent impact assessment stage of the]~~ Environmental Impact Assessment~~[, and any additional baseline data that will be required]~~;

~~(p) An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and to propose Mitigation and management strategies and monitoring methodology; and,~~

~~(q) A note describing and explaining any divergence from [relevant applicable Standards or [ISA] Guidelines [of the Authority]].~~

## Annex IV

### Environmental Impact Statement

#### Comments

A joint text proposal has been provided by a drafting group, which focusses on the restructuring and allocation of EIA provisions to their appropriate locations across the Regulations, Annexes and Standard and Guidelines. This work has in particular included a replacement of text from draft regulation 48 (4) to Annex IV. Also, the work has included great focus on replacing content from Annex IV to the relevant Standard and Guidelines. Contents to be placed in the Standard and Guidelines are currently placed in the revised suspense document upon further discussion of the exact placement.

For further details on the work of the drafting group, please refer to the [joint proposal](#). This document also contains reference to other material that Council has considered in respect of the Environmental Impact Statement Process.

#### 1. Preparation of an Environmental Impact Statement

The Environmental Impact Statement prepared under these Regulations and the present Annex shall, ~~[but not limited to, entail the following elements]:~~

(a) Be prepared in clear language and in an official language of the Authority together with an English-language version, where applicable;

(b) Provide information ~~[based on data from, as a general rule, a minimum of 15 years of monitoring,]~~ in accordance with the Regulations, and taking into account the applicable ~~R~~egional ~~E~~nvironmental ~~M~~anagement ~~P~~lan, Standards and Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely Environmental Effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant or Contractor considers an Environmental Effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted; and

(c) Include a non-technical summary of the main conclusions and information provided to facilitate understanding of the nature of the activity by Stakeholders.

~~[(d) Be peer reviewed by competent independent experts, before submission and include a description of the experts, their qualifications, and the results of their review.]~~

#### 2. Template for Environmental Impact Statement

The required contents and recommended format for an Environmental Impact Statement is outlined below. It is intended to provide the Authority, its member States and other stakeholders with ~~unambiguous~~ clear documentation of the potential Environmental Effects based on the Best Available Scientific Evidence, Best Environmental Practices, and Best Available Techniques, and Good Industry Practice on which the Authority can base its decision, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

This document is a template and does not provide details of methodology or thresholds that may be resource- and site-specific. These methodologies and thresholds

may also change over time in according to, for example, development of new technologies, new scientific data or new knowledge, and will be developed as Standards and Guidelines to support the Regulations.

[Table of content to be inserted]

## **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:~~

~~(a) A description of the proposed project, its objectives, if any, a description of alternatives analysed, and a justification of the alternative chosen;~~

~~(a) bis. A description of alternatives analysed;~~

~~(b) Anticipated Economic, financial and other benefits to be derived from the project, and the beneficiaries for each, [including humankind];~~

~~(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 socio-cultural) 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;~~

~~(d) Measures to minimize and Mitigate anticipated and Cumulative Environmental Impacts, support recovery of the Marine Environment from impacts,] and a description of any anticipated and cumulative residual impacts, that may occur despite Mitigation, noting how the Mitigation hierarchy is being employed in assessing impacts;~~

~~(d bis) A description of any residual impacts;~~

~~(d ter) Expected recovery rate of the Marine Environment impacted;~~

~~(e) Linkages with development of the Environmental Monitoring and Management Plan and the Closure Plan; and~~

~~——— (f) Consultation undertaken with other parties and Stakeholders.~~

## **1. Introduction**

The purpose of the Introduction section is to set the scene for the Environmental Impact Assessment. This section should contain enough detail for a reader to form an overall impression of the proposed project and how it has developed and understand how the Environmental Impact Assessment is structured. As this section mainly provides a 'roadmap' to more detailed material in the Environmental Impact Assessment, it may be relatively short.

### **1.1. Background**

~~Summarize briefly the project being proposed, including all main activities and locations.~~

### **1.2. Project viability**

~~Provide information on the viability of the proposed development, its economic context and why the project is needed.~~

~~Provide understanding of the policy on alternatives being followed by the applicant. The determination of project viability may include a summary of feasibility investigations related to geophysical, engineering, geotechnical, oceanographic, biological and other components of project operations.~~

### **1.3. Project history**

~~Summarize briefly the work undertaken up to the date the Environmental Impact Statement was finalized and ready to be submitted to the Authority. This should include a brief description of the resource discovery, the Exploration undertaken, depth zones, and any component/ system testing conducted to date. The time, location, and parties involved in Exploration work should be included. For the component/ system testing, provide a brief description of activities here. If applicable, include any report(s) related to results of component/system testing and Test Mining studies including any monitoring and assessment of the Environmental Impacts in an appendix.~~

### **1.4. Project proponent**

~~Summarize the credentials of the proponent, including major shareholders, other contracts or licences held (including in other jurisdictions), previous and existing contracts with the Authority. The proponent's technological and environmental expertise, capacity and financial resources should be outlined, and the proponent's environmental record for this work and any previous comparable works should be summarised as well as how they intend to support commitments made elsewhere in the application.~~

### **1.5. This report**

~~This section should constitute a guide for users of the Environmental Impact Statement on how to effectively use the information contained in the Environmental Impact Statement.~~

#### **1.5.1. Scope**

~~Provide detail as to what is and is not included, and which risks have been prioritised and which received less emphasis, in this Environmental Impact Statement, based on the Scoping Report and previous feedback from the Authority and Stakeholders. Link to other supporting information.~~

#### **1.5.2. Report structure**

~~This subsection should refer to the prescribed structure of the template but should also indicate where to find information that is not obvious from the table of contents, for example in cases where the Environmental Impact Statement relates to a larger project covering several Mining Areas within the Contract Area or for an Environmental Impact Statement that contains a large volume of information (especially multiple volumes). Authorship should be provided for chapters.~~

#### **1.5.3. Consultation overview**

~~Provide overview of mandatory, as well as any voluntary stakeholder consultation processes and consultations.~~

## **2. Policy, legal and administrative context**

Provide information on the relevant policies, legislation, agreements, Standards and Guidelines that are applicable to the proposed Exploitation activities mining operation.

### **~~2.1. Applicable national and international legislation policies and procedures~~**

~~Outline the national and international legislation, procedures and policies, for example those adopted in accordance with Article 209 of the Convention to prevent, reduce and control pollution of the Marine Environment, including the coastline, from activities in the Area, as well as applicable rRules, rRegulations and, pProcedures of the Authority, applicable Standards and taking into consideration Guidelines and the relevant Regional Environmental Management Plan of the Authority, that is applicable to the proposed Exploitation activities mining operation in the Area, including any guidance provided for implementation and how the proposed operation will comply with them.~~

### **~~2.2. Other applicable national legislation, policies and regulations~~**

~~Outline any other legislation, policies, regulations or Sustainable Development Bills that do not necessarily apply specifically to seabed mining or the environment, but may be relevant to the proposal (e.g., shipping regulations, maritime declarations, flag State laws, climate. This section should also refer to national regulations and laws that relate to the effects of Exploitation activities on coastal States, [or other places where components of Exploitation (e.g., processing) could occur].~~

### **~~2.3. Applicable international and regional agreements~~**

~~In addition to the United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the Implementation of Part XI of the Convention, list the international and regional agreements applicable to the operation, (whether directly or via incorporation into domestic laws cited in section 2.2 above), such as relevant conventions, including Annexes and Guidelines, of the International Maritime Organization related to Protection of the environment, biodiversity and safety. These include the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the Ballast Water Management Convention (BWMC), the International Convention on the Control of Harmful Anti-fouling Systems on Ships and the 1996 Protocol thereof and the Convention on Biological Diversity and the Convention on Migratory Species of Wild Animals and the international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ); and describe how the proposed operation will comply with them.~~

### **~~2.4. Other applicable standards, principles and Guidelines~~**

~~Discuss applicable standards and Guidelines, including those mandated by the source(s) of funding for the operations, that will be adhered to or aligned with throughout the operation, such as those of the Authority not already included in section 2.1, the Equator Principles, the Environmental Management Standards of the International Organization for Standardization, the Code for Environmental~~



~~Management of Marine Mining of the International Marine Minerals Society, the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation and the Standards of the Extractive Industries Transparency Initiative.~~

## ~~2.5. National Processes related to Sponsoring State permits~~

~~Describe any national processes followed and permits received from the Sponsoring State in relation to the Environmental Impact Assessment.~~

~~[2.6 Ecologically and/or Biologically Significant Areas (EBSAs) and Area-based management tools~~

~~Describe any relevant area-based designation and/or management tools established under subregional, regional or global processes and the scope, geographical coverage, supporting data, and objectives of such tools. Also describe any relevant area-based designation and/or management tools in adjacent areas under national jurisdiction.]~~

## **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.~~

Details of the proposed project should include the location and associated activities, mineral resources, project components (which includes project scale, mining equipment, transport and materials handling and on-site-processing), commissioning, construction and operating standards (which includes design codes, health and safety and workforce description), decommissioning and closure, other alternatives considered, environmental management measures to Mitigate impact and a development timetable.

ALT: Details of the proposed project should include:

(i) The location and associated activities

(ii) - Mineral resources

(iii)- Project components including project scale, mining equipment, transport and materials handling and

on-site-processing

(iv) - Commissioning including construction, operating standards, design codes, health and safety, and

workforce description

(v) - Decommissioning and closure

(vi) - Environmental management measures to mitigate impact

(vii) - A development timetable

(viii) - Other alternatives considered.

### **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 Impact Reference Zones and Preservation Reference Zones 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. This map may be the same as the map supplied in Annex 1 Section II.~~

#### **3.1.2. Associated activities**

~~Describe the supporting activities and infrastructure required (e.g., transportation corridors, ports for disembarkation of vessels, ports for unloading of ore that are outside the direct mining site, anchoring areas for vessels and machinery).~~

### **3.2. Mineral resource**

~~Provide details of the type of resource proposed for extraction (e.g. sea floor massive sulphides, polymetallic nodules, ferromanganese crusts), the type, size, shape, tonnage, volume grade and distribution pattern of the Mineral deposits. Estimates of the inferred indicated resource should be provided on the basis of the international CRIRSCO reporting template or national accepted codes (NI 43-101, JORC Code) and the official ISA Mineral classification of the Authority (PMN, PMS and CFC).~~

### **3.3. Project components**

Provide background information on the proposal and the technologies and equipment to be employed, and include the subsections set out below.

#### **3.3.1. Project scale**

Provide an overview of the spatial (horizontal and vertical) and temporal (seasonal and annual) scales of the Exploitation activities mining operation, including volumes, depth of penetration into the seabed. Provide an overview of physical, chemical, geological and oceanographic properties of material to be recovered, dewatered and deposited or discharged into the water column or back to the seabed, and the target depth range for any such discharge, [in accordance with the applicable Standards and Guidelines]. This should include an account of the [residual] area to be directly impacted over time, including the water column and seafloor beyond the Contract Area, if applicable, as well as the likely extent of any secondary impacts (e.g., sediment plumes, noise, light), which will be discussed in greater detail later.

#### **3.3.2. Mining Equipment**

Describe any equipment expected to [be used] [qualify as Best Available Technology] for mining and support operations (e.g., mining vessels/platforms, supply vessels, barges), including the anticipated frequency of vessel movements for these activities. Also, including a description of any specific technologies developed to reduce impacts should be included.

Provide details of methodologies of exploitation (drilling, dredging, excavating, disposing of waste, constructing and operating or maintaining Installations, pipelines and other devices) and give specifications of the technologies to be employed in relation to Best Environmental Practice, including relevant diagrams and drawings, that address: the Mining Workplan, timelines and the general mining sequence, the technologies to be engaged/employed in Exploitation activities to recover the resource from the seabed, the depth of penetration into the seabed the specific technologies developed to reduce the direct impact of Exploitation activities (e.g. noise, light, plumes) and other details of the Exploitation activities subsea and on the surface. Describe the energy requirements of the requisite machinery.

#### **3.3.3. Transport and materials handling**

Provide a description of all methods to be used to transport the Mineral-bearing ore, including from the sea floor to the surface [and how it relates in relation] to Best Environmental Practice, and any methods related to the trans-shipment of the Mineral-bearing ore, including transfers at sea. [Describe the energy requirements of the requisite machinery.] Also, [include] a description of any [measures and specific] technologies developed to [avoid.] reduce [and Mitigate] impacts [anywhere] should be included [, highlighting at which levels,] in the water column ([e.g.] generation of plume at the seafloor, turbidity in the water column, addition of bottom sediments to the surface waters) [resulting impacts to the marine ecosystem, may be mitigated] during the different phases for collection, separation, lifting, transportation, processing, and discharge of effluents.

#### **3.3.4. On-site processing**

~~Provide a detailed description of the plan for processing of the mineralized material that will occur within or above the Area [and how it relates in relation] to Best Environmental Practice, including water column activities (such as riser pipe transfer) and shipboard processing. Include a description of any methods to be used on the sea floor to separate the mineralized material from surrounding sediment and/or rock, as well as any dewatering and separation of the mineralized material at the surface.~~

~~This section should also cover any disposal of seawater[/fines] and include the spatial layout of the activities over time which will provide a comprehensive map of the disturbance area from which to assess harm to the Marine Environment.~~

~~Include a description of the waste management, transport, disposal and discharge of sediment, wastes or other effluents into the Marine Environment and the disposal of waste from general ship operations, including the specific technologies and methods to be adopted to reduce harmful impacts of such disposal to the Marine Environment. The description should acknowledge respective [ISA] Standards and Guidelines [of the Authority] as well as other applicable legal frameworks. Describe the management of shipboard wastes to be transported to shore based disposal facilities, including the handling and management of hazardous materials should also be described, together with a description of the nature of such material and its transportation, storage and disposal. [Describe the energy requirements of the requisite machinery.] Also, a description of any specific technologies developed to reduce impacts should be included.~~

### **3.4. Commissioning**

~~Describe the pre-production activities that will take place with regard to the establishment and set-up of the site for Exploitation activities mining operations. The management of this process (such as the establishment of safety zones around vessels) should also be described.~~

### **3.5. Construction and operating standards**

~~Outline the design codes or certification standards to which the equipment will be or has been built, as well as the operating standards that will be applied to Exploitation activities mining operations, including [any relevant those for] Best Available Technology and Best Environmental Practice [guidance] issued by the [ISA] [Authority]. This section should include subsections such as those set out below.~~

#### **3.5.1. Design codes**

#### **3.5.2. Health and safety**

#### **3.5.3. Workforce description**

~~This section should also outline capacity building objectives and commitments.~~

### **3.6. Decommissioning and Closure**

~~Describe the steps that will occur when the Exploitation activities mining operation are completed or in the event of an emergency, including the Decommissioning and removal of offshore infrastructure or the temporary suspension of Exploitation activities, under a Closure Plan.~~

### **3.7. Other alternatives considered**

~~Provide an account of alternative options that were rigorously explored and objectively evaluated, including a no-action alternative, that were considered and rejected in favour of the current proposal with justification as to why the alternatives were rejected. Aspects should include the selection of the mine site, mine production scenarios, equipment design and engineering decisions, including technologies selected to reduce the direct impact of Exploitation activities, Environmental Impacts, financial feasibility, transport and materials handling, shipboard processing and stakeholder support. A no mining scenario must be included.~~

### **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 socio-cultural environment, [while developing the project].~~

### **3.9. Development timetable (detailed schedule)**

~~Provide a description of the overall timetable, from initiation and equipment construction through the implementation of the mining programme, through to the Decommissioning and closure of operations. The description should include the major phases of the operation as well as the milestone dates on which relevant tasks are expected to be completed. Information on the development timetable provided under this section should clearly communicate the different phases in the development proposal. For reasons of clarity, a flow chart or a Gantt or PERT (Programme Evaluation and Review Technique) chart should be used where appropriate. Information provided in this section should include the following:~~

- ~~(a) The funding arrangement for the proposed activity, or whether the availability of funds is subject to this or other approvals being granted;~~
- ~~(a) bis Timing of expected regulatory approvals;~~
- ~~(b) Pre-construction activities including the development and testing of mining equipment, operations and systems in situ (if applicable);~~
- ~~(c) A construction schedule and staging timetable;~~
- ~~(d) An infrastructure development schedule;~~
- ~~(e) A monitoring schedule (during and after operations); and~~
- ~~(f) A Closure schedule.~~

~~Whether the availability of funds is subject to approvals should be noted on the timetable.~~

### **3.10. Summary of Scoping results, including of the risk assessment process**

~~Provide a brief overview of the results of the scoping exercise including with regard to the sufficiency of the scientific baseline data collected during Exploration [or through other means] to support a robust Environmental Impact Assessment.~~

### 3.11. Methodology for Description of the Marine Environment and Assessment of Environmental Impacts and Environmental Effects

[Provide a description of Methodologies, for collecting and analyzing baseline and “Test Mining” data and assessing the potential Environmental Impact and Environmental Effects from the proposed operations and alternatives considered.]

Methodological approaches should be consistent with established community standards. In the case that novel sampling techniques, new technology, or sampling designs are employed, particularly detailed methodology and justification should be provided in this section.

#### Comments

It has been questioned whether sections 3.10 and 3.11 are appropriate as subsections of section 3 or whether it should be placed in standalone sections elsewhere in Annex IV.

### ~~3.12. Studies completed~~

~~Describe any prior research/Exploration that could provide relevant information for this Environmental Impact Statement and future activities. These studies should be detailed in the appendices.~~

### ~~3.13. Methodology for Collecting Baseline Data~~

~~For each of the baseline descriptions of the Marine Environment in sections 4 [and 5 and socioeconomic and socio-cultural environment in section 6], describe the methodology for collecting and analysing baseline data, including:~~

- ~~(a) spatial and temporal extent of sampling;~~
- ~~(b) spatial and temporal frequency of sampling;~~
- ~~(c) gear used for sampling and any modifications or calibrations conducted to the gear;~~
- ~~(d) results of power analysis;~~
- ~~(e) limitations of sampling and how this may impact certainty of impact assessments; and~~
- ~~(f) any cooperation with other research programmes in the Area, such as with the Authority/ISA, States, other Contractors, or non-governmental organizations.~~

~~Highlight any deviations from baseline data collection requirements provided in relevant Standards and Guidelines, and the Regional Environmental Management Plan, and provide a rationale for those deviations.~~

~~Assess the sufficiency of baseline data collected and compiled in view of the aim to establish mining-related environmental change in relation to natural variability.~~

~~Raw baseline data [and computer code], with sufficient metadata and code comments, used to analyse and provide a description of the Marine Environment shall be included in the Annexes of the Environmental Impact Statement or, if the data [has and/or code have] been previously submitted to the Authority, the applicant may~~

~~provide a link to the Authority's database where the data [is and/or code are] stored or other location where such information has been made available online.~~

### **3.14. Methodology for Summarizing Baseline Data**

~~Provide a description of the methodology used to summarize baseline data collected. This shall include:~~

- ~~(a) description and justification of transformations performed to the data and analyses used to summarize the data;~~
- ~~(b) a list of program(s) used to analyze results;~~
- ~~(c) a list of methods to determine species identification and life history; and~~
- ~~(d) any limitations associated with the results of the analysis.~~

### **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 socio-cultural] 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 Annexures 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.]~~

## **4. Description of the existing [oceanographic,] physiochemical and geological environment**

Give a detailed account of [~~knowledge of~~] the oceanographic (physical, chemical and geological) [~~and meteorological (including air quantity) [environmental] conditions [and implications of climate change on such conditions as a regional overview]~~] at each mining ~~the site, [the expected total]~~ and Impact Area as well as [~~the Impact and Preservation] Reference Zones [(PRZs)]~~, which should include information from a thorough literature review as well as from on-site studies in accordance with the Regulations and applicable Standard and taking into ~~consideration account the relevant~~ Guidelines to be specified. The Guidelines on baseline data collection as updated from time to time by the Commission, shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline

description. The account will provide the baseline description of the oceanographic conditions, including physical, chemical and geological oceanographic setting, including its spatial and temporal variability and temporal trends ~~[[conditions]],~~ against which impacts will be measured and assessed. The detail in this section is based on the prior ~~E~~environmental ~~R~~risk ~~A~~assessment carried out in ~~accordance~~ with the respective ~~S~~standard and ~~taking into consideration G~~uidelines, that will have identified the main impacts, and thus the priority elements that need to be considered and assessed in the Environmental Impact Assessment.

#### **4.1. Key messages**

~~Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).~~

#### **4.2. Regional overview**

~~Describe the general baseline environmental conditions [and expected trends and variability] of the site and Impact Area, in accordance with the Standards and taking into consideration Guidelines on baseline data collection, including but not limited to the physical, chemical and geological oceanographic setting within a broader regional context and taking into account the applicable Regional Environmental Management Plan. This should be a brief section that includes a map. A more detailed site specific and Impact Area description will be provided in accordance with the sections below.~~

#### **4.3. Studies completed**

~~Describe any prior research/Exploration studies (including methods used for completing the studies based on Best Available [Science using Best Available] Techniques that could provide relevant information for this Environmental Impact Statement. This research should be detailed in the appendices [and/]or in reports attached to the appendices. [The environmental baseline data collected for the Authority, as outlined in exploration contract conditions, should accompany the Environmental Impact Statement.]~~

#### **4.4. Meteorology and air quality**

~~Provide a general Characterization of the local meteorology (e.g., wind directions and speeds, seasonal and interannual patterns and variability). Provide description of air quality, including chemical characteristics. This section may be most relevant to surface operations and the general risk assessment. —~~

#### **4.5. Geological properties and habitat classification**

~~Provide a baseline description of the nature and extent of the Mineral resource and bedrock within a broader geological context. Describe the geological petrographic and geomorphological setting of the mining sites, the Impact Areas, and the designated [Impact and] pPreservation rReference zZones [(PRZs)] including sea floor mapping (bathymetry and backscatter), high-resolution sub-bottom profiling, and sedimentation rates, and refer to submarine features such as hydrothermal vents, seamounts abyssal hills and canyons as appropriate.~~



~~Provide habitat classification using an appropriate system as prescribed in the applicable relevant Standard, [and] taking into consideration the Regional Environmental Management Plan.~~

#### **4.6. Oceanographic setting**

~~Provide a description of oceanographic aspects including but not limited to thermohaline conditions, optical properties and turbidity, surface, [mid-]water [column] and bottom currents regime, tides, waves, turbulence, and oceanographic fronts, eddies and climate change projections, including spatial variation at and above the site. Seasonal and longer term variability is an important element. Detail is required on the regional setting, as well as the specific mining site and Impact Area, and the designated [Impact and] Preservation Reference Zones [(PRZs)], and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site to boundaries of the Impact Area. For activities conducted in areas of seamount chains, hydrothermal vent fields, trenches and canyons or other areas with complex bathymetry, oceanographic currents will be influence by topographic forcing and will require a more detailed oceanographic assessment, including targeted sampling programs, to determine the Impact Area. Climate change projections should also be included.~~

#### **4.7. Chemical oceanographic setting**

~~Provide a description of water mass characteristics at the mining sites, the Impact Areas, and the designated [Impact and] Preservation Reference Zones [(PRZs)] and above the sites at various depths of the water column, including the structure and development of the oxygen minimum zone in particular near the sea floor (up to 200m above bottom), that includes nutrients, particle loads, temperature and dissolved gas profiles, vent fluid characteristics if applicable, turbidity, etc.~~

~~Provide a description of chemical oceanographic properties at the mining sites, the Impact Areas, and the designated [Impact and] Preservation Reference Zones [(PRZs)], throughout the water column and horizontally from the proposed mine site, that includes nutrients, particle loads, temperature, oxygen, salinity, density, particulate and dissolved organic matter, pH, chemical composition, including, but not limited to, concentrations of trace metals, dissolved gas profiles, depth range and characteristics of oxygen minimum zone, redox regimes, carbonate saturation, hydrocarbon and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability of these properties, and vent fluid characteristics if applicable.~~

#### **4.8. Seabed substrate and sub-seabed characteristics**

~~Provide a description of seabed substrate and sub-seabed composition (to benthic subsurface layers) of the wider mine sites, the Impact Areas, and the designated [Impact and] Preservation Reference Zones [(PRZs)], including, but not limited to, physical, chemical, geological and oceanographic properties, specific gravity, bulk density, sediment composition, physical and chemical composition of pore water and pore water profiles, grain size, mineralogy sediment mechanics, dissolved and particulate organic and inorganic carbon, nutrients, carbonates, redox regimes, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics). Substrate composition shall be described to a depth below the seafloor prescribed in the [relevant] Standard on Baseline Information and taking into consideration [the applicable] [as indicated in] the Regional Environmental Management Plan.~~

#### **4.8. bis. Rare or sensitive habitats**

Identify and describe the physical and chemical characteristics of rare or sensitive habitats in line with the respective international guidelines (FAO 2009, Azores Criteria 2010) and policy decisions (inter alia from UN and, CBD ...) ~~onsuch as hydrothermal vents, ridges, seamounts, as well as oceanographic fronts or eddies, abyss hills and canyons and other geological and oceanographic features.~~

#### **4.9. Natural hazards**

Provide a description and trend analysis of variation related to applicable potential natural hazards for the site, including, but not limited to, volcanism, seismic activity, cyclone/hurricane, tsunamis, climate-related oceanographic changes and variability, slides, slumps, etc. and how these may develop in future, e.g. as a consequence of climate change.

#### **4.10. Noise and light**

Provide a description of local ambient noise and light at the seabed, throughout the water column and at the surface, including, but not limited to, light intensity, backscatter, and attenuation, bioluminescence, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics, indicating pertinence to fauna where known.

#### **4.11. Greenhouse gas emissions**

Provide a description and quantification of the level of gas and fluid emissions from anthropogenic activities [related to the proposed Exploitation activities in the proposed Mining Area in the Area], as well as those affecting sea floor and water column chemistry.

#### **4.12. Climate Change**

Description of the expected changes in physical and chemical oceanographic conditions and processes in the broader area of the mine site due to climate change.

#### **4.13. Summary of the existing physiochemical environment**

Summarize key findings and include notes on special considerations for rare or sensitive habitats, hydrothermal vents, ridges, seamounts and oceanographic fronts or eddies, abyss hills, fracture zones and canyons and other geological and oceanographic features described in this section. It is anticipated that this summary will be up to one page and be more extensive than the key messages section.

### **5. Description of the existing biological environment**

Give a detailed account of knowledge of the [existing biological environment, including] biological properties, biological communities' composition and structure and ecosystems including their functions that could be impacted by proposed activities as a regional overview, in the proposed mining sites and Impact Areas, and the designated [Impact and] Preservation Reference Zones (PRZs), including information from a

thorough literature review and baseline data collected from on-site campaigns, in accordance with the Regulations and applicable Standards and taking into consideration ~~account the relevant~~ Guidelines. ~~The description of the site should be divided by depth regime (surface, midwater from 200m depth to 50m above bottom and benthic including benthopelagic, where appropriate) or otherwise as indicated in the relevant Regional Environmental Management Plan and provide a description of the various biological components and communities that are present in or utilize the area. The Standard on baseline environmental data collection shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline description. The detail in this section is expected to be based on a prior Environmental Risk Assessment that identified, and thus the elements that need to be measured and assessed in the Environmental Impact Assessment.~~

### **5.1. Key messages**

~~Provide key messages (overview of main findings, covered in six or fewer bullet points).~~

### **5.2. Regional overview**

~~Provide regional context for the baseline environmental conditions [and expected trends and variability] of the mining site and Impact Areas, and the designated [Impact and] Preservation Reference Zones [(PRZs)], including but not limited to the general biological setting, [taking into account] in accordance with the applicable Regional Environmental Management Plan. This should be a brief section that includes a habitat classification map. A more detailed description of the mining site, the [Impact and] Preservation Reference Zones [(PRZs)] and Impact Area description will be provided in accordance with the sections below.~~

### **5.3. Studies completed**

~~Describe any prior research/Exploration studies (including methods used for completing the studies based on Best Available [Science using Best Available Techniques] that could provide relevant information for this Environmental Impact Statement and future activity. This research should be detailed in the appendices [and/or in reports], and the environmental reference baseline data collected for the Authority, as outlined in the Exploration contract conditions, should accompany the Environmental Impact Statement.~~

### **5.4. Biological environment**

~~Provide a description of biological and ecological properties in the region and the mine site, with special focus on the designated Preservation Reference Zones PRZ and the total mine site and Impact Area, including diversity, abundance, biomass, life history parameters, relevant behaviour, including feeding rates, community level analyses, connectivity, trophic relationships, resilience, ecosystem functions and services as well as seasonality and spatial (horizontal and vertical) and temporal variability. Any work on ecosystem models and appropriate ecosystem indicators, etc., should also be presented here. This section should span the size range from megafauna to microbial communities and shall be guided by the variables given by the Standard for the establishment of baseline environmental data.~~

~~The description of the benthic [and pelagic communities and] ecosystem [with functional relationships] fauna and its food web is structured by depth range, as this~~

~~enables a direct link to the source and location of an impact. For each depth zone, (at least surface, [mid]water [column] and [seafloor]benthic] as below) there should be an inventory [description] of the known taxonomic/ecological groups (e.g., plankton, fish, marine mammals, marine turtles, benthic microbial invertebrates, demersal scavengers), in accordance with the Authority's Guidelines.~~

~~Describe the biological communities and ecosystem functions, structured by depth ranges in accordance with the applicablerelevant Standards and taking into consideration account Regional Environmental Management Plans, [which] may encompass:~~

- ~~(a) surface seawater~~
- ~~(b) epipelagic zone (< 200 metres)~~
- ~~(c) mesopelagic zone (200–1000 metres),~~
- ~~(d) bathypelagic zone (1000–4000 metres),~~
- ~~(e) abyssopelagic zone (4000–6000 metres),~~
- ~~(f) hadalpelagic zone (> 6000 metres),~~
- ~~(g) demersal zone (part of the water column near to and significantly affected by the seabed), and~~
- ~~(h) benthic zone.~~

~~The description should evaluate the temporal and spatial variability in distribution and composition.~~

~~The description should include the size and habitat distributions of the fauna and their life history stages (such as larval and juvenile stages, which differ from the adult stage) as well as trophic pathways. Discussions of species and communities should include considerations of whether they are endemic (restricted to just the site, resource substrate or region) or are known to be rare, threatened or endangered.~~

~~Migratory and highly mobile species should be included where foraging ranges / migration pathways / management units have been noted as overlapping with proposed operations during scoping.~~

~~The climate Mitigation functions and services of the ocean shall also be described (including CO<sub>2</sub> uptake and sequestration, or nutrient cycling).~~

### **5.4.1. Surface**

~~Describe the biological communities from the surface to a depth of 200 metres, including [microbes] plankton (phytoplankton and zooplankton, microbial plankton and organic matter), micro-nekton, surface/near-surface fish such as tuna, and seabirds, marine turtles and marine mammals. Address factors provided in 5.4, as well as spatial and temporal variability and trends, in distribution and composition.~~

### **5.4.2. [Midwater] [Water Column]**

~~Describe the pelagic communities and their habitat in the open water from a depth of 200 metres down to 50 metres above the sea floor, and include particulate organic matter, microbes, zooplankton, nekton, mesopelagic, bathypelagic and abyssopelagic fishes and deep-diving mammals. Particular focus should be given to gelatinous and other fragile taxa which may be most vulnerable to sediment loads. Address factors provided in 5.4, as well as spatial and temporal variability.~~

### **5.4.3. Benthic**

~~Describe the known benthic microbial, invertebrate and fish communities, including infauna, epifauna, benthopelagic fauna, and demersal fish and scavengers, up to an altitude of [ca.] 50 metres above the sea floor [(or the height of the nepheloid layer)] and at least 5 meters below (into the sediments). This inventory should include considerations of species richness, biodiversity, faunal densities, taxonomic uniqueness, community structures and connectivity, etc. Ecosystem functions, such as bioturbation, habitat and food [supply/creation] and elemental cycling etc. should also be covered in this section. Address factors provided in 5.4, as well as spatial and temporal variability and patchiness.~~

### **~~5.4.3.bis. Rare or sensitive habitats and species~~**

~~Identify and describe the biological characteristics of rare or sensitive habitats and species potentially affected by the planned Exploitation activities. The identification (as in 4.8bis) shall be guided by the respective international guidelines (FAO 2009, Azores Criteria 2010) and policy decisions (UNGA, CBD) and include features such as hydrothermal vents, ridges, seamounts, as well as oceanographic fronts or eddies, abyss hills and canyons and other geological and oceanographic features. Identify any unique, rare and threatened elements and their potential vulnerability to the effects of mining, outline which habitats and communities can be considered representative and their distribution, indicate existence and connectivity to the same habitats and communities outside the mine site and the potential impact zone.]~~

### **~~5.4.4 Ecosystem/community level description~~**

~~Summarize existing community and ecosystem studies that integrate elements of the above sections. The summary should consider productivity, habitat heterogeneity, food web complexity, carbon and nutrient cycling, benthopelagic coupling, biodiversity, succession, stability, the potential toxicity effects of plumes, bioavailability of toxins, trophic relationships, ecosystem functioning, benthic-pelagic couplings, ecosystem connectivity, early life history stages, recruitment and behavioural information. Identify, preserve and distribute to the scientific community any unique, rare and threatened elements, outline which habitats and communities can be considered representative and their distribution, indicate existence and connectivity to the same habitats and communities outside the mine site and the potential impact zone.]~~

### **~~5.4.4. Alt. Ecosystem and community level description~~**

~~Summarize existing community and ecosystem level studies. This should include integration of connectivity studies (e.g. life history and recruitment research), trophic interactions and the linkages between food energy and contaminants in the food chain (including benthopelagic couplings) and ecosystem functioning / services. Food energy linkages and the complexity of the food web should be included, giving consideration to the impacts that may result from contaminants or other disruptions to the food web. Understanding across depths should be provided. Emphasis might be placed on knowledge of trophic levels, the degree of interaction between benthic and pelagic communities, whether there are specialized predators that could be more vulnerable than generalists, and the complexity of the food web and species interactions, with a view to gaining an idea of the resilience of the system to disturbances. It is important to consider wider community relationships to enable assessments to move beyond community descriptions to incorporate potential changes in ecosystem function.~~

~~[Identify, preserve and distribute to the scientific community any unique, rare and threatened elements, outline which habitats and communities can be considered representative and their distribution, indicate existence and connectivity to the same habitats and communities outside the mine site and the potential impact zone.] ]~~

## **5.5. Summary of the existing biological environment**

Summarize the findings focusing on key ecosystems and species determined above. It is envisaged that this summary will be up to one page in length.

### ~~5.6 Rare or sensitive habitats and species~~

~~Identify and describe the biological characteristics of rare or sensitive habitats and species potentially affected by the planned mining operation. The identification (as in 4.8bis) shall be guided by the respective international guidelines (FAO 2009, Azores Criteria 2010) and policy decisions (UNGA, CBD) and include features such as hydrothermal vents, ridges, seamounts, as well as oceanographic fronts or eddies, abyss hills and canyons and other geological and oceanographic features.~~

~~Identify any unique, rare and threatened elements, outline which habitats and communities can be considered representative and their distribution, indicate existence and connectivity to the same habitats and communities outside the mine site and the potential impact zone.]~~

## **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 and planned uses of the area for which information is publicly available. 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.

### **6.1. Key messages**

~~Provide key messages (overview of main findings, covered in six or fewer bullet points):~~

### **6.2. Existing uses**

#### **6.2.1. Fisheries**

~~Relevant fisheries shall be described here to further assess the socioeconomic impacts. This should include description of areas of significance for migratory fish stocks, such as spawning grounds, nursery areas or feeding sites. Any closed fishery areas such as VME closures, MPAs, or voluntary closures must be named and taken into consideration. Provide a 'heat map' showing important fishery areas in relation to proposed operations and note any areas of interaction or cumulative impact.~~

### **6.2.2. Marine traffic**

~~This section describes the non-project related marine traffic occurring within the Contract Area and uses the Regional Environmental Management Plan in accordance with IALA's regulations to provide a summary of regional movements. Provide a 'heat map' showing densities of marine traffic in relation to proposed operations and note any areas of interaction or cumulative impact. Provide this per season if repeatable seasonal variation exists.~~

### **6.2.3. Submarine cables**

~~This section describes the ~~[known]~~ in situ non-project related submarine cables occurring within the Contract Area. Provide a map showing known submarine cables in relation to proposed operations and note any areas of interaction or cumulative impact.~~

### **6.2.4. Tourism**

~~Describe areas used by cruise liners and for game fishing, sightseeing, marine mammal watching and other relevant tourism activities. Provide a 'heat map' showing densities of tourism in relation to proposed operations and note any areas of interaction or cumulative impact. Provide this per season if repeatable seasonal variation exists.~~

### **6.2.5. Marine scientific research**

~~Outline the ~~[past, present and planned/ongoing current]~~ scientific research programmes taking place in the ~~[region/area]~~, studying the essence of phenomena and processes occurring in the Marine Environment and the interrelations between them.~~

### **~~6.2.5 Sociocultural uses~~**

~~List human activities in, and socio-cultural 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.)~~

### **6.2.5. bis Sociocultural values and uses**

~~List socio-cultural ~~[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).)~~

### **6.2.6. Other**

~~List other uses of the project area that are not related to the above (e.g., other, Exploitation projects sports and leisure).~~

## **6.2. bis Planned uses**

~~Describe the planned uses of the area for which information is publicly available (e.g. other Exploitation Contracts, Exploration contracts, fisheries, maritime traffic, tourism, marine scientific research, submarine cables, area-based management tools).~~

## **6.3. Sites of an archaeological, historical significance**

~~List any sites of archaeological or historical 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).~~

## **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.~~

## **7. Assessment of impacts on the physical, chemical and geological environment and proposed Mitigation**

Provide a detailed description and evaluation of potential Environmental Impacts and Environmental Effects [including Cumulative Environmental Effects] of the operation [which could degrade the current status and functioning of to] components of the physical chemical and geological environment identified in section 4 [including the proposed environmental management measures to mitigate impacts and a summary of residual effects, [and the extent to which any potential Environmental Impacts and Environmental Effects may occur in areas under a State's national jurisdiction]. This should consider the entire lifespan of the project, i.e. construction/development (pre-commissioning) of the mine site, operational and Decommissioning phases, and following Closure of the site. The potential for accidental events and natural hazards. The detail in this section is expected to be based on a prior Environmental ImpactRisk Assessment prepared, reviewed, and revised in accordance with Regulation 47 ~~ter~~ and respective Standard and Guideline for Environmental Impact Assessment (chapter III Scoping, D). ~~It should include for each component a description of:~~

~~(a) The [hazard: detailing the] source (action, temporal and spatial duration), [probability and frequency of the risk] and [the] nature [and severity] of the disturbance;~~

~~(a) bis [Exposure characterization: evaluation and probability of exposure of the ecosystem components (see section 5) to the identified hazard. The] nature, duration and extent of any actual or potential impact, including cumulative effects and taking into account ecological and biologically significant areas;~~

~~\_\_\_\_\_ (a) ~~ter~~ The methods used to determine impacts (including the assumptions and limitations of any impact modelling or other analysis undertaken);~~

~~\_\_\_\_\_ (b) Risk evaluation and management: Document how decisions were taken to determine] Measures [that will be taken] to prevent, Mitigate and manage such impacts; and~~

~~\_\_\_\_\_ (c) The unavoidable residual impacts that will remain, including their expected longevity.~~



~~\_\_\_\_\_ (d) The extent to which any potential impacts and Environmental Effects may occur [beyond the Contract Area or] in areas under a State's national jurisdiction. \_\_\_\_\_~~

~~The detail in this section is expected to be based on the Environmental Risk Assessment carried out according to the relevant Regulations, Standards and by taking into consideration Guidelines that will have identified the main impacts, and thus the elements that need to be emphasized in the Environmental Impact Assessment.~~

### **7.1. Key messages**

~~Provide an overview of the key content covered in section 7.~~

### **7.2. Description of potential impact categories**

~~Provide an overview and description of the categories of potential impacts caused by [hazards owing to] the proposed Exploitation activities mining operation.~~

~~Key elements that need to be included are:~~

~~\_\_\_\_\_ (a) The major types of potential impacts, such as habitat removal, variations in communities' composition, the creation of sediment plumes, dewatering plumes, noise, light, etc.;~~

~~\_\_\_\_\_ (b) Descriptions of impact studies carried out during Exploration (e.g., component testing and the resulting observations from the associated monitoring);~~

~~\_\_\_\_\_ (b) bis. Descriptions of Test Mining studies undertaken prior to the application;~~

~~\_\_\_\_\_ (c) Descriptions of the results of any Environmental Risk Assessments, which should be included as separate reports or appendices where appropriate; and~~

~~\_\_\_\_\_ (d) Descriptions of the methods applied to describe and quantify impact categories and assessment from impact to receptor (including the assumptions and limitations of any impact modelling undertaken);-~~

### **7.2. bis. Description of impact pathways**

~~\_\_\_\_\_ The preferred approach for this template is to include for each receptor descriptions of:~~

~~\_\_\_\_\_ (a) The methods used to determine the pathway from impact to receptor (including the assumptions and limitations of any impact modelling undertaken);~~

~~\_\_\_\_\_ (b) The source(s) of impact;~~

~~\_\_\_\_\_ (c) The nature, spatial extent and temporal extent of potential impact(s), including cumulative impacts;~~

~~\_\_\_\_\_ (d) Measures that will be taken to avoid, minimise or Mitigate such impacts; and~~

~~\_\_\_\_\_ (e) The unavoidable (residual) impacts that will remain, including their expected longevity and outline the measures that will be taken to ensure long term site compliance with the environmental quality objectives, quantitative thresholds, and~~

indicators in accordance with these Regulations and the applicable Standard, and taking into consideration account the relevant Guidelines.

## **~~7.2. ter. Receptors and impacts~~**

~~Receptors for which this will be done include:~~

- ~~\_\_\_\_\_ (a) Meteorology and air quality~~
- ~~\_\_\_\_\_ (b) Geology [and Geophysics]~~
- ~~\_\_\_\_\_ (c) Physical oceanography~~
- ~~\_\_\_\_\_ (d) Chemical oceanography of the mine site and Impact Area~~
- ~~\_\_\_\_\_ (e) Seabed substrate characteristics \_\_\_\_\_~~

~~Impacts to be considered include:~~

- ~~\_\_\_\_\_ (a) Sediment plume generation,~~
- ~~\_\_\_\_\_ (b) Discharge of water,~~
- ~~\_\_\_\_\_ (b)bis Energy flow pathways (such as hydrothermal fluid),~~
- ~~\_\_\_\_\_ (c) Noise and light,~~
- ~~\_\_\_\_\_ (d) Greenhouse gas emissions and climate change emissions (including estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate) \_\_\_\_\_~~

~~Effects to be considered include:~~

- ~~\_\_\_\_\_ (a) Changes in temperature and salinity of water,~~
- ~~\_\_\_\_\_ (b) Optical characteristics / water clarity,~~
- ~~\_\_\_\_\_ (c) Turbidity / particulate loading,~~
- ~~\_\_\_\_\_ (d) Sediment characteristics (including changes in the sediment composition, grain size, density and pore water profiles),~~
- ~~\_\_\_\_\_ (e) Discharge plumes (frequency, spatial extent, composition and concentration, etc.);~~
- ~~\_\_\_\_\_ (f) Primary sediment plume (frequency, spatial extent, composition and concentration),~~
- ~~\_\_\_\_\_ (g) Dissolved gas levels,~~
- ~~\_\_\_\_\_ (h) Nutrient levels,~~
- ~~\_\_\_\_\_ (i) For a sea floor massive sulphide project, the modification of vent fluid discharges, if present, should be addressed. \_\_\_\_\_~~

## **~~7.8. Accidental events and Natural hazards~~**

~~Discuss impacts of accidental events and the cumulative effects of the Exploitation activities mining operation in relation to any natural hazards that could occur, including,~~

but not limited to, volcanism, seismic activity, cyclone/hurricane, tsunamis, etc. and the measures that will be taken to avoid, remedy or Mitigate those impacts.

### **7.9. Noise and light**

Provide a description of the expected emissions of noise and light from the proposed operations.

### **7.10 Greenhouse gas emissions and climate change**

Provide an assessment of gas and chemical emissions from proposed operations, relative to emissions both natural and anthropogenic activities. Subsections should include estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate.

### **7.11. Cumulative impacts**

Provide a description of the source of nature and extent of any interactions between various potential Environmental Impacts and Environmental Effects across the environment. Where they may have cumulative effects, they must be considered on both spatial and temporal scales over the lifetime of the proposed Exploitation activities mining operation and in the post-Closure period and alternatives considered.

### **7.12. Proposed operations impacts**

Cumulative within the mining site and Impact Area of the mining proposed herein.

### **7.13. Regional operation impacts**

Cumulative between activities, actions, or natural phenomena, where known in the region.

### **7.14. Other issues**

Outline here other, more general issues, as applicable.

### **7.15. Summary of residual effects**

Summarize key findings on potential Environmental Impacts and Environmental Effects, environmental management measures, and any potential impacts and effects to areas under any State's national jurisdiction. A table may be a useful summary format to pull together the above elements in a simple visual mode. The table should include a column outlining the measures that will be taken to address potential Environmental Impacts and manage residual effects and ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these Regulations and the applicable Standard and taking into consideration account the relevant Guidelines.

## **8. Assessment of [effects and] impacts on the biological environment and proposed Mitigation**

Provide a detailed description and evaluation of [the sufficiency of available information] [on] potential Environmental Impacts and Environmental Effects [including Cumulative Environmental Effects] of the proposed operation [and a summary of the environmental management measures to mitigate Environmental Impacts and residual effects, alt.1 [[Mitigation hierarchy measures to avoid, reduce and Mitigate the effects caused by the project], alt.2 [Measures taken to avoid, reduce and Mitigate effects, including alternatives] [and the extent to which any potential Environmental Impacts and effects may occur in areas under a State's national jurisdiction] and alternatives considered in section 3.7 [which could degrade the current function of] [+ø] the biological environment components identified in section 5 in the [Contract Area, the] mine site and the Impact Areas, [with special regard to the Impact and Preservation Reference Zones]. Consider Environmental Impacts and Environmental Effects that could happen during the entire lifespan of the project i.e. construction/development (pre-commissioning), operational and Decommissioning phases and following Closure of the site. The potential for accidental events and natural hazards should be considered.

The detail in this section is expected to be based on a prior Environmental ImpactRisk Assessment prepared, reviewed, and revised in accordance with Regulation 47 ter, and respective Standards and taking into consideration the Guidelines for Environmental Impact Assessment Process. ~~The [[description]] analysis shall be structured by the depth ranges described in section 5 and shall for each component, provide a description of:~~

~~(a) The [hazard detailing the] source (action, temporal and spatial duration) [of the risk] and nature of the [ecological effects/disturbance];~~

~~(a) bis. [Exposure characterization: evaluation and probability of exposure of the ecosystem components (see section 5) to the identified hazard. The] nature and extent (temporal and spatial) of any actual or potential impact, including cumulative effects;~~

~~(a) ter. The methods used to determine impacts (including the assumptions and limitations of any impact modelling or other analyses undertaken);~~

~~(b) [Risk evaluation and management: Document how decisions were taken to determine] Measures [that will be taken] to prevent, Mitigate and manage such impacts with reference to the submitted Environmental Management and Monitoring Plan; [and]~~

~~(c) The unavoidable residual impacts that will remain, including their significance and expected longevity. —~~

~~(d) An evaluation of the impacts and effects against the applicable environmental goals and objectives, indicators and thresholds as identified in the applicable relevant environmental Sstandards and Guidelines and in the applicable Regional Environmental Management Plan, [and].~~

~~(e) The extent to which any potential impacts and Environmental Effects may occur in areas beyond the Contract Area or under a State's national jurisdiction.~~

~~The detail in this section is expected to be based on the Environmental Risk Assessment, carried out according to the applicable relevant Rregulations, Standards and taking into consideration Guidelines ance that will have identified the main impacts, and thus the elements that need to be emphasized in the Environmental Impact Assessment.~~

## Comment

The alternative wordings for mitigation in section 8 should be retained and restricted in light of Council's discussions on how to refer to Mitigation across the regulations.

### ~~8.1. Key messages~~

~~This section should provide an overview of the key content covered in section 8.~~

### ~~8.1.bis. Description of the key sources of Environmental Impacts~~

~~This section should describe the key sources of [risks and] impacts on the Marine Environment from the Exploitation activitiesmining operation.~~

### ~~8.2. Description of [hazards and the nature of] potential impact~~

~~Provide an overview and description of the categories of potential impacts caused by the hazards arising from the proposed Exploitation activitiesmining operation and alternatives considered. This should introduce the major types of impacts and their effects on the biotic environment, such as habitat removal, the crushing of animals, the creation of sediment plumes, noise and light, etc. and be referred to in subsequent descriptions and evaluations of potential Environmental Impacts and Environmental Effects from the hazards posed by the proposed operation and alternatives considered. A description should be included of any lessons learned from activities during the exploratory phase of the programme (e.g., mining system component tests).~~

~~Key elements that need to be included are:~~

~~(a) Description of the major types of potential impacts, such as habitat removal, the biological effects of sediment plumes and dewatering plumes, noise, light, etc. [Each impact has to be characterized by its nature, duration and extent of any actual or potential exposure, including cumulative effects and taking into account ecological and biologically significant areas, rare and fragile species and habitats.] These impact categories should be used in subsequent descriptions and evaluations of potential Environmental Impacts and Environmental Effects from the proposed operations.~~

~~(b) Descriptions of impact studies carried out during Exploration (e.g., component testing and the resulting observations from the associated monitoring);~~

~~(b) bis. Descriptions of Test Mining studies undertaken prior to the application; Descriptions of the results of any Environmental Risk Assessments, which should be included as separate reports or appendices where appropriate; and~~

~~(c) Descriptions of the methods applied to describe and quantify impact pathways and assessment in line with the applicablerelevant Standards and taking into consideration and Guidelines, i.e. [the Environmental Impact Assessment EIA] Guideline.~~

### ~~8.2. bis Description of impact pathways~~

~~The preferred approach for this template is to include for each impact pathway an overarching description of:~~

~~(a) The methods used to determine the pathway from impact to receptor (including the assumptions and limitations of any impact modelling undertaken);~~

~~(b) The source(s) of impact~~

~~(c) The nature, spatial extent and temporal extent of potential impact(s), including cumulative impacts;~~

~~(d) Measures that will be taken to avoid, minimise or Mitigate such impacts; and~~

~~(e) The unavoidable (residual) impacts that will remain, including their expected longevity and outline the measures that will be taken to ensure long term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these Regulations and the applicable Standard, and taking into consideration account the relevant Guidelines.~~

## **8.2.ter. [Assessment of risks] and impacts**

~~[The Assessment of risks and impacts must be done in as much detail as possible for the following community Receptors [including for which this must be done include]:~~

~~(a) Microbial communities~~

~~(b) Phytoplankton]~~

~~(b)is zooplankton and micronekton~~

~~(b)ter nekton~~

~~(b)quat benthopelagic fauna, including scavengers~~

~~(c) Meiofauna (infauna / epifauna)~~

~~(d) Macrofauna (infauna / epifauna / demersal fish)~~

~~(e) Megafauna, including surface/near surface fish such as tuna, and seabirds, marine turtles and marine mammals~~

~~As appropriate, these receptors are to be considered:~~

~~(a) at the surface (from the surface down to a depth of 200 metres)~~

~~(b) [for the midwater column] (from a depth of 200 metres down to 50 metres above the sea floor), [separate for the different water masses, including deep diving and migratory species]~~

~~(c) up to an altitude of 50 metres above the sea floor, including zooplankton, [scavengers] nekton, mesopelagic and bathypelagic fishes and deep diving mammals.~~

~~Impacts [categories] to be considered include:~~

~~(a) Sediment plume generation [(frequency, spatial extent, composition and concentration)],~~

~~(b) discharge [plumes of water]~~

~~[(b-bis) Seafloor destruction]~~

~~(c) Noise and light [emissions]~~

~~(d) Greenhouse gas emissions and climate change emissions (including estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate);~~

Effects to be considered include:

- ~~(a) changes in temperature [and] salinity [stratification and mixing] of water [column];~~
- ~~(b) optical characteristics / water clarity~~
- ~~(c) turbidity / particulate loading~~
- ~~(d) sediment characteristics (including changes in the sediment composition, grain size, density and pore water profiles)~~
- ~~(e) [effects of] discharge plumes, [Contamination and pollution, turbidity, temperature change] (frequency, spatial extent, composition and concentration, etc.);]~~
- ~~(f) primary sediment plume (frequency, spatial extent, composition and concentration)~~
- ~~(g) dissolved gas levels~~
- ~~(h) nutrient levels~~
- ~~(i) For a sea floor massive sulphide project, the modification of vent fluid discharges, if present, should be addressed.~~

## **8.6. [Summary of] Ecosystem/community level [effects caused by the project]**

~~[Analyse and] Describe [potential and probable estimated] effects on the ecosystem [and ecosystem dynamics during the term of contract and long term or where linkages between the various components above are known].~~

### **8.6.1. Potential [other effects and] impact to be addressed**

#### **8.6.1.1. Noise and light**

~~Provide a description of the expected emissions of noise and light from the proposed operations and any potential Environmental Effects, especially any impacts of noise on avoidance, masking and availability of prey (e.g., on marine mammals) and fish. [Indicate the range of light pollution and potential effects in the different depths.] Provide a description of the measures that will be taken to ensure compliance with applicable environmental quality objectives and quantitative thresholds for noise and light levels for relevant fauna, in accordance with these Regulations and the applicable Standard, and taking into consideration account the relevant Guidelines.~~

#### **8.6.1.2. Greenhouse gas emissions and climate change**

~~Effects of mining on ocean climate Mitigation functions and services should be described (including any anticipated alteration of CO<sub>2</sub> uptake and sequestration, or nutrient cycling.)~~

### **[8.6.2 — Environmental management measures to Mitigate impacts]**

~~Moved to section “8.7 bis”~~

## **8.7. Cumulative effects**

The nature and extent of any interactions between various impacts where they may have cumulative effects must be considered. This should include an evaluation of the spatial and temporal intensity of mining and its effects on other impacts including existing uses considered in the Assessment and described in Section 9 of the Environmental Impact Statement as well as an evaluation of the resulting cumulative effects to the ecological balance of the Marine Environment, including the spatial and temporal extent of such effects. Describe how spatial and temporal cumulation will differ between faunal groups and different habitats.

Provide a description of the source of nature and extent of any interactions between various potential Environmental Impacts and Environmental Effects across the environment. Where they may have cumulative effects, they must be considered on both spatial and temporal scales over the lifetime of the proposed Exploitation activities mining operation and in the post-Closure period and alternatives considered.

### **8.7.1. Proposed operations effects**

Cumulative effects [of the proposed mining with all other known influences and effects, including from other Exploitation activities,] within the scope of the site and Impact Area of the mining proposed herein.

### **8.7.2. Regional operations effects**

Cumulative effects [on a regional scale, due to Authority related and other between] activities to be analysed by the Secretariat according to the [Regional Environmental Management Plan REMPs. The analysis will periodically be provided in a regional quality status report.]

## **8.7 bis. Mitigation hierarchy measures to avoid, reduce and Mitigate the effects caused by the project**

### **8.7bis.1 Decision-making**

Explain here how decisions were taken to Mitigate Environmental Effects, and what were the goals to be achieved.

### **8.7bis.2 Measures taken to avoid, reduce and Mitigate effects, including alternatives**

### **8.7bis.3 Expected unavoidable residual effects**

### **8.7bis.4 Restoration and Rehabilitation measures**

Practicable Restoration and Rehabilitation of the project area — approach. The Restoration and Rehabilitation of the project area should be considered as a part of the Mitigation hierarchy. At this stage in the Environmental Assessment Process, there might be no final knowledge on the potential of Restoration and Rehabilitation in the area, so a plan should be proposed to develop this knowledge throughout the lifespan of the project and to prepare the decision on the issue at the end of the project. This



~~should be done in accordance with applicable Standards and taking into consideration Guidelines.]~~

### ~~8.8. Summary of residual effects~~

~~Summarize key findings on potential Environmental Impacts and Environmental Effects, environmental management measures, residual effects, and any potential impacts and effects to areas under any State's national jurisdiction. Information on potential recovery times following disturbance and the longevity of residual effects should be included. This will give readers an understanding of the temporal component and efficacy of proposed Mitigation measures. A table may be a useful summary format to pull together the above elements in a simple visual mode. The table should include a column outlining the measures that will be taken to address potential Environmental Impacts and residual effects and ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these Regulations and the applicable Standard and taking into consideration account the relevant Guidelines.~~

### ~~[8.9 Practicable restoration and rehabilitation of the project area]~~

~~Moved to section "8.7 bis.4."~~

### ~~[8.9 alt. Accidental events and Natural hazards~~

~~Discuss impacts to the biological environment of accidental events and the cumulative effects of the mining operation and natural hazards and the measures that will be taken to avoid, remedy or mitigate those impacts.]~~

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

Provide a detailed description and evaluation of potential Environmental Impacts and Environmental Effects of the operation to the socioeconomic and sociocultural components identified in section 6 [and a summary of the environmental management measures to mitigate impacts and residual effects]. 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.

### **9.1. Key messages**

~~This section should provide an overview of the key content covered in section 9:~~

### ~~9.1. bis. Description of potential impact categories~~

~~Provide an overview and description of the categories of potential impacts caused by the proposed Exploitation activitiesmining operation. Key elements that need to be included are:~~

~~(a) the major types of potential impacts, such as habitat removal, the creation of sediment plumes, noise, light, etc. These impact categories should be used in subsequent descriptions and evaluations of potential Environmental Impacts and Environmental Effects from the proposed operations;~~

~~(b) Descriptions of impact studies carried out during Exploration (e.g., component testing and the resulting observations from the associated monitoring);~~

~~(c) bis Descriptions of Test Mining studies undertaken prior to the application;~~

~~(d) Descriptions of the results of any Environmental Risk Assessments, which should be included as separate reports or appendices where appropriate; and~~

~~(e) Descriptions of the methods applied to describe and quantify impact pathways and assessment.~~

### **9.1. ~~ter. Description of impact pathways~~**

The preferred approach for this template is to include for each impact pathway an overarching description of:

~~(a) The source;~~

~~(a)ter The methods used to determine impacts (including the assumptions and limitations of any impact modelling undertaken);~~

~~(a)bis The nature, spatial extent and temporal extent of potential impacts, including cumulative impacts;~~

~~(b) Measures that will be taken to avoid, minimise or Mitigate such impacts, including a comparative analysis of how measures taken may differ across alternative operations considered;~~

~~(c) The unavoidable (residual) impacts that will remain, including their expected longevity. The detail in this section is expected to be based on the scoping Environmental Risk Assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the Environmental Impact Assessment; and~~

~~(d) The extent to which any potential impacts and effects may occur in areas under a State's national jurisdiction.~~

## **9.2. Impact identification**

### **9.2.1. Impacts on existing human uses**

For each of the following marine uses, describe:

~~(a) Potential impacts and effects and issues to be addressed;~~

~~(b) Environmental management measures to Mitigate impacts and effects;~~

~~(c) Residual impacts and effects; and~~

~~(d) Potential impacts and effects in areas under any State's national jurisdiction.~~

#### **9.2.1.1 Fisheries and biological conditions**

~~A description of potential impacts, e.g., effects from light and noise on fisheries and biological conditions, with proposed management measures and a description of residual impacts.~~

#### **9.2.1.2bis Submarine cables**

~~A description of potential impacts on [known] non-project-related submarine cables occurring within the project area, along with proposed management measures and a description of residual impacts.~~

#### **9.2.1.3 Tourism**

~~A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.~~

#### **9.2.1.4 Marine scientific research**

~~A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts, according to the IALA's regulations.~~

#### **9.2.2 Impacts on Sociocultural values and uses**

~~A description of potential impacts and issues to be addressed pertaining to socio-cultural 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.~~

#### **9.2.3 Impacts on Ecosystem Functions and Services**

~~A description of potential impacts of the operation on any ecosystem functions and services, for example, carbon burial and sequestration, taking into account the relevant Guidance.—~~

#### **9.2.4 Other impacts**

~~List other potential impacts that are not related to the above (e.g., submarine cables, other Mineral Exploration or Exploitation projects).—~~

#### **9.2.5 Impacts on Planned uses**

~~Describe the potential impacts on planned uses of the area for which information is publicly available (e.g. fisheries, maritime traffic, tourism, marine scientific research, submarine cables, area-based management tools).~~

#### **9.2.6 Impacts on Area-based management tools**

~~A description of potential impacts and cross-boundary issues to be addressed, along with proposed management measures and a description of residual impacts.~~

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

~~Describe, as applicable, potential impacts to sites of archaeological, or historical 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).~~

### ~~9.4. Gender Impact analysis~~

~~Assess and analyse how the proposed operations may impact on gender roles and relationships.~~

### ~~9.5. Summary of socioeconomic and sociocultural environment~~

~~Summarize findings on management measures, residual effects, and any potential impacts and effects, (including to socio-cultural 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.~~

### ~~[9.5bis. Assessment of Uncertainty]~~

~~Moved to section “10 bis”.~~

#### ~~9.5bis.1 Uncertainty Assessment~~

~~Provide a detailed description and evaluation of any uncertainties in the assessments described in section 7, 8, and 9. This uncertainty assessment shall:~~

- ~~(1) Identify any relevant areas of uncertainty and gaps in knowledge and their implications for the environmental impact assessment and its findings; and,~~
- ~~(2) Describe the measures taken in the environmental impact assessment to reduce uncertainty in its findings to as low as reasonably practicable.~~

#### ~~9.5bis.2 Addressing Significant Uncertainty~~

~~Where significant uncertainty exists despite the efforts described in 9bis.1(b), provide a detailed description of environmental monitoring and management measures for managing and reducing uncertainty during the proposed operations, to be incorporated into the Environmental Monitoring and Management Plan and describe how these will enable the applicant to ensure compliance with relevant Rules of the Authority.]~~

### ~~[9.6 Accidental events and Natural hazards~~

~~Discuss any impacts of accidental events and the cumulative effects of the mining operation and natural hazards, and the measures that will be taken to avoid, remedy or mitigate those impacts.~~

#### ~~9.6.1 Potential impacts and issues to be addressed~~

~~Moved to section “10 ter”.~~

### ~~9.6.2 Environmental management measures to mitigate impacts~~

~~Moved to section “10 quat”.~~

### ~~9.6.3 Residual effects~~

~~Moved to section “10 quin”.~~

## 9. bis Waste management

A description outline of waste management.

Provide a description of proposed vessel waste management, with reference to compliance with relevant conventions, legislation and principles, and methods of cleaner production and energy balance.

### **Comments**

A new section 9 bis is added in light of the fact that DR 48ALT(4)(k) requires a description outline of waste management. The proponents recognise that Section 10.6 and 10.7 currently sit in section 10 below but consider that should only cover waste management with regard to “potential environmentally hazardous discharges resulting from accidental and extreme natural events as these are fundamentally different from normal operational discharges of wastes and wastewaters” as outlined below. Section 9bis would be about all waste management, and section 10 could refer to this section but provide situation-specific detail relevant to section 10.

## **10. Hazards arising from natural, accidental and discharge events**

This section should outline the possibility/probability of accidental events and natural hazards occurring, an assessment of the impact they may have, to the mine site and Impact Area, the measures taken to prevent or respond to such an event and an assessment of the residual impact should an event occur. This should include an overview of potential environmentally hazardous discharges resulting from accidental and extreme natural events as these are fundamentally different from normal operational discharges of wastes and wastewaters. Reference should be made to the ERCP.

~~For each component include:~~

~~(a) The nature and extent of any impact;—~~

~~(b) Measures that will be taken to avoid, Mitigate or minimize such impact; and~~

~~(c) Residual impacts.~~

### **10.1. Extreme weather**

~~For example: hurricanes/cyclones.~~

## **~~10.2. Natural hazards~~**

~~For example: volcanic eruptions, seismic events.~~

## **~~10.3. Accidental events~~**

~~For example: leakage or spillage of hazardous material, fires and explosions, and collisions, including potential loss of equipment.~~

## **~~10.4. Maritime safety and interactions with shipping~~**

~~Provide a description of predicted maritime safety issues and potential interactions with other vessels from the proposed activities with reference to compliance with the relevant conventions.~~

## **~~10.5. Emergency Response and Contingency Plan~~**

~~Provide a description of an Emergency Response and Contingency Plan.~~

## **~~10.6. Waste management~~**

~~Provide a description of proposed vessel waste management, with reference to compliance with relevant conventions, legislation and principles, and methods of cleaner production and energy balance.~~

## **~~10.7 — Balast Water management~~**

~~Provide a description of proposed vessel balast water management where applicable, with reference to compliance with relevant rules and principles, and methods of cleaner production and energy balance.~~

## **~~10.8. Hazards arising from natural, accidental and discharge events~~**

~~Discuss any impacts of accidental events and the cumulative effects of the Exploitation activities and natural hazards, and the measures that will be taken to avoid, remedy or Mitigate those impacts.]~~

## **10 bis Assessment of Uncertainty**

### **10 bis.1 Uncertainty Assessment**

Provide a detailed description and evaluation of any uncertainties in the assessments described in section 7, 8, and 9. This uncertainty assessment shall:

(1) Identify any relevant areas of uncertainty and gaps in knowledge and their implications for the Environmental Impact Assessment and its findings; and,

(2) Describe the measures taken in the Environmental Impact Assessment to reduce uncertainty in its findings to as low as reasonably practicable.

**Comments**

Section 10 bis (1) should be placed in a Standard. Currently placed in the revised suspense document.

**10 bis.2 Addressing Significant Uncertainty**

Where significant uncertainty exists despite the efforts described in 9bis.1(b), provide a detailed description of environmental monitoring and management measures for managing and reducing uncertainty during the proposed operations, to be incorporated into the Environmental Monitoring and Management Plan and describe how these will enable the applicant to ensure compliance with rules, regulations and procedures of the Authority.

**10 ter Holistic cumulative impact assessment and issues to be addressed**

**~~10 quat Environmental management measures to avoid, reduce and Mitigate impacts~~**

**Comments**

The drafting group consider this section 10 quat is covered by Section 11 and is thus deleted here. Wording is copied as an alternation in Section 11 heading. Should be considered in light of how Council decides to refer to mitigation across the regulations.

**10 quin Analysis of residual effects against the RRP, Standards and Guidelines of the Authority**

Provide a description of any residual impacts that may remain following the application of Mitigation measures, including the expected longevity of those impacts, and outline the measures that will be taken to ensure long-term site compliance with the environmental quality objectives, quantitative thresholds, and indicators in accordance with these Regulations and the applicable Standard, and taking into consideration the Guidelines.]

**Comments**

It should be considered whether a separate standalone section on residual effects would be necessary or whether 'residual effects' should be added to 10 ter ('cumulative impact assessment...') (noting it is already included in sections 7, 8 & 9 ("assessment of impacts on...") and section 11("Environmental management, monitoring and reporting"). If Council decides to retain the more detailed content in 10 quin., then Council should consider whether such content should also be added to any of the aforementioned sections, or instead the Standards and Guidelines. Retained here in the annex until Council decides.

## **11. Environmental management, monitoring and reporting**

### **[Alt. Environmental management measures to avoid, reduce and Mitigate impacts]**

Provide sufficient information to enable the Authority to anticipate possible environmental management, monitoring and reporting requirements for an environmental approval. Information listed include a description of the applicant's Environmental Management System and should reflect the proponent's environmental policy and the translation of that policy to meet the requirements of this section and previous sections during different stages of the project life (i.e., from construction to Decommissioning and closure and the post-closure period).

The Environmental Management and Monitoring Plan is a separate report from the Environmental Impact Statement, but this could be a useful opportunity to highlight some of the key issues [including residual effects] from the Statement that will be addressed in the full Environmental Management and Monitoring Plan. ~~Information detailed in this section should include the headings set out below.~~

#### **~~11.1. Organizational structure and responsibilities~~**

~~This section should show how the Contractor's environmental team fits into its overall organizational structure. Responsibilities and professional qualifications of key personnel should be outlined.~~

#### **~~11.2. Environmental management system~~**

~~A full Environmental Management System shall exist at the time the Environmental Impact Statement is submitted. The applicant has to demonstrate that it will be capable of managing appropriate relevant environmental questions and outline the standards that will be considered and/or aligned with when developing the system for the project.~~

#### **~~11.3 Environmental Management and Monitoring Plan~~**

~~An Environmental Management and Monitoring Plan will be submitted as a separate document for the Authority's approval prior to the commencement of Exploitation activities mining operations. This section should provide an overview of what the Plan would entail. With reference to, the headings set out below and Annex VIII of the Exploitation Regulations of the Authority.~~

##### **~~11.3.1 Mitigation and management~~**

~~Summarize the Mitigation and management measures that will be taken, based on the impact minimization and Mitigation analysis undertaken as part of the Environmental Impact Assessment, and as described in the Environmental Impact Statement in Sections 7, 8, and 9.~~

##### **~~11.3.3 Closure Plan~~**

~~A Closure Plan will be submitted as a separate document for the Authority's approval prior to the commencement of Exploitation activities mining operations. However, this section should provide an overview of what the Closure Plan will entail,~~



~~including Decommissioning, continued monitoring and Rehabilitation measures, if applicable.~~

## **11.4 Reporting**

~~Outline how data collected at the mine site and Impact Area will meet reporting requirements and best scientific practices outlined in Annex VII on the Environmental Management and Monitoring Plan.~~

### **11.4.1 Monitoring**

~~Outline how [information and] the results of monitoring studies will be reported to the Authority, as well as the frequency and format of data releases in accordance with the regulations and any relevant Standards and taking into consideration account any relevant Guidelines.~~

### **11.4.2 Incident reporting**

~~Outline how Incidents will be reported and managed.~~

## **12. Responsible Product stewardship**

[An overview of the downstream supply chain. A description of responsible product stewardship related to] [Provide a brief description of] the intended use of the Mineral-bearing ore once it leaves the [Contract] Area. The description should also address how the Contractor will minimize health, safety, environmental, socioeconomic and sociocultural effects [and impacts] of the intended product or products to meet standards for environmental management, and should address the following potential impacts:

- (a) Energy and materials consumption;
- (b) Waste generation;
- (c) Toxic substances;
- (d) Air and water emissions.

The intention is not to provide a full and highly detailed account, but, where information is known about Environmental Impacts, these impacts should be described briefly here.

## **13. Consultation [and stakeholder engagement and methods]**

[The Environmental Impact Statement should include a description summary of the nature, extent, participation and outcomes of consultations and stakeholder engagement that have taken place with the Stakeholders, including commission consultation, and how their comments have been addressed in the environmental impact statement. A description of consultation methods shall also be provided].

Consultations [and engagement] shall be inclusive, transparent and open to all relevant Stakeholders, including States, global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, indigenous peoples and local communities [and in accordance with this Regulation and the applicable Standards and taking into consideration the Guidelines].

### ~~13.1 Consultation methods~~

~~Provide a description of the nature and extent, participation and outcomes of consultation(s) that have taken place with relevant Stakeholders, and how their comments have been addressed in the Environmental Impact Assessment. This will include the description of the mechanisms [and criteria] used to manage the diversity of Stakeholders addressed and comments provided.~~

~~This includes describing the mechanism(s) used to consult with different groups and how this aligns with the applicable relevant Standards and Guidelines, also incorporating criteria for Preservation Reference Zones and Impact Reference Zones.~~

### ~~13.2 Stakeholders~~

~~List Stakeholders that have been consulted and explain the process by which Stakeholders were identified. This should include a brief description of the Stakeholders and a historic overview of any previous activities conducted by the Stakeholders in The Area.~~

### ~~13.3 Public consultation and disclosure~~

~~Provide a description of the goals and consultation workshops/meetings that occurred prior to the preparation of the report, including outlining any concerns and comments made by Stakeholders and how these will be addressed, and, if not, describe the reasons for that decision.~~

### ~~13.4 Commission consultation~~

~~Summarize the Commission's recommendations on the Scoping Report and proposed Terms of Reference for the applicant's Environmental Impact Assessment submitted to the Commission, and justification for any deviation either from those submitted Terms of Reference, or from the Commission's recommendations.~~

### ~~13.5. Stakeholder [and coastal State] Consultation~~

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

### ~~13.4 Continuing consultation and disclosure~~

~~Outline any further consultation with Stakeholders that has been deemed necessary and is being planned.~~

## **14. Glossary and abbreviations**

Include a glossary of terms, acronyms and abbreviations used throughout the document. The glossary should include definitions for, and key terms defined in the regulations so as to ensure that users of the Environmental Impact Statement ~~\_, including the decision makers and relevant Stakeholders, have a clear understanding of the intention behind the use of certain terms in the Environmental Impact Statement. The~~

~~glossary should be included in the table of contents for the Environmental Impact Statement and referenced in the introduction section.~~

## **15. Study team**

Outline the people involved in carrying out the Environmental Impact Assessment studies and in writing the Environmental Impact Statement. ~~If independent scientists or other experts were involved in any of the work, they should be listed. [Any remuneration should be mentioned.] The names, current and validated contact information, occupational qualifications and their role in the generation of the Environmental Impact Statement of such people should also be included. A statement that those individuals so named concur with the content of the report should be included. Any conflict of interest must be identified, disclosed in detail in this section including the way it was and continues to be managed.~~

## **16. References**

Evidence obtained from outside sources should be documented throughout the Environmental Impact Statement, with the use of footnotes or other suitable reference mechanism. In addition, all sources used in preparation of the Environmental Impact Statement (including those specifically referenced in the body of the document) should be listed in bibliography format, with full details of the source (including website addresses, if applicable). ~~This enables users of the Environmental Impact Statement to review the supporting documentation independently.~~

## **17. Appendices**

The appendices section should include a list of all the technical reports carried out for parts of the Environmental Impact Assessment or that are used in support of any aspect of the Environmental Impact Assessment (such as prior risk assessments or monitoring activities conducted as part of Exploration Contracts). Copies of these reports should be provided as appendices to the Environmental Impact Statement, with clear indications as to which section(s) the document is being provided to support.

## Annex V

### Emergency Response and Contingency Plan

An Emergency Response and Contingency Plan must:

(a) Be prepared in accordance with Good Industry Practice and the ~~applicable~~relevant Regulations, Standards and taking into consideration the Guidelines;

(b) Provide an effective plan of action for the applicant's efficient response to Incidents and events, including processes by which the applicant will work in close cooperation with the Authority, [coastal States,] other competent international organizations and, where applicable, emergency response organizations; and

(c) Include:

(i) The overall aims and objectives and arrangements for controlling the risk of Incidents;

(ii) Organizational structure and personnel roles and responsibilities;

(iii) Details of individuals authorized to initiate response mechanism(s);

(iv) Details of the emergency response equipment;

(v) Details of the safety management system relevant to emergency response;

(vi) Details of the Environmental Management System relevant to emergency response;

(vii) A description of all foreseeable Incidents, an assessment of their likelihood and consequences and associated control measures;

(viii) A description of the arrangements to protect persons on the mining vessel(s), and to ensure their safe escape, evacuation and rescue in the event of an Incident that presents risks to their safety;

(ix) Details of arrangements for the maintenance of control systems to monitor the Marine Environment in the event of an Incident;

(x) Information and measures relating to the prevention of Incidents which could result in Serious Harm to the Marine Environment;

(xi) An assessment of [potential] pollution hazards and the measures to prevent or reduce such hazards, ~~including an assessment of unintentional and unauthorised Mining Discharges and measures to control such discharges~~;

(xii) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning;

(xiii) Details of arrangements for coordinating any emergency response, including coordination with the Authority, other service providers, maritime search and rescue authorities, and nearby vessels, citing the source for such arrangements, where relevant;

(xiv) Details of training programmes for personnel relating to emergency prevention of response;

(xv) Details of audit and review processes relating to matters covered by this Plan, including regular testing of the Plan, significant changes to the Plan or the nature

of operational activities, and the process of Incident investigation, recording and Communication to the Authority and the Sponsoring State;

[(xvi) Details of the presence of other hazards/harmful substances;

[(xvii) A description of accountability and liability for environmental damage resulting from an Incident; and

(xix) Details of how the Plan is [gender-responsive and responsive to persons from vulnerable groups].

## Annex VI Health and Safety Plan and Maritime Security Plan

### A Health and Safety Plan

1. The Health and Safety Plan prepared under these Regulations and this Annex must:

(a) Be prepared in accordance with Good Industry Practice, and ~~[relevant]~~ applicable ~~S~~standards and ~~taking into consideration G~~guidelines;

(b) Comply with applicable national laws and regulations related to safety and health, including occupational safety and health, of personnel on vessels or Installations engaged in activities in the Area, as well as applicable international rules and standards of the International Labour Organization and the International Maritime Organization related to safety and health, including occupational safety and health;

~~[(c) bis Take into account that no worker or trainee on board a vessel or Installation engaged in the activities in the Area should be under the legal age of its nationality;]~~

(c) Be designed with the aim to ensure that all personnel on a vessel or Installation engaged in activities in the Area are provided with appropriate safety and health protection, including occupational safety and health protection, and live, work and train in a safe and hygienic environment with roles and responsibilities allocated to relevant named personnel appropriately;

(d) Identify hazards and risks and include a comprehensive and integrated system for the management of the hazards and risks;

(e) Ensure that the risks to the health and safety of personnel on a vessel or Installation engaged in activities in the Area are reduced to a level that is as low as reasonably practicable;

(f) Address all matters of safety of life and the prevention of occupational accidents, injuries and diseases that may be identified as hazards and risks for personnel on vessels or Installations engaged in activities in the Area;

(g) Include and refer to the requirements of the Emergency Response and Contingency Plan under Annex V of these Regulations that relate to protecting and securing the safety and health of all persons on vessels or Installations during an Incident or emergency; ~~and~~

~~(h) — Be worded in plain language.~~

(h) [Be gender-sensitive, and specifically address women's safety, and freedom from harassment in the workplace, and consider other issues relevant to ensuring an equitable and inclusive working environment for a diverse workforce].

2. The minimum requirements to the content of the health and safety plan are contained in the Standard and Guidelines on health and safety plans.

## **B** **Maritime Security Plan**

1. The Maritime Security Plan prepared under these Regulations and this Annex must:

(a) Be prepared in accordance with Good Industry Practice and ~~applicable~~relevant ~~S~~standards and taking into consideration Gguidelines;

(b) Comply with applicable national laws and regulations related to maritime security, as well as applicable international rules and standards of the International Maritime Organization related to maritime security;

(c) Be developed based on a security assessment and risk analysis relating to all aspects of the vessel's or Installation's operations in order to determine which of its parts are more vulnerable to maritime security Incidents;

(d) Provide an effective plan to ensure the application of measures on board the vessel that are designed to protect the persons on board, the ancillary equipment, the cargo, the cargo transport units, the ship's stores, ~~the vessel~~ and the operation itself from the risks of a security Incident;

(e) Be protected from unauthorized access or disclosure;

(f) Be subject to inspection by officers duly appointed by Inspectors appointed by the Authority under Part XI of these Regulations;

~~(g) Be worded in plain language;~~

[(h) Be gender-sensitive, and specifically address women's security, and any other issues relevant to ensuring maritime safety measures are applied equitably and inclusively for a diverse workforce.]

2. The minimum requirements to the content of the maritime security plan are contained in the Standard and Guidelines on maritime security plans.

## Annex VII

### Environmental Management and Monitoring Plan

1. The Environmental Management and Monitoring Plan prepared under these Regulations and this Annex VII shall be:

(a) Prepared in clear language and in an official language of the Authority, together with, where applicable, an official English-language version;

(a) bis. Prepared in accordance with the relevant Regulations, ~~[and Standard and Regional Environmental Management Plan,]~~ taking into ~~consideration account applicable~~ Guidelines ~~[and Regional Environmental Management Plan,]~~, on the basis of Best Environmental Practice, Best Available Scientific Information, ~~[and Best Available Information];~~ and

~~(b) Verified by the report of [independent] competent [independent experts persons] appointed by the Authority.~~

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. Include detailed location maps showing proposed ~~I~~mpact ~~R~~eference ~~Z~~ones and ~~P~~reservation ~~R~~eference ~~Z~~ones as well as locations of other nearby ~~C~~ontract ~~A~~reas 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~~~~relevant~~ Standards;

(c) bis A description of the environmental baseline data, measured baseline values for parameters at the site, a characterization of the area proposed to be mined, adjacent areas that could be affected by mining, and areas that will be avoided due to their environmental value;

(d) A description, ~~[prepared in accordance with the applicable Standard and taking into consideration the 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 data];~~

(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 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;

(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.

(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 ~~[tests carried out in the Exploration phase];~~

(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) 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;

(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 ~~[Good Industry Practice,]~~ ~~[Best Available Techniques,]~~ 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 the]~~ training programme for all persons engaged or to be engaged in activities in the project ~~[or its]~~ area;

(r) Details of ~~[Mining]~~ ~~d~~Discharges, including those defined and regulated by relevant rules and regulations issued by the International Maritime Organization, within the ~~Mining Area~~ ~~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.

(t) Details of any practicable Restoration and ~~R~~ehabilitation of the ~~Mining Area~~ ~~project area~~ and the monitoring of their success;

(u) A plan for further research and studies;

(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

## Annex VIII

### Closure Plan

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

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

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

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

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

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

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

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

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

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

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

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

(l) Information on reporting and management of data and information post closure including information on how data will be archived and made [publicly] available post-

closure, and how the formatting of submitted datasets and reports will be consistent with best scientific practices;

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

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

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

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

## **Annex IX**

### **Exploitation Contract and schedules**

THIS CONTRACT made the ... day of ... between the INTERNATIONAL SEABED AUTHORITY represented by its SECRETARY-GENERAL (hereinafter referred to as “the Authority”) and ... represented by ... (hereinafter referred to as “the Contractor”) WITNESSETH as follows:

#### **A. Incorporation of clauses**

The standard clauses set out in Annex X to the Regulations on exploitation of Mineral resources in the Area shall be incorporated herein and shall have effect as if herein set out at length.

#### **B. Contract Area**

For the purposes of this Contract, the “Contract Area” means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

#### **C. Grant of rights**

In consideration of (a) their mutual interest in the conduct of Exploitation in the Contract Area pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the Convention, (b) the rights and responsibility of the Authority to organize and control activities in the Area, particularly with a view to administering the resources of the Area, in accordance with the legal regime established in Part XI of the Convention and the Agreement and Part XII of the Convention, respectively, and (c) the interest and financial commitment of the Contractor in conducting activities in the Contract Area and the mutual covenants made herein, the Authority hereby grants to the Contractor the exclusive right to Explore for and Exploit [specified Resource category] in the Contract Area in accordance with the terms and conditions of this [Contract](#).

#### **D. Entry into force and Contract term**

This Contract shall enter into force on signature by both parties and, subject to the standard clauses, shall remain in force for an initial period of [x] years thereafter unless the Contract is sooner terminated, provided that this Contract may be renewed in accordance with the regulations.

#### **E. Entire agreement**

This Contract expresses the entire agreement between the parties, and no oral understanding or prior writing shall modify the terms hereof.

## **F. Languages**

This Contract will be provided and executed in the [ ... and] English language[s] [and both texts are valid].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed this Contract at ..., this ... day of ....

## **The Schedules to the Exploitation Contract**

### **Schedule 1**

Coordinates and illustrative chart of the Contract Area and proposed Mining Area(s).

### **Schedule 1 bis**

[Certificate of sponsorship]

### **Schedule 2**

The Mining Workplan.

### **Schedule 3**

The Financing Plan.

### **Schedule 4**

The Emergency Response and Contingency Plan.

### **Schedule 5**

The Health and Safety Plan and the Maritime Security Plan.

### **Schedule 6**

The Environmental Management and Monitoring Plan.

### **Schedule 7**

The Closure Plan.

### **Schedule 8**

The Training Plan.

### **Schedule 9**

Conditions, amendments and modifications agreed between the Commission and the Contractor, and approved by the Council, during the application approval process.

### **Schedule 10**

Where applicable under Regulation 26, the form of any Environmental Performance Guarantee, and its related terms and conditions.

### **Schedule 11**

Details of insurance policies taken out or to be taken out under Regulation 36.

### **Schedule 12**

Agreed review dates for individual plans, together with any specific terms attaching to a review, where applicable.

**Schedule 13**

To the extent that any documentation is not available at the point of signing the Contract, and a time frame for submission has been agreed with the Commission, this should be reflected here, together with, where applicable, deadline dates.

**Schedule 14**

The Parent Company Liability Statement.



## Annex X

### Standard clauses for Exploitation Contract

#### ~~Section 1~~ ~~Definitions~~

~~In the following clauses:~~

~~(a) "Regulations" means the regulations on exploitation of mineral resources in the Area, adopted by the Authority; and~~

~~(b) "Contract Area" means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.~~

#### **Section 2** **Interpretation**

2.1 Terms and phrases defined in the regulations have the same meaning in these standard clauses.

2.2 In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Contract and references in this Contract to the Convention are to be interpreted and applied accordingly.

#### **Section 3** **Undertakings**

3.1 The Authority undertakes to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with Article 157 of the Convention.

3.2 The Contractor shall implement this ~~C~~contract in good faith and shall in particular implement the Plan of Work in accordance with Regulation 18bis, Good Industry Practice [and Best Environmental Practices]. For the avoidance of doubt, the Plan of Work includes:

- (a) The Mining Workplan;
- (b) The Financing Plan;
- (c) The Emergency Response and Contingency Plan;
- (d) The Training Plan;
- (e) The Environmental Management and Monitoring Plan;
- (f) The Closure Plan; and
- (g) The Health and Safety Plan and Maritime Security Plan,

that are appended as schedules to this Contract, as the same may be amended from time to time in accordance with the regulations.

3.3 The Contractor shall, in addition:

(a) Comply with the regulations, as well as other r~~R~~ules, regulations and procedures of the Authority, as amended from time to time, and the decisions of the relevant organs of the Authority;

(b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

(c) Pay all fees and royalties required or amounts falling due to the Authority under the regulations, including all payments due to the Authority in accordance with Part VII of the regulations; and

(d) Carry out its obligations under this Contract with due diligence, including compliance with the rules, regulations and procedures ~~of adopted by~~ the Authority to ensure effective ~~P~~rotection for the Marine Environment, and exercise reasonable regard for other activities in the Marine Environment.

## **Section 4**

### **Security of tenure and exclusivity**

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct Exploration and Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure, and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein and the Regulations. ~~[Any impacts from activities in the Area carried out under an Exploitation Contract must be strictly limited to the Contractor area.]~~

4.2 The Authority undertakes not to grant any rights to another person to Explore for or Exploit the same resource category in the Contract Area for the duration of this Contract.

4.3 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than the resource category specified in this Contract but shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation activities of the Contractor.

4.4 If the Authority receives an application for an Exploitation Contract in an area that overlaps with the Contract Area, the Authority shall notify the Contractor of the existence of that application within 30 Days of receiving that application.

## **Section 5**

### **Legal title to Minerals**

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof; ~~[onto the Contractor's mining vessel or Installation and receipt by the Authority of the required payment for those Minerals]~~, in compliance with this Contract.

5.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

## **Section 6**

### **Use of subcontractors and third parties**

6.1 No Contractor may subcontract any part of its obligations under this Contract unless the subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority.

6.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its subcontractors and any work that is further subcontracted, in accordance with Good Industry Practice.

~~[6.2.bis. The Contractor shall apply due diligence in selecting its suppliers, and shall be responsible to ensure the adequacy of goods and services it procures, in accordance with Good Industry Practice].~~

6.3 Nothing in this section shall relieve the Contractor of any obligation or liability under this Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under this Contract in the event that it subcontracts any aspect of the performance of those obligations.

## **Section 7 Responsibility and liability**

7.1 [In accordance with the ‘polluter pays’ principle,] the Contractor shall be liable to the Authority for the actual amount of all environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising out of activities of the Contractor~~any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract [arising out of its wrongful acts [or omissions]],~~ account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage ~~[arising out of the Contractor's wrongful acts [or omissions]]~~ regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. ~~[For the purpose of clauses 7.1 and 7.2, ‘wrongful acts or omissions’, means any unlawful act or omission attributable to the Contractor that results in damage not anticipated and approved in the Plan of Work, irrespective of bad intention or negligence]. [Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay out in lieu of actual reinstatement, and/or measures to compensate for third party economic loss, as well as pure ecological loss and harm to the living resources of the Area.] For the avoidance of doubt, strict liability in this context applies the polluter pays principle, and means, it is not necessary to prove that a Contractor intended to commit or was reckless as to committing a wrongful act or omission, it is necessary only to demonstrate unpermitted damage or harm arose as a result of a Contractor’s wrongful act for the Contractor to be held liable for that damage or harm.~~

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising from activities of the Contractor~~, wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.~~

7.3 The Authority shall be liable to the Contractor for the actual amount of any damage caused to the Contractor arising out of its wrongful acts in the exercise of its powers and functions, including violations under Article 168 (2) of the Convention, account being taken of contributory acts or omissions by the Contractor~~, its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract,~~ or third parties.

7.4 The Authority shall indemnify the Contractor, ~~its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract,~~ against all claims and liabilities of any third party arising out of any wrongful acts or omissions in the exercise of its powers and functions hereunder, including violations under Article 168 (2) of the Convention.

## **Section 8**

### **Force Majeure**

8.1 The Contractor shall not be liable for an unavoidable delay or failure to perform any of its obligations under this Contract due to Force Majeure, provided the Contractor has taken all reasonable steps to overcome the delay or obstacle to performance. For the purposes of this Contract, Force Majeure shall mean an event or condition that the Contractor could not reasonably be expected to prevent or control; provided that the event or condition was not caused by Contractor action, negligence or by a failure to observe Good Industry Practice.

8.2 The Contractor shall give written notice to the Authority of the occurrence of an event of Force Majeure as soon as reasonably possible after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance and if a remedy is possible, the estimated time to cure or overcome the event or circumstance and the obligations that cannot be properly or timely performed on account of the event or circumstance) and similarly give written notice to the Authority of the Restoration of normal conditions.

8.3 The Contractor shall, upon request to the Secretary-General, be granted a time extension equal to the period by which performance was delayed hereunder by Force Majeure and the term of this Contract shall be extended accordingly.

## **Section 9**

### **ExtensionRenewal**

9.1 The Contractor may ~~extent~~renew this Contract in accordance with Regulation 20, ~~for periods not more than 10 years each, on the following conditions:~~

~~(a) The resource category is recoverable annually in commercial [and profitable] quantities from the Contract Area;~~

~~(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;~~

~~(c) This Contract has not been terminated earlier; and~~

~~(d) The Contractor has paid the applicable fee in the amount specified in appendix H to the regulations.~~

~~9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.~~

~~9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract [shall be] [may be] renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.~~

## **Section 10 Renunciation of rights**

10.1 The Contractor, by prior written notice to the Authority, may renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

## **Section 11 Termination of sponsorship**

[Omitted]

## **Section 12 Suspension and termination of Contract and penalties**

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:

(a) If, in spite of written warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this Contract, Part XI of the Convention, the Agreement and the rules, regulations and procedures of the Authority;

(b) If the Contractor has failed, within a reasonable period, to comply with a final binding decision of the dispute settlement body applicable to it;

(c) If the Contractor knowingly, recklessly or negligently provides the Authority with information that is false or misleading;

(d) If the Contractor or any person standing as surety or financial guarantor to the Contractor pursuant to Regulation 26 of the Regulations becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee ~~or receiver~~ for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction; or

(e) If the Contractor has not made bona fide efforts to achieve or sustain Commercial Production and is not recovering Minerals in commercial quantities at the end of five years from the expected date of Commercial Production, save where the Contractor is able to demonstrate to the Council's satisfaction good cause, which may include Force Majeure, [good faith efforts to comply with the environmental obligations imposed by the Authority,] or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving Commercial Production.

12.2 The Council may, without prejudice to Section 8, after consultation with the Contractor, suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if the Contractor is prevented from performing its obligations under this Contract by reason of an event or condition of Force Majeure, as described in Section 8, which has persisted for a continuous period exceeding 2 years, despite the Contractor having taken all reasonable measures to overcome its inability to perform and comply with the terms and conditions of this Contract with minimum delay.

12.3 Any suspension or termination shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate this Contract in accordance with Part XI, Section 5, of the Convention. In such a case, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

[12.4 If the Contractor takes such action, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.]

12.5 If the Council has suspended this Contract, the Council may by written notice require the Contractor to resume its operations and comply with the terms and conditions of this Contract, not later than 60 Days after such written notice.

12.6 In the case of any violation of this Contract not covered under Section 12.1 (a), or in lieu of suspension or termination under Section 12, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation.

12.7 Subject to Section 13, the Contractor shall cease operations upon the termination of this Contract.

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

### **Section 13** **Obligations on ~~Suspension or following Expiration, Surrender or~~** **Termination of a Contract**

13.1 In the event of termination, ~~expiration or surrender~~ of this Contract, the Contractor shall:

(a) Comply with the ~~F~~final Closure Plan, and the Environmental Management and Monitoring Plan and continue to perform the required environmental management of the Contract Area as set forth in the ~~F~~final Closure Plan and for the period established in the ~~F~~final Closure Plan;

(b) Continue to comply with relevant provisions of the regulations, including:

(i) Maintaining and keeping in place all insurance required under the regulations;

(ii) Paying any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of ~~suspension or~~ termination; and

(iii) Complying with any obligation to meet any liability under Section 8;

(c) Remove all Installations, plant, equipment and materials in the Contract Area; and

(d) Make the area safe so as not to constitute a danger to persons, shipping or [to result in adverse impacts, or a reasonable likelihood of such impacts, to] the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any,

shall be deducted from the Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

## **Section 14**

### **Transfer of rights and obligations**

[Omitted]

## **Section 15**

### **No waiver**

No waiver by either party of any rights pursuant to a breach of the terms and conditions of this Contract to be performed by the other party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

## **Section 16**

### **Modification of terms and conditions of this Contract**

16.1 When circumstances have arisen or are likely to arise after this Contract has commenced which, in the opinion of the Authority or the Contractor would render this Contract inequitable or make it impracticable or impossible to achieve the objectives set out in this Contract or in Part XI of the Convention, the parties shall enter into negotiations to revise it accordingly.

16.2 This Contract may be revised by agreement between the Contractor and the Authority.

16.3 This Contract may be revised only:

- (a) With the consent of the Contractor and the Authority; and
- (b) By an appropriate instrument signed by the duly authorized representatives of the parties.

16.4 Subject to the confidentiality requirements of the regulations, the Authority shall publish information about any revision to the terms and conditions of this Contract.

## **Section 17**

### **Applicable law**

17.1 This Contract is governed by the terms of this Contract, the ~~r~~Rules, regulations and procedures of the Authority and other rules of international law not incompatible with the Convention.

17.2 The Contractor, ~~its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract~~ shall observe the applicable law referred to in Section 17.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

17.3 Nothing contained in this Contract shall be deemed an exemption from the necessity of applying for and obtaining any permit or authority that may be required for any activities under this Contract.

17.4 The division of this Contract into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

**Section 18  
Disputes**

Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part XII of the Regulations.

**Section 19  
Notice**

Any notice provided to or from one party to another pursuant to this Contract shall be provided in accordance with the notice provision set out at Regulation 91 of the Regulations.

**Section 20  
Schedules**

This Contract includes the schedules to this Contract, which shall be an integral part hereof.



## Annex X ~~bis ter~~ ~~[Alt.]~~

### Design Criteria for Impact Reference Zones (IRZs) and Preservation Reference Zones (PRZs)

Applicants must establish suitable and effective Impact Reference Zones (IRZs) and Preservation Reference Zones (PRZs) in order to monitor the Environmental Impacts of their activities. The following parameters shall apply in the designation of IRZs and PRZs.

1. IRZs and PRZs must be situated within the Contract Area (and the Contract Area may need to be selected around the need for appropriate IRZ/PRZs, especially where multiple or large reference zones are required)
2. The applicant needs to demonstrate that the IRZ/PRZs are environmentally similar before the commencement of mining. [Additional PRZs and IRZs have to be introduced subsequently, once areas ecologically dissimilar from the primary PRZ are impacted, to warrant future comparability.]
- ~~3. To designate representative IRZs/PRZs requires characterisation of the pelagic and benthic environment including all sub-habitats that may be impacted by Exploitation activities mining operations, and determination of regional distributions and patterns of connectivity of communities. Temporal variation must also be evaluated over multiple years.~~
- ~~4.3.~~ IRZs must be zones where direct impacts from mining are predicted to occur once mining commences.
- ~~5. All types of impact [from mining related activities in any Contract Area identified in the Environmental Impact Statement], must correspond with [at least 1] IRZ/IRZs] which will enable the Contractor to monitor these impacts. Designation of multiple IRZs [(or a very large IRZ) may be necessary is possible] for this purpose.~~
- ~~6.4.~~ The area(s) of the IRZ(s) needs to be sufficiently large and representative to allow adequate assessment of recovery of populations and environmental conditions after the Exploitation activities, in accordance with the applicable~~relevant~~ Standards, and taking into consideration~~account~~ relevant Guidelines.
- ~~7.5.~~ PRZs will be important in identifying natural variations in environmental conditions against which impacts shall be assessed and must be comparable to that of the impacted areas, in accordance with the applicable~~relevant~~ Standards and, taking into consideration~~account~~ the relevant Guidelines. [The abiotic and biotic baseline data include but are not limited to the quantity and quality of mineral resources, species composition and habitat types.]
- ~~8.6.~~ PRZs must be areas that will not be impacted by Exploitation activities from any Contractor, including impacts from operational and discharge plumes and including during the post-closure period. PRZs should~~must~~ also be free from impacts of other industrial activities. PRZs should~~must~~ have to remain unimpacted throughout the post-mining monitoring period.
- ~~9.7.~~ Where a Contract Area consists of several disjunct sub-areas that are isolated from each other, then each of those areas would require a corresponding PRZ and IRZ.
- ~~10.8.~~ Use of multiple PRZs and IRZs should be considered for increase in statistical rigour, and chance of detecting effects and adding redundancy in case of unexpected variation/plan changes.
- ~~11.9.~~ The area of the PRZ needs to be sufficiently large to contain sufficiently large populations to guarantee long-term survival. The PRZ will also require a buffer

zone around it to protect the populations and ensure maintenance of natural environmental conditions in the PRZ.

- ~~12. Abiotic and biotic parameters, within the IRZ and PRZ will need to be monitored to quantify impacts. This includes but is not limited to monitoring species diversity and function. To establish an adequate baseline and to find suitable indicator species (e.g., the sensitive species that will suffer most from an impact, key stone species that are crucial for ecosystem processes, or species which abundance indicates a disrupted ecosystem functioning), it will be necessary to catalogue most species in the IRZ and PRZ in question and unravel their functions. This will require sufficient sampling effort to collect sample sizes that allow for a meaningful comparison (i.e., with high statistical power).~~
- ~~13. The longevity of PRZs and duration of post monitoring are important. The duration of post mining monitoring should last until [monitoring results show a trajectory towards recovery. Post mining monitoring should be described in the final EMMP and/or Closure Plan] no measurable difference between IRZ and PRZ can be detected anymore. [13 Alt. Post mining monitoring shall continue until [monitoring show a trajectory towards recovery of] ecosystem function [returns to the level of the pre mining condition] agreed within the EMMP/Closure Plan and taking into account the time taken to reach a new equilibrium state.]~~
14. Isolation of PRZs is important. Any PRZ will by definition have to remain unimpacted throughout the post-mining monitoring period.
- ~~15. To designate representative IRZs/PRZs requires characterisation of the pelagic and benthic environment including all sub habitats that may be impacted by Exploitation activities mining operations, and determination of regional distributions and patterns of connectivity of communities. Temporal variation must also be evaluated over multiple years.~~
- ~~16. An applicant will need to be able to demonstrate knowledge of species' ecological requirements (e.g. for successful reproduction); an average population density alone will not suffice.~~

**Comment**

Since this annex specifies the design criteria for IRZs and PRZs, the main text should include provisions regarding their installation. Furthermore, it has been suggested that significant parts of this annex are moved to Guidelines. The deleted elements have been placed in the revised suspense document.

## **Annex XI**

### **Parent Company Liability Statement**

THIS “STATEMENT” made the ... day of ... by

- A. [insert name of Managing Company], with its statutory seat at [insert address and home State] and registered at [insert Chamber of Commerce or Trade Register details], represented by ..., with the authority to provide this Statement on behalf of [Managing Company]; and
  
- B. [insert name of Contractor], with its statutory seat at [insert address and home State] and registered at [insert Chamber of Commerce or Trade Register details], represented by ..., with the authority to provide this Statement on behalf of [Contractor]; and

irrevocably and unconditionally DECLARE and REPRESENT that:

#### **Obligations of [Managing Company]**

- 1. [Managing Company] is jointly and severally liable for any debts and liabilities of [Contractor] arising in relation to:
  - (i) the obligations of [Contractor] that follow from the agreement that is to be concluded between [Contractor] and the International Seabed Authority for the exploitation of Mineral resources in the Area (hereinafter referred to as “the Exploitation Contract”);
  - (ii) the acts performed by [Contractor] in the performance of the Exploitation Contract; and
  - (iii) the omissions that [Contractor] makes in the performance of the Exploitation Contract (hereinafter referred to as “the Joint and Several Liability Obligation”);
  
- 2. [Managing Company] has the financial capability to comply with the Joint and Several Liability Obligation, or can draw on a parent company or its shareholders in order to do so (hereinafter referred to as “Certainty of Funds”);

3. [Managing Company] confirms that the Contractor is adequately insured to perform the Exploitation Contract in accordance with the applicable regulations and that such insurance will remain in place until such time as the Contractor's insurance should be in place, in accordance with the Regulations on Exploitation of Mineral Resources in the Area (hereinafter referred to as "the Regulations") and the Exploitation Contract (hereinafter referred to as "Certainty of Insurance");

4. [Managing Company] will procure that [Contractor] complies with the terms and conditions of their Exploitation Contract and the rules, regulations and procedures of the International Seabed Authority, in a manner consistent with the Convention and the Agreement, by among others, but not limited to, exercising its voting rights in the shareholder's meeting of [Contractor] and issuing instructions to the directors of [Contractor], when it is competent to do so;

### **Enforcement of Obligations of [Managing Company]**

5. At any given point in time, the International Seabed Authority is authorized to request documentation to support the [Managing Company's] compliance with its obligations of Certainty of Funds and Certainty of Insurance, and that failure to do so within 15 working days or inability to substantiate such Certainty of Funds or Certainty of Insurance has to be remedied by [Managing Company] within a period of 90 days;

6. Should [Managing Company] fail to comply with the obligations in provision 5 above, the International Seabed Authority shall suspend the Exploitation Contract by issuing a written notice to the Managing Company and the Contractor in accordance with the applicable regulations, as a consequence of which the Contractor shall cease its operations in the exercise of the Exploitation Agreement until the International Seabed Authority is satisfied that [Managing Company] has remedied its failure to comply with the obligations in provision 5 above;

7. Notices to [Managing Company] and [Contractor] are to be sent to the following address: [insert contact details of Managing Company and Contractor].

### **Miscellaneous Provisions**

8. If [Contractor] transfers its rights and obligations under an Exploitation Contract in whole, [Contractor] and [Managing Company] shall procure that the party that qualifies as the "Managing Company" under Regulations of the Transferee provides a statement substantially in the same form as Schedule 14 to the Exploitation Contract (Parent Company Liability Statement);

9. If [Contractor] transfers its rights and obligations under an Exploitation Contract in part, this STATEMENT shall remain in full force and effect, unless [Contractor] and [Managing Company] procure that the party that qualifies as the “Managing Company” under Regulations of the Transferee provides a statement substantially in the same form as Schedule 14 to the Exploitation Contract (Parent Company Liability Statement);

10.If [Managing Company] no longer directly or indirectly owns or controls [Contractor], the party that comes to qualify as the “Managing Company” under the Schedule to the Regulations shall issue a statement substantially in the same form as Schedule 14 to the Exploitation Contract (Parent Company Liability Statement);

11. This STATEMENT or the obligations provided for in this STATEMENT cannot be assigned, transferred or novated;

12. A change in the corporate seat of [Managing Company] does not affect the validity of this STATEMENT;

13. [Managing Company] undertakes not to engage in any contracting or other corporate practice that serves to avoid its liability and responsibility as provided for under this STATEMENT;

14. This STATEMENT shall remain in effect after the termination of the Exploitation Contract and can be invoked for any conduct that is reasonably attributable to the Contractor; and

15. Any disputes arising in relation to this STATEMENT shall be settled in accordance with Part XII of the Regulations. [Managing Party] herewith provides its explicit written consent to being a party to such dispute settlement procedures.

## Appendix I

### Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of Regulation 34 include any of the following events, except for where it constitutes an Incident for the purposes of these Regulations:

1. Occupational lost time illness.
2. Occupational lost time injury.
3. Marine Mammal Fatality.
4. Significant leak of hazardous substance [as determined in accordance with the applicable Standard and taking into consideration the applicable Guideline].
5. Unauthorized Mining Discharge.
6. Adverse environmental conditions [with likely][that cause or likely to cause] significant safety ~~and~~/or environmental consequences.
7. Significant threat or breach of security, [including cyber security].
8. Impairment ~~or~~ damage to safety or environmentally critical equipment, [where such impairment or damage prevents compliance with the Regulations].
9. Contact with fishing gear resulting in its damage.
10. ~~[Suspected]~~ Contact with submarine pipelines or cables resulting in its damage [or an event that is likely to such damage].
11. Contact with equipment related to marine scientific research resulting in its damage.

## **Appendix II**

### **Schedule of annual, administrative and other applicable fees**

[Omitted. Suggested replaced to a separate decision of the Council, as per the proposal of several delegations, and is currently placed in the suspense document.]

## **Appendix III**

### **Monetary Penalties**

[Omitted. Suggested replaced to a separate decision of the Council, as per the proposal of several delegations, and is currently placed in the suspense document.]

## **Appendix IV**

### **Determination of a royalty liability**

[Omitted. Suggested replaced to the Standard and Guidelines and is currently placed in the suspense document.]

## **Standard and Guidelines concerning financial terms of a Contract**

[Currently placed in the Revised Suspense Document.]

## Schedule

### Use of terms and scope

#### Comments

- Many textual proposals have been received over time in respect of the Schedule in the different informal working groups. Here, a consolidated and streamlined version is presented in a clean format. Some terms and scope are still outstanding and is awaiting further consideration and proposed language.
- Several proposals have been received in respect of the terms and scope of Underwater Cultural Heritage, and in the latest version of the Consolidated Text, the intersessional working group had suggested to refrain from defining it in the Schedule. With the new work of the group, it has been suggested to insert definitions of “Underwater Cultural Heritage”, “Tangible Underwater Cultural Heritage” and “Intangible Underwater Cultural Heritage”. This should be discussed and resolved.

“**Authority**” means the International Seabed Authority as established by part XI of the Convention and for the purposes of these Regulations shall include all organs of the Authority save for the Enterprise, except where the Enterprise is expressly stated as being included.

“**Agreement**” means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

“**Best Available Scientific [Information]/[Knowledge]**” means the scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies, including peer review.

[“**Best Available Techniques**” means the latest stage of development, and state-of-the-art processes, facilities or methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the Protection of the Marine Environment from the harmful effects of activities in the Area, taking into account the guidance set out in the applicable Standards and Guidelines.]

[**Alt. “Best Available Techniques”** means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

(a) ‘techniques’ includes both the technology used and the way in which the Installation is designed, built, maintained, operated and Decommissioned;

(b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.

(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;]



**“Best Environmental Practices”** means the application of the most appropriate combination of environmental control measures and strategies, for purposes of ensuring the effective protection of the Marine Environment, and based on the Best Available Scientific Information and Best Available Technology that will change with time in the light of improved knowledge, understanding or technology, as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities and in accordance with applicable Standards taking into account the relevant Guidelines .

**“Calendar Year”** means a period of 12 months, ending with 31 December.

**“Change of Control”** means where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee

**“Closure”** means activities undertaken within a Contract Area once Commercial Production has ceased, and includes: Decommissioning, post-mining monitoring and reporting, and any Rehabilitation and Restoration or compensatory measures that may be agreed.

**“Closure Plan”** means a document that contains an integrated environmental, social and economic base case for Decommissioning, closure and postclosure activities and conditions against which future monitoring can be compared. It will be revised through the lifetime of the Exploitation Contract and must be considered as an integral part of operational planning.

**“Commercial Production”** shall be deemed to have begun where a Contractor engages in Sustained Large-scale Recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.

**“Commission”** means the Legal and Technical Commission of the Authority.

**“Communication”** means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these Regulations;

**“Compliance Notice”** means [to be defined]

**“Confidential Information”** shall have the meaning assigned to that term by Regulation 89.

**“Contract Area”** means the part or parts of the Area allocated to a Contractor under an Exploitation Contract and defined by the coordinates listed in schedule 1 to such Exploitation Contract.

**“Contractor”** means any party to an Exploitation Contract (other than the Authority) in accordance with Part III of these Regulations and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the Exploitation Contract.

**Explanation / Comment**

The definition intends to encompass the Enterprise as well as other Contractors. It is necessary to assess whether this wording is the most comprehensive and whether it necessitates amendments to some Regulations. There are some uses of “Contractor” in the Regulations that do not intend to include the Enterprise. In general, it is also necessary to streamline these references once, it has been decided how reference should be made to Contractors and the Enterprise.

Another element that has been raised by a delegation is the fact that the term “Contractor” presently includes the Contractor’s employees, subcontractors, agents and all persons engaged in working or acting for the Contractor in the conduct of its operations under the Exploitation Contract where the context applies. It should be discussed how this broad definition of Contractor should be read across the various regulations and what the implications on commercial activities would be.

“**Convention**” means the United Nations Convention on the Law of the Sea.

“**Council**” means the executive organ of the Authority established under Article 158 of the Convention.

“**Cumulative Environmental Effect**” means any [material] consequences in the Marine Environment arising over time from the conduct of Exploitation activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority. In case of cumulative effects, the combination of all effects in the same area may be more severe than the sum of its parts.

“**Day**” means calendar Day.

“**Decommissioning**” means measures taken, whether onshore or offshore, to permanently cease the operations, remove, or dispose of structures, facilities, Installations, and other equipment erected or used for the purposes of activities undertaken pursuant to an Exploitation Contract, in connection with the abandonment or cessation or partial cessation of those activities in a Contract Area or part of a Contract Area.

“**Designated Representative**” means the person so named on behalf of a Contractor on the Seabed Mining Register or prior to award of the Exploitation Contract, in the application.

“**Effect**” is the consequence or outcome of an action or activity during the project; it is typically broader and more functional than an impact.

“**Effective Control**” or “**effectively controlled**” means a required, substantial and genuine link between Sponsoring State and Contractor, which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the Sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its Exploitation Contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the Sponsoring State or otherwise.

“**Effective Control**” or “**effectively controlled ALT**” means the substantial and genuine link between Sponsoring State and Contractor, demonstrated by the Contractor being a national of the Sponsoring State and being subject to its effective jurisdiction and regulatory control.

“**Emergency Response and Contingency Plan**” means the document referred to in Annex V.

“**Environmental Effect**” means any consequences in the Marine Environment, arising from [Environmental Impacts caused by] the conduct of Exploitation activities, being positive, negative, direct, indirect, temporary or permanent.

[**Alt. “Environmental Effect**” means any material consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, cumulative, temporary or permanent.]

“**Environmental Impact**” means changes, physical and or chemical, to the environment, resulting from Exploitation activities.

**“Environmental Impact Assessment”** means the process of identifying, predicting, evaluating and mitigating the physicochemical, biological, socioeconomic, and other relevant effects of development proposals prior to major decisions being taken and commitments made. This includes all potential effects, both positive and negative, and encompasses natural and anthropogenic receptors.

**“Environmental Impact Statement”** means the documentation of the Environmental Impact Assessment, which describes the predicted effects of the project on the environment (and their significance), the measures that the applicant is committed to taking to avoid, minimise and reduce them where possible, and the remaining effects that cannot be avoided.

**“Environmental Management System”** means the part of the overall management system [implemented]/[applied] by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals, objectives and environmental performance.

[Alt. **“Environmental Management System”** means part of the management system used to manage environmental aspects, fulfil compliance obligations, and address risks and opportunities.]

**“Environmental Risk Assessment”** means the process for identifying and evaluating Environmental Risk using a generally accepted risk assessment methodology.

**“Environmental Performance Guarantee”** means a financial guarantee supplied under Regulation 26.

**“Environmental Performance Guarantor”** means each entity or individual that provides an Environmental Performance Guarantee in accordance with these Regulations.

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

**“Exploit”** and **“Exploitation”** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in area beyond national jurisdiction, for the production and marketing of metals, as well as the Decommissioning and Closure of Exploitation activities.

**“Exploitation Contract”** means an exploitation contract entered into between the Authority and a Contractor in the form prescribed in Regulation 17 and Annex IX to these Regulations.

**“Exploration Regulations”** means the regulations on prospecting and exploration for polymetallic nodules in the Area, the regulations on prospecting and exploration for polymetallic sulphides in the Area and the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

**“Explore”** and **“Exploration”**, as applicable, mean the searching for Resources in the Area with exclusive rights, the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation.

**“Feasibility Study”** means a comprehensive study of a Mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

**“Final Closure Plan”** means the version of a Contractor’s Closure Plan that has been approved by the Council pursuant to Regulation 60.

**“Financial Incentive”** means a financial grant or reduction of amounts otherwise payable to the Authority which otherwise complies with the requirements for financial incentives in these Regulations and in Standards and Guidelines.

**“Financing Plan”** means the document referred to in Annex III.

**“Force Majeure”** means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor.

**“Good Industry Practice”** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide [and includes meeting the performance requirements under the rules, regulations and procedures of the Authority].

**“Guidelines”** means such documents issued by the organs of the Authority pursuant to Regulation 95.

**“Impact Area”** means the zone or region on the seafloor and in the water column subject to measurable effects from activities under an Exploitation Contract related to 1 or several Mining Area(s).

**“Impact Reference Zone”** (or “IRZ”) means a zone designated within the Contract Area [in accordance with Annex X bis to these Regulations] that is representative of the environmental characteristics of the Contract Area, is predicted to be impacted by Exploitation activities, and will be used to assess the effects of activities under an Exploitation Contract on the Marine Environment, including by way of comparison with the Preservation Reference Zones.

**“Incident”** means an event, or sequence of events, where activities in the Area result in:

(a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);

(b) A significant unanticipated or unpermitted adverse impact to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such adverse impact was only narrowly avoided is a reasonably foreseeable consequence of the situation; and/or

(c) Damage to a submarine cable or pipeline, or any Installation.

**“Incidents Register”** means a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events.

**“Independent Auditor”** means an auditor appointed by [the Contractor] to conduct an audit in respect of a Contractor and/or its related entities in accordance with the relevant Standards and applicable Guidelines.

**“Inspector”** means a person acting under Part XI of these Regulations.

**“Inspector Code of Conduct”** means [to be inserted]

**“Installations”** includes, insofar as they are used for carrying out activities in the Area, structures and platforms, whether stationary or mobile.

[**“Managing Company”** means [to be inserted]

**“Marine Environment”** includes the physical, chemical, oceanographic geological, genetic, and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, species, biodiversity, ecosystems, as well as the seabed and ocean floor and subsoil thereof.

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

[**Alt “Material Change”** means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.]

[**Alt 2 “Material Change”** means a change that effects the fundamental basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority].

**“Metal”** means any metal contained in a Mineral.

**“Minerals”** means Resources that have been recovered from the Area.

**“Mining Area”** means the part or parts within the Contract Area from which Minerals will be extracted, as described in a Plan of Work, as may be modified from time to time in accordance with these Regulations.

**“Mining Discharge”** means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site and includes but is not limited to, disposal, spilling, leaking, pumping, emitting, emptying, or discharging.

**“Mining Workplan”** means the document referred to in Annex II, including any modifications made from time to time in accordance with these Regulations.

**“Mitigate”** and **“Mitigation”** means acting/an action or activity intended to remedy, reduce or offset known potential negative impacts to the environment. These occur in a strict hierarchy:

(a) Avoiding an Environmental Effect altogether by undertaking or not undertaking a certain activity or parts of an activity;

(b) For Environmental Effects that cannot be avoided, minimizing effects by limiting the degree or magnitude of the activity and its implementation [to the extent practicable and necessary to ensure protection of the Marine Environment];

(c) For Environmental Effects that cannot be avoided or minimised rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and

(d) For Environmental Effects that cannot be avoided, minimised or rectified, reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;

[(e) Offsetting, only as a last resort.]

[**“Monopolize”** means the ability to control over 75 per cent of the estimated annual volume of similar Mineral-bearing ore exploited, produced or removed from the Area

after Commercial Production has occurred in respect of at least 2 Exploitation Contracts.]

**["Parent Company Liability Statement"]** means the statement that is to be validly signed by the Contractor and the Contractor's Managing Company on behalf of those companies, and provided by the Contractor as Schedule 14 to the Exploitation Contract, as amended from, yet substantially in the same form as, Annex XI to these Regulations.]

**["Pilot Mining"]** means an *in situ* operating of the integrated system of all equipment and all related process steps, including collector, raiser and release techniques, for exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which provides evidence concerning, inter alia, environmental impact, commercial capacity, duration of operations to validate feasibility of future Commercial Production.]

**Comment**

This suggested term is interrelated to a proposal concerning draft regulation 48 ter on test mining and reference is also made to the reference to "Test Mining" and "Test Mining ALT" below.

**"Plan of Work"** means a Plan of Work for Exploitation in the Area, defined collectively as all and any plans or other documents setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an Exploitation Contract.

**"Preservation"** means the maintenance of the environment, lands and natural resources without anthropogenic use beyond access.

**"Preservation Reference Zone"** (or "PRZ") means a zone designated within the Contract Area in accordance with Annex X bis to these Regulations that has been identified as having similar ecological characteristics to an Impact Reference Zone, and within which no mining impacts are predicted to occur, which will be used to show a representative and stable ecosystem from the sea surface to the benthic subsurface layers, and can be used to form a comparison with an Impact Reference Zone.

**"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 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.

**"Regulations"** means the regulations on exploitation of Mineral resources in the Area, adopted by the Authority.

**"Rehabilitation"** means an occurrence of when an ecosystem recovers certain characteristics of its natural state, such as the presence of certain species, functions or services.

**"Regional Environmental Management Plan"** means a proactive spatial management strategy that anticipates exploitation and that includes the designation of Areas of Particular Environmental Interest.

**“Related Parties” or “Related Party”** means parties that belong to the same corporate structure, such as a parent and subsidiary company, or sister companies which are both subsidiaries of the same parent company, and a state enterprise shall be considered a “related party” vis-à-vis its host State party or a Contractor sponsored by its host State party unless evidence is provided that any costs, prices and revenues have been charged or determined on an arm’s-length basis.

**“Relevant Activities”** means all activities and business operations which are connected or associated with the mining, harvesting, transporting, processing and/or sale of Minerals or Metals obtained under an Exploitation Contract.

**“Reserved Area”** means any part of the Area designated by the Authority as a reserved area in accordance with Article 8 of Annex III to the Convention.

**“Resources”** means all solid, liquid or gaseous Mineral resources, Mineral-bearing ore, associated Minerals, or mixture thereof *in situ* in the Area at or beneath the seabed.

**“Restoration”** means a return to pre-disturbance conditions.

**“Roster of Inspectors”** means [to be inserted]

**“Rules of the Authority”** means [the Convention, the Agreement,] these Regulations and other rules, regulations and procedures of the Authority, including Standards and Guidelines as may be adopted from time to time.

**“Scoping Report”** means [to be inserted]

**“Seabed Mining Register”** means the registry established and maintained by the Authority in accordance with Regulation 92.

[**“Serious Harm”** means any effect from activities in the Area on the Marine Environment which represents an [unlawful] significant adverse change in the Marine Environment determined according to the rules, regulations and procedures of the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Information [and, where available, relevant traditional knowledge of Indigenous Peoples and local communities].]

[**“Serious Harm to the Marine Environment ALT”** means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:

(a) it is not likely to be redressed through natural recovery within a reasonable period;

(b) it impairs the ability of affected populations to replace themselves;

(c) it degrades the long-term natural productivity of habitats or ecosystems;

(d) causes, on a more than temporary basis, a loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or

(e) any other criteria contained in the relevant Regional Environmental Management Plan, or Standards.]

**Comment**

As already mentioned in the comment box to the preamble, the use of “Serious Harm” and “Harmful Effects” have been used inconsistently throughout the Regulations. It is thus necessary to decide on a clear and consistent approach, and the decided wording should be applied throughout the Regulation, including in the preamble,

draft regulations 2, 4, 13, 44, 45, 46, 48ter, 49, 51, 53bis, 53ter, 59, 96quat, 99, annex IV and Annex VII.

**“Sponsoring State”** means a State party or parties to the Convention which submits a certificate of sponsorship of an applicant, and a certificate of registration for any ships/vessels or Installations used to undertake activities in the Area in accordance with Regulation 6.

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

**“Standards”** means such documents adopted by the Authority pursuant to Regulation 94.

**“State”** means a State party or parties to the Convention.

**“Strategic Environmental Goals and Objectives”** means [to be inserted].

**“Sustained Large-scale Recovery Operations”** means the exploitation, production or removal from the Area of Mineral-bearing ore in a systematic manner over a minimum period specified in the Standards and which constitutes large-scale production.

**“Suitably Qualified Person”** means a person qualified to conduct a valuation of Mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and who otherwise complies with the requirements for a Suitably Qualified Person in Standards and Guidelines.

**“Temporary Suspension”** means [to be discussed and inserted]

**“Test Mining”** means an *in situ* testing that do not have harmful effects on the marine environment of the integrated system of all equipment and all related process steps (e.g. including collector, raiser and release techniques) for Exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which allows the Test Mining for the provision of evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission and the Council in its evaluation of the application against the criteria contained in Regulation 13 and 15.

**“Test Mining ALT”** means the use and testing of a fully integrated and functional mining system, including collection systems and water discharge systems.

**“Transferee”** means an entity to which a Contractor may transfer, or has transferred, its rights and obligations under an Exploitation Contract in accordance with Regulation 23.

**“Transfer Profit Share”** means a payment by the Contractor to the Authority in accordance with the applicable Standard in circumstances where the Contractor has transferred its rights and obligations under an Exploitation Contract in accordance with Regulation 23.