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Draft regulations on exploitation of mineral resources in the Area

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Parts IV: Regulations 44 to 52

Drafting proposals submitted by delegations as compiled on 24 March 2022

Part IV

Protection and preservation of the Marine Environment

Section 1

Obligations relating to the Marine Environment

Regulation 44

General obligations

1. The Authority, sponsoring States, the Enterprise and Contractors shall ~~each, as appropriate—within their respective competence,~~ adopt, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects which may arise from Exploitation in the Area or from shipboard processing immediately above a mine site of minerals derived from that mine site, in accordance with the Convention, the Agreement, the rules, regulations and procedures adopted by the Authority ~~in respect of activities in the Area, as well as the Standards referred to in regulation 45.~~ To this end, ~~they shall:~~

(a) In establishing and keeping under periodic review environmental rules, regulations and procedures, in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, and the ecosystem approach to the assessment and management of risk ~~of harm~~ to the Marine Environment from Exploitation in the Area;

(ii) Apply the Best Available Techniques and Best Environmental Practices ~~in carrying out such measures;~~

(eiii) Integrate Best Available Scientific Evidence in environmental decision- making, including all risk assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with Best Environmental Practices; and

(div) ~~Promote—Require~~ accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through stakeholder engagement and the timely release of and access to relevant environmental data and information ~~and opportunities for stakeholder participation.~~

(b) In taking all necessary measures to ensure that the Contractor carries out Exploitation in the Area in conformity with the terms of its contract and its obligations under the Convention and the rules, regulations and procedures adopted by the Authority related to the protection for the Marine Environment from harmful effects, the Sponsoring State shall implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iv) above.

(c) In taking necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from Exploitation in the Area, the Enterprise and Contractors shall implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iii) above and demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through stakeholder engagement and the timely release

of and access to relevant environmental data and information.

2. In adopting laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the marine environment from Exploitation in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be, States shall implement, mutatis mutandis, the measures set out under paragraph 1(a)(i) to (iv) above.

3. The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 and 2 above.

Explanation / comment

- Draft regulation 44 was the object of a number of comments, in particular the need to clearly differentiate and set out the responsibilities of the various actors with regard to the general obligations. The proposed revisions and restructuring aim to respond to those comments by specifying the respective responsibilities of each actor.
- The reference to the precautionary approach in paragraph 1 was kept as originally drafted, for consistency with the current text of the Exploration Regulations. It is noted that this is the term used in the Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks and the General Assembly resolutions on oceans and the law of the sea. Further information on the implementation of the precautionary approach is available in a note prepared by the Secretariat for the twenty-fifth session of the Authority (ISBA/25/C/8).
- It is noted that a proposal was made to specify, in the paragraph related to Rio Principle 15 that “where information is uncertain or inadequate, the Authority shall favour caution and environmental protection”. The proponent is invited to clarify if this is aimed at elaborating on the concrete application of Rio Principle 15 or if this is an additional requirement. Rio Principle 15 reads as follows:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

- In light of the proposal to include a reference to the “ecosystem approach” in paragraph 1, further consideration of the practical implications of this proposal may be needed, including the possibility of providing a definition for the term in the Schedule.

- It is proposed that a reference to “shipboard processing immediately above a mine site of minerals derived from that mine site” be added to paragraph 1 for completeness and consistency with Annex III, para 17(2)(f).
- It is also proposed that a new paragraph 2 be added to reflect a concomitant obligation on flag States, when adopting laws and regulations pursuant to article 209 of the Convention, to also implement the pertinent measures required of the Authority, sponsoring States and contractors under paragraph 1, including in light of the requirement in article 209 that the requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures established in accordance with Part XI of the Convention.

I – Members of the International Seabed Authority

Canada

1. The Authority, sponsoring States, the Enterprise and Contractors shall, within their respective competence, adopt, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects which may arise from Exploitation in the Area or from shipboard processing immediately above a mine site of minerals derived from that mine site, in accordance with the Convention, the Agreement, the rules, regulations and procedures adopted by the Authority, as well as the Standards referred to in regulation 45. To this end:

- a) In establishing and keeping under periodic review environmental rules, regulations and procedures, in accordance with the Convention and the Agreement, the Authority shall:
 - (i) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, and the ecosystem approach to the assessment and management of risk to the Marine Environment from Exploitation in the Area;
 - (ii) Apply the Best Available Techniques and Best Environmental Practices;
 - (iii) Integrate Best Available Scientific Evidence in decision- making, including all risk assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with Best Environmental Practices; ~~and~~
 - (iv) Take into account limitations, gaps or deficiencies in knowledge regarding the deep-sea marine environment and anticipated impacts of exploitation activities in the Area;

Rationale

It is standard practice to include provisions on uncertainties and knowledge gaps. Without such, the information currently in the draft regulations could be mistaken as comprehensive. As many scientists agree, there is a critical knowledge deficit on the subject of the deep-sea marine environment. The inclusion of uncertainties and knowledge gaps would highlight the areas of research that are still needed to accurately assess the marine environmental impacts of deep-sea mining.

Regulation 44bis
Regional Environmental Management Plans

Placeholder

- A proposal was made for a new provision 44bis addressing Regional Environmental Management Plans (see ISBA/26/C/CRP.1).
- In light of the process subsequently decided upon by the Council concerning a standardized approach for the development, approval and review of Regional Environmental Management Plans in the Area (ISBA/26/C/10), it is suggested that delegations focus their discussion on paragraph 3 of the proposal, which is most directly related to these draft regulations. The paragraph reads:

“3. An application for a Plan of Work shall not be considered by the Commission until and unless a Regional Environmental Management Plan has been adopted by the Council for the particular area concerned. In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Implementing Agreement.”

- Discussions could also consider the possible placement of such a provision in Part II, sections 3 and 4, or to Regulation 94, if kept in the draft regulations.

**Regulation 45
Development of environmental Standards**

Environmental Standards shall be developed in accordance with regulation 94 and shall include the following subject matters:

- (a) Environmental quality objectives, including on biodiversity status, plume density and extent, and sedimentation rates;
- (b) Monitoring procedures; and
- (c) Mitigation measures.

Explanation / comment

- The Legal and Technical Commission have commenced their preparation of environmental Standards pursuant to Regulation 45 , including, for instance, the Standard for environmental impact assessments. Regulation 45 serves as an explicit regulatory basis for the preparation of those environmental Standards. In view that the Commission has prepared also related draft guidelines, consideration should be given as to whether the chapeau and title of Regulation 45 should also make explicit reference to “Guidelines”.
- A proposed new paragraph 2 (see ISBA/26/C/CRP.1), which reads:
2. The Authority shall not approve any Exploitation activities unless the necessary environmental Standards have been adopted.
would require further discussion, including concerning its possible placement in Part II, sections 3 and 4, or to Regulation 94, if kept in the draft regulations.

I – Members

Finland

**Regulation 45
Development of environmental Standards and Guidelines**

Environmental Standards and Guidelines shall be developed in accordance with regulation 94 and shall include the following subject matters:

- (a) Environmental quality objectives, including on biodiversity status, plume density and extent, and sedimentation rates;
- (b) Monitoring procedures; and
- (c) Mitigation measures.

[2. The Authority shall not approve any Exploitation activities unless the necessary environmental Standards and Guidelines have been adopted.](#)

Rationale

We consider that both Standards and Guidelines need to be included under Regulation 45. We also support the inclusion of the proposed paragraph 2.

Regulation 46
Environmental management system

1. A Contractor shall develop, implement and maintain an environmental management system, in conformity with the applicable Standard and taking account of the relevant Guidelines.
2. An environmental management system shall:
 - (a) ~~Be capable of~~ Delivering site specific the Authority's environmental objectives at the mine site and Standards as reflected in the Environmental Management and Monitoring Plan;
 - (b) Be audited by an ~~capable of cost effective~~, independent auditing ~~by~~ recognized and accredited international or national organizations; and
 - (c) Permit effective reporting to the Authority in connection with environmental performance.

Explanation / comment

- The revisions to this draft regulation, building on proposals from various delegations, aim at clarifying the original wording including in terms of who should develop the environmental management system and who should audit it.
- The reference to environmental objectives was also further clarified to make it clear that the environmental objectives to be achieved at the mine site are to be set by the Authority.
- In light of queries from some delegations, attention is drawn to the ISA publication “A Discussion Paper on the development and drafting of Regulations on Exploitation for Mineral Resources in the Area (Environmental Matters)”, which provides information on the concepts of environmental management systems, environmental management and monitoring plans and environmental impact assessment (available at <https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/documents/EN/Regs/DraftExpl/DP-EnvRegsDraft25117.pdf>).
- It is noted that one delegation preferred keeping the original wording of Regulation 46, while another suggested that paragraph 2 was not necessary as the elements could be incorporated in the relevant guideline.

Regulation 46bis

Environmental impact assessment

1. An applicant or Contractor, as the case may be, shall carry out an environmental impact assessment of the potential effects on the marine environment of the proposed mining operation in accordance with these regulations, the applicable Standard and Guidelines, as well as Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.
2. The environmental impact assessment shall include:
 - (a) Scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Statement on the key environmental issues;
 - (b) Impact assessment and evaluation to describe and predict the nature and extent of the Environmental Effects of the mining operation, including cumulative impacts and residual effects, using Best Available Scientific Evidence;
 - (c) Identification of measures to prevent, mitigate and manage harmful effects to as low as practicable, including through the development and preparation of an Environmental Management and Monitoring Plan; and
 - (d) Preparation of the Environmental Impact Statement in accordance with Regulation 47 and the relevant Guidelines.
3. Screening shall also be part of an environmental impact assessment when, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, in order to determine whether a revised Environmental Impact Statement is required.
4. The environmental impact assessment shall:
 - (a) Be based on relevant baseline data that captures temporal and seasonal variation;
 - (b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan;
 - (c) Provide for stakeholder consultation; and
 - (d) Be subject to an independent scientific assessment prior to the submission of the Environmental Impact Statement to the Authority.
5. A Contractor shall review impact assessments, including for cumulative impacts of activities covered by the assessment, periodically and revise them thereafter whenever a change in the mining operation has occurred or there is relevant new information.
6. An environmental impact assessment and Environmental Impact Statement shall be considered in accordance with Part II or regulation 57, as the case may be.
7. In the conduct of the environmental impact assessment, the

Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Explanation / comment

- The proposed new regulation 46bis aims to respond to concerns expressed by delegations that a requirement for an environmental impact assessment should be clearly set out in the draft regulations. While this new regulation provides for the general obligation to undertake an EIA, the document to be prepared following the EIA and submitted to the Authority, namely the Environmental Impact Statement, is set out in Regulation 47.
- The current draft regulation 46bis is based on the elements formerly included in Regulation 47(1), as adjusted and complemented with proposals by delegations which I did not hear opposition.
- Paragraph 2 aims at identifying the key elements of an EIA. In light of the fact that undertaking an EIA is always a requirement prior to the approval of a Plan of Work, and therefore not subject to the outcome of a screening phase, paragraph 3 aims at specifying the circumstances under which screening may be part of an EIA.
- Some delegations made proposals setting out in detail the specific steps of an EIA. It is noted that the Legal and Technical Commission developed a draft Standard concerning the EIA process, including details of the required steps, and draft Guidelines on the EIA and EIS. I, therefore, consider it is not necessary to specify more details in this Regulation.
- Paragraph 4 aims to set out some framing elements for the conduct of the EIA. The proposal by a delegation which suggested that the EIA shall “be based on the prior testing of equipment and operations in the Mining Area under application” can be revisited in light of the outcome of the discussions on “test mining”.
- Paragraph 6 clarifies that the decision concerning whether an activity should proceed or not, based on the information provided through the environmental impact assessment and as reflected in the Environmental Impact Statement, is made by the Authority.
- Paragraph 7, the wording of which is based on article 142 of the Convention, aims at accommodating different views concerning involvement of coastal States in the EIA process.

I – Members

Finland

4. The environmental impact assessment shall:

(a) Be based on relevant baseline data that captures temporal ~~and~~ seasonal and spatial variation

Rationale

Spatial variation also need to be captured in the baseline data in order to properly be able to assess the environmental impacts.

Regulation 46ter

Environmental monitoring

1. The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 48, shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution and other hazards to the marine environment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to have harmful effects on the marine environment.
2. The Contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of monitoring programmes.
3. The Contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit data and information, in accordance with the relevant Standards, and taking into account the relevant Guidelines and recommendations issued by the Commission. The Secretary-General shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention.
4. In implementing paragraph 1, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Explanation / comment

- New regulation 46ter aims at providing for the obligation to continuously monitor the effects of the mining operation on the marine environment. The preparation of the document setting out the manner in which this is done and which is to be submitted to the Authority, the Environmental Management and Monitoring Plan, is provided for in Regulation 48.
- The proposed text is based on similar provisions in the Exploration Regulations and on articles 205 and 145 of the Convention.
- Paragraph 5, the wording of which is based on article 142 of the Convention, aims at accommodating different views concerning involvement of coastal States.

I – Members

Australia

1. The Contractor, ~~through~~ pursuant to the Environmental Management and Monitoring Plan required under Regulation 48, shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution and other hazards to the marine environment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to have harmful effects on the marine environment.

Rationale

Australia suggests that paragraph 46ter, paragraph 1 be amended to refer to the Contractor observing, measuring, evaluating and assessing the relevant risks or effects pursuant to, rather than through, the Environmental Management and Monitoring Plan. In order to ensure a logical flow to the Regulations, Australia is of the view that the obligations in proposed 46ter should be either included within, or follow, draft Regulation 48 concerning Environmental Monitoring and Management Plans.

China

46 ter 4. In implementing paragraph 1, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4. **The Authority shall specify procedures and time limit requirements for such consultation with coastal State concerned.**

Rationale

China believes that the consultation with coastal State should be carried out in strict accordance with Article 142 of the UNCLOS, and the scope of consultation should not be expanded. At the same time, in order to ensure the actual operation of the consultation, it is needed to clarify the procedures and time limit requirements for such consultation with coastal State concerned.

Micronesia

The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 48, shall observe, measure, evaluate and analyse, by recognized scientific methods in accordance with Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices, and Best Available Techniques, the risks or effects of pollution and other hazards to the mMarine eEnvironment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining

operation to determine whether it is likely to have harmful effects on the marine environment.

Rationale

On paragraph 1, it is our view that the observation, measurement, evaluation, and analysis of the risks or effects of a mining operation to the Marine Environment must be conducted in accordance with Good Industry Practice, Best Environmental Practices, and Best Available Techniques, as well as the Best Available Scientific Evidence. These four elements encompass the original phrase “recognized scientific methods” as well as other considerations of relevance to this paragraph that are not captured by the phrase “recognized scientific methods.” It is also our view that the phrase “of pollution and other hazards” should be deleted in order to ensure the broadest scope possible for this paragraph. Finally, we propose that the phrase “marine environment” be capitalized as “Marine Environment,” to ensure consistency with the rest of the draft exploitation regulations, Standards, and Guidelines, including how the term is reflected in the Schedule.

On paragraph 4, we look forward to textual proposals from other delegations on this point, particularly for the purpose of expanding the scope of coastal States to be notified and consulted under this paragraph.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

United States of America

1. The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 48, shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution and other hazards to the marine environment of the mining operation following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is having or likely to have harmful effects on the marine environment.

3. The Contractor shall report annually in writing in accordance with these regulations to the Secretary General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall release publicly, in an accessible format, data and information at monthly intervals, ~~submit data and information,~~ in accordance with the relevant Standards, and taking into account the relevant Guidelines and recommendations issued by the Commission. ~~The Secretary General shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention.~~ The Commission shall consider annual reports pursuant to article 165 of the Convention.

Rationale

In paragraph 1, it is vital that the current levels of pollution and other hazards, and any current harmful effects, be continuously monitored, in addition to anticipating potential harmful effects to the marine environment.

In paragraph 3, the public release of monitoring data at monthly intervals will allow for regular and routine verification of environmental conditions at the site by the Authority, and contribute to the scientific knowledge about deep sea habitats.

Institute for Advanced Sustainability Studies

Regulation 46ter

Environmental monitoring

1bis. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to have harmful effects on the marine environment. This shall including the following:

1.
 - (a) The monitoring of the temporal and spatial variability of the potentially affected areas must have taken place continuously since the exploration phase;
 - (b) Indicators must have been selected and tested which are a) anticipatory to provide an early warning of deterioration; b) biologically important, applicable and indicative over space and time, c) scientifically sound and measurable and quantifiable over space and time, d) sensitive to pressures and responsive to management, and e) socially relevant and interpretable by stakeholders. To be valid, longer term measurements have to determine site-specific reference points for evaluating a) pressure, environmental state and change; b) progress towards environmental targets; and c) the effectiveness of measures.
 - (c) An independent and scientific monitoring strategy should be established, with monitoring partly or completely conducted by third parties, to validate the environmental impact of such activities.
2. The Contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of monitoring programmes, including regional monitoring programmes.
3. The Contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit data and information, in accordance with the relevant Standards, and taking into account the relevant Guidelines and recommendations issued by the Commission. The Secretary-General shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention and publish them on the Authority's website.

Rationale

Some of the suggested amendments reflect proposals previously made by Member States, including Germany UK, US, and New Zealand, others have been added by us.

The Pew Charitable Trusts

Proposed edits are in blue

Regulation 46ter

Environmental monitoring

1. The Contractor, through the Environmental Management and Monitoring Plan required under Regulation 47, shall observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment of the mining operation on the marine environment following the approval of the Plan of Work. It shall keep under surveillance the effects of the mining operation to determine whether it is likely to pollute the marine environment.

3. The Contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit data and information in the required standardized format, taking into account the relevant Standards, Guidelines and recommendations issued by the Commission. The Secretary-General shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention.

4. In implementing paragraph 1, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any adjacent coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.

Rationale

Amendments on para 1 reflect our position that the provision should apply to monitoring of impacts beyond “pollution.” Noting specifically that sediment plumes generated by disturbance of the sea floor may not technically be counted within the definition of “pollution”, because they do not introduce anything new into the marine environment, although they are among the principal mining impacts.

On para 2, we agree with the comments made by the African Group, USA and others that annual reporting is not sufficient for the ISA's ongoing monitoring of

Contractors' environmental impacts during exploitation. The Contractor should be required to provide environmental performance data to the ISA in real-time, reporting against indicators in the EMMP. The Contractor should also provide to the ISA, whenever it is available, any new baseline data, model validation data, test results etc, so the ISA does not wait up to a year, to evaluate ongoing impacts. In this regard, the Regs could also require each Contractor to provide the ISA a quarterly data assessment report which provides, statistical analysis, assessment of trends and identification of areas for improvement.

In para 4, the reference to 'resource deposits' seems to limit this clause to exclude adjacent coastal states who share an EEZ border with the Area and may be concerned about transboundary effects (but who do not necessarily have border straddling mineral deposits.) (Also the drafting 'across whose jurisdiction resource deposits in the Area lie' does not seem to make sense: if the deposits are in the Area, then they cannot also be in national jurisdiction. The two are mutually exclusive.

Section 2 Preparation of the Environmental Impact Statement and the Environmental Management and Monitoring Plan

Regulation 47 Environmental Impact Statement

1. The purpose of the Environmental Impact Statement, which shall accompany an application for approval of a Plan of Work in accordance with regulation 7, is to document and report the results of the environmental impact assessment carried out in accordance with Regulation 46bis.
2. An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation.
3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall ~~be~~:
 - (a) Be ~~Inclusive~~ inclusive of a prior environmental risk assessment;
 - (b) Be ~~Based~~ based on the results of the environmental impact assessment; (c) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed;
 - ~~(ed)~~ Be ~~In~~ in accordance with the objectives and measures of the relevant regional environmental management plan; and
 - ~~(de)~~ Be ~~Prepared~~ prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.
4. The Environmental Impact Statement shall demonstrate that the proposed mining operation is in accordance with all relevant environmental Standards and with the requirements of the relevant Regional Environmental Management Plan.

Explanation / comment

- The elements concerning environmental impact assessments formerly contained in draft regulation 47(1) were removed and included in the new regulation 46bis setting out the requirements for an environmental impact assessment.
- Wording was introduced in paragraph 1 to clarify that the EIS was part of the application process and to be considered in that context.

I – Members of the International Seabed Authority

China

3(c). Identify comments received through public consultation on the environmental impact assessment **within a specified period of the publication of the environmental impact assessment** and how they have been addressed **according to the relevant rules and procedures adopted by the Authority;**

Rationale

China endorses the positive effects of public consultation for the improvement of the EIA. However, contractors can be caught up in endless responses in the absence of appropriate standards, procedures, and timelines. In order to facilitate the operation of the contractor, China calls upon the Authority and facilitator to elucidate how and to what extent the contractor should "address" the comments and clarify the timeline and procedure for public consultation.

New Zealand

Replace existing text with:

“Consider and incorporate as appropriate comments received through public consultation, explaining how each comment received has been incorporated or otherwise addressed.”

Rationale

This proposal includes an obligation to consider all consultation responses, instead of merely to identify them.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

United States of America

3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall ~~be~~:

- (a) ~~Be Inclusive-inclusive~~ of a prior environmental risk assessment;
- (b) ~~Be Based-based~~ on the results of the environmental impact assessment;
- (c) **Include a description of the analysis of alternatives, including a no-action alternative.**
- (de) Identify comments received through public consultation

on the environmental impact assessment and how they have been addressed;

~~(ced)~~ Be In-in accordance with the objectives and measures of the relevant regional environmental management plan; and

~~(fde)~~ Be Prepared-prepared in accordance with the applicable ~~Standards~~Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, and taking into account the relevant Guidelines.

Rationale

Firstly, we would like to suggest that a description of the results of the analysis of alternatives, including a no-action alternative, be required as part of the Environmental Impact Statement. This will allow decision makers to consider and analyze the impacts of a reasonable range of alternatives to the proposed action, as well as a no-action alternative. Alternatives analysis is an essential part of an EIA. Even where there are no technically and economically feasible alternatives, EIA still considers the alternative of “no action” as a means of assessing the effects of the proposed action. Secondly, since the Guidelines are not legally binding, we have suggested an alternative formulation for considering them in the preparation of the EIS, as well as added a reference to applicable Standards.

Deep Ocean Stewardship Initiative

2. An Applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in a timely manner after the results of the EIA have been obtained in accordance with this regulation and in consultation with relevant stakeholders throughout the process.

Rationale

Ensuring that an EIS is conducted in a timely manner is critical, given the rapid rate of environmental change associated with mining activities: any associated delays would perpetuate potential damage longer than necessary.

It is also important to include stakeholders in the development of the EIA and EIS. The EIA process and the resulting EIS would benefit from multiple points of consultation from stakeholders throughout all phases of the process.

The Pew Charitable Trusts

Proposed edits are in blue

2. An applicant or Contractor, as the case may be, shall prepare, or

commission the preparation of, an Environmental Impact Statement in accordance with this regulation.

3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall be:

- (a) Inclusive of a prior environmental risk assessment, preliminarily prepared during the environmental impact assessment scoping phase, and revisited and updated as the environmental impact assessment proceeds;

5. Where predictive models have been used to inform an environmental impact assessment:

(a) These shall be reviewed by competent independent experts, with the results provided to the Authority as annexures to the Environmental Impact Statement; and

(b) The monitoring programme proposed in the Environmental Impact Statement shall describe how predictions made by models will be validated.

Rationale

Amendments on para 2 reflect that in some jurisdictions, a private applicant cannot itself prepare an EIA given their potential conflict of interest (and the applicant/contractor would also need to adhere to the national law requirements for the EIA)

Edits on para 3 (a) are to clarify the timing of when an environmental risk assessment should take place

New paragraph 5 is proposed - Given the scarcity of current knowledge about deep-sea environments and how they will be affected by deep-sea mining, EIAs are likely to rely to some extent on predictive modelling. Those methodologies should be verified, and that the accuracy of those models are checked, as new data comes in.

Regulation 48
Environmental Management and Monitoring Plan

1. The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental ~~Effects~~impacts meet the environmental quality objectives and standards for the mining operation. The plan will contain any conditions included in the Environmental Impact Statement and will set out commitments and procedures on how the environmental impacts of the mining operation will be monitored, how the mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.

2. An applicant or Contractor, as the case may be, shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation.

3. The Environmental Management and Monitoring Plan shall cover the main aspects prescribed by the Authority in annex VII to these regulations and shall be:

(a) Based on the environmental impact assessment and the Environmental Impact Statement;

(b) In accordance with the relevant regional environmental management plan; and

(c) Prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

4. The Contractor shall provide information in its annual report on the implementation of the Environmental Management and Monitoring Plan in accordance with regulations 38, paragraph 2(g), and 46ter, paragraph 3, for evaluation by the Legal and Technical Commission.

Explanation / comment

- Should the change proposed by a delegation from environmental “effects” to “impacts” be agreed upon by delegations in paragraph 1, this change would need to be considered throughout the Draft regulations, bearing in mind that article 145 of the Convention uses the term “effects”. The attention of delegations is drawn to the ISA publication “A Discussion Paper on the development and drafting of Regulations on Exploitation for Mineral Resources in the Area (Environmental Matters)”, which provides information on the use of the terms “Impact”, “Effect” and “Change” (available at <https://ran-s3.s3.amazonaws.com/isa.org/jm/s3fs-public/documents/EN/Regs/DraftExpl/DP-EnvRegsDraft25117.pdf>, paragraphs 7.2-7.4).
- The new paragraph 4 echoes paragraph 3 of the new draft regulation 46ter and draft regulation 38(2)(g). Consideration could be given to including the reporting requirement in only one of these provisions.

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United States of America

- (c) Be prepared in accordance with the applicable ~~Guidelines~~, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, taking into account the relevant Guidelines, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.
1. The Contractor shall provide information in its annual report on the implementation of the Environmental Management and Monitoring Plan in accordance with regulations 38, paragraph 2(g), and 46ter, paragraph 3, for evaluation by the Legal and Technical Commission, as well as publicly release, in an accessible format, monitoring data and information at monthly intervals.

Rationale

Firstly, since the Guidelines are not legally binding, we have suggested an alternative formulation for considering them in the preparation of an EMMP. Secondly, we propose that Environmental Management and Monitoring Plans be required to include data reporting at regular subannual intervals in addition to the submission of the annual report. Currently, monthly or quarterly reporting is encouraged in the Draft guidelines for the preparation of Environmental Management and Monitoring Plans. More frequent reporting would allow regular and routine verification of environmental conditions at the site by the Authority, and contribute to scientific knowledge about deep sea habitats.

The Pew Charitable Trusts

Regulation 48

Environmental Management and Monitoring Plan

3. The Environmental Management and Monitoring Plan shall cover the ~~main~~ main aspects content prescribed by the Authority in annex VII to these regulations and shall be:

(b) In accordance with the the Authority's policies and objectives cited in regulation 2, as well as relevant regional environmental management plan; and

(d) Designed to ensure that the Contractor, in the performance of its Plan of Work:

(i) does not breach any of the Rules of the Authority,

(ii) tests assumptions made in the Environmental Impact Statement, continuously improves environmental knowledge and reduces residual uncertainties remaining from the environmental impact assessment process,

(iii) identifies any material differences in scale, nature or extent of Environmental Effects caused, compared to those predicted in the environmental impact assessment, and

(iv) manages any responses or changes required to project implementation as a result of new knowledge

3bis. A Contractor shall reflect in its Environmental Monitoring and Management Plan:

(a) Its internal thresholds and methodology for maintaining compliance with the Standards of the Authority developed in accordance with Regulations 45 and 94, and any thresholds set by the relevant Regional Environmental Management Plan;

(b) Any conditions included in the Council's environmental impact assessment decision and

(c) Commitments and procedures on how the Mitigation measures will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.

3ter. A Contractor shall include in its Environmental Monitoring and Management Plan project-specific environmental objectives, which are compatible with and designed to achieve, the environmental policy of the Authority, and the environmental objectives, indicators and thresholds of the relevant Standards and Regional Environmental Management Plan.

5. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of the Environmental Monitoring and Management Plan in proportion to the relevant risks and impacts

Rationale

In para. 3, along with Costa Rica, France and other delegations we also propose striking “main aspects”. This proposal would help avoid any confusion over what elements in the EMMP template must be covered. We also support Germany's comments regarding the essential importance for specific environmental thresholds to be set first by the ISA, which the EMMP's project-specific objectives must then meet.

The descriptive provisions in para 1 can be formulated as operative provisions in subparagraph (3).

Rationale for subpara 3(d)

For reasons of practicality, legality, and commercial fairness, contracts should not be continually revised. Instead, a Contractor can be required via the EMMP to strive for continual self-assessment and adjustment, in pursuit of ever-minimising the adverse environmental footprint of the project. Science-based adaptive management is therefore a key mechanism for the EMMP. This involves reducing uncertainties that remain from the EIA process over time, and responding flexibly to new learning and changing circumstances through continual monitoring and re-adjustment. Incorporating such a routine evaluation-improvement cycle is especially important given the long term (30-year plus extensions) envisaged for exploitation contracts.

Adaptive management is not, however, a mechanism that should be used as a justification to approve otherwise environmentally risky activities. Contractors should be required to take a precautionary approach and be able to evidence sufficiently to the ISA's satisfaction that environmental standards can be met. *Then* adaptive management can be employed by the ISA and Contractors as an enhancement to precaution. Sources: Code Project submission to the LTC Working Group on draft EMMP Guidelines, December 2020 [not published]; and Neil Craik 'Implementing adaptive management in deep seabed mining: Legal and institutional challenges', Marine Policy 114, 2020.

Rationale for subpara 3bis

In other sectors, a project proponent will design its environmental plan, including an EMMP, around pre-defined standards set by regulators and industry standard-setting bodies (pertaining to environmental performance thresholds e.g. noise control, emissions etc.) The ISA needs to develop its environmental Standards to set such thresholds (in accordance with DR45) as a priority. Then the EMMP requirements on the Regulations can cross-refer to the Standards and Guidelines setting environmental thresholds and - if planned – also those relating to technology and design, and/or indicative examples or definitions of “best available technology”. These will be needed to inform Contractors' machinery design; and the ISA may wish to work with the IMO in relation to emissions standards (ISA Technical Study 25 pg.39).

For specific parameters that Contractors must monitor under the environmental standards to be set by the ISA, the ISA should require Contractors to set internal action thresholds to enable action before a threshold is breached, for example:

- at 75% of a limit, take Action 'A';
- at 90% of a limit, take Action 'B'
- at 100% or more of a limit, report non-compliance. Source: White Paper, Dr. Kevin Murphy (Pew, 2020)

Rationale for 3ter

'Environmental objectives' are referenced a few times in the draft Regulations [DR 2(e)(i), DR46(2)(a), DR48(1), and Annex VII paragraph 2(a)]. The meaning of that term is not elaborated, but from the nature of those references, they appear to envisage every Contractor developing its own environmental objectives for each Plan of Work. Elaboration of when and how these objectives are set would be helpful. In particular,

several respondents to the 2020 stakeholder consultation on Standards and Guidelines for Environmental Management Systems (e.g. EU, Germany, Italy, Portugal, US, IASS, Pew, JOGMEC, whose comments are available: [here](#)) were concerned to ensure that Contractors should not have free rein to set their own environmental objectives. A Contractor-led, project-specific approach to environmental objectives could lead to different environmental performance benchmarks for different Contractors. It is also possible that environmental objectives determined by a Contractor will miss elements critical to protection of the marine environment. ISA leadership is needed and these proposed amendments (as per DR48(3ter)) are predicated on the presumption that the ISA will set its own strategic environmental objectives, and evaluate Plans of Work against them. Annex III may be another location where this issue could be addressed.

Source: [White Paper, Dr. Kevin Murphy \(Pew, 2020\)](#)

Rationale for OP5

The proposed insertion avoids any inadvertent suggestion that the expenses associated with the implementation of other Regulations might not be borne by the Contractor. It should be broadened to cover personnel resources as well as financial.

[Regulation 48bis-Test mining]

Placeholder

- A proposal was made for a new provision 48bis addressing test mining (see ISBA/26/C/CRP.1).
- Several delegations sought clarification on the concept of “test mining”, including what it encompassed and its purpose. Attention is drawn to the revised Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area issued by the Legal and Technical Commission (ISBA/25/LTC/6/Rev.1 and Corr.1), which provide definitions for “test mining” and “testing of mining components”.
- While a number of delegations expressed support for the inclusion of a provision concerning “test mining”, different views were expressed on whether there should be a mandatory requirement, whether it should take place both when applying for approval of a Plan of Work and before commercial production, for every project or only the first one, whether it should be subject to an EIA, and how this related to the tests carried out during exploration.
- A delegation suggested that a provision on “test mining” may be better placed in Regulation 7 rather than in Part IV.

- The Facilitator suggests that further discussions take place on these issues.

I – Members of the International Seabed Authority

China

Rationale

China still has the following questions about test mining that needs to be clarified by the facilitator. It is unclear about test mining whether there should be a mandatory requirement, whether it should take place both when applying for approval of a Plan of Work and before commercial production, and how this related to the tests carried out during exploration, etc. China calls upon the Authority to adopt relevant standards and guidelines.

Korea

The purpose of test mining is to ensure that no significant harm is caused by Exploitation activities. Test mining projects shall as a general rule provide evidence that appropriate equipment is available to ensure the effective protection of the Marine Environment in accordance with Article 145. To this end, a Contractor shall conduct test mining, ~~in at least two critical stages, unless Paragraph 5 applies; firstly, when applying for an approval of a Plan of Work in accordance with Part II, and secondly,~~ before Commercial Production shall commence in accordance with Regulation 25.

Rationale

We propose this because any activity occurring while applying for an approval of a plan of work is not supposed to be regulated by the exploitation Code but may be appropriate to be regulated by the Exploration Code.

In accordance with the Exploration Code, exploration itself includes a certain concept of test mining, the use and testing of recovery systems and equipment.

So obliging test mining when applying for an approval of a plan of work under the exploitation Code could possibly be redundant.

Section 3 Pollution control and management of waste

Regulation 49 Pollution control

A Contractor shall take all necessary measures to protect and preserve the Marine Environment, including by preventing, ~~reduce~~ reducing and controlling pollution and other hazards, including marine litter and underwater noise, ~~to the Marine Environment~~ from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan, the relevant Regional Environmental Management Plan and the applicable Standards and Guidelines.

Explanation / comment

- The revisions proposed by some delegations for draft regulation 49 include a combination of articles 192, 194 and 145 of the Convention, which seems to broaden the obligation originally focused on pollution control. It is noted that the general obligation of the Contractor with regard to the protection of the marine environment from harmful effects is included in draft regulation 44.
- The inclusion of various pollution sources and types, such as marine litter and underwater noise, may need to be further discussed.

I – Members of the International Seabed Authority

China

A Contractor shall take ~~all~~ necessary measures to protect and preserve the Marine Environment ...

Rationale

China noted the addition of “all” to the text. China believes that “all” is not operational because the contractor, due to the lack of a completed list of such measures, cannot assess and prove that he has exhaustively taken “all” measures. China calls on the facilitator to delete this word or clarify its scope.

Regulation 50
Restriction on Mining Discharges

1. A Contractor shall not dispose, dump or discharge into the Marine Environment any Mining Discharge, except where such disposal, dumping or discharge is permitted in accordance with:

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

(b) The Environmental Management and Monitoring Plan.

2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is carried out for the safety of the vessel or Installation or the safety of human life, provided that all reasonable measures are taken to minimize the likelihood of damage to human life and of ~~Serious~~ Harm to the Marine Environment and, if such harm has occurred, to monitor and mitigate its impacts, and such disposal, dumping or discharge shall be reported forthwith to the Authority.

3. The disposal, dumping or discharge into the Marine Environment of any Mining Discharge that is not in accordance with regulation 50(1) or 50(2) is considered an Unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.

4. This Regulation shall be interpreted and applied in a manner that is consistent with the obligations of the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 and the 1996 Protocol thereto.

Explanation / comment

- The revisions to paragraph 2 aim at reflecting suggestions by a number of delegations that accidental or emergency dumping should be consistent with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972, and the 1996 Protocol thereto, in particular article 8 of the Protocol.
- The revised wording of paragraph 4 aims to address concerns expressed regarding a proposal suggesting a formulation of “not undermining”.

I – Members of the International Seabed Authority

Australia

2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is carried out for the safety of the vessel or Installation or the safety of human life, provided that all reasonable measures are taken to minimize the likelihood of damage to human life and of Serious Harm to the Marine Environment. A Contractor shall report any disposal, dumping or discharge under this paragraph to the Authority, as soon as possible.

~~2bis. _____ and, if such Serious harm-Harm to the Marine Environment has occurred, occurs as a result of disposal, dumping or discharge in accordance with paragraph 2, the Contractor shall, to monitor and mitigate its-the impacts of such harm-, and such disposal, dumping or discharge shall be reported forthwith to the Authority.~~

Rationale

The proposed structural changes to the text of paragraph 50(2) provide greater clarity upon the face of the Regulation that it is the Contractor who is obliged to monitor and mitigate the impact of harm caused by any disposal, dumping or discharge, and to report such disposal, dumping or discharge to the Authority. In addition, this structure separates the exemption from paragraph 50(1) from the consequential obligations upon a Contractor.

Netherlands

4. The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the dumping of waste and other matters.
5. The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the prevention of pollution from ships.

Rationale

Regulation 50 paragraph 1 restricts the contractor from disposing, dumping, or discharging a Mining Discharge (MD) immediately above a mine site (ref. definition MD in Schedule). Question is what happens when the waste is transported from the mine site? The proposals for paragraphs 4 and 5 seek to address the transport of waste from the mine site. Additionally, we seek compliance with the relevant international legal instruments that govern the disposal, dumping and discharge of waste.

Section 4 Compliance with Environmental Management and Monitoring Plans and performance assessments

Regulation 51 Compliance with the Environmental Management and Monitoring Plan

A Contractor shall, in accordance with ~~the terms and conditions of~~ its Environmental Management and Monitoring Plan and these regulations:

(a) Monitor and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards referred to in regulation 45;

(b) Implement all applicable Mitigation and management measures to protect the Marine Environment, as set out in the Standards referred to in regulation 45; and

(c) Maintain the currency and adequacy of the Environmental Management and Monitoring Plan during the term of its exploitation contract in accordance with Best Available Techniques and Best Environmental Practices and taking account of the relevant Guidelines.

I – Members of the International Seabed Authority

China

Regulation 51(b)

Implement ~~all~~ applicable Mitigation and management measures to protect the Marine Environment, as set out in the Standards referred to in regulation 45; and

Rationale

China believes that “all” is not operational because the contractor cannot assess and prove that he has exhaustively implemented “all” mitigation measures. China calls on the facilitator to delete this word.

Finland

- (a) Monitor and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards and Guidelines referred to in regulation 45;
- (b) Implement all applicable Mitigation and management measures to protect the Marine Environment, as set out in the Standards and Guidelines referred to in regulation 45; and

Rationale

With regard to the proposals that Regulation 45 should include also Guidelines (in addition to Standards), Guidelines should be included in Regulation 51 as well to improve coherence.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

United States of America

- (a) Monitor and release monitoring data publicly, in an accessible format and on a monthly basis, as well as report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards referred to in regulation 45;

Rationale

In paragraph (a), the public release of monitoring data at monthly intervals will allow for regular and routine verification of environmental conditions at the site by the Authority, and contribute to the scientific knowledge about deep sea habitats.

Deep Ocean Stewardship Initiative

A contractor shall, in accordance with its Environmental Management and Monitoring Plan and these regulations:

(d) Take into account the impact that climate change can have on conditions during the period of an exploitation contract, and ensure that all plans and practices, including impact monitoring, update accordingly.

Rationale

Contractor exploitation operations will occur over a prolonged period of time, during which climate change will likely change the conditions in which the contractor(s) need to operate. These changes should be taken into account in all plans and practices, including impact monitoring, and be updated accordingly, to ensure that the Environmental Management and Monitoring Plan and the regulations continue to be effective in the ISA mandate of environmental protection and preservation.

Regulation 52

Review of the Performance-performance assessments of the Environmental Management and Monitoring Plan

1. ~~A Contractor~~The Authority shall ~~conduct~~review the performance assessments of the Environmental Management and Monitoring Plan undertaken by the Contractor in accordance with the relevant Standards and Guidelines to assess:

(a) The compliance of the mining operation with the plan; ~~and~~

(b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; and

(c) The conformity of the plan with the relevant Regional Environmental Management Plan.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least annually;

2bis. An ad hoc performance assessment may be requested by the Council following:(a) an Incident or Notifiable Event;

(b) receipt of an unsatisfactory annual

report; or (c) issuance of a compliance

notice.

3. A Contractor shall compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines.

4. The Commission shall review a performance assessment report at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

5. Where the Commission considers the performance assessment undertaken by the Contractor to be unsatisfactory, taking account of the Guidelines ~~or~~and the ~~conditions attaching to the~~ Environmental Management and Monitoring Plan, the Commission may require the Contractor to:

(a) Repeat the whole or relevant parts of the performance assessment, and revise and resubmit the report;

(b) Submit any relevant supporting documentation or information requested by the Commission; or

(c) 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.

6. Where a Contractor has previously submitted two successive unsatisfactory reports and the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the

performance assessment and to compile the report.

7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Secretary-General shall:

(a) Issue a compliance notice under regulation 103; or

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.

9. The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration.

Explanation / comment

- The revisions aim to respond to the comments of a number of delegations concerning the need to: reinstate a minimum period at which the performance assessment should be undertaken; clarify the fact that the Authority is carrying out a review of the assessment, while the Contractor provides the report on which the review is based; and include the possibility for ad hoc assessments in case of specific situations as listed in paragraph 2bis.
- The frequency of the assessments in paragraph 2 may need to be further discussed, noting that another delegation suggested that such frequency "shall be no less than 24 months".
- Issues concerning the frequency of and the reporting on the performance assessment in this draft regulation may also need to be reconsidered in light of the overall reporting burden on the Contractor (who would be required to report simultaneously on the implementation of the EMMP and provide a performance assessment of the same EMMP) as well as the burden on the LTC, which would, in the same year, review the implementation of the EMMP in the context of the annual report, and also review the performance assessment of the EMMP and provide recommendations relating to both to the Council at the same time. It may be suggested that annual reporting on implementation is sufficient, with performance assessment triggered by the events specified in paragraph 2bis, or on a periodic basis, which should be long enough to develop a basis of information and experience to be reviewed.

I – Members of the International Seabed Authority

Australia

1bis. A Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan.

1. ~~A Contractor~~The Authority shall ~~conduct~~review the performance assessments of the Environmental Management and Monitoring Plan undertaken in accordance with paragraph 1 by the Contractor in accordance with the relevant Standards and Guidelines to assess:

Rationale

Given the facilitator's proposed changes to the primary actor in paragraph 52(1) (from the Contractor to the Authority), Australia suggests new paragraph 52(1bis), which first sets out the primary obligation upon the Contractor to conduct performance assessments. This is intended to clarify the respective obligations of the Authority and the Contractor.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

Deep Ocean Stewardship Initiative

DR52(4)

The Commission shall review a performance assessment report at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. If the Commission does not possess sufficient expertise amongst its members it shall consult independent experts to review the performance assessment. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

Rationale

The inclusion of the proposed text ensures that the performance assessment is reviewed by people with the relevant expertise, which may not always be present in the Commission, and may also not be held by one single person.

DR52(5)(c)

(c) Appoint, at the cost of the Contractor, an independent competent person /group of persons 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.

Rationale

The proposed textual changes allow for the consideration that the performance assessment is done including all relevant expertise, in case one person does not include all necessary expertise.

DR52(6)

Where a Contractor has previously submitted two successive unsatisfactory reports and the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person / group of persons to conduct the performance assessment and to compile the report.

Rationale

The proposed textual changes allow for the consideration that the performance assessment is done including all relevant expertise, in case one person does not include all necessary expertise.