## Aid to discussions for Friday 17th July - Environmental Management and Monitoring

During the Council session in March, the environmental management and monitoring regulations were no longer considered a key outstanding issue. However, after the session the facilitator of the working group received substantive comments from the delegation of Germany. During this Council session, Council is invited to consider the proposals from Germany where these are alternatives to the proposal of the working groups. The proposal of Germany is attached hereto.

If time allows, Council is invited to discuss the following questions:

1. Should only “environmental” effects should be covered by the Environmental Management and Monitoring Plan or also other effects resulting from activities?
2. Should there be a common term for all binding documents for Contractor, so that these do not have to be listed every time?
3. Should cumulative effects be monitored and managed under the Environmental Management and Monitoring Plan?
4. What are “environmental risks”, and should they be covered by the Environmental Management and Monitoring Plan?
5. Is the end of contract period the same as end of Closure Plan?
6. Shall the Contractor be able to close parts of the Mining Area before others?

**Germany's proposed edits to the regulations on environmental management and monitoring**

Text highlighted in blue is the principal substantive proposal for discussion. Text highlighted in green are drafting proposals for coherence and consistency.

## Section 3

## Environmental Management and Monitoring

## Regulation 49

## Environmental Management and Monitoring

1. A Contractor shall continuously ~~[~~and/~~]~~or continually, as appropriate, 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.~~

2 ~~alt.~~ The Contractor shall monitor the Environmental Impacts and Environmental Effects of the activities to:

a) assess compliance with the ~~Environmental Impact Assessment,~~ Environmental Management and Monitoring Plan and Closure Plan; and,

b) measure, analyse, and document the ~~actual~~ effects on the Marine Environment; and

c) determine whether the activities are having or are likely to have harmful effects on the Marine Environment.

In doing so, the Contractor shall include a comparison of monitoring data against environmental threshold values contained in applicable Standards and a comparison between monitoring data and the effects predicted in the Environmental Impact Statement.

[2 bis. In addition to monitoring by the Contractor, the Secretariat shall arrange for independent experts, reporting to the Authority, to undertake monitoring of the Environmental Impacts and Environmental Effects of activities in the Area [during Pilot Mining and during the first phase of at least seven years of Commercial Production], in accordance with applicable Standards and taking into account relevant Guidelines. The costs of such independent monitoring shall be borne by the Contractor.]

3. Monitoring [by the Contractor] shall be conducted until [completion of a Closure Plan][ such time as the Council decides that a Contractor has met the objectives of its Final Closure Plan, in accordance with regulation 51bis.]

4. The Contractor shall Mitigate and manage Environmental Impacts and Environmental Effects [and risks] to ensure that these are ~~consistent~~ compliant with the Standards, including ~~[~~threshold values,~~]~~ and the Exploitation Contract and its schedules ~~[including the predictions made in the Environmental Impact Statement]~~ until [the end of the Exploitation Contract period][ such time as the Council decides that a Contractor has met the objectives of its Final Closure Plan, in accordance with regulation 51bis.]

4bis. The objectives of the monitoring and management set out in this Section 3 is to ensure that the Marine Environment is effectively protected from harmful effects of activities in the Area, and that after Exploitation activities, that:

~~[~~(a) Ecosystem Integrity has been maintained [or restored][, in accordance with the environmental goals and objectives in regulation 44ter];

[(b) Any adverse Environmental Effects arising from Closure are Mitigated, and residual Environmental Effects continue to be monitored and reported for the period prescribed in the Closure Plan;]

~~]~~

~~[(d) all installation and equipment, or parts thereof, [and waste] are removed from the [Mining Area]/[Contract Area]; [and]]~~

[(c~~e~~)~~Alt.~~ all installations, equipment or parts thereof introduced into the Area or Marine Environment in connection with the Contractor's activities under the Contract are removed]

5. If the Contractor or Authority 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 the Guidelines,]~~ ~~[~~and if the harmful effects is an Incident or Notifiable Event, the Contractor shall proceed in accordance with regulation 33 or 34,as applicable~~]~~. ~~[~~All harmful effects identified by the Contractor shall be reported in according to regulation 50bis~~]~~.

[5 Alt. If the Contractor or the Authority identifies from the results of the monitoring any harmful effects on the Marine Environment that constitute an Incident or a Notifiable Event, in that case regulation 33 or 34 shall apply, as applicable.]

## Regulation 49bis

## Environmental Management System

1. A Contractor shall have in place, implement and maintain an Environmental Management System that meets the requirements of the relevant Standard and taking into account the Guidelines, for the purpose of monitoring, managing, and continuously improving its environmental performance, including through implementing the Environmental Management and Monitoring Plan and Closure Plan.

2. The Environmental Management System shall be detailed in the Environmental Management and Monitoring Plan in accordance with regulation 7, paragraph 3.bis, subparagraph (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 [relevant][~~Applicant's~~] Regional Environmental Management Plan ~~Environmental Management and Monitoring Plan~~ and the [Environmental Goals and Objectives in Regulation 44ter, through the Contractor's][applicable][relevant] ~~Regional Environmental Management Plan~~ Environmental Management and Monitoring 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~~; and

(c) 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 ensure that its Environmental Management System shall be reviewed and undergo periodic audits by an [independent recognized and accredited international or national organization][Independent Auditor], in accordance with applicable Standards.

4. A Contractor shall, in its annual reports include the results of the audits under paragraph 3 and demonstrate the continual and systematic assessment of the Environmental Management System and its improvement.

## Regulation 50

## Environmental Management and Monitoring Plan

1. ~~The~~ An Applicant shall prepare, and a Contractor shall maintain ~~develop~~ an Environmental Management and Monitoring Plan ~~for the exploitation activities~~. The Environmental Management and Monitoring Plan shall cover ~~such~~ all Exploitation activities. [If cessation of Commercial Production occurs in some parts of the Mining Area while Commercial Production continues in other parts of the Mining Area, Closure shall be described separately for each part of the Mining Area.]

1bis. 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 44 ter] 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 44 ter] [Strategic Environmental Goal and Strategic Environmental Objectives] and in accordance with ~~[are compatible with]~~ applicable Standards and ~~[taking into account]~~ are consistent with 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~~]~~ ~~[The Environmental Management and Monitoring Plan shall include all elements and matters prescribed in Annex VII to these Regulations and shall]~~:

(a) set project specific environmental objectives and environmental performance Standards ~~[which are [designed to achieve] [aligned with] the environmental policy and objectives of the Authority]~~;

(b) set measurement criteria[, frequency] and methodology;

(b) bis ~~[~~detail~~]~~ 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 of [the] Environmental Impacts and Environmental Effects [of Exploitation], including pollution control and Mining Discharge in regulations 53 ~~bis~~ and 53 bis~~ter~~;

(iii) ~~[monitoring~~ evaluating the effectiveness of monitoring and management, as the relevant measures and procedures are implemented~~]~~; and

(iv) taking corrective action and responding to monitoring results and new knowledge with the aim of ~~continuous~~ continual improvement;

(d) describe what monitoring data and reports will be submitted to the Authority, including details of: frequency, format, medium, and data integrity Standards; and

(e) provide a description of the Environmental Management System and~~.~~,

~~(f) describe 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~~]

2 bis. The ~~Closure Plan~~Environmental Management and Monitoring Plan shall, in accordance with the requirements of Annex VIII, set out the [obligations] of a Contractor during any Temporary Suspension.

[2 ter. For the purpose of paragraph 2(d), the Contractor shall be required to submit monitoring data immediately and in real-time to the Secretary General, including by direct transmission to the Authority from the monitoring equipment without intervention from the Contractor, wherever possible.]

3. An Environmental Monitoring and Management Plan shall be subject to Stakeholder consultation by the Applicant or Contractor before submission for approval in accordance with Regulation 93ter. Coastal states shall be engaged in accordance with Regulation 93bis].

4. Any modification of an Environmental Management and Monitoring Plan shall be made in accordance with Regulation 57.

## ~~Regulation 51~~

## ~~Closure Plan~~

~~1. An Applicant shall prepare and a Contractor shall maintain a Closure Plan for the Mining Area, in accordance with, Annex VIII to these Regulations, applicable Standards and [consistent with other Environmental Plans of the Contractor], [the Environmental goals and objectives of the Authority as contained in regulation 44ter], , [Alt. 1 the applicable Regional Environmental Management Plan], and taking into account the Guidelines [Alt. 2 and the applicable Regional Environmental Management Plan] [including environmental threshold values].~~

~~[1.Alt. A[n Aapplicant shall prepare and a] Contractor shall [develop]/[maintain] [and update] a Closure Plan for the [Mining Area]/[Contract Area]. The Closure Plan shall include a date for cessation of Commercial Production.]~~

~~[1.bis The objectives of a Closure Plan are to ensure that:~~

~~[(a) the Marine Environment is effectively protected from harmful effects of activities in the Area;]~~

~~[(b) Ecosystem Integrity has been maintained or restored, in accordance with the environmental goals and objectives in regulation 44ter;]~~

~~[(c) Any adverse Environmental Effects arising from Closure are Mitigated, and residual Environmental Effects continue to be monitored and reported for the period prescribed in the Closure Plan;]~~

~~[(d) all installation and equipment, or parts thereof, [and waste] are removed from the [Mining Area]/[Contract Area]; [and]]~~

~~[(de)Alt. all installations, equipment or parts thereof introduced into the Area or Marine Environment in connection with the Contractor's activities under the Contract are removed]~~

~~[(f) the Authority is informed about the state of the Contract Area at the time of cessation of Commercial Production, including any remaining Resources and the environmental conditions.]]~~

~~[1bis.Alt.ter The Closure Plan shall be in accordance with [Alt. 1 the Authority's environmental policy and objectives [including those set out in regulation 44 ter] and [are compatible with] applicable Standards and [taking into account] 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 VIII to these Regulations] [Alt. 2 Annex VIII to these Regulations and all relevant environmental plans, regulations, Standards and decisions of the Authority], and shall:~~

~~(a) set project specific environmental objectives and environmental performance Standards;~~

~~(b) set measurement criteria and methodology;~~

~~[(b) bis [detail] 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 and Closure;~~

~~(ii) Mitigation and management, including pollution control in regulation 53 bis;~~

~~[(iii) monitoring the effectiveness of monitoring and management, as the relevant measures and procedures are implemented]; and~~

~~(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.]~~

~~[1ter. The Contractor shall ensure that all installation and equipment, or parts thereof, are removed from the [Mining Area]/[Contract Area] after cessation of production.]~~

~~[2. The Closure Plan shall, in accordance with the requirements of Annex VIII, [set out]/[specify]/[describe] the obligations of a Contractor during any Temporary Suspension and [cessation of commercial production of mining activity]/[Closure].]~~

~~[2. bis In developing the Closure Plan, the Applicant shall, *inter alia*:~~

~~(a) undertake a gap analysis of existing environmental data to determine if additional information and/or surveys will be required [to inform closure];~~

~~(b) set a date for cessation of Commercial Production;~~

~~(b) bis ensure alignment between the Closure Plan and the Environment Management and Monitoring Plan for the duration of the Closure Plan [and the post-closure period], in accordance with the applicable Standards and taking into account the Guidelines; and~~

~~(c) include project-specific objectives, which may include Restoration [where possible,] and Rehabilitation commitments in accordance with the [environmental goals and objectives in the regulation 44ter and Closure objectives in paragraph 1. Bis,] applicable Standards and taking into account the Guidelines[, including environmental threshold values].]~~

~~[2.ter In developing and maintaining the Closure Plan, the Applicant or Contractor shall ensure transparency, and shall:~~

~~(a) consult with all States and Stakeholders in accordance with regulation 93ter; and~~

~~(b) engage with [relevant] Stakeholders, and in accordance with regulation 93 bis, Standards, and taking into account the Guidelines, consult Stakeholders on the Closure Plan, design, review, and implementation.]~~

~~3. A Contractor shall maintain and update its Closure Plan on the basis of information arising from implementation of the Plan of Work 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 account the Guidelines.~~

~~4. The Closure Plan shall be reviewed and if necessary, updated [at the following intervals]:~~

~~(a) if required pursuant to regulation 57;~~

~~(b) every 5 years from the date of signature of the Exploitation Contract, except where a Closure Plan has been updated in the interim pursuant to regulation 57, in which case 5-years period shall be calculated from the date theof Closure Plan was last reviewed; or~~

~~(c) [6 years] [Alt. 1 /] [Alt.2 and] [4 years] prior to the [planned]/[expected] cessation of Commercial Production [as indicated in the approved Plan of Work].~~

~~[5. Alt. The updated Closure Plan shall be subject to Stakeholder consultation in accordance with regulation 93ter . Coastal states shall be engaged in accordance with regulation 93bis.]~~

~~6. Alt. Any update to a Closure Plan [Alt. 1 proposed by a Contractor, pursuant to paragraph 4Alt, subparagraph (b) or (c) shall be treated as a request for a modification to a Plan of Work approved by the Authority pursuant to] [Alt. 2 shall be made in accordance with] regulation 57.~~

## Regulation 51~~bis~~

## ~~Final~~ Closure Plan~~: Cessation of Commercial Production~~

1. A Contractor shall, at least 24 months prior to the planned cessation of Commercial Production submit to the Secretary-General~~[Alt.1~~ , for the consideration of the Commission,~~]~~ a~~[~~n~~]~~ ~~[updated] [Final]~~ Closure Plan ~~[Alt. 2 , which shall be treated as a proposed modification to a Plan of Work, for the purposes of DR57]~~ [that shall be prepared on the basis of the ~~previously approved Closure Plan~~Environmental Management and Monitoring Plan, including its objectives, as updated in accordance with these Regulations].

~~[1. bis The Contractor shall consult on the [updated] [Final] Closure Plan with all States and Stakeholders in accordance with regulation 93 ter.]~~

~~[~~1.bis. ~~Alt.~~ The ~~Final~~ Closure Plan shall be subject to Stakeholder consultation in accordance with regulation 93ter. Coastal states shall be engaged in accordance with regulation 93bis.~~]~~

2. The Commission shall consider the ~~[Final] [updated]~~ Closure Plan and any comments received pursuant to paragraph 1bis~~[.Alt]~~ within the consultation ~~[~~period under regulation 93 bis or regulation 93 ter~~]~~.

3. If the Commission determines that the ~~[Final] [updated]~~ Closure Plan meets the requirements of regulation 51, it shall recommend approval of the ~~Final~~ Closure Plan to the Council.

4. If the Commission determines that the ~~[Final] [updated]~~ Closure Plan does not meet the requirements of the regulation 51;

(a) the Commission shall request the Contractor in writing to make and submit amendments to the ~~[Final] [updated]~~ Closure Plan as a condition for recommendation of approval of the Plan in accordance with paragraph 3 of this regulation:

(b) the Contractor shall have the opportunity to make representations and /or to submit a revised ~~[Final] [updated]~~ Closure Plan for the Commission's consideration, withinn90 Days of the date of the request in subparagraph (a); and

(c) the Commission shall consider any representations under subparagraph (b) and any revised ~~[Final] [updated]~~ Closure Plan submitted by the Contractor when preparing its report and recommendations to the Council.

5. The Commission and Finance Committee shall review the amount of the Environmental Performance Guarantee provided under regulation 26 and whether it reflects the forecasted costs required for implementation of the ~~Final~~ Closure Plan. The Commission shall include the results of that review and any recommendations in ~~[~~its~~]~~ report to the Council on the ~~[Final] [updated]~~ Closure Plan.

6. The Council shall consider and take a decision based on the report and recommendation of the Commission. The Council's decision shall include such directions to the Contractor as the Council considers appropriate.

[6.bis Where a Contractor fails to comply with any requirement of this regulation, the Secretary-General shall refer the matter to the Compliance Committee for consideration in accordance with regulation 103. The Compliance Committee may take appropriate measures, including, where applicable, recommending to the Council, recourse to the Environmental Performance Guarantee provided under regulation 26.]

7. 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 by the Secretary General within 7 Days of a submission or decision being made.

## Regulation 51 bis

## Implementation and Monitoring of the ~~Final~~ Closure Plan

1. The Contractor shall continue to monitor the Marine Environment as set out in the ~~[Final]~~ Closure Plan until the objectives ~~of the Closure Plan have been achieved~~in regulation 49 paragraph 4bis have been met.

~~[~~1. bis The purpose of Closure monitoring is to:

(a) Obtain evidence that the Contractor fulfilled its obligations under these Regulations;

(a) bis Verify that there are no further impacts arising from Commercial Production after cessation: and

(b) Assess the need for Restoration [(where possible)] and Rehabilitation of the Marine Environment [in line with the objectives of the Closure Plan];~~]~~

~~[1.bis.Alt. The purpose of Closure monitoring is to obtain evidence that the Contractor fulfilled its obligations under these Regulations and to assess the achievement of the Closure objectives]~~

2. Upon completion of implementation of the ~~Final~~ Closure Plan, the ~~[~~Contractor~~]/[Authority]~~ shall, in accordance with the procedure described in the applicable Standard, hire an Independent Auditor to conduct a final compliance assessment and submit a final compliance assessment report, in accordance with the applicable Standards and taking into account the Guidelines, to the Secretary-General to ensure that the [Closure objectives contained in the ~~Final~~ Closure Plan]/[objectives of the ~~Final~~ Closure Plan] have been met. The report shall be reviewed by the Commission at its next meeting, provided that it has been published on the website of the Authority at least 30 Days in advance of the meeting.

[2.bis Any final compliance assessment reports prepared by the Independent Auditor shall be made available for commenting by Stakeholders and independent experts. Any comments received shall be made available for the Commission.]

[2.bis.Alt. In preparing any final compliance assessment reports the Independent Auditor shall consult Stakeholders and independent experts, as appropriate.]

[2.bis.Alt.2. Before review by the Commission under paragraph 2, a final compliance assessment report prepared by the Independent Auditor shall be subject to Stakeholder consultation in accordance with regulation 93ter.]

~~[~~3. The Commission shall submit a report of its review under paragraph 2~~6~~ and recommendations to the Council for consideration, which shall decide whether the objectives of the ~~Final~~ Closure Plan have been achieved. The Commission's report and Council's decision shall be published at the Authority's website [in accordance with regulation 92]/[within 7 Days of a decision being made].~~]~~

~~[~~4. If the Council decides that a Contractor has met the objectives of the ~~Final~~ Closure Plan, the Council shall release the Environmental Performance Guarantee to the Contractor.~~]~~

~~[~~5. If the Council decides that a Contractor has failed to meet the objectives of the ~~Final~~ Closure Plan and reporting hereon, the Council shall either:

(a) direct the Contractor on further action that shall be taken to deliver the ~~Final~~ Closure Plan; or

(b) direct the Authority to use funds from the Environmental Performance Guarantee to facilitate work to meet the objectives of the ~~Final~~ Closure Plan and on completion of that work, to release remaining funds from the Contractor's Environmental Performance Guarantee to the Contractor.~~]~~

## Regulation 52

## 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 or ~~Final~~ Closure Plan, as appropriate, in accordance with regulation 38, paragraph 2, subparagraph (g).

2. The Contractor shall submit to the Secretary General [required] environmental [monitoring] data and information at the required intervals to the required data integrity quality, and in the required standardized format as set out in the Environmental Management and Monitoring Plan~~,~~ or ~~Final~~ Closure Plan, as appropriate in accordance with the applicable Standards, and taking into account the Guidelines.

[2 bis. The Secretary General shall transmit all Contractor and all independent monitoring data received to the Commission for its review.]

[2 ter. The Commission shall evaluate and compare the results of the Contractor's monitoring and the independent monitoring, verify the consistency and reliability of monitoring data, share any information relevant to Contractor non-compliance with the Compliance Committee, and report its findings and recommendations to the Council.]

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, paragraph 3.

## Regulation 52bis

## Compliance with the Environmental Management and Monitoring Plan and ~~Final~~ Closure Plan

1. The Commission shall review the data submitted by the Contractor [monthly/annually] pursuant to regulation 50 bis, paragraph 2 [upon receipt].

2. The Contractor shall review the implementation of the Environmental Management and Monitoring Plan or ~~Final~~ Closure Plan, as appropriate on a [regular] basis [in accordance with the relevant Standard]. Such review shall include:

(a) the efficacy, timeliness, relevance and accuracy of flow of information and data derived from monitoring the Exploitation activities and the Environmental Impacts and Environmental [Effects], 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 50 bis, paragraph 2, or its quality, indicates that the Contractor does not meet its obligations, the Commission shall refer the matter to the Compliance Committee immediately ~~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 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 regulations 102 and 103.]

## Regulation 52ter

## Performance assessments of the Environmental Management and Monitoring Plan and Closure Plan

1. A Contractor shall [also periodically][conduct [or commission a formal][commission an Independent Auditor to conduct a] performance

assessments of its Environmental Management and Monitoring Plan or Closure Plan, as appropriate, [in accordance with this regulation, [the applicable Standard and taking into account the Guidelines]. [In conducting s][Such a performance assessment [of the Environmental Management and Monitoring Plan or Closure Plan, as appropriate, 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~~modifications 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 and Closure 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][taking into account] Good Industry Practice, Best Available Techniques and Best Environmental Practices];

(e) the reports of the Environmental Management and Monitoring Plan or Closure Plan, as appropriate, 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; and

(f) the currency and adequacy of its Environmental Management System, including its ability to implement effectively the Environmental Management and Monitoring Plan or Closure Plan, as appropriate.

2. The frequency of a performance assessment [shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan or Closure Plan, as appropriate and] shall occur every 24 months or, if any ~~amendments~~ modifications have been made to the Environmental Management and Monitoring Plan or Closure Plan, as appropriate following a previous performance assessment, 12 months after such ~~amendments~~ modifications have been approved~~accepted~~ by the Council in accordance with regulation 57, whichever occurs later.

2bis. Closure activities included in the Environmental Management and Monitoring Plan shall be reviewed and updated along with the rest of the Environmental Management and Monitoring Plan in accordance with this regulation. Six years prior to the planned cessation of Commercial, such Closure activities shall be reviewed no less than 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 Non-Compliance Notice under regulation 103bis; [and]

[(b)bis where the Contractor's data reports appear materially inconsistent with the independent monitoring data; and]

(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]

[(c) alt. when the Compliance Committee determines it necessary for good cause, including where evidence before it suggests a breach of compliance has occurred.]

[3. bis The Contractor shall engage with [potentially directly affected] Stakeholders, and in accordance with [regulation 93 bis], Standards and taking into account the 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 account the 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; and

(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 regulations 93 bis and 93 ter.]

5 Alt. [The Secretary General shall conduct a consultation regarding the Performance Assessment Report with all States and Stakeholders in accordance with Regulation 11]. The Commission shall review the performance assessment report and any Stakeholder comments received [within 60 Days of receipt of such report and comments]. The [Commission] shall, where necessary and appropriate, consult external competent, independent experts in its review of the performance assessment.

6. The Commission shall review the performance assessment report in accordance with the applicable Standard and taking into account the Guidelines. [within 60 Days of receipt of such report and comments].

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 [Material Change is made to a previous] revised assessment and report [is produced], a new consultation in accordance with regulation 93 ter 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 or Closure Plan, as appropriate, is determined to be inadequate in any material respect, the Commission shall require the Contractor to deliver a revised Environmental Management and Monitoring Plan or Closure Plan, as appropriate, 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.

## Regulation 53

## Pollution control

A Contractor shall take [all][measures] necessary [and appropriate] [measures] to protect and preserve the Marine Environment, from harmful effects, in accordance with article 145 of the Convention, including by preventing, reducing and controlling pollution and other hazards, [including underwater noise, light, greenhouse gas emissions, and marine litter, directly or indirectly [resulting arising] 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 Contractors' Environmental Management and Monitoring Plan or Closure Plan, as appropriate,], [and taking into account] Regional Environmental Management Plans, and [the Guidelines].

## Regulation 53 bis

## Mining Discharges

1. A Contractor shall not introduce any Mining Discharge into the Marine Environment, except where such Mining Discharge is permitted in accordance with:

(a) the assessment framework for Mining Discharges as set out in the applicable Standard [and];

(b) the Plan of Work.

2. Notwithstanding paragraph 1, a Contractor may make such 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 Mining Discharge is conducted so as to prevent harm to human life and to the Marine Environment. [Such Mining Discharge shall be considered an Incident]

[3. A Contractor shall keep a register of Mining Discharges, to be updated [promptly] after any discharge event, that shall be reported annually to the Authority under regulation 38, as part of the Contractor's annual report.]

[4. 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.]