

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 31<sup>ST</sup> SESSION:  
COUNCIL - PART 2**

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

**1. Name(s) of Delegation(s) making the proposal:**

Friends of the President (United Kingdom)

**2. Please indicate the relevant provision to which the textual proposal refers.**

Definition - Alt. 3 "Material Change"

Draft Regulation 57 (Modification of a Plan of Work)

Draft Regulation 92(1bis)(j) (Seabed Mining Register)

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

**Definition**

"**Material Change**" means a 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, as may be further defined in a Standard, and which may include changes such as modifications to the way in which Exploitation activities are conducted; changes to assessments of harmful effects of activities on the Marine Environment, or effects on Stakeholders; the availability of new knowledge or technology; changes to a Contractor's operational management; and changes to any applicable Standards and Guidelines.

**Regulations**

**Regulation 57**

**Modification of a Plan of Work ~~by a Contractor~~**

1. A Contractor shall not modify the Plan of Work scheduled to an Exploitation Contract except in accordance with this regulation or as otherwise provided for by applicable regulations.

2. A Contractor shall notify the Secretary-General of any proposed modification to a Plan of Work. The Secretary-General shall inform the Council and transmit the notification to the Commission within 7 Days of receipt.

3. The Commission shall determine whether the proposed modification constitutes a Material Change ~~in accordance with any applicable Standards and~~ applying the procedure in regulation 12 *mutatis mutandis*.

4. If the Commission determines in accordance with paragraph 3 ~~of this regulation~~ that the proposed modification constitutes a Material Change:

(a) it shall report its determination to the Council and recommend whether the Contractor should be required to undertake an Environmental Impact Assessment and revise the Environmental Plans, and / or any other part of the Plan of Work;

(b) the Council, based on the recommendations of the Commission, shall decide whether the Contractor is required to undertake an Environmental Impact Assessment and revise the Environmental Plans, and / or any other part of the Plan of Work;

(c) if the Council decides in accordance with ~~paragraph 4~~, subparagraph (b) that the Contractor is required to undertake an Environmental Impact Assessment and revise the Environmental Plans, and / or any other part of the Plan of Work, the Contractor shall do so applying the processes for their preparation set out in the Regulations *mutatis mutandis* and shall submit revised documents to the Commission. The Commission shall report to the Council on the revised documents and shall recommend either approval or disapproval of the proposed modification applying the process set out in regulations 11, 12, 13 and 15 *mutatis mutandis*. The Council shall consider the proposed modification and the report of the Commission, and shall approve or disapprove the proposed modification applying the ~~Council~~ procedure for consideration and approval of a Plan of Work in regulation 16 *mutatis mutandis*; and

(d) if the Council decides in accordance with ~~paragraph 4~~, subparagraph (b) that the Contractor is not required to undertake an Environmental Impact Assessment and revise the Environmental Plans, or any other part of the Plan of Work, ~~the Secretary-General and the Contractor shall immediately undertake~~ a consultation on the proposed modification applying the process set out in regulation 11 shall commence immediately~~93ter~~, following which the Council shall consider the proposed modification taking into account the results of ~~the~~ consultation and the report and recommendation of the Commission prepared applying the process set out in regulations 11, 12, 13 and 15 *mutatis mutandis*, and shall approve or disapprove the proposed modification applying the Council procedure for consideration and approval of a Plan of Work in regulation 16 *mutatis mutandis*.

5. If the Commission determines in accordance with paragraph 3 ~~of this regulation~~ that the proposed modification does not constitute a Material Change, it shall recommend approval or disapproval of the proposed modification and ~~shall~~ report its recommendation to the Council applying the process set out in regulations 12, 13 and 15 *mutatis mutandis*, following which:

(a) if the Council does not notify the Secretary-General that it disagrees with the Commission's recommendation within 60 Days of the date the recommendation is notified to the Council, the recommendation shall take effect as if it were a decision of the Council 60 Days after such notification;

(b) if, within 60 Days of the date a recommendation by the Commission ~~to approve or disapproved the proposed modification~~ is notified to the Council, the Council notifies the Secretary-General that the proposed modification should be assessed as a Material Change, the procedure in paragraph 4, subparagraphs (b) – (d) ~~of this regulation~~ shall apply immediately;

(c) if, within 60 Days of the date a recommendation by the Commission ~~to approve or disapprove the proposed modification~~ is notified to the Council, the Council notifies the Secretary-General that it disagrees with the recommendation, the Council shall decide whether to request the Commission to reconsider its recommendation, and if making such a request, shall provide the Commission with the Council's reasons for doing so;

(d) the Commission shall notify the Council of ~~its a~~ reconsidered recommendation ~~in response to any request~~ ed pursuant to under paragraph 5, subparagraph (c) within 60 Days of the request, following which the Council shall decide within 60 Days whether to approve or disapprove the proposed modification; and

(e) if the Council does not take a decision in accordance with ~~paragraph 5~~, subparagraph (d), the Commission's reconsidered recommendation shall take effect as if it were a decision of the Council from the end of the period referred to in paragraph 5, subparagraph (d).

6. Notwithstanding paragraph 2, the Secretary-General and the Contractor may agree to changes to the Plan of Work to correct minor omissions, errors or other such defects, including upon the recommendation of the Commission, as follows:

(a) the Secretary-General shall notify ~~any such~~ agreed changesment to the Commission and the Council within 7 Days; and

~~(b) the Commission shall consider the agreement and, no later than 60 Days following notification by the Secretary-General, recommend to the Council whether the agreed changes should be assessed as a proposed modification pursuant to paragraphs 3 to 5 of this regulation;~~

~~(c) the Council shall consider the recommendations of the Commission within 60 Days of notification; and~~

~~(d) any~~ agreed changes shall take effect 60 Days after the notification~~from the end of the period~~ referred to in ~~paragraph 6~~, subparagraph (~~a~~e), unless the Council decides before the end of that period, including upon the recommendation of the Commission, that they are to be assessed as a proposed modification pursuant to paragraphs 3 to 5 of this regulation.

7. Any recommendations and reports of the Commission under this Regulation regarding proposed modifications shall be in the form set out in Regulation 15(1bis) mutatis mutandis. All modifications and changes to a Plan of Work pursuant to this regulation shall be recorded in the Seabed Mining Register by the Secretary-General

as soon as reasonably practicable following approval or agreement in accordance with this regulation.

## **Regulation 92 Seabed Mining Register**

(1bis)(j) the Commission's recommendations and reports and the Council's decisions regarding proposed modifications of a Plan of Work pursuant to regulation 57, [and the findings and recommendations resulting from any review of a Plan of Work pursuant to regulation 58];

### **4. Please indicate the rationale for the proposal.**

**Definition and DR57(3)** – The Group proposes adding the words “as may be further defined in a Standard” to the definition of Material Change. This expressly envisages the possibility of a future Standard further developing the concept of Material Change. Consequently, the existing reference to “any applicable Standards” in Draft Regulation 57, paragraph (3) is redundant and so the Group proposes its deletion.

**Title** – The Group proposes deletion of the words “by a contractor” from the title of Draft Regulation 57 to reflect that the modification process is not a unilateral one involving only a Contractor but includes the Authority (potentially each of the Secretary-General, the Commission and the Council).

**Applicable processes** – For greater clarity as to process, the Group proposes clarifying in Draft Regulation 57, sub-paragraphs (4)(c) and (d) that the processes set out in Draft Regulations 11, 12, 13 and 15 apply when assessing proposed Material Changes. The Group further proposes clarifying in Draft Regulation 57, sub-paragraph (5) that the processes set out in Draft Regulations 12, 13 and 15 apply when assessing proposed non-Material Changes. This clarifies that Stakeholder consultation is required for any proposed Material Changes, but not for proposed non-Material Changes.

*As set out in the Report on the Group's Intersessional Work, the Group notes that debate is ongoing within the Council regarding the requirements for Applicant and Authority Stakeholder consultation on an application for a Plan of Work. The Group considers this to be a key outstanding issue which requires resolution by the Council. Once resolved, it may be appropriate for the Group to reconsider the drafting in sub-paragraph 4(c) to clarify which actor is obliged to undertake the consultation referred to in that provision.*

**Minor omissions, errors and other such defects** – The Group proposes further simplifying the process set out in Draft Regulation 57, paragraph (6) for agreeing changes to correct minor omissions, errors and other such defects. The Group proposes that changes agreed by the Secretary-General and a Contractor (including upon the recommendation of the Commission) take effect 60 Days after they are notified to the Council and Commission, unless the Council decides (including upon the recommendation of the Commission) that they should be assessed pursuant to

paragraphs (3)-(5). This means unless the Council decides otherwise, agreed changes take effect automatically. The Commission has the discretion, but not an obligation, to make recommendations: (i) to the Secretary-General and a Contractor regarding proposed changes; and (ii) to the Council as to whether agreed changes should be assessed as proposed modifications pursuant to paragraphs (3)-(5). The Group considers it appropriate to retain the Council's ability to take a decision on changes agreed between the Secretary-General and a Contractor, consistent with its role and function under UNCLOS. This proposal means that Council Member States and Commission members would be notified of the proposed agreed changes and have a chance to raise concerns, but non-Council Member States, observers and other stakeholders would not. The Group considers this proportionate given the limited scope of such proposed changes (i.e. minor omissions, errors and other such defects).

**Publication of Commission reports and recommendations** – The Group proposes adding a cross-reference to regulation 15(1bis) to Draft Regulation 57, paragraph (7) to clarify that all reports and recommendations of the Commission regarding proposed modifications made pursuant to Draft Regulation 57 are to be published. For further clarity, the Group also proposes amending Draft Regulation 92 (Seabed Mining Register), paragraph (1bis)(j) to clarify that recommendations and reports of the Commission (as well as decisions of the Council) regarding proposed modifications are to be included on the Seabed Mining Register. The second part of subparagraph (j) has been left in square brackets so as not to prejudice any future work by the Group on Draft Regulation 58. Note, Commission recommendations regarding changes to correct minor omissions, errors or other such defects do not need to be published, but paragraph 7 nevertheless requires any agreed changes to be published in the Seabed Mining Register.

**Streamlining language** – Finally, the Group proposes several technical drafting deletions to streamline the text.