TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 31ST 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.

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.**

   Draft Regulation 7(4) (Modification of Mining Area in a Plan of Work)

   Draft Regulation 23(4 bis) (Transfer of rights and obligations under an Exploitation Contract)

   Draft Regulation 38(2)(m) (Annual report)

   Draft Regulation 39(1 bis) (Books, accounts and records)

   Draft Regulation 48(1) (Environmental Impact Statement)

   Draft Regulation 48 bis(1)(c), (3) and (4) (New Environmental Impact Assessment and revised environmental documentation)

   Draft Regulation 57(4) and new paragraph 4bis (Modification of a Plan of Work)

   Draft Regulation 58 (Review of a Plan of Work)

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

   Annex IX, Schedules 1 and 15 (Schedules to the Exploitation Contract)

   Annex X, new Section 16.0, and Sections 16.2 and 16.3 (Revision of an Exploitation Contract)

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.**

Regulation 7(4) – Modification of Mining Area in a Plan of Work

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

subsequent decisions for further Mining Areas being treated as a modification of the Plan of Work under regulation 57~~deferred to a later time upon the submission of further documentation~~.

Regulation 23(4 bis) - Transfer of rights and obligations under an Exploitation Contract

4 bis. ~~If at the time of the transfer a Material Change arises this [should] / [shall] be addressed in accordance with regulation 57.~~ If a modification to the Plan of Work is a condition of a transfer, the proposed modification shall be notified to the Authority pursuant to this regulation and regulation 57 and shall be assessed in accordance with regulation 57.

Regulation 38(2)(m) - Annual report

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

[…]

~~[~~(m) details of any proposed modification to the Plan of Work notified pursuant to regulation 57(2), any change agreed pursuant to regulation 57(6), and the ~~reasons for such modifications]~~ status or outcome of the applicable process under regulation 57;

Regulation 39(1. bis) - Books, accounts and records

1 bis. The Contractor shall keep the books, accounts, and records ~~pursuant~~ referred to in paragraph 1 ~~[~~at ~~a place~~ the location specified in Schedule 15 of the Exploitation Contract~~],~~ and shall make them readily available for inspection and audit in accordance with these Regulations. Any proposed change in location shall be assessed in accordance with regulation 57.

~~[1. bis Alt. The Contractor shall maintain books, accounts, and records at a location specified in the Exploitation Contract. If circumstances require a change, the Contractor and the Compliance Committee may mutually agree on an alternative location. In any case, the books, accounts, and records shall be kept in a place that allows them to be readily available for inspection and audit in accordance with these Regulations.]~~

Regulation 48(1) - 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 Statement shall be considered by the Authority in accordance with Part II or regulation 57 and is required for an application for a Plan of Work pursuant to regulation 7, paragraph 3, subparagraph (d)~~.

Regulation 48 bis(1)(c) - New Environmental Impact Assessment and revised environmental documentation – documentation to be provided

(c) details of any Environmental Impact Assessment ~~conducted or~~ to be conducted, or any proposed modification ~~to the Environmental Plans~~ of a Plan of Work under consideration but not yet submitted under regulation 57.

Regulation 48 bis(3) - New Environmental Impact Assessment and revised environmental documentation - process

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~~ recommend to the Council whether the Contractor ~~shall~~ should (i) be required to undertake an Environmental Impact Assessment and prepare ~~propose~~ a revised Environmental Impact Statement ~~[or make modification to the Environmental Plans] or [make] other~~ and (ii) prepare a proposed modification to the Plan of Work. The Council, based on the recommendation of the Commission, shall decide whether the Contractor is required to do either or both of (i) and (ii). Where the Council decides that a modification should be proposed, the Contractor shall prepare a proposed modification in accordance with paragraph 2 of regulation 57, and the proposed modification shall be assessed and decided in accordance with regulation 57.

Regulation 48 bis(4) - New Environmental Impact Assessment and revised environmental documentation – new Mining Area

~~[4. 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 Environmental Impact Statement and revised Plan of Work, which must be approved by the Authority in accordance with regulations 11 to 16.]~~

Regulation 57(4) (chapeau only) and (4bis) – non-duplication of EIA/EIS under DR48bis(3)

4. Subject to paragraph 4bis, ~~I~~if the Commission determines in accordance with paragraph 3 that the proposed modification constitutes a material change:

4bis. Where, in respect of a proposed modification, the Contractor has already undertaken an Environmental Impact Assessment and prepared a revised Environmental Impact Statement in accordance with regulation 48bis(3), the Contractor shall not be required to undertake a further Environmental Impact Assessment or revise the Environmental Impact Statement under paragraph 4 in respect of the same proposed modification, except to the extent that the Commission determines, following its review under paragraph 4(c), that the Environmental Impact Assessment or revised Environmental Impact Statement is inadequate and requires further work.

Regulation 58(1) – Frequency and grounds of review

A ~~Plan of Work~~ Contractor shall ~~be~~ review~~ed~~ its Plan of Work at intervals not exceeding five years from the date of signature of the Exploitation Contract. ~~That~~ N~~n~~otwithstanding the foregoing, the Council may ~~decide to review more frequently~~, based on recommendations of the Commission, in accordance with applicable Standards and ~~taking into consideration~~ considering the Guidelines, ~~including where any of the events described in subparagraphs [(a) to (h)] have occurred~~ decide that an earlier review by the Contractor is required where there are reasonable grounds to consider that a modification constituting a Material Change should be made to the Plan of Work.

~~[(a) bis Alt. information has come to light that was not available when the Plan of Work was approved, including [major] changes in Best Available Techniques, Best Available Scientific Information [or Best Environmental Practices], and shows that more appropriate measures are necessary to deal with the Environmental Effects of the activity;]~~

~~[((a)bis)bis Evidence of misrepresentation or material omission in the original application of Plan of Work approval process;]~~

~~(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 [based on scientific evidence] relevant to the effective Protection of the Marine Environment;]~~

~~(a) quin. [Alt. 1 unanticipated impacts resulting in adverse effects] [Alt. 2 Unanticipated effects] on the environmental [or other activities] have arisen, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved;~~

[(a) sexies a request by [another competent international body] concerning other activities or measure in the Marine Environment pursuant to regulation 31;]

[(b) significant Incidents;]

[(b)bis. The applicable Regional Environmental Management Plan has been amended following review.]

[(c) recommendations for improvement in procedures or practices following an inspection report under regulation 100;]

[(g) significant changes in Best Available Scientific Information; and]

[(h) operational management changes, including changes to subcontractors and suppliers listed in the Plan of Work, 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.]

Regulation 58(1.bis) - Automatic suspension

[1.bis The occurrence of any of the circumstances set out in paragraphs [1(a)ter, 1(a)quin and 1(b)] shall entail suspension of exploitation activities until the amended Plan of Work has been reviewed and approved.]

Regulation 58(2) - Contractor's Report

32. A Contractor shall submit a report of its review to tThe Secretary-General, who shall transmit forward the report on each review it to the Commission and, [**Alt 2.** the independent expert or panel of independent experts referred to in paragraph 3,] the Council, and the Sponsoring State or States. [Alt.1 Where, as a result of a review a Material Change needs to be made to the Plan of Work, the Commission shall recommend the Council and the Contractor shall implement as established in regulations 57] [Alt.2 Any proposed modification to a Plan of Work as a result of a review pursuant to this regulation shall be assessed in accordance with regulation 57]

Regulation 58(3) - Verification, assessment and recommendations

23. A review of the Plan of Work under paragraph 1 shall be undertaken by the Contractor [and [reviewed and] [**Alt 1.** verified by the Commission and its findings assessed by the Commission] [**Alt 2.** verified by [Alt.1an independent expert] or [Alt.2 a panel of independent experts] appointed by the Commission] in accordance with the applicable regulations], and Standards and considering taking into account the Guidelines. The verification shall include verification of the data, information, methodologies and processes

underlying the Contractor's review. [**Alt 2.** The independent expert or panel of independent experts shall report its findings to the Commission, which shall assess those findings and the findings of the review.] The ~~Secretary-General~~ Commission shall ensure that ~~invite~~ the Sponsoring State or States~~[~~, ~~and [relevant] [~~potentially affected~~]~~ coastal States,~~]~~ and other relevant Stakeholders are afforded an opportunity to provide information relevant to participate in the review, considering any consultation already undertaken under these Regulations and avoiding unnecessary duplication. The Commission ~~results of the review~~ shall ~~be compiled as a report [and be accompanied by an endorsement of the report by the experts involved on the review and submitted~~ submit recommendations to the Council through the Secretary-General ~~by completion of the review]~~ following verification of the review and assessment of its findings, which may include details of any modifications to the Plan of Work it considers necessary or appropriate.

Regulation 58(4) – Additional information

4. For the purpose of the verification and assessment of the findings of the review under paragraph 3 ~~review,~~ the Contractor shall provide ~~[to the independent expert] all~~, through the Secretary-General, any additional information reasonably required by ~~the Secretary-General~~ [**Alt 1.** the Commission] [**Alt 2.** the independent expert or panel of independent experts], in the manner and ~~at~~ within the ~~times as may be necessary for the purposes of this regulation.~~ period determined by [**Alt 1.** the Commission] [**Alt 2.** the independent expert or panel of independent experts or the Commission, as applicable], and communicated to the Contractor by the Secretary General. ~~[The Secretary-General shall request the Contractor to submit additional data and information as may be required by the independent expert or experts undertaking the review.]~~

Regulation 58(5) – Council Decision

5. The Council, based on the Contractor's report submitted under paragraph 2 and any recommendations submitted under paragraph 3, may decide that a modification to the Plan of Work should be proposed. In that case, the Contractor shall prepare a proposed modification in accordance with paragraph 2 of regulation 57, and the proposed modification shall be assessed and decided in accordance with regulation 57.

Regulation 58(6) – Publication

6. Subject to the protection of Confidential Information in accordance with these Regulations, ~~T~~the Secretary-General shall make publicly available ~~the findings and~~, in accordance with regulation 92, the Contractor's report submitted under paragraph 2, the Commission's recommendations ~~resulting~~

~~from a review of a Plan of Work~~ submitted under ~~this regulation [in accordance with regulation 92]~~ paragraph 3, and any decision of the Council under paragraph 5.

Regulation 92(1. Bis)(j) and (j)Alt – Seabed Mining Register

~~(j) [any modifications to the approved Plan of Work and its periodic review report including recommendations of the Commission and decision of the Council for each Contract pursuant to regulations 57 and 58] [Any modification to a Plan of Work pursuant to Regulation 57 and the findings and recommendations resulting from a Review of a Plan of Work pursuant to Regulation 58];~~

(j)~~Alt [~~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~~ Contractor's report submitted under paragraph 2 of regulation 58, the Commission's recommendations ~~resulting from any review of a Plan of Work pursuant to~~ submitted under paragraph 3 of ~~R~~regulation 58, and any decision of the Council under paragraph 5 of regulation 58~~]~~;

Annex IX, Schedules 1 and 15

The Schedules to the Exploitation Contract

Schedule 1
Coordinates and illustrative chart of the Contract Area and proposed Mining Area~~(s)~~.

[…]

Schedule 15
Location of books, accounts and records

Annex X, Section 16.0 - Scope

16.0 This Section applies to revision of the provisions of this Exploitation Contract other than the Plan of Work. Any proposed modification to the Plan of Work shall be dealt with in accordance with regulation 57.

Annex X, Sections 16.2 and 16.3 - Consent and form

~~16.2 This Contract may be revised by agreement between the Contractor and the Authority.~~

16.3 Subject to Section 16.0, ~~T~~this Exploitation 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.

4. Please indicate the rationale for the proposal.

Regulation 7(4) – Modification of Mining Area in a Plan of Work

Regulation 48 bis(4) - New Environmental Impact Assessment and revised environmental documentation - new Mining Area

Annex IX – Schedule 1 – Mining Area defined term

Rationale: Amendment to DR7(4) and deletion of DR48 bis(4) clarifies that a proposed change to the Mining Area is to be treated as a proposed modification under DR57.

The term Mining Area is defined in the Schedule of the Regulations as “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.” Any proposal to modify the Mining Area / Schedule 1 should therefore be assessed in accordance with DR57.

As a minor drafting point, the Group proposes that the “(s)” at the end of the term “Mining Area” in the title of Schedule 1 in Annex IX is deleted. This wording is superfluous as the definition of Mining Area already foresees the possibility of multiple “parts” of a Contract Area.

Without these amendments, DR7(4) and DR48bis(4) leave unclear the correct process to be followed in the event of a change to the Mining Area.

Regulation 23(4 bis) - Transfer of rights and obligations under an Exploitation Contract

Rationale: “Material Change” should not be said to “arise” at transfer. Under DR57(3), the Commission determines whether a proposed modification constitutes a Material Change. “Shall” is appropriate because the provision directs the proposal into the mandatory DR57 process rather than creating discretion. The Council may wish to consider whether it is appropriate to include a time period within which the Contractor must prepare a proposed modification.

Regulation 38(2)(m) – Annual report

Rationale: This amendment avoids implying that disclosure in an annual report is sufficient notification of a proposed modification. It also captures minor corrections

and gives the annual report a useful record-keeping function without duplicating the Seabed Mining Register. For the avoidance of doubt, the Group understands the term “proposed modification” used in this sub-paragraph simply to mean a proposal for a modification already notified pursuant to DR57 and is not intended to be broader than that, i.e. it does not include proposals that the Contractor may have contemplated but has not yet notified to the Authority.

Regulation 39(1. bis) - Books, accounts and records

Annex IX – Schedule 15 – Location of books, accounts and records

Rationale: As the appropriate location for books, accounts and records will be specific to each Contractor, this should be included in a Schedule to the Exploitation Contract (i.e. a Plan of Work), which may be modified from time to time using the DR57 process. It is important that there is certainty and transparency as to the location of books, accounts and records. Accordingly, changes in location should not be effected by informal agreement between the Contractor and the Compliance Committee.

As a consequential drafting point, the Group proposes the addition of a new Schedule 15 to Annex IX, Location of books, account and records.

Regulation 48(1) - Environmental Impact Statement

Rationale: The deletion of wording in this DR is proposed first to clarify that Draft Regulation 57 does not require an Environmental Impact Statement for every proposed modification, and second because reference to DR7(3)(d) is superfluous; it is clear from the terms of that provision that an Environmental Impact Statement is required as part of the application for approval of a Plan of Work.

Regulation 48 bis(1)(c) – New Environmental Impact Assessment and revised environmental documentation – documentation to be provided

Rationale: To clarify that the Contractor is required to provide details of any EIA to be conducted or proposed modification to a Plan of Work under consideration in response to the circumstances notified under paragraph 1. The Group’s preference is to widen the scope from Environmental Plans to any part of a Plan of Work so the Authority has a fuller understanding of the Contractor’s early thinking and expectations. At this stage, the Contractor is not expected to have completed an EIA or submitted a proposed modification under DR57. Decisions as to whether an EIA should be undertaken or a modification proposed may be taken by the Council under paragraph 3, see below.

Regulation 48 bis(3) – New Environmental Impact Assessment and revised environmental documentation – process

Regulation 57(4) (chapeau only) and (4bis) – non-duplication of EIA/EIS under DR48bis(3)

Rationale: This proposal clarifies the respective roles of the Commission and Council and distinguishes environmental assessment from modification of a Plan of Work. Any resulting modification would be proposed by the Contractor and dealt with under regulation 57, without prejudice to other regulatory action available to the Authority.

The Group proposes a consequential amendment to DR57 to clarify that where a new EIA is conducted and EIS revised under DR48bis with a resulting proposed modification, the EIA/EIS step would not need to be redone under DR57(4), except where the Commission determines that EIA/EIS to be inadequate during the review process under DR57(4)(c).

Regulation 58(1) – Frequency and grounds of review

Rationale: Having consulted the REMP Group, the Modifications Group proposes to retain a single general “reasonable grounds” trigger. The Group considers that a Standard may expressly identify amendment to a REMP as a reasonable ground. This simplifies the drafting of paragraph 1 and avoids opening the question of which particular instruments and circumstances should be expressly listed.

Regulation 58(1.bis) - Automatic suspension

Rationale: Automatic suspension on occurrence of selected review triggers would conflate the trigger for review with the consequences of the review and the approval of any amended Plan of Work. Any suspension should be addressed under the regulations specifically governing suspension or emergency measures. The Group therefore proposes deletion of this provision.

Regulation 58(2)-(5) – Clarification of process

Rationale: Amendments are intended principally to clarify the sequencing of the review process.

Under new paragraph 2, the Contractor first undertakes the review and submits its report to the Secretary-General, who transmits it to the relevant bodies.

Under paragraph 3 (see further below), the report is then verified either by the Commission under Alt 1 or by an independent expert or panel of independent experts under Alt 2. Under Alt 2, the experts report their findings to the Commission. Under both alternatives, the Commission assesses the findings and submits recommendations to the Secretary-General.

Under paragraph 4 (see further below), any additional information required for the verification or the Commission's assessment is provided through the Secretary-General.

Under paragraph 5, the Council may subsequently decide, based on the Contractor's report and the Commission's recommendations, that the Contractor should propose a modification to the Plan of Work.

The amendments therefore distinguish between: (i) the Contractor's review and report; (ii) verification of that review by the Commission or independent experts; (iii) assessment of the findings and recommendations by the Commission; and (iv) the Council's consideration of whether a modification should be proposed. They also ensure that a review-generated modification enters the regulation 57 process at the appropriate stage. Where the Council decides that a modification should be proposed, the Contractor must prepare the proposal in accordance with regulation 57(2), after which it is assessed and decided in accordance with regulation 57. This avoids both requiring implementation before approval and creating a separate route for approving modifications outside regulation 57.

Regulation 58(3) – Verification, assessment and recommendations

Rationale: This proposal reflects differing views within the Group on the appropriate institutional body to verify the Contractor's review. Under Alt 1, the Commission would verify the review, including the underlying data, information, methodologies and processes, and assess its findings. Under Alt 2, an independent expert or panel of independent experts would undertake that verification and report its findings to the Commission. Under both alternatives, the Commission would assess the findings and submit recommendations to the Secretary-General, including details of any modifications to the Plan of Work it considers necessary or appropriate.

The alternatives therefore concern responsibility for verification, rather than whether the Contractor's review should be verified or assessed. They also preserve a common regulatory role for the Commission in assessing the findings of the review and making recommendations, while ensuring that independent experts under Alt 2 perform a technical fact-finding rather than a regulatory decision-making function.

Both options will entail a cost implication for the Authority – either in terms of Commission resource or the cost of contracting independent experts. The Group seeks views from the Council on which alternative it supports.

Regulation 58(4) – Additional information

Rationale**:** The Contractor's report is submitted under paragraph 2. This paragraph addresses any additional information subsequently required for verification of the review or assessment of the findings of the review under paragraph 3. Under Alt 1, the Commission may determine what additional information it reasonably requires for both functions. Under Alt 2, the independent expert or panel may require additional

information for the verification, and the Commission may require additional information for its assessment of the findings. The words “as applicable” make clear that each body may seek information only for the function assigned to it under paragraph 3. The Secretary-General should act as the formal channel for communicating those requirements to the Contractor and receiving the Contractor’s response. The alternatives remain in square brackets and should be aligned with the institutional approach ultimately selected under paragraph 3.

Regulation 58(6) – Publication

Regulation 92 – Seabed Mining Register

Rationale: These amendments aligns the publication requirement with the revised sequencing and outputs of the review process. It distinguishes between the Contractor’s report under paragraph 2, the Commission’s recommendations following verification and assessment under paragraph 3, and any subsequent decision of the Council under paragraph 5.

Under Alt 2, the independent experts’ verification findings would be reported to the Commission and inform its assessment and recommendations; paragraph 6 does not separately require publication of the expert report.

Publication of the Contractor’s report in full goes beyond the previous text, which referred only to the findings and recommendations resulting from the review. The Group nevertheless considers publication of the report preferable from a transparency perspective. At the same time, this requirement is expressly subject to the protection of Confidential Information in accordance with the Regulations, applying the defined term, “Confidential Information”. This provides due protection for information falling within that definition while avoiding a broader or discretionary limitation on publication.

The Group proposes a consequential amendment to DR92(1 bis)(j)Alt to ensure that both provisions identify the same material for publication.

Annex X, Section 16 - Scope

Rationale: The Group proposes a new opening paragraph 16.0 to set out the scope of that provision. This new paragraph reflects the Group’s understanding that (1) the Plan of Work is part, but not the whole, of the Exploitation Contract; and (2) Draft Regulation 57 governs the process for modifying plans and documents scheduled to the Contract, while Section 16 governs revision of the remaining contractual terms.

The new Section 16.0 prevents Section 16 from being treated as an alternative route for modification of the Plan of Work. Separate modification processes are justified because they address different legal subject matter and perform different functions. DR57 is designed for modification of a Plan of Work, comprising the operational, technical and environmental documentation approved by the Authority. It provides a dedicated process for assessing and approving such modifications. By contrast,

modification of other parts of the Exploitation Contract concerns the contractual framework itself, namely the contract template and the Standard Terms and Conditions. These modifications are therefore more appropriately addressed through Annex X, Section 16, rather than a procedure designed for operational changes to a Plan of Work.

The use of “revision” rather than “modification” aligns Section 16.0 with the terminology used elsewhere in Section 16 and helps distinguish the contractual revision process under that Section from the separate process for modification of a Plan of Work under regulation 57.

The reference to “provisions” rather than “terms” more precisely describes the parts of the Exploitation Contract falling within Section 16 and avoids possible confusion with the term “Standard Terms and Conditions”.

The reference to “this Exploitation Contract” rather than “an Exploitation Contract” reflects that Section 16 is itself a Standard Term and Condition that will be annexed to and form part of the Exploitation Contract to which it applies.

Annex X, Sections 16.2 and 16.3 - Consent and form

Rationale: Sections 16.2 and 16.3(a) duplicate the same consent requirement. Deleting section 16.2 streamlines the clause without changing its substance. The addition of “Subject to Section 16.0” in Section 16.3 makes the scope limitation explicit and confirms that the consent and formal instrument requirements in Section 16.3 apply only to revisions governed by Section 16, and do not provide an alternative route for modifying a Plan of Work outside regulation 57.