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Item 11 of the provisional agenda*
Draft regulations on exploitation of mineral resources in the Area

Draft regulations on exploitation of mineral resources in the Area

Parts IV: Regulations 46 ter, 50-53 and 59-61

Drafting proposals submitted by delegations as compiled on 28 March 2022

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

Spain

2. The Contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of monitoring programmes- to observe, measure, evaluate and analyse the impacts of Exploitation on the Marine Environment, to share the findings and results of such programmes with the Authority for wider dissemination.

~~It should include an environmental risk assessment and the results of the consultation process performed with key stakeholders, in line with the Standard and Guidelines.~~

Rationale

Indicated in the text above

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”.

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1 (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 ~~necessary~~~~carried out~~ for the safety of the vessel or ~~other man-made structures at sea~~ ~~Installation~~ or the safety of human life, provided that ~~such disposal, dumping or discharge is conducted so as 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~~ permitted under regulation 50(1) or 50(2) is considered an Unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.

Rationale

With regards DR 50 paragraph 1, Pew believes that the rules for disposal, dumping or discharges should be uniform across all Contractors and ISA-led. They should not be negotiable on a contract-by-contract basis.

We therefore support the amendment in sub-paragraph (a) to require a Standard on this subject, which is legally binding on all contractors. On that basis, we would question whether sub-paragraph (b), which refers to including additional permissions about pollution in the EMMP, is necessary.

On para 2, we agree with Costa Rica's proposal to strike "carried out" and insert "necessary". This proposal would set a higher threshold ('necessary') in which otherwise-unlawful dumping may be permitted.

We appreciate and agree with the deletion of the word 'serious' before 'harm'. The ISA and its contractors should at all times strive not only to avoid serious harm, but to minimise all environmental harm.

See: [Fifth Report of the Code Project - Part 2 \(Pew, 2019\)](#)

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.

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

(a) ~~In addition to data collection and reporting requirements under regulation 39bis,~~ 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) ~~Apply best endeavours to improve~~ ~~Implement all applicable~~ Mitigation and management measures to protect the Marine Environment ~~on an ongoing basis,~~ as set out in the Standards referred to in regulation 45; and

(c) ~~Monitor compliance with, and assess and~~ ~~m~~Maintain the currency and adequacy of the Environmental Management and Monitoring Plan ~~and Environmental Management System~~ during the term of its exploitation contract ~~including through management review under regulation 46(2)(e) and performance assessment under regulation 52 and modification to the Plan of Work under regulation 57 where required,~~ in accordance with ~~Best Available Scientific Evidence,~~ Best Available Techniques and Best Environmental Practices ~~and the relevant Standards and any revisions made by the Authority to the relevant Regional Environmental Management Plan,~~ and taking account of the relevant Guidelines.

Rationale

Regarding the first paragraph, we agree with the deletion of the phrase “ the terms and conditions”, as this terminology seems more suited to a legal contract, than to an environmental management plan.

For subparagraph b, we recommend striking “implement all applicable” as this seems redundant. The ‘applicable measures’ referred to here are those measures found in instruments which already bind a Contractor, e.g. the Regulations, Plan of Work, Standards. So this general requirement, that reiterates a Contractor should comply with the Regulations, Standards, and its Plan of Work does not seem to add anything.

Instead, we recommend that this should be an opportunity to reinforce the need to integrate adaptive and continuous-improvement measures into a Contractor’s management programme.

On sub-paragraph (c), the different EMMP review processes may be quite confusing in the Regulations, so we believe cross-referencing here to the relevant Regulations that deal with review of an EMMP, can be helpful to aid collective understanding and ensure alignment. We will submit a textual proposal to this effect.

We also agree with Costa Rica’s insertion after “Best Environmental Practices”.

Regulation 52

Review of the 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.

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1 (d) The accuracy of the findings of the environmental impact assessment as set out in the Environmental Impact Statement which informed the Environmental Management and Monitoring Plan.

1.bis In conducting a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall:

(a) Take into account changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities,

(b) Take into account the outcomes of management reviews of the environmental management system conducted under regulation 46(2)(e); and

(c) Engage competent independent experts, which may include those listed in regulation 12(4)(quater.), to review the Environmental Management and Monitoring Plan and the Contractor's compliance with it, where appropriate.

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:

an Incident or Notifiable Event;

receipt of an unsatisfactory annual report; or

issuance of a compliance notice.

3bis. The Secretary-General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholders' comments to the Commission for review.

4. The Commission shall review a performance assessment report and any Stakeholder comments received in relation to it 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 upon review of the report and any stakeholder comments received 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:

7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 3 bis. and 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 inform the sponsoring State and shall:

8 bis Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor's Environmental Management and Monitoring Plan is inadequate in any material respect, the Secretary-General shall inform the sponsoring State and shall: ~~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.

Rationale

With regards to para 1, we believe further text is needed to ensure that during the performance assessment the Contractor should take into account external developments and advances in capabilities. We believe taking account of such developments will be important to ensure the Contractor's application of Best Environmental Practices and continuous improvement through adaptive management. We would also propose insertion here to require Contractors to seek external experts to ensure a properly independent and accurate review. We will submit specific textual proposals to this effect.

On para 2, we agree with the other delegations commenting on the need to specify the frequency of performance assessments, with 12 months being a minimum reporting period. In this regard we note that more regular assessments may be necessary in an environment with high levels of uncertainty.

On para 3 bis - We believe that the review of the EMMP performance assessment should include stakeholder consultation. Thus we propose a new paragraph 3 bis reading

On para 8, we note that this provision should address the inadequacy of an EMMP separately from non-compliance by a Contractor with its EMMP. These are separate issues which may require different enquiries and lead to different outcomes. Failure to comply with an EMMP should lead to a compliance action as indicated by subparagraph (a), while an inadequate plan should lead to a revised EMMP under subparagraph (b). Proposal on 8bis reflects this.

Regulation 53
Emergency Response and Contingency Plan

1. A Contractor shall maintain:

(a) The currency and adequacy of its Emergency Response and Contingency Plans based on the identification of potential Incidents and in accordance with Good Industry Practice, Best Available Techniques, Best Environmental Practices and the applicable ~~standards~~ Standards and Guidelines and shall be tested at least annually; and

(b) Such resources and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority.

2. Contractors, the Authority and sponsoring States shall consult together, as well as with other States and organizations which appear to have an interest, in relation to the exchange of knowledge, information and experience relating to Incidents, using such knowledge and information to prepare and revise standards and operating guidelines to control hazards throughout the mining life cycle, and shall cooperate with and draw on the advice of other relevant international organizations.

3. Following an Incident, a Contractor must submit a detailed report on how the plan was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.

Explanation / comment

- Consideration could be given to moving draft regulation 53 up to section 3 as it seems more appropriately placed there.

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1 (b) Such resources, training, and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority including on-vessel presence at all times of personnel authorised and trained to implement the Plan.

2. ~~Contractors, the Authority and sponsoring States shall consult together, as well as with other States and organizations which appear to have an interest, in relation to~~ shall facilitate the exchange of knowledge, information and experience relating to Incidents, between Contractors, and with States, and shall ~~using such knowledge and information to prepare and revise standards and operating guidelines to control hazards throughout the mining life cycle, and shall cooperate with and~~ draw on the advice of other relevant

international organizations so that such knowledge and information can be used:

(a) by Contractors to meet the requirements of regulation 53(1), and by the Authority to prepare and revise Standards and Guidelines

3. Following an Incident, a Contractor must submit a detailed report on how the plan worked well or did not work well, and how it was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.

Rationale

Paragraph 2 of DR 53 seems to conflate the different roles and responsibilities between contractors, states, other International organizations, and the ISA.

For paragraph 3, we suggest that an amendment be made to reflect that there are two separate issues here, namely: (i) was the emergency response and contingency plan adequate, and (ii) was the plan complied with, as these two issues will likely require different responses from the ISA.

Regulation 56
Funding of the Environmental Compensation Fund

The Fund will consist of the following monies:

- (a) The prescribed percentage or amount of fees paid by Contractors to the Authority;
- (b) The prescribed percentage of any penalties paid by Contractors to the Authority;
- (c) The prescribed percentage of any amounts recovered by the Authority by negotiation or as a result of legal proceedings in respect of a violation of the terms of an exploitation contract;
- (d) Any monies paid into the Fund at the direction of the Council, based on recommendations of the Finance Committee; and
- (e) Any income received by the Fund from the investment of monies belonging to the fund.

Explanation / comment

- The revisions to Section 5 aim to implement the wish of delegations to make the Environmental Compensation Fund established under this Part limited to the issues identified in the ITLOS Seabed Disputes Chamber Advisory Opinion.
- The suggestion by a number of delegations that the Fund be financed by monies paid by Contractors was implemented for clarity in the appropriate sub-paragraphs.
- A proposal was made for restoration and rehabilitation of the Area to form part of decommissioning and the closure plan instead of being included in either Fund. It is noted that restoration and rehabilitation are already included in draft regulation 59, paragraph 2(f).
- Questions were raised and suggestions made concerning the modalities of operation of the Fund, including:
 - (a) participation of vulnerable communities and stakeholders in decisions about disbursement of funds;
 - (b) how the funds and any interests generated will be managed and by whom;
 - (c) when and how disbursements, reimbursements and refunds can be made;
 - (d) what the process for accessing the fund would be;
 - (e) the standard of proof that would be required;
 - (f) the types of damages and purposes for which access to the fund is eligible;
 - (g) what happens if there is damage to the environment before the money is paid;
 - (h) the basis for assessing the amount to be paid by contractors;

(i) whether affected coastal States would be involved in the decisions on how to use the funds to implement the activities.

- Such issues could be addressed in the rules and procedures to be established pursuant to draft regulation 54(2).
- The provisions addressing environmental research and training are now captured in Enclosure II to the present document, without prejudice to their future placement in the regulations. Whilst these provisions may be discussed by the informal working group, it may be noted that similar issues are also being discussed in the Finance Committee in the context of the discussions on benefit-sharing.

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

Center for Polar and Deep Ocean Development, Shanghai Jiao Tong University (SJTU-DOD)

The Fund will consist of, but not limited to, the following monies

Rationale

To obtain more funding, there should be room and mechanism for the involvement of other actors in the Fund. That the Area and its resource are the common heritage of mankind should be born in mind. It worth emphasizing that the “common heritage”, not only refers to the common ownership to the resources on a non-discriminatory basis, but it also includes obligations distributed to all. Those obligations at least incorporate “protection of the natural environment” by all. Moreover, voluntary contributions should not be excluded.

Part VI

Closure plans

Regulation 59

Closure Plan

1. A Closure Plan shall set out the responsibilities and actions of a Contractor for the decommissioning and closure of activities in a Mining Area, including the post-closure management and monitoring of residual ~~and natural~~ Environmental Effects. Closure also includes a temporary suspension of mining activities.

2. The objectives of a Closure Plan are to ensure that:

(a) The closure of mining activities is a process that is incorporated into the mining life cycle and is conducted in accordance with Good Industry Practice, Best Environmental Practices, ~~and~~ Best Available Techniques and Best Available Scientific Evidence;

(b) At the date of cessation or suspension of mining activities, a management and monitoring plan is in place for the period prescribed in a Closure Plan;

(c) The risks relating to Environmental Effects are quantified, assessed and managed, which includes the gathering of information relevant to closure or suspension;

(d) The necessary health and safety requirements are complied with;

(e) Any residual ~~negative~~ Environmental Effects are identified and quantified, and management responses are considered/implemented, including plans for further Mitigation or remediation where appropriate;

(f) Any restoration or rehabilitation commitments will be fulfilled in accordance with predetermined criteria or standards; ~~and~~

(f)bis Requirements regarding the removal of all Installations and equipment from the Mining Area are addressed; and

(g) The mining activities are closed or suspended efficiently and cost-effectively.

3. The Closure Plan shall cover the ~~main~~ aspects prescribed by the Authority in annex VIII to these regulations.

4. A Contractor shall maintain the currency and adequacy of its Closure Plan in accordance with Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Evidence and the relevant Guidelines.

5. The Closure Plan shall be reviewed annually and updated each time there is a Material Change in a Plan of Work, ~~or, in cases where no such change has occurred, every five years,~~ and be finalized in accordance with regulation 60 (1).

Explanation / comment

- While a proposal was made to delete the reference to “post-closure” management and monitoring in paragraph 1 (see ISBA/26/C/CRP.1) in light of the fact that a Closure Plan should involve both pre- and post-decommissioning works, it is noted that the current wording is consistent with the current wording of draft regulation 26(2)(c). Should a change be made here, regulation 26(2)(c) would also need to be amended.

- The references to residual environmental effects in paragraphs 1 and 2(e) were harmonized with other such references in the draft regulations in particular draft regulation 26(2)(c) and for consistency with the definition of “Environmental Effects” in the Schedule, by deleting “natural” and “negative”.
- It is noted that some delegations raised concerns with the reference to mining activities being closed or suspended “cost-effectively” in paragraph 2(g). This may need further consideration.

I - Members

Spain

2 (f) bis Requirements regarding the removal of all installations and their parts and equipment from the Mining Area, including the explicit prohibition of any kind of waste abandonment are addressed; and

Rationale

We propose to make an express mention of the prohibition to leave marine litter or debris in the area where the activity is closed.

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United States of America

2. The objectives of a Closure Plan are to ensure that:

...

- (f) Any restoration or rehabilitation commitments will be fulfilled in accordance with predetermined criteria or standards; and

(f)bis Requirements regarding the removal of ~~all~~ **any** Installations and equipment from the Mining Area are addressed; and

- (g) The mining activities are closed or suspended efficiently and ~~cost-effectively~~ **safely**.

Rationale

In 2(f)bis, there may be cases where leaving installations and/or equipment at the mine site may be better environmental management than removing all infrastructure in all cases. In 2(g), the United States suggests striking “cost-effectively” in favor of “safely” to clarify objectives other than cost-savings, such as health and safety, managing residual Environmental Effects, and restoration and rehabilitation commitments, take priority.

Regulation 61
Post-closure monitoring

1. A Contractor shall implement the final Closure Plan in accordance with the conditions of its implementation and shall report to the Secretary-General on the progress of such implementation on an annual basis, including the results of monitoring under paragraph 2 below, as set out in the final Closure Plan.
2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant Guidelines.
3. The Contractor shall conduct a final performance assessment and submit a final performance assessment report in accordance with the Guidelines to the Secretary - General to ensure that the closure objectives as described in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

Explanation / comment

- A suggested frequency for the report to be provided on the progress in implementation of the Closure Plan was added in paragraph 1 as proposed by a delegation.

I-Members

Costa Rica

1. A Contractor shall implement the final Closure Plan in accordance with the conditions of its implementation and shall report to the Secretary-General on the progress of such implementation on an annual basis, including the results of monitoring under paragraph 2 below, as set out in the final Closure Plan.
2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant standards and taking into account relevant -Guidelines.
3. After the conclusion of the implementation of the final closure plan ~~T~~the Contractor shall conduct a final performance assessment and submit a final performance assessment report in accordance with the Guidelines to the Secretary - General to ensure that the closure objectives as described in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.
4. The Commission shall prepare a detailed report with recommendations on the final performance assessment for the Council. The Council shall consider and decide if the closure plan met its objectives in order to take a decision on the Contractor's Environmental Performance Guarantee

Rationale

- 1- Costa Rica believes the moment to conduct the final assessment shall be after the conclusion of the implementation of the final closure plan.
- 2- Paragraph 4: Costa Rica believes that the Council has to make a decision and that this article has to provide for it.

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United States of America

...

2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant regulation, standard and guidelines, and release monitoring data publicly and in an accessible format at monthly intervals.
3. The Contractor shall hire a competent and independent auditor to conduct a final performance assessment and submit a final performance assessment report in accordance with the Guidelines to the Secretary-General to ensure that the closure objectives as described in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting, and the Commission shall submit it to the Council for consideration.

Rationale

In paragraph 2, the United States notes the “duration provided for in the relevant Guidelines” would not be legally binding. We suggest the Council consider discussing under what environmental conditions a Contractor may be released from post-closure monitoring and elaborating such conditions in the regulations or a Standard, either instead of or complementary to a specified amount of time.

Also in paragraph 2, we propose text in line with previous edits specifying that monitoring data be released publicly and in an accessible format on a monthly basis to sufficiently allow regular and routine verification of environmental conditions and contribute to scientific understanding.

Finally, in paragraph 3 we suggest clarification that the Commission will not only review the report but also submit it to the Council for consideration. Further, we suggest textual additions clarifying the performance assessment should be performed by an independent and competent professional hired by the Contractor.

The Pew Charitable Trusts

1. A Contractor shall implement the final Closure Plan ~~in accordance with the conditions of its implementation~~ and shall report to the Secretary-General on the progress of such implementation on an annual basis, including the results of monitoring ~~conducted under paragraph 2 below~~, as set out in the final Closure Plan.
2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant Standards, taking account of any Guidelines.
3. Upon completion of implementation of the final Closure Plan, ~~The Contractor shall~~ conduct a final performance assessment and submit a final performance assessment report in accordance with the Guidelines to the Secretary-General to ensure that the closure objectives as described in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting, and the Commission shall provide a report and recommendations upon that performance assessment report to the Council, who shall decide whether the final Closure Plan has been satisfactorily delivered, which decision shall be relevant to the retention, release, forfeiture or use by the Authority of the Contractor's Environmental Performance Guarantee.

Rationale

We agree with other delegations that there should be a final decision on whether or not the Contractor's duties have been discharged, so that the Environmental Performance Guarantee can be released - or if necessary, forfeited.

There should also be a Standard for the Closure Plan, which should be referenced here and elsewhere in DR 59 & 60.

Overarching Submission with regard to the Environmental Provisions

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

Advisory Committee on Protection of the Sea

ACOPS herewith voices its concern that the current draft exploitation regulations and the comments thereon submitted before and during the discussions in the Informal Working Group that are due to conclude today, do not include any “appropriate rules, regulations and procedures” for the “prevention, reduction and control of **interference with the ecological balance** of the marine environment,” which is specifically required in Law of the Sea Convention (LOSC) Article 145 as part of the “necessary measures [that] shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection of the marine environment from harmful effects which may arise from such activities.”

“Necessary measures” may include, *inter alia*:

- Defining “interference” and “ecological balance”
- The information needed to establish a baseline “balance” against which any potential interference must be measured
- Rules, regulations, procedures, standards and guidelines to “prevent, reduce and control” this interference.

This will also require consideration of the current draft regulations, standards and guidelines with regard to, *inter alia*:

- The ecosystem approach
- Biodiversity
- Environmental impact assessment
- Cumulative impacts
- Residual effects
- Monitoring
- The geographical boundaries for assessing an activity in the Area, including REMPS.

ACOPS will present its views in further detail in the next round of comments on the proposed draft regulations and looks forward to the thoughts of other delegations on this matter.

Rationale

The omission of the “**interference with the ecological balance**” criterion, if left unaddressed in the exploitation regulations, will leave LOSC Article 145 unimplemented for a clearly mandated specific environmental requirement, the marine environment unprotected from a defined set of harmful effects related thereto,

and the exploitation regulations consequently vulnerable to legal challenge.

Environmental concepts developed since the LOSC was adopted in 1982 have been brought into the current draft exploitation regulations, as provided for elsewhere in the LOSC, but these concepts do not and cannot supersede or substitute for the “interference with the ecological balance” criterion, neither legally nor scientifically.

The “interference with the ecological balance” criterion must be considered in its own right and the “necessary measures” developed accordingly.