

## Regulation 4.alt

### Rights and legitimate interests of coastal States

1. Nothing in these Regulations shall affect the rights and legitimate interests of coastal States under the Convention, including but not limited to Article 142 and other relevant provisions of the Convention.

Alt 2. Applicants,] ~~Contractors,~~ as well as the Enterprise, shall take all necessary measures to ensure that their activities [and foreseen activities] [in the Area] are conducted with due regard to the rights and legitimate interests of the [relevant] [potentially affected] coastal States [under the Convention and] in accordance with applicable Regulations and Standards and taking into account Guidelines.

[3. Without prejudice to other necessary measures taken pursuant to paragraph 2, applicants, contractors or the Enterprise shall engage consultengage with potentially affected coastal States, at an early stage and before including prior to submitting an application-plan of work, from the stage of approval of plan of work and throughout the exploitation contract, in accordance with applicable Regulations and Standards, and taking into account Guidelines. ]

Alt 3. Without prejudice to other necessary measures taken pursuant to paragraph 2, applicants, contractors or the Enterprise shall engage with potentially affected coastal States, including by conducting consultations, at an early stage [Alt A : [Alt 1: including] prior to [Alt 2: and after] submitting an application] [Alt B: from the stage of approval of plan of work] and throughout the exploitation contract, in accordance with applicable Regulations and Standards, and taking into account Guidelines.

~~4. The potentially affected coastal States referred to in paragraph 3 above shall include:~~

~~a) Coastal States, which may include those that are adjacent to any ~~Contract Area~~ covered by the Plan of Work, whose sovereign rights for the purpose of exploring and exploiting, conserving or managing Marine natural resources, in the Exclusive Economic Zone, accordance with the Convention, may be affected, in accordance with the Convention.~~

~~(based on article 56(1) (a))~~

~~b) Coastal States, which may include those that are adjacent to any ~~Contract Area~~ covered by the Plan of Work, whose exercise of jurisdiction with regard to the Protection and Preservation of the Marine Environment, in the Exclusive Economic Zone accordance with the Convention, may be affected, in accordance with the Convention.~~

~~(based on article 56 (1) (b) (iii))~~

~~e) Coastal States across whose jurisdiction the resources related to the activity may lie.~~

~~(based on article 142 (1))~~

**Commented [A1]:** Text in yellow highlight represent the co-chairs' proposals for what to retain for DR 4Alt, following the last round of informals.

**Commented [A2]:** Based on comments received during the informals, we propose to replace para 3 with Alt 3. For reasons of clarity, we propose that the Working Group proceed with Alt A instead of Alt B and to keep both Alt 1 and 2 for maximum clarity.

d) States that carry out, in the area of the planned activity, any activities, including economic activities, that may reasonably be believed to be affected.

4 Alt. The potentially affected coastal States referred to in paragraph 3 above shall include:

a) Coastal States across whose jurisdiction the [deposits of resources] [Alt: resource deposits] related to the activity may lie.

b) Following the submission of a written notification to the [Contractor] [Applicant] that it wishes to participate in the consultation process pursuant to Regulation 93ter, the following:

i. Coastal States, which may include those that are adjacent to any Contract Area, whose sovereign rights for the purpose of exploring and exploiting, conserving or managing Marine natural resources, in accordance with the Convention, may be affected by any activity by the Contractor in the Contract Area.

ii. Coastal States, which may include those that are adjacent to any Contract Area, whose exercise of jurisdiction with regard to the Protection and Preservation of the Marine Environment, in accordance with the Convention may be affected by any activity by the Contractor in the Contract Area.

5. Potentially affected coastal States may, during the consultation [Alt: process pursuant to DR 93ter] [prior to the approval of Plan of Work], submit to the Authority scientific data and assessments or other relevant data and information on potential effects likely to be caused by the activities of the applicant or contractor and may request modifications to mining plans if risks are identified.

#### Regulation 4bis.

#### ~~Sovereignty, sovereign rights of jurisdiction-Without prejudice~~

These regulations 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 regulations be interpreted as recognition or non-recognition of any claims to sovereignty, sovereign rights or jurisdiction.~~

#### Regulation 93ter.alt

#### Consultation with Coastal States

1. Prior to preparing [the documents referred to in Regulation 7] [the Plan of Work], the Applicant shall:

**Commented [A3]:** Japan suggested to add “deposits of” for consistency with the wording of Article 142 paragraph 1. We have no objections to this proposal, but have proposed to suggest to use “resource deposits” instead, which appears in Art 142(1) as well, for brevity.

**Commented [A4]:** During the last round of informals, the Working Group agreed that we would continue to leave this here as a placeholder but move it to DR 93ter eventually. We have proposed alternative text in square brackets that could possibly make this paragraph clearer. We have also proposed a possible place to move this paragraph to in DR 93ter below.

**Commented [A5]:** With thanks to the Argentine delegation for working off other delegations’ comments in July, this revised proposal has been submitted for the Working Group’s consideration.

**Commented [A6]:** As this is meant to take place before the general consultation process, as a matter of placement we may wish to consider moving it to before DR 93bis eventually, i.e. this becomes the new DR 93bis and DR 93bis becomes the new DR 93ter. For ease of reference, we will continue referring to this as DR 93ter up until it is moved.

**Commented [A7]: For consideration:** Should Contractor notify Coastal States directly? Or is it possible to just ask Sec-Gen to do so? Can the notification obligation in Art 142(1) be satisfied that way?

Should Contractor’s notification follow a template? If so, is it useful to add a new template?

a. Notify the coastal States across whose jurisdiction resource deposits related to the proposed activity may lie of the Applicant's intention to apply for a Plan of Work.

a-b. Request that the Secretary-General inform all other [coastal][Member] States [for the purpose of the procedure in paragraph 4(b) of Regulation 4] [of the Applicant's intention to apply for a Plan of Work]

2. [Upon receipt of] [Within 30 days of receiving] the Secretary-General's notification 1, any coastal State falling within paragraph 4(b) of Regulation 4 may inform the Applicant in writing that it wishes to participate in the Applicant's consultations with coastal States.

3. Applicants shall invite the coastal States referred to in paragraph 1(a) above, as well as any other coastal States which have written to the Applicant pursuant to paragraph 2 above, to submit written comments on the following draft documents:

4-3.

- a. [Plan of Work]
- b. Scoping reporting;
- c. Environmental Impact Assessment;
- d. Environmental Impact Statement;
- e. Environmental Management and Monitoring Plans;
- f. Performance of Assessment of the Environmental Management and Monitoring Plans; and
- g. Closure Plans.

5-4. Where 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 island developing States, upon request, to identify potential effects of the planned activity on Marine areas and their resources under their jurisdiction. [This support should encompass an assistance mechanism, along with training and mentorship programs, to bolster local capacities.]

6-5. [...] [Procedures for consultations with potentially most affected coastal States shall be further developed in Standards and Guidelines.]

7-6. The Applicant shall consider the contributions received from coastal States during this consultation period and, as appropriate, revise the proposal accordingly or respond to substantive contributions not reflected in the revised proposal.

8-7. [Where the planned activity may result in the exploitation of resources lying within the national jurisdiction of a coastal State, the prior consent of the coastal State must be obtained] in writing before the Applicant submits its application for a Plan of Work.

**Commented [A8]: For consideration:** Should there be a time limit to submit notifications here? Have tentatively proposed 30 days.

**Commented [A9]: For consideration:** Which documents should Coastal States be consulted on at this point?

**Commented [A10]:** From paragraph 3 of DR 93ter.

**Commented [A11]:** From para 4 of DR 93ter. Propose merging the former paragraphs 3 and 4 in one as they deal with the same subject matter.

**Commented [A12]: For consideration:** Should paragraph 5 of DR 4Alt be placed here?

**Commented [A13]:** From paragraph 5 of DR 93ter.

**For consideration:** Is this paragraph necessary?

**Commented [A14]:** Based on Article 21(5) of the BBNJ Agreement. To replace the language "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..." from the original DR 93ter, as the BBNJ language is clearer.