

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.

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 [Alt 1: the potentially affected] _coastal States] [Alt 2: 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] [consult] with potentially affected coastal States, at an early stage including prior to and after submitting an application, 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 comprise:

- a) Coastal States across whose jurisdiction the resource deposits related to the Applicant's or Contractor's activity may lie.
- b) Following the submission of a written notification through the Secretary-General to the Applicant or Contractor as well as the Enterprise 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.

b Alt) Coastal States that are adjacent to any Contract Area which, following the submission of a written notification to the Contractor [and Enterprise] that it wishes to participate in the consultation process pursuant to Regulation 93bis,comprising] those:

- i. 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; and
- ii. 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 of the Contractor in the Contract Area.

The WG facilitators have reflected comments and proposals from the wider discussions at the March session. A few outstanding issues remain that will require further discussions:

On paragraph 2, whether to introduce the preferred “potentially affected” qualifier or stay closer to article 142(2) of the Convention.

On paragraph 3, choose between “engage” or “consult” or possibly to include a reference to DR93.bis

On paragraph 4(b) there are two options regarding the category of coastal States which must submit notifications in order to participate in the consultations whether or not these are limited to those coastal States adjacent to any contract area (“may include” vs “that are adjacent”).

Regulation 4bis.

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.

Regulation 93tbis.alt

Consultation with Coastal States

1. Prior to preparing [the documents referred to in Regulation 7] [the Plan of Work], the Applicant or the Enterprise shall request the Secretary-General to, within 7 days:
 - 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.
 - b. Inform all [Member] States for the purpose of paragraph 4(b) of Regulation 4[of the Applicant’s intention to apply for a Plan of Work

2. Within [60][90] days of receiving the Secretary-General’s notification in paragraph 1, any coastal State falling within paragraph 4(b) of Regulation 4 may inform the Applicant or the Enterprise in writing that it wishes to participate in the Applicant’s or Enterprise’s consultations with coastal States. A Coastal State writing to the Applicant or the Enterprise pursuant to this paragraph shall also include supporting reasons, as well as scientific data and assessments or other relevant data and information, where available, in support of its view that the activities of the applicant or contractor as well as the Enterprise are likely to cause adverse potential effects to its rights and interests under the Convention

3. Applicants, Contractors, as well as the Enterprise, 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 including on the following draft documents, taking into account Regulation 89 on confidentiality of information:
 - a. Scoping reporting;
 - b. Environmental Impact Assessment;
 - c. Environmental Impact Statement;
 - d. Environmental Management and Monitoring Plans;
 - e. Performance of Assessment of the Environmental Management and Monitoring Plans; and
 - f. Closure Plans.
 - g. Any Material Change to the Plan of Work

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.]

5. Potentially affected coastal States may, **during the consultation process** 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 as well as the Enterprise and may request modifications to mining plans if risks are identified.

6. The Applicant, the Contractor, as well as the Enterprise 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.

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 [or the Enterprise] submits its application for a Plan of Work.

8. Coastal States will indicate a focal point to facilitate consultations.

As this is meant to take place before the general consultation process, this regulation should be moved to before DR 93bis eventually, i.e. this becomes the new DR 93bis and DR 93bis becomes the new DR 93ter.

The WG facilitators have reflected comments and proposals from the wider discussions at the March session. A few outstanding issues remain that will require further discussions:

On paragraph 1, when should the request for notification by the SG take place.

On paragraph 2, what would be the reasonable time given to coastal States to inform that they want to be consulted

On paragraph 3, decide on which documents will be included on the consultations

On paragraph 4, there were no aligned positions on whether to keep it, so discussion remains ongoing.