Regulation-by-Regulation Compilation of Textual Proposals by Members, Observers and Stakeholders[1]

Draft Regulations on Exploitation of Mineral Resources in the Area (ISBA/25/C/WP.1)

[1] Received by 15 October 2019.

Table of Contents

Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"),

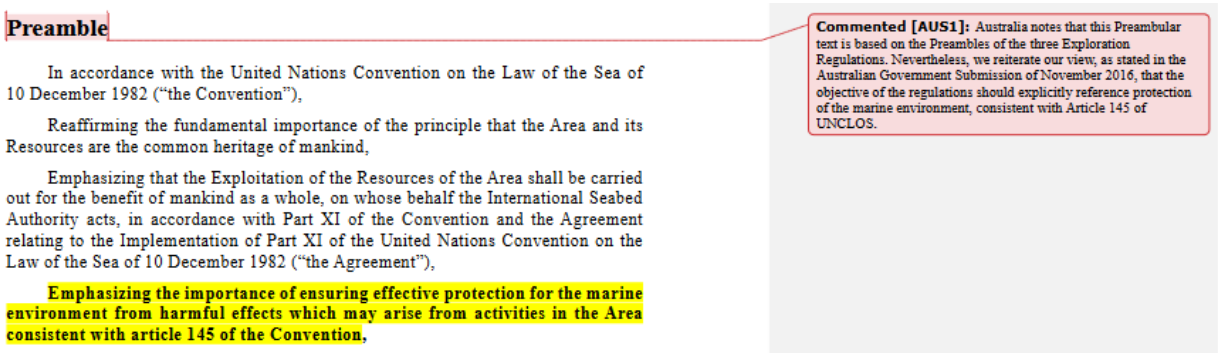
Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind,

Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Agreement"),

Considering that the objective of these regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement.

I - Members of the International Seabed Authority

Australia



Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"),

Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind,

Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Agreement"),

Emphasizing the importance of ensuring effective protection for the marine environment from harmful effects which may arise from activities in the Area consistent with article 145 of the Convention,

Commented [AUS1]: Australia notes that this Preambular text is based on the Preambles of the three Exploration Regulations. Nevertheless, we reiterate our view, as stated in the Australian Government Submission of November 2016, that the objective of the regulations should explicitly reference protection of the marine environment, consistent with Article 145 of UNCLOS.

Costa Rica

Recalling that the Authority shall, in developing the resources of the Area, ensure the effective protection of the marine environment from harmful effects which may arise from activities in the Area, in accordance with article145 of the Convention.

Also recalling that Part XII of the Convention on the Protection and Preservation of the Marine Environment shall be applied to part XI when relevant.

Considering that the objective of these regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement, while ensuring effective protection of the marine environment from harmful effects caused by exploitation activities.

Reaffirming the commitment to the United Nations Sustainable Development Goals and the 2030 Agenda.

RATIONALE: The preamble must recognize the environmental commitments and legal frameworks that will guide the Regulations.

Germany

- In addition to acknowledging the importance of the United Nations' Sustainable Development Goals, the **Preamble** should also indicate the delicate balance which needs to be achieved between Art. 145 UNCLOS and exploitation activities.

Preamble:
"[…] Considering that the objective of these Regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement, while ensuring effective protection for the marine environment from harmful effects caused by exploitation activities, Taking into account the Sustainable Development Goals and Targets of the 2030 Agenda, as adopted by the General Assembly of the United Nations in September 2015 (resolution 70/1)."

Indonesia

1	**Preamble** In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"), Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind, Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Agreement"), Considering that the objective of these Regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement.		

Morocco

Préambule & Partie I: Introduction.	Le préambule ne prend pas en compte la santé globale des océans et le rôle que les fonds marins et les ressources associées jouent dans les équilibres écologiques, terrestres et dans la régulation du climat. A compléter par faire référence à: -La partie XII de la CNUDM pour la protection et la conservation de l'environnement marin; -La Convention des Nations Unies sur le stock de poissons.

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

Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"),

Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind,

Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Agreement"),

Commented [A1]: Throughout this document, the regulations should better take into account the differences in exploitation of polymetallic nodules, seafloor massive sulphides, and ferromanganese crusts. The understanding of potential impacts to biodiversity from exploitation of sulphides and ferromanganese crusts is significantly more limited than that of polymetallic nodule mining. Seamounts at depths where ferromanganese crusts form are home to particularly rich, varied, and vulnerable cold-water coral and sponge habitats. The upper range for these crusts is important for deep sea fisheries. Many of these areas are Vulnerable Marine Ecosystems and/or Ecologically or Biologically Significant Marine Areas.

Secretariat of the Convention on Biological Diversity

Preamble	The preamble of the Convention on Biological Diversity reflects various aspects of the conservation and sustainable use of biodiversity, which may also be relevant for preamble of the draft regulations, including the following: "Affirming that the conservation of biological diversity is a common concern of humankind," "Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source," "Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat," "Noting further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings," "Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,"

Deep Sea Conservation Coalition

Preamble		The preamble needs a lot of work. It does not take into account the overall health of the ocean and the role that the seabed and associated resources play in the balance (ecological, earth systems, climate regulation) that is maintained in and by this system, for example. Instead, it starts with exploitation, instead of effective protection.

Institute for Advanced Sustainability Studies

Preamble

1. We recommend an additional provision after the third paragraph therein, stating as follows: "Recognizing the application of Part XII of the Convention on the 'Protection and Preservation of the Marine Environment' as applicable to Part XI where relevant, as well as Article 145 of the Convention, in that the Authority shall, in developing the resources of the Area, ensure the effective protection of the marine environment from harmful effects which may arise from activities in the Area".

2. The reason for this inclusion is to ensure that the preeminence of the protection of the marine environment is given due recognition from the outset. In fact, the 1994 Implementing Agreement recognizes the significance of this in its Preamble and stipulates that State Parties to the Agreement are "Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment".

3. We note further that Annex IX of the Draft Regulations (on the Exploitation Contract) makes explicit reference to Part XII of the Convention.

Part I
Introduction

Regulation 1
Use of terms and scope

1. Terms used in these regulations shall have the same meaning as those in the Rules of the Authority.

2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.

3. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule.

4. These regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in article 87 of the Convention.

5. These regulations are supplemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment.

6. The annexes, appendices and schedule to these regulations form an integral part of the regulations and any reference to the regulations includes the annexes, appendixes and schedule thereto.

7. These regulations are subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

I - Members of the International Seabed Authority

Australia

1. Terms used in **the Convention** **[~~these regulations~~]** shall have the same meaning **~~as those~~** in **[~~the Rules of the Authority~~]** **these regulations**.

2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.

3. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule.

4. These regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these regulations shall be construed in such a way as to restrict the exercise by States

Commented [AUS2]: Note that the equivalent provision in the three Exploration Regulations is drafted as follows, "Terms used in the Convention shall have the same meaning in these Regulations" (emphasis added).

It is not clear why the terms '[Rules of the Authority]' and 'Convention' have been inverted in these DRs. In our view, the way this paragraph is currently drafted appears contradictory to paragraph 3 which then states that 'terms and phrases used in these regulations are defined in the schedule'. In our view, the approach taken in the Exploration Regulations makes more sense and would avoid this apparent contradiction.

Commented [AUS3]: Australia continues to recommend that the Article 87 high seas freedoms be specifically enumerated in this draft regulation, including the freedom to lay submarine cables and pipelines

Belgium

Regulation 1
Use of terms and scope

1. Terms used in these regulations shall have the same meaning as those in the Rules of the Authority.

Commented [VS10]: Insert terms mentioned in Schedule 1 here, cf. other treaties with definitions mentioned in the beginning of the document.

Chile

Proyecto de Artículo 1
Términos empleados y alcance

Párrafos 1 y 2:

En general, parecen adecuados los términos empleados y su alcance en relación con lo dispuesto en la Convención y el Acuerdo de 1994, de los que tratan los **párrafos 1 y 2** del proyecto de reglamento.

No obstante lo anterior, es necesario esclarecer el alcance del **párrafo 2**: Respecto a "(…) *la parte XI de la Convención se interpretarán y aplicarán conjuntamente como un solo instrumento. El presente reglamento y las referencias que en él se hagan a la Convención deberán interpretarse y aplicarse de la misma manera* (…)"

En aras de la transparencia y claridad, Chile solicita una clarificación sobre cuál sería el alcance de este punto.

Párrafo 4:

Es preciso tener en consideración que la propia CONVEMAR establece que estas libertades deben ser ejercidas por **todos los Estados**, teniendo debidamente en cuenta los intereses y

actividades de otros Estados en su ejercicio de la libertad de la alta mar, así como los derechos previstos en la Convención del Mar con respecto a las actividades en la Zona.

En tal sentido, es necesario tener en consideración como se interrelacionarán otros organismos sectoriales y regionales con las actividades que la Autoridad puede efectuar en cuanto a las actividades de exploración y explotación, ya que tales actividades se realizan muchas veces en una misma área geográfica.

Párrafo 5:

Considerando lo planteado en el documento ISBA/25/C/3 *"**Contenido y elaboración de normas y directrices para las actividades realizadas en la Zona conforme al marco regulador de la Autoridad**"*, cabe señalar que dichos instrumentos deben elaborarse en forma paralela y complementaria al Reglamento.

En cuanto a la oportunidad de su elaboración, pareciera necesario desarrollarlas en paralelo al reglamento, atendida su incidencia e interpretación sistemática con las disposiciones reglamentarias. En todo caso, debe determinarse cuáles deben estar terminadas coetáneamente con el Reglamento.

En cuanto a las normas de procesos, el proyecto de reglamento debería exigir la adopción de un mecanismo similar a un **sistema de gestión ambiental**, que pueda cautelar y resguardar los **más altos estándares ambientales** que tendría el Reglamento. Tales puntos se están discutiendo en otros marcos de negociación como BBNJ que, sin lugar a dudas, afectarían este marco multilateral. Cabe preguntarse **¿Cómo se completarán entonces?**

Por su parte, las normas de desempeño constituirán parte esencial de la medición de los contratistas, por lo que debe haber claridad sobre las mismas. En el mencionado documento del proyecto de Reglamento, se podría elaborar un marco genérico de evaluación aplicable a la elaboración de normas de desempeño en relación con los impactos ambientales específicos y su gestión para mitigarlos y, en lo posible, eliminarlos efectivamente.

Al respecto, cabe señalar que tuvo lugar un taller técnico en mayo de 2019. Toda esta información es de suma importancia para evaluar la calidad del proyecto de Reglamento antes de su aprobación, debiendo existir certeza en esa orientación. Por lo tanto, al no tener claridad sobre este factor, cabría **desarrollar mayores trabajos al interior de la Autoridad, para ampliar estos elementos, antes de la entrada en vigencia del Reglamento.**

Costa Rica

Regulation 1
Use of terms and scope

5. These regulations are supplemented by further rules, regulations and procedures of the Authority, including Standards and Guidelines, as referred to in these regulations and the annexes thereto, in particular on the protection and preservation of the Marine Environment.

RATIONALES: Standards and Guidelines are part of the rules, regulations and procedures. If they are not considered as such their validity may be questioned(in particular the obligatory nature of the Standards)

Germany

- In our opinion, **Draft Regulation 1** should clearly state that Standards are an integral part of the regulations.

Draft Regulation 1:
"[…] 5. These regulations are supplemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment. Standards form an integral part of these regulations and any reference to the regulations includes the Standards that form part of these. […]"

Indonesia

	Part I **Introduction** **Regulation 1** **Use of terms and scope** 1. Terms used in these Regulations shall have the same meaning as those in the Rules of the Authority. 2. In accordance with the Agreement, the provisions of the Agreement and Part XI of the Convention shall be interpreted and applied together as a single instrument. These Regulations and	To maintain clear reference and consistency with the Convention and prevailing regulations of the Authority, Indonesia holds that text of R 1(1) should be restored to its original text.	Keep the original text: Terms used in these Regulations shall have the same meaning as those in the Convention.

Italy

Part No./ Section No./ Draft Reg. No.	Comment description
Part I /Introduction /DR1 (5)	Use accompanied instead of supplemented to reinforce that standards and guidelines are binding documents of the regulations. In Schedule 1, add to the definition of guidelines and standards an explicit reference to their being, respectively, recommendatory and mandatory.

Myanmar

2. For "Part I: Rights of Coastal State", the following sentence should be used in place of the sentence mentioning in the draft regulation as: **Any coastal State which has grounds for believing that any activity in the Area by a Contractor is likely to cause ~~Serious~~ Harm or a threat of ~~Serious~~ Harm to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based."**

Poland

DR 1.1 PL prefers to refer to "the Convention" instead of "the Rules of the Authority" as the former option seems to provide more legal certainty. According to the definition in the Schedule 1 the Rules of the Authority consist of "the Convention, the Agreement, these Regulations and other rules, regulations and procedures of the Authority, as may be adopted from time to time". The said means that some of the Rules of the Authority may be adopted after the adoption of DR which in turn would imply that terms used in DR would need to have the same meaning as terms used in documents that do not exist at the time of the adoption of DR.

Republic of Korea

On Regulation 1, we believe that not only the rules of the Authority, but the United Nations Convention on the Law of the Sea and the 1994 Part XI Implementation Agreement need to be added to Regulation 1, Paragraph 1. This is to ensure that the regulations are in line with the Convention and the Agreement. Taking this into account, we'd like to make reference to 'Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area', which states in Regulation 1, para 1 that "Terms used in the Convention shall have the same meaning in these Regulations."

Russian Federation

Regulation	Text of the Regulation	Comments / Remarks	Explanation
Regulation 1	Use of terms and scope 1. Terms used in these regulations shall have the same meaning as those in the Rules of the Authority.	It is proposed to point out in Regulation 1 that the Regulations apply to all three types of deep-sea minerals.	To ensure that the content of the document is clear and unambiguous.
Regulation 1(1)	Terms used in these regulations shall have the same meaning as those in the Rules of the Authority.	It is suggested that the provision shall be read as follows: "*Terms used in these regulations shall have the same meaning as those in the Convention, the Agreement, as well as in rules, regulations and procedures of the Authority*".	The original wording reflects the erroneous definition contained in the Schedule "Use of terms and scope": "***Rules of the Authority***" *means the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time*". It is inappropriate to use the wording "*Rules of the Authority*" when referring to the international legal norms established in international treaties – the UNCLOS and the Agreement relating to the implementation of Part XI of the UNCLOS.
Regulation	**Text of the Regulation**	**Comments / Remarks**	**Explanation**
			This remark refers to all parts of these regulations where such wording is used.
Regulation 1 (5)	These regulations are supplemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment.	It is suggested to omit this provision.	There is no legal burden arising from the content of this provision. The text of the Rules refers to the rules, regulations and procedures of the Authority, as well as to standards and guidelines, and sets out in which specific cases the standards, guidelines, rules, regulations and procedures of the Authority should be referred to.

Spain

PRIMERA.- **ARTÍCULO 1.4.**

Se sugiere una nueva redacción del artículo 1.4.

Redacción actual:

4. El presente reglamento no afectará de manera alguna a la libertad para realizar investigaciones científicas, de conformidad con el artículo 87 de la Convención, ni al derecho a realizar investigaciones científicas marinas en la Zona, de conformidad con los artículos 143 y 256 de la Convención. Nada de lo dispuesto en el presente reglamento se interpretará de manera que restrinja el ejercicio por parte de los Estados de la libertad de la alta mar con arreglo al artículo 87 de la Convención.

Redacción propuesta:

4. Ninguna disposición en el presente Reglamento se entenderá en perjuicio de los derechos, la jurisdicción y las obligaciones de los Estados con arreglo a la Convención. El presente Reglamento se interpretará y aplicará en el contexto de la Convención y de manera acorde con ella".

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

Regulation 1
Use of terms and scope

1. Terms used in these regulations shall have the same meaning as those in the Rules of the Authority.

2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.

3. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule.

4. These regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in article 87 of the Convention.

5. These regulations are supplemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment.

6. The annexes, appendices and schedule, and standards and guidelines to these regulations form an integral part of the regulations and any reference to the regulations includes the annexes, appendixes and schedule, and standards and guidelines thereto.

7. These regulations are subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

Commented [A2]: The United States fully supports the clear statement in this regulation that the right to conduct MSR in the Area shall not be affected in any way by these regulations.

Commented [A3]: We note that this paragraph is somewhat in tension with Part XIII on Review of the Regulations, rendering it overly difficult to make updates to the annexes, appendixes and schedule, or any other items considered as an integral part of these regulations. We recommend including a separate provision setting forth the procedures for updating the non-regulation documents.

Commented [A4]: The standards and guidelines will also form an integral part of the Regulations.

Commented [A5]: We would delete this section of the regulations. Although the expansion of the regulation to also cover "policies" is an improvement over one covering only "fundamental principles", we believe that this section diminishes clarity and could diminish uniformity in application of operative provisions. Although omission of references to other portions of the Convention and Agreement in this draft regulation does not affect their applicability or the obligations they impose, picking and choosing which of many relevant policies to reference in this section could suggest a hierarchy of importance or relevance, when none should be intended.

The Pew Charitable Trusts

Regulation 1

Use of terms and scope

1.Terms used in these Regulations shall have the same meaning as those in the ~~Convention~~ Rules of the Authority. […]

5. These Regulations are supplemented by Standards and Guidelines, as referred to in these Regulations and the Annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment.

6. The Annexes, Appendices and Schedule 1 to these Regulations form an integral part of these Regulations and any reference to these Regulations includes a reference to the Annexes, Appendixes and definitions in Schedule 1 relating thereto.

UNCLOS mandates the Authority to adopt various 'rules, regulations and procedures' ['RRP'] for the conduct of Activities in the Area. The 1994 Implementing Agreement indicates that these RRP should incorporate applicable 'standards' for the protection and preservation of the marine environment (1994 Agreement, section 1(5)).

DR1(5) refers to "*Standards and Guidelines* ['S&G'] ***as well as*** *... rules, regulations and procedures of the Authority* ['RRP']" This language suggests that the Regulations will treat S&G and RRP as two distinct sets of instruments, and that S&G are not included within the Regulations' use of the term RRP.

The Regulations also rely repeatedly on the term 'Rules of the ISA', to refer to the different instruments that place binding requirements upon Contractors. This term 'Rules of the ISA' is defined to include RRP, but not S&G.

This terminology bears further examination. It may be argued that UNCLOS does not empower the ISA to produce instruments other than RRPs. If S&G are not deemed to be RRP, their validity may be challenged. There are also places where the draft Regulations refer to RRP or "Rules of the ISA" only, which – if those terms do not include S&G – may be considered too narrowly drafted. In this respect, the various references in the draft Regulations to Standards will need to be re-examined, and/or consideration may be given to amending the defined term 'Rule of the ISA' to include 'Standards'.

This issue is discussed further at DR95, below.

III – Stakeholders

Global Sea Mineral Resources

Part I - Introduction		
DR 1(5)	Regulations are intended to be supplemented by Standards and Guidelines, as well as further rules, regulations and procedures of the Authority. Standards are legally binding on Contractors (DR 94(4)).	The main concerns include: - The Commission may recommend to the Council the adoption or revision of Standards, pursuant to DR 94(1). The Draft Regulation does not establish time limits for the Commission to suggest the adoption or revision of Standards. - As Contractors will have to adjust their activities to be compliant with new/revised Standards, the Draft Regulations should include a procedure to: o Ensure that Contractors are part of the drafting and/or revision procedure of Standards to ensure changes imposed are technologically and economically achievable; and o Provide a mechanism where both parties (Authority and Contractor) assess the cost-benefit impact of the new standard and mutually agree on the adjustments to the terms of the Contract.

Nauru Ocean Resources Inc.

Regulation 1(4)
NORI believes that there should be a similar confirmation that Marine Scientific Research (MSR) will not be permitted to be carried out in such a way as to cause damage or undue interference to a deep-sea mining operation. For example, MSR should not be permitted to operate in or disturb a Contractor's Preservation Reference Zone, or interfere with the safe and orderly performance of the Contractor's exploitation activities and commitments.

Regulation 1(5)
NORI disagrees with the concept of new "Standards" becoming legally mandatory obligations after a Contractor has been granted an Exploitation Contract. Alternatively, if new Standards are mandatory, then the Contractor should be compensated if such changes cause the Contractor to incur a material economic loss or cost.

NORI also submits that Contractors should have flexibility to carry out their activities in a different manner to what is prescribed in the Standards if the Contractor has reasonable grounds for demonstrating that a different course of action is also responsible and/or appropriate in the circumstance. As currently drafted the new "Standards" are effectively the same as new "Regulations". Given this, the process for adopting Standards should go through a rigorous review process in which Contractors are heavily involved to ensure that the Standards are indeed commercially viable and practicably achievable.

Regulation 2
Fundamental policies and principles

In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these regulations are, inter alia, to:

(a) Recognize that the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:

(i) The development of the Resources of the Area;

(ii) Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;

(iii) The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention;

(iv) Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement;

(v) Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;

(vi) The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;

(vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;

(viii)The protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected Mineral or in the volume of exports of that Mineral, to the extent that such reduction is caused by activities in the Area;

(ix) The development of the common heritage for the benefit of mankind as a whole; and

(x) That conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

(c) Ensure that the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice;

(d) Provide for the protection of human life and safety;

(e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles:

(i) A fundamental consideration for the development of environmental objectives shall be the effective protection of the Marine Environment, including biological diversity and ecological integrity;

(ii) The application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;

(iii) The application of an ecosystem approach;

(iv) The application of "the polluter pays" principle through market-based instruments, mechanisms and other relevant measures;

(v) Access to data and information relating to the protection and preservation of the Marine Environment;

(vi) Accountability and transparency in decision-making; and

(vii) Encouragement of effective public participation;

(f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline;

(g) Incorporate the Best Available Scientific Evidence into decision-making processes;

(h) Ensure the effective management and regulation of the Area and its Resources in a way that promotes the development of the common heritage for the benefit of mankind as a whole; and

(i) Ensure that these regulations, and any decision-making thereunder, are implemented in conformity with these fundamental policies and principles.

I - Members of the International Seabed Authority

Australia

(iii) The application of an ecosystem approach;

(iv) The application of "the polluter pays" principle through market-based instruments, mechanisms and other relevant measures;

(v) Access to data and information relating to the protection and preservation of the Marine Environment;

(vi) Accountability and transparency in decision-making; [and]

(vii) Encouragement of effective public participation; **and**

(viii) Identification of areas of particular environmental interest.

(f) Provide for the prevention, reduction and control of pollution and other

Commented [AUS4]: This is the only time 'ecosystem approach' is mentioned in the draft regulations. UNGA expressly encouraged the ISA to take an ecosystem approach into their mandates in UNGA Resolution 67/78 para 174. We consider the term 'ecosystem approach' ought to be defined in the draft regulations.

Commented [AUS5]: The polluter pays principle requires the party responsible for the harm to bear the cost. Clarification is required on the market-based instruments, mechanisms and other relevant measures referred to in this provision.

Commented [AUS6]: Areas of particular environmental interest should be a defined term in these regulations.

Belgium

Regulation 2
Fundamental policies and principles

Consistent with Part XI of the Convention and the Agreement, the fundamental principles of these regulations are, inter alia, to:

(a) Recognize that the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:

(i) The development of the Resources of the Area;

(iii) The application of an ecosystem approach, as reflected in Convention on Biological Diversity, COP 5 Decision V/6;

(iv) The application of the polluter pays principle through market-based instruments, mechanisms and other relevant measures, as reflected in principle 16 of the Rio Declaration on Environment and Development;

Commented [VS13]: Superfluous.

Commented [VS14]: What do both concepts mean? What is the added value of having both in this text? Suggestion: delete 'policies and', unless the aforementioned question can be answered.

Commented [VS15]: In case the 'policies and principles' are fundamental, they shall be mentioned here. So: 'inter alia' should be deleted.

Commented [VS16]: This should be a copy of art. 150 or not be copied here at all. Making a selection suggests there is a priority list, which is not the case.

Commented [VS18]: Cf reference made under (ii), for 'precautionary approach'.

Commented [VS19]: Cf. reference made under (ii).

Canada

Regulation 2
Fundamental policies and guiding principles

() Recognize the need to ensure public trust, regulatory integrity, and the need to avoid any perceived or actual conflicts of interest;

(c) Ensure that the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice while adopting sustainable and socially responsible policies;

Chile

Proyecto de Artículo 2
Políticas y Principios Fundamentales

El principio de Patrimonio Común de la Humanidad es clave. Este sólo se enuncia en el párrafo 2 del texto del preámbulo, y en el proyecto de artículo 2.9, sobre principios fundamentales, sin desarrollarse mayormente.

Chile considera que es necesario abundar en este principio y su aplicación práctica en el Reglamento, en especial, considerando que el Reglamento tiene como objetivo beneficiar a toda la humanidad. **Este es un punto muy importante para Chile.**

Se sugiere reafirmar, y recalcar la inderogabilidad establecida en el párrafo 6 del Art. 311 y el propio principio establecido en el Art. 136 de la CONVEMAR.

Asimismo, se contemplan en este artículo, en los literales **a)** y **d)**, términos como: **protección, conservación y preservación**. Al respecto, Chile **recomienda clarificar dichos términos** a fin de generar mayor entendimiento de los mismos. Justamente este punto está unido con los comentarios al anexo 1 del proyecto de Reglamento.

Entonces, se sugiere incorporar una letra en este artículo, con una redacción orientada a asegurar, resguardar y salvaguardar la protección efectiva del medio marino, haciendo uso de las mejores tecnologías y las mejores prácticas ambientales disponibles, que permitan mitigar los efectos e impactos sobre este medio.

En tal sentido **es importante conocer previamente los lineamientos de la política ambiental de la Autoridad**, mencionados en el **literal e)**, para evaluar su conformidad con la protección **"efectiva"** del medio marino. De esta manera, es clave recordar que los Estados tienen la obligación de proteger y preservar el medio marino (**art.192** de la CONVEMAR). Por tanto, ya existe un deber de los Estados en esta materia, que debe reflejarse en los instrumentos relacionados con el Derecho del Mar.

La finalidad del Reglamento es regular la explotación de los fondos marinos. En este sentido, se precisa aclarar
¿Cómo la gestión efectiva de la Zona y sus recursos mencionados en el literal h) pueden promover el desarrollo del Patrimonio Común de la Humanidad (PCH)?
¿Qué se entiende por desarrollo del PCH?
¿Qué entiende la Autoridad por desarrollo del PCH?
¿Se entendería que debe ser sostenible, atendida la Agenda 2030?
¿Cómo interpreta el concepto de "sostenible"?

China

1. Draft regulation 2

This regulation stipulates the fundamental principles for deep seabed exploitation. It is proposed to have two principles in addition to those already included. The first one is to ensure a reasonable balance between exploration for and exploitation of the resources in the Area and protection and preservation of the marine environment. The second one is to ensure mutual due regard for each other between activities in the Area and other activities in the marine environment.

"The polluter pays" principle mentioned in subparagraph (e) (4) has different meanings and applicable conditions in distinct contexts. "The polluter pays" principle as contained in principle 16 of the Rio Declaration on Environment and Development is a consensus reached by the international community. It is suggested to change the wording as "'the polluter pays' principle as contained in principle 16 of the Rio Declaration on Environment and Development".

Costa Rica

Regulation 2
Fundamental principles and relevant policies

In furtherance of and consistent with Part XI of the Convention and the Agreement, this Regulations shall be implemented and interpreted with full respect of, inter alia, the following fundamental principles and taking into account, inter alia, the following relevant policies ,

RATIONALE: Principles are fundamental, and they should be prioritized over policies. Also, Part XI does not mention fundamental policies

It is more appropriate to speak of relevant (or main) policies.

(a) Recognize that the Area and its resources are the Common Heritge of Mankind, and as such the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring, inter alia :

RATIONALE: it should not be an exhaustive list.

(i) The sustainable development of the Resources of the Area;

(vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area, as well as the prevention of monopolization of activities in the Area by Sponsor States, Contractors or States operating in reserved areas.

RATIONALE: The definition of monopolization provided by UNCLOS applies only to developed State sponsors. Another way to solve this would be by including a definition of monopolization.

(c) Ensure that where exploitation is authorized, the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice;

RATIONALE: we cannot ensure that all the resources will be exploited, and the wording as was included in ISBA/25/c/WP/1 seems as if we were ensuring exploitation

(e) Ensure the implementation of article 145 of the Convention, in order to provide the effective protection and preservation of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including by the adoption of regional environmental management plans, based on the following principles:

RATIONALE : instead of copying parts of article 145, leaving some parts out, it is better to refer to the full implementation . Preservation needs to be included to keep the wording of UNCLOS, the exploration regulations and the Council's instructions. It is also important to mention that REMPS should be adopted(not just drafted, or discussed, etc.)

(i) A fundamental condition for the approval of an application for a Plan of Work shall be that said Plan of Work includes the necessary provisions to ensure the effective protection of the Marine Environment, including biological diversity and ecological integrity;

RATIONALE: it should not be just a consideration, but a condition, and it should be directed at the approval phase of the Plan of Work.

(ii) Ensure the effective application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;

(iii) Ensure the effective application of an ecosystem approach, including the consideration of natural variability and Climate Change

RATIONALE: Climate Change needs to be considered in the regulations, and in this section in particular, since the effective application of the ecosystem approach requires the integration of climate change considerations and the need to maintain climate resiliency in all phases of planning, decision making and oversighting.

(iv) Ensure the effective application of "the polluter pays" principle as reflected in Principle 16 of the Rio Declaration on Environment and Development.

RATIONALE: its application should not be limited to market based instruments and or mechanisms.

(vi) Accountability and transparency in every aspect of the process, including, inter alia, decision-making, implementation, monitoring, reporting, compliance;

RATIONALE: Accountability and transparency should not be limited to the decision making process.

(vii) Promotion and facilitation of effective public participation;

RATIONALE: Encouragement is very ambiguous and not enough. Public participation needs to be promoted and facilitated.

(f)bis Ensure the effective protection and conservation of the Natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

RATIONALE: Taken directly from art. 145..

France

Projet d'article 2, alinéa e, vi : La formule « *Accountability and transparency in decision-making* » est ici traduite par « la responsabilité et la transparence dans la prise de décisions ». Cette traduction ne donne pas entière satisfaction, le terme de responsabilité ne traduisant pas tout à fait la notion « *accountability* » qui se rapproche d'avantage d'une obligation de rendre compte.

Germany

- The United Nations' Sustainable Development Goals should be mentioned as a leading principle for mining operations in the Area (**Draft Regulation 2**). Further suggested changes are as follows:

Draft Regulation 2:
"In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these regulations are, inter alia, to: […] (b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring: […] (xi) The effective implementation of the Sustainable Development Goals and Targets of the 2030 Agenda, as adopted by the General Assembly of the United Nations in September 2015 (resolution 70/1); […] (e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles: […] (v) Open access to data and information relating to the protection and preservation of the Marine Environment; […] (e bis) Ensure that Regional Environmental Management Plans are adopted by the Authority before exploitation activities are permitted in the respective areas, while preventing any misuse of Regional Environmental Management Plans to block Plans of Work; […]."

Indonesia

	Regulation 2 **Fundamental policies and principles** In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these Regulations are, inter alia, to:	▪ In general, Indonesia agrees with the element of principles set out in R 2 as it is reflecting some of Indonesia's main concern. That said, Indonesia holds that pursuant to article 142 of the Convention, the R 2 should add a new principle.	

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	(a) Recognize that the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act; (b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring: i. The development of the Resources of the Area; ii. Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste; iii. The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention; iv. ~~The~~ Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement; v. Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals; vi. The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;	▪ Indonesia also encourages member states to utilize original structure using number instead of letter to avoid unnecessary confusion. ▪ We further call all member states to fully reflect on the Convention and therefore does not seek to contradict its provisions, in particular regarding article 144, 148 and 152 (2) of the Convention ▪ Indonesia supports the adoption of precautionary approach as one of overarching element of the regulation. Yet Indonesia is of the view that precautionary approach should not be regarded merely as an approach but as a principle of law founded in jurisprudence and binding international instruments and agreements. Moreover, the precautionary principle does not need a reference to the principle 15 of Rio Declaration as it may rise an interpretation that the precautionary approach be subject to different capabilities of members of the authority. ▪ Indonesia believe that removing reference to Rio Declaration is required should we seek to establish a non-discriminatory and non-contradictory rule with uniform requirements and standards to all member states, especially in relation to protection and preservation of Marine Environment. ▪ Indonesia agrees that establishing Regional Environment Management Plan is crucial and could serve as a key measure	New (c) bis: Give effect to article 142 of the Convention by ensuring that activity in the area shall be conducted with due regards to rights and legitimate interests of any coastal state across / adjacent whose jurisdiction such deposits lie, and with a view to ensuring: i. Consultation, including a system of prior notification to be maintained with coastal state concerned to avoiding infringement of such rights and interests; ii. Neither the principle and policies or provisions in the regulation shall affect the rights of coastal state to take such measures consistent with relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interest from pollution or threat thereof or from hazardous occurrences resulting from or caused by any activities in the Area Proposed revision for R 2 (e) (ii) (b): The application of the precautionary ~~approach~~ principle, ~~as reflected in principle 15 of the Rio Declaration on Environment and Development~~; Provision on R 2 (f) to be terminated from draft as it merely repeating the provision of R 2 (e). ~~(f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline;~~

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	vii. The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area; viii. The protection of developing countries from serious adverse effects on their economies or	that incorporates the precautionary and ecosystem approach while ensuring the right legitimate interests of coastal state are protected. We, therefore, support the removal of "if any" phrase from from R 2 (e) as voiced by Germany delegation and the African Group.	

Italy

	DR2 (b) (ii)		Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of precaution and conservation, the avoidance of unnecessary waste;	
	DR2 (d)		Provide for the protection of human and non-human life and safety;	
	DR2 (e) (iv)	Must reflect Rio Declaration as for DR2 (e) (ii)	The application of the polluter pays principle, as reflected in principle 16 of the Rio Declaration on Environment and Development, through ~~market-based instruments,~~ compensation and incentive mechanisms and other relevant measures; ~~and~~	Italy believes that the "polluter pays" principle should not be founded only on market-based instruments. We believe indeed that it would be non-effective or insufficient in an environment where the assessment of direct losses or damages would be very difficult. Therefore it is our opinion that it would be critical to introduce the concept of compensation of damages to the so called "ecosystem services" independently from their economic or non-economic relevance. Such principle is effectively and successfully implemented throughout the European Union since 2004 with the "Directive on Environmental Liability" with regard to the prevention and remedy of environmental damage. The principle deals with the pure ecological damage as distinct from traditional damage, including to property, economic goods or

Jamaica

Regulation 2 Fundamental ~~policies and~~ principles

In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these regulations are, inter alia, to:

(e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles: ...

(iv) The application of "the polluter pays" principle through regulatory mechanisms, including standards and guidelines, market-based instruments, ~~mechanisms~~ and other relevant measures;

RATIONALE:

DR 2(b) has been redrafted to more closely follow Article 150 of UNCLOS on *"Policies relating to activities in the Area"*. We interpret the change in the heading of DR 2 to include reference to "policies" as attributable to this. Nevertheless, we note the views expressed by other States Parties in Council and agree that the reference to "policies" in the title of DR 2 may serve to weaken the provision which addresses some of the fundamental principles governing the Area stated in Section 2 of Part XI of UNCLOS. In the alternative approach, we would suggest making DR 2(b) a distinct provision, i.e. DR 2bis.

With regard to paragraph (e)(iv), the text may be read as emphasizing market-based approaches over other measures. The polluter pays principle is mainly implemented by regulatory instruments (sometimes referred to as 'command-and-control' approaches) but can also be applied via market-based mechanisms, e.g. for the development and introduction of environmentally sound technologies and products. The proposed amendments are designed to present a more balanced approach in the application of the polluter pays principle.

Japan

2 PART I: INTRODUCTION

Regulation 2 (Fundamental policies and principles)

Regulation 2(e)(iv) provides "the application of the polluter pays principle through market-based instrument, mechanisms and other relevant measures," which could be being interpreted in many ways. In order to avoid such situation, Japan considers the text should refer to the principle 16 of the Rio Declaration, which reads "a State party should promote the internalization of environmental costs and the use of economic instruments taking into account the principle that the polluter should bear the cost of pollution without distorting international trade and investment."

< Regulation 2 (e) (iv) >

(e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles:

(iv) The application of the polluter pays principle as reflected in principle 16 of the Rio Declaration on Environment and Development through market-based instruments, mechanisms and other relevant measures;

Kenya

We have perused the above-stated Draft Regulations contained in the document referenced ISBA/25/C/WP.1 and wish to make comments on **Regulation 2 (b) (iv)**.

The provision stipulates as follows:

> **'Regulation 2**
> **Fundamental policies and principles**
>
> In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these regulations are, inter alia, to:
>
> ...
> (b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:
>
> ...
> (iv) Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement...'

We have noted that this provision has been taken verbatim from Article 150 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Subsidiary instruments, such the present Draft Regulations, can be used to elaborate on substantive provisions of the main instrument, in this case UNCLOS, especially in light of prevailing circumstances of the present time. This would ensure that UNCLOS remains a dynamic treaty.

In that regard we propose a modification of the language used in this provision to include international cooperation of States in strengthening research, scientific and technical capacities of Member States in the developing and least-developed States categories, in order to ensure their optimal absorption and adaption of transferred technology.

Most countries in the developing and least-developed States categories are unable to optimally absorb and assimilate, which includes development of innovations, technologies transferred to them because of human and infrastructural capacity deficits that inhibit them from optimally utilizing, deriving value, innovating and developing themselves using technology transfer.

Consequently, for transfer of technology to be meaningful for Member States in the developing and least-developed States categories, they need assistance to develop their capacities so as to be able to optimize value from technology transfer for ultimate growth and development of their industries and economies.

International cooperation in meaningfully developing the capacities of the stated categories of Member States will likewise contribute to the realization of the aspiration contained in paragraph (vii) of enhancing opportunities for all States Parties, regardless of their social or economic systems, to participate in the development of the resources of the Area.

Mexico

Una de las fortalezas de los organismos internacionales radica en la transparencia de sus gestiones y de sus políticas anticorrupción, cuanto más, cuando existe una participación de intereses económicos y comerciales de entidades públicas y privadas en beneficio de la humanidad en su conjunto. Es por ello que se debe pensar en mecanismos que garanticen la máxima transparencia en el proceso de asignación de contratos de explotación hasta la conclusión de la actividades y el cierre que incluyan, entre otros puntos, el libre acceso para ser consultados por cualquier parte interesada y a disposición en caso de requerirse un proceso de rendición de cuentas. En esta línea, se sugiere que en el principio de transparencia que debe regir la actividad de exploración se incluya de manera genérica en los **proyectos de artículos 2 y 44** no limitarlo a la sección relativa a la protección efectiva del Medio Ambiente Marino.

Respecto de este mismo **proyecto de artículo 2**, México considera que el texto de dicho artículo es poco claro al combinar las políticas/lineamientos con los principios que deben regir las actividades de explotación. En este sentido, se recuerda que los principios tienen carácter vinculante y que ya se tienen definidos tanto en su uso y definición en otros instrumentos. De acuerdo a ello, los principios precautorio, el ecosistémico, de transparencia, el de patrimonio de la humanidad, el de "el que contamina paga", debieran regir todas las actividades de explotación reguladas por este Código de Explotación y deben de estar mencionados en un apartado específico del artículo 2. Las demás disposiciones del **proyecto de artículo 2**, se considerarán lineamientos y deberán tener un tratamiento distinto a los principios anteriormente enlistados.

Micronesia

4. On Draft Regulation 2, the FSM is doubtful that there is proper balance reflected here with respect to fundamental principles on the one hand, and policies on the other hand. The FSM recommends either separating principles and policies into individual Draft Regulations or, at the very least, specifying which of the items listed in Draft Regulation 2 are fundamental principles and which are policies (if one Draft Regulation is to be retained).

   Additionally, the FSM welcomes the deletion of the phrase "if any" in Draft Regulation 2(e), in connection with regional environmental management plans ("REMPs"). The deletion implies that REMPs must be adopted prior to the issuance of a plan of work for the relevant region of the Area. The FSM supports such a requirement and encourages that this be clearly stated in this Draft Regulation and other relevant Draft Regulations.

   Furthermore, in Draft Regulation 2(e)(iv), the FSM queries the use of the modifier "market-based" with respect to "instruments, mechanisms and other relevant measures" aimed at applying the "polluter pays" principle. Principle 16 of the 1992 Rio Declaration on Environment and Development and many other international instruments allow for other modalities for operationalizing the polluter pays principle beyond market-based modalities, including through governmental taxes and similar levies. The text should be amended to enable this clarification, perhaps by moving the language on "market-based" to the end of the listing. The FSM also supports an explicit reference to compensation for damage to ecosystem services in this Draft Regulation.

Also, in Draft Regulation 2(g), on incorporating the Best Available Scientific Evidence into decision-making processes, the FSM reiterates previous interventions and comments on the relevance and value of the traditional knowledge of Indigenous Peoples and local communities ("IPLCs") regarding the marine biological diversity and ecosystems of the high seas and the Area that can complement decision-making in relation to activities in the Area. Traditional knowledge exists about marine species that migrate between coastal waters on the one hand and the high seas water columns and the seabed on the other hand, as well as about marine biological diversity and marine processes encountered through longstanding instrument-free traditional navigation on the open Ocean. There is also traditional knowledge about environmental management best practices in coastal waters, including in terms of extractive efforts and how to regulate them, that can be of use in planning, management, and decision-making processes in connection with activities in the Area as best practices. Numerous multilateral instruments and processes of relevance to the high seas water column and the seabed recognize traditional knowledge, including the Convention on Biological Diversity ("CBD") and its process for identifying Ecologically or Biologically Significant Marine Areas, the Central Arctic Ocean Fisheries Agreement, the United Nations Framework Convention on Climate Change and its Paris Agreement, the ongoing negotiations for an international legally binding instrument under the United Nations Convention on the Law of the Sea ("UNCLOS") on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and the current effort to develop a Road Map for the United Nations Decade of Ocean Science for Sustainable Development. The FSM also stresses that holders of such traditional knowledge must be properly involved in management and decision-making processes relating to activities in the Area, similar to efforts in Canada and elsewhere with interests in the Area. In this respect, Draft Regulation 2(g) can be amended to insert the phrase "and traditional knowledge of Indigenous Peoples and local communities" right after the reference to "Best Available Scientific Evidence," and Draft Regulation 2(e)(vii) can be amended to include a reference to holders of traditional knowledge—i.e., "Encouragement of effective public participation, including by Indigenous Peoples and local communities." Additionally, traditional knowledge can be reflected as part of the definition of Best Environmental Practices, which is referenced in numerous places in the overall Draft Regulations. Specifically, in the Schedule of the Draft Regulations pertaining to the use of terms and scope, the definition of "Best Environmental Practices" can be modified to mean "the application of the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved, understanding, technology or knowledge, including the traditional knowledge of Indigenous Peoples and local communities, taking into account the guidance set out in the applicable Guidelines." These comments regarding Best Environmental Practices as well as Best Available Scientific Evidence apply to all other references to Best Environmental Practices and Best Available Scientific Evidence in the rest of the overall Draft Regulations (although this submission highlights specific references as well for the sake of discussion).

Morocco

Article 2 : Politiques et principes fondamentaux.	Besoin de clarifier les termes et notions de : -Effets nocifs ; -Approche par écosystème; -Pollueur/payeur.

Norway

As regards the protection of the environment, the regulations refer to the precautionary approach as one of the guiding principles (see Regulations 2(e)(ii) and 44(a)).

In Norway's understanding, the "precautionary approach" will imply that decisions on measures to be taken shall be based on science, knowledge and facts to the extent possible, to ensure prudent and sustainable economic activities.

Poland

DR 2 In PL's opinion this regulation consists not only of principles but also of approaches and policies. Accordingly, we would prefer to add the word "approaches" in the chapeau of this regulation. As an argument in favor of not limiting ourselves to "principles" we could point out that the title of article 150 of UNCLOS (this article is inserted in reg. 2 (b)) reads "Policies relating to activities in the Area" hence, while referring to article 150 and its content we should not use the term "principles".

Alternatively, PL could support listing elements mentioned in this regulation without determining whether they are principles, policies or approaches.

DR 2 (b) Notwithstanding the above, PL does not see the need to repeat the content of article 150 of UNCLOS in DR. We are not sure about potential legal consequences of repeating one part of UNCLOS and omitting other relevant parts. Accordingly, we would like to propose to streamline this provision as follows "Give effect to article 150 of the Convention."

DR 2 (e) The chapeau of this provision refers to principles yet, some of the elements listed in this provision are not principles or are not presented as such. For example the second and third indents refer explicitly to approaches. This provision would merit from more consistency.

DR 2 (i) It seems that this letter should be a separate provision. Keeping it in this place may cause interpretive difficulties (it refers to "fundamental policies and principles" being – according to the chapeau - one of them).

Republic of Korea

In Regulation 2, the language of Article 150 of the Convention is identically repeated in para 2 (b). To make it simple and concise, rather than repeating the whole language of Article 150 of the Convention, Regulation 2 para 2 (b) could state "give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in accordance with the policies stated under article 150 of the Convention".

Russian Federation

Regulation 2(e)(iv)	(iv) The application of "the polluter pays" principle through market-based instruments, mechanisms and other relevant measures;	It is suggested to omit the words "*through market-based instruments, mechanisms and other relevant measures*" so that the provision reads as follows: "*(iv) The application of "the polluter pays" principle;*"	This suggestion is based on the fact that the formulation of the "*polluter pays*" principle, which has been recognized as a general principle of international environmental law, does not refer to any additional mechanisms and instruments. In this regard, reference to the Rio Declaration can also be made. Otherwise, it would be important to clarify what stands behind "*market-based instruments, mechanisms and other relevant measures*", whereas the existing provision provides no legal clarity.

United Kingdom

2. Fundamental policies and principles	(e)(i) A fundamental consideration for the development of environmental objectives shall be the effective protection of the Marine Environment, including biological diversity and ecological integrity;	(e)(i) A fundamental consideration for the development of environmental objectives shall be the effective protection, conservation and, where practicable, restoration of the Marine Environment, including biological diversity and ecological integrity;	Previous drafts of the Regulations included "protection and conservation" of the Marine Environment. This has become simply "protection" in the current draft, which is a significant change to the meaning and expectations, not just a change to the language. UNCLOS 145 2(b) includes the "protection and conservation" of the natural resources of the Area. We would prefer the language here to track that of UNCLOS Art 145 in order to embed the necessary concepts of consented harm and subsequent management Ideally would also include a reference to 'restoration'. We would draw the ISA's attention to the wording in the EU Marine Strategy Regulations: "protect and preserve the marine environment, prevent its deterioration or, *where practicable, restore* marine ecosystems in areas where they
			have been adversely affected", which we consider to represent best practice in this matter.
	(e)(ii) The application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;	(e)(ii) The application of the precautionary principle; ~~approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;~~	UK remains of the view that this should refer to the precautionary 'principle'.
	(e)(iii) The application of an ecosystem approach;	(e)(iii) The application of an ~~e~~Ecosystem aApproach;	'Ecosystem Approach' will need careful definition in the Schedule on Use of Terms
	(e)(v) Access to data and information relating to the protection and preservation of the Marine Environment;	(e)(v) Access to data and information relating to the protection and conservation and, where practicable, restoration of the Marine Environment;	See comments on 2(e)(i) above.
	(e)(vii) Encouragement of effective public participation;	(e)(vii) ~~Encouragement of~~ The right to effective public participation;	Public participation needs to be more than simply encouraged – it is fundamental to transparency and therefore should be more categorical as a principle.
	-	2(e)(x) Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause serious harm to the marine environment including, but not restricted to, pollution.	This additional sub-paragraph reflects the provision of Regulation 4 in respect of areas under the sovereignty or jurisdiction of coastal states.

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

Regulation 2
Fundamental policies and principles

(e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following ~~principles~~:

(iii) The application of an ecosystem approach;

(iv) The application of "the polluter pays" approach ~~principle~~ through market-based instruments, mechanisms and other relevant measures;

(v) Access to data and information relating to the protection and preservation of the Marine Environment;

(vi) Accountability and transparency in decision-making; and

(vii) Encouragement of effective public participation;

(f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;

(g) Provide for the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment;

(gh) Incorporate the ~~Best Available Scientific Evidence~~Best Available Scientific Information into decision-making processes;

(hi) Ensure the effective management and regulation of the Area and its Resources in a way that promotes the development of the common heritage for the benefit of mankind as a whole; and

(ij) Ensure that these regulations, and any decision-making thereunder, are implemented in conformity with these fundamental policies and principles.

Commented [A6]: To the extent this regulation remains in the text, we suggest inclusion of a requirement for the Authority to ensure consultation and cooperation to ensure compliance with the requirement in article 147 that activities in the Area be carried out with reasonable regard for other activities in the marine environment. We would not view an omission of such a requirement as prejudicing the obligation of the Authority to comply with Article 147.

Commented [A7]: A specific section labeled "principles" also risks diminishing uniformity in the application of operative provisions by somewhat randomly what to include in this section. We would not consider all of the items listed in this section as "principles."

Commented [A8]: The "ecosystem approach" is not defined in the regulations. Propose that it be better described.

Commented [A9]: Article 145 should be used in full.

Commented [A10]: Best available scientific information is more common than evidence, and the exploration regs use "best available scientific and technical information." "Evidence" conveys a higher threshold of usable information, which may not be attainable in this part of the world about which we know less than the moon.

International Union for the Conservation of Nature and Natural Resources

DR2: IUCN General Comments: The fundamental principles and policies should be in separate Regulations: fundamental principles such as the common heritage of mankind, effective protection and precaution should be in a stand-alone provision that guides the application of the Regulations and decision-making processes. As noted in the Code Project submission, the incorporation of UNCLOS Article 150's mining production policies should not be brought to bear on fundamental principles or environmental management decisions such as review of an applicant's environmental plans.

DR2 IUCN specific comments:

In furtherance of and consistent with Part XI of the Convention and the Agreement, these Regulations, and any decision-making thereunder, shall be implemented in conformity with these fundamental principles: ~~the fundamental policies and principles of these Regulations are, inter alia, to:~~

(a) Recognize that the Area and its Resources are the common heritage of mankind and that rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) ~~Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:~~

(i) ~~The development of the Resources of the Area;~~

(ii) ~~Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;~~

(iii) ~~The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention;~~

(iv) ~~Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement;~~

(v) ~~Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;~~

(vi) ~~The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;~~

(vii) ~~The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;~~

(viii) ~~The protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected Mineral or in the volume of exports of that Mineral, to the extent that such reduction is caused by activities in the Area;~~

(ix) ~~Development of the common heritage for the benefit of mankind as a whole; and~~

(x) ~~Conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.~~

(c) Ensure that, where exploitation takes place, the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with ~~Good~~ Best Industry Practice;

(d) Provide for the protection of human life and safety;

(e) Provide, ~~pursuant to article 145 of the Convention,~~ for the effective protection for the Marine Environment from the harmful effects that may arise from Exploitation, pursuant to article 145 of the Convention, ~~in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles: [~~ [Comment: The necessary measures may require more than just the Authority's "environmental policy" and regional environmental management plans. These are necessary but insufficient to ensure effective protection. The ISA as yet lacks an Environmental Policy, which should be developed to guide implementation; there is also a need for a separate article on REMPs to integrate their requirements into the draft regulations. The development and adoption of a REMP should serve as a precondition to consideration of a plan of work]

(ebis) Recommendations and decisions pertaining to mineral exploitation in the Area shall be based upon information adequate to enable informed judgments to be made about their possible impacts and no such activities shall take place unless this information is available for decisions relevant to those activities.

(i) A fundamental condition for the approval of an application for a plan of work ~~consideration for the development of environmental objectives~~ shall be whether the plan of work is sufficient to ensure the effective protection for the Marine Environment, including biological diversity and ecological integrity;

[Comment: a separate article/process is needed to develop criteria for "effective protection", "harmful effects" and "serious harm"]

(ii) Ensure the effective ~~The~~ application of the precautionary approach, as reflected inter alia, in principle 15 of the Rio Declaration on Environment and Development and Article 6 of the UN Fish Stocks Agreement through-out all planning, management and decision-making processes in order to protect and preserve the marine environment.

(iii) Ensure the effective ~~The~~ application of an ecosystem approach [Comment: the ecosystem approach needs to be further defined and operationalized];

(iv) Ensure the effective ~~The~~ application of the polluter pays principle ~~through market-based instruments, mechanisms and other relevant measures~~; and

(v) Provide for effective Access to data and information relating to the protection and preservation of the Marine Environment;

(vi) Ensure Accountability and transparency in all facets of the ISA operations, including decision-making; and

(vii) ~~Encouragement of~~ Provide for and facilitate effective public participation;

(f) ~~Provide for~~ Ensure the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline [Comment: (f) and (fbis) should be moved to follow (i);

(fbis) Ensure the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment. [Comment: as (f) above, proposed f(bis) draws directly from Article 145.

(g) Incorporate the Best Available Scientific Evidence into all facets of the Authority's operations including decision-making processes;

(h) Ensure the effective management and regulation of the Area and its Resources in a way that promotes the enjoyment ~~development of~~ the common heritage for the benefit of mankind as a whole; [Comment: there are benefits beyond just financial benefits that should be considered, for example, ecosystem services, marine genetic resources, marine scientific research, telecommunication services, conservation values, option values]

(i) ~~Ensure that these Regulations, and any decision-making thereunder, are implemented in conformity with these fundamental policies and principles~~. [Comment: a redrafted version of this sub-paragraph has been inserted into the preamble above.

Advisory Committee on Protection of the Sea

Draft Regulation (DR) 2: Fundamental policies and principles: **Re the discussion in plenary on DR 2(b) on Law of the Sea Convention (LOSC) Art. 150: we recall the words of H.E. Ambassador M.C.W. Pinto of Sri Lanka who said in 1978 that one of the purposes of Art. 150 is "to compel a dialogue between producers and consumers." LOSC Art. 150 illustrates that the Authority has many competing interests to balance.*

Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR.

Deep Ocean Stewardship Initiative

DR 2: It is unclear why a crucial obligation set out in article 145(b) of the Convention is omitted: 'the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.'

DR 2(b)(vi): This introduces a new element (i.e., fair prices for consumers) to be balanced against the interests of land-based mining producers. This could undermine the interests of (mainly developing states) land-based producers, as protected by the 1994 Implementing Agreement (Section 7). Also, it is not clear how DR 2(b)(vi) would be balanced against (viii), which aims to protect developing states against serious adverse effects on their economies resulting from a reduction in mineral prices, which may well be in the interest of consumers. As a result, we recommend the removal of Reg 2(b) (which references the economic policies of UNCLOS Art 150) from this fundamental policy section, and include it elsewhere as one relevant consideration for the LTC / Council in the plan of work application review process.

DR 2(b)(ix): "the development of the common heritage for the benefit of mankind as a whole" should elaborate on main types of benefits, such as: ecosystem services, marine genetic resources, increasing scientific knowledge, etc. This avoids any potential misinterpretation or narrowing down of benefits to financial proceeds.

DR 2(e)(iii) – There is no clear understanding about what is meant by "ecosystem approach", as well as what it entails. Clarification on the matter may better guarantee compliance by Contractors regarding obligations relating to the Marine Environment.

DR 2(e)(iv): The polluter pays principle is a very welcome addition to the draft Regulations.

DR 2(g): Climate change considerations are essential for achieving this.

DR 2(h): Similar to 2(b)(ix), we recommend elaboration on the clear definition of common heritage promotion, or a cross reference to the definition. This avoids any potential misinterpretation or narrowing of benefits to financial proceeds.

Deep Sea Conservation Coalition

This section – DR 2 - has been weakened: it now includes fundamental "Policies" as well as Principles.

This is a crucial section: e.g. common heritage ONLY appears in DR2 and DR12(4) as "realizing benefits for mankind as a whole". The precautionary principle (approach) is only in DR 2 and DR 44. The elevation of Article 150 policies to "fundamental policies" is misconceived. In doing so it now includes a 'need' for mining, which is subjective, arguable and far from unanimously held, so that "(v) increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals", for instance, is now on the same level as the common heritage of mankind. The policies need to be taken out of the Fundamental Principles Article so that the fundamental principles are fundamental, and are not policies to be weighed against other policies. Additionally, the Fundamental Principles are not integrated and mainstreamed into regulations. For example, DR 2(e)(i) "…effective protection of the Marine Environment, including biological diversity and ecological integrity" should be operationalized in subsequent regulations. In doing so, it should require that a full inventory of biodiversity in a claim area be obtained and included in an EIA and that the loss of biodiversity be prevented as a condition for the approval of a Plan of Work for Exploitation.

DR 2(e) should be elevated to the front of the Regulations as the crucial fundamental principle underlying any exploitation of minerals; if the principles in DR 2(e) cannot be met then the rest cannot take place.

Dr 2(h) Should read "The Area and its resources are the common heritage of mankind" to reflect the central Article 133 of the Convention. The current wording is from Article 151(i) of the Convention, which is a policy, and is duplicated in DR 2(b)(ix), which should be removed.

2	Fundamental Principles	The change in wording from "Fundamental Principles" to "Fundamental Policies and Principles" makes no sense: the term "fundamental policy" both implies that some policies are fundamental and not, and somehow would require regulators to balance fundamental and non-fundamental policies. DR 2 (vi) is currently: "(vi) Accountability and transparency in decision-making; " This should also include implementation, monitoring, compliance etc. does not take into account the overall system of the ocean and the role that the seabed and associated resources play in the balance (ecological, earth systems, climate regulation) that is maintained in and by this system. The Fundamental Principles should be mainstreamed. The current wording: "(i) Ensure that these Regulations, and any decision-making thereunder, are implemented in conformity with these fundamental policies and principles."

		Is bootstrapping: instead, for instance, DR 13 should require implementation of DR 2. This is particularly important, as the precautionary approach currently is not a matter for assessment under DR 13 – it is only in DR 2 and 44 (general obligations) The wholesale inclusion of UNCLOS Art. 150, to include for instance "(v) Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;" is unjustified and appears to be intended to justify seabed mining by reference to alleged need. There is nothing in Art. 150 to indicate that every provision in that Article is fundamental, and certainly nothing to suggest that a postulated need for minerals is a fundamental principle. This is contrary to SDG 12, which calls for sustainable consumption and production patterns, as well as 2019 Global Resources Outlook calling for de-linking resource use from growth. The deletion of 'conservation' is inconsistent with Article 145, which provides for "ensure effective protection for the marine environment" and "(b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment." In (vii), "encouragement" of public participation is not enough: it should instead read "ensuring" public participation. Dr 2(h) Should read "The Area and its resources are the common heritage of mankind" to reflect the central Article 133 of the Convention. The current wording is from Article 151(i) of the Convention, which is a policy, and is duplicated in Article 2(b)(ix), which should be removed. In addition, it should be a fundamental principle that a loss of biodiversity will be prevented.

Institute for Advanced Sustainability Studies

4. While we are pleased to see some matters in DR 2, we suggest that a clear distinction be drawn between principles and policies. DR 2 should only encompass 'Fundamental principles'. In this regard, given the matters stated therein are purely matters of policy, DR2 (b) and (c) should be deleted.

5. Our suggestion is premised on the Convention, whereby Section 2 of Part XI enunciates the 'Principles governing the Area', whereas Article 150 (entitled 'Policies relating to activities in the Area') clearly falls outside of Section 2.

6. We further recommend that the words "as reflected in principle 15 of the Rio Declaration on Environment and Development" in DR 2(e)(ii) be deleted. The reason behind this is that there is no logic in restricting the treatment of the precautionary approach to the understanding that was attached to it in 1992.

International Marine Minerals Society

Regulation 2, Fundamental Policies and Principles	How is this to be implemented?

The Pew Charitable Trusts

Regulation 2

Fundamental policies and principles

In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these Regulations are, inter alia, to:

The addition of the term 'policies' in DR 2 may bear further discussion. Regulatory instruments are usually designed to implement predetermined policy, rather than being used as a vehicle to elaborate or embody their own policies. In any case, the meaning of '*fundamental policies [...] of these Regulations*' remains unclear. Is the intention that concepts listed in DR2 be set above other ISA policies? Is there a distinction between principles and policies? If so, what are the operational implications?

(a) Recognize that the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring, ~~in particular~~:

DR2(b) now repeats Article 150(a)-(j) UNCLOS in full. This seems unnecessary. There may also be unintended consequences: DR2 is cross-referred in DR13(4)(e), which requires the Commission to review an applicant's environmental plans against DR2 policies and principles. Now that it replicates Article 150 UNCLOS, DR2 includes mining production policies, which should not be brought to bear on environmental management decisions.

How Articles 145 and 150 UNCLOS are reflected in DR2, and how this should influence decisions taken under the Regulations, may benefit from a clearer delineation.

(i) ~~The orderly~~The development of the Resources of the Area;

(~~i~~)(ii) Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;

(~~ii~~)(iii) The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention;

(iv) ~~The participation~~Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement; and

(v) Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;

(vi) The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;

(~~iii~~)(vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;

The draft Exploitation Regulations do not define 'monopolisation'. This implies a default to the parameters provided by UNCLOS Annex III, Article 6(3)(c). Yet that provision of UNCLOS applies only to developed State sponsors (and not to Contractors, or States operating in reserved areas), only to nodules (and not to crusts or sulphides); and sets an almost unattainable threshold of geographic coverage before monopolisation is deemed to have occurred (e.g. 2% of the Area).

(iv)(viii) The protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected Mineral or in the volume of exports of that Mineral, to the extent that such reduction is caused by activities in the Area;

(ix) The development of the common heritage for the benefit of mankind as a whole; and

(x) Conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

(c) Ensure that the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice;

A better formulation for DR2(c) could be '*Ensure that, where Exploitation takes place, the Resources of the Area are developed in accordance with sound commercial principles…*' That wording better reflects UNCLOS [1994 Agreement, Annex, section 6] and would avoid the inference that the Regulations should - as a fundamental policy - '*ensure … Exploitation*'.

(d) Provide for the protection of human life and safety;

(e) Provide, pursuant to article 145 of the Convention, for the effective protection effor the Marine Environment from the harmful effects that may arise from Exploitation, in accordance with the Authority's environmental policy–and, including regional environmental management plans, if any, based on the following principles:

The deletion of 'if any' in DR2(e) appears to suggest that a Plan of Work for Exploitation cannot be issued for any site unless and until there is a Regional Environmental Management Plan ('REMP') adopted for the relevant region. This is a positive response to stakeholder comments. Yet the point could be more explicitly stated. A new standalone Regulation could detail the role that REMPs should play in the Commission's recommendation and the Council's decision on Plans of Work.

The deletion of 'conservation' in DR2(e) appears to have been prompted by a *'request by the Council to maintain the distinction between "conservation" and "preservation" in the regulations, noting that the Authority's mandate under [UNCLOS] Article 145 is limited to the adoption of rules, regulations and procedures including the protection and conservation of the natural resources of the Area*' [ISBA/25/C/18].

In this regard, it can be noted that:

(a) The LTC's reference to UNCLOS Article 145 in DR2(e) omits the phrase: "*…and the prevention of damage to the flora and fauna of the marine environment*";

(b) UNCLOS offers no definition of 'natural resources of the Area'. 'Natural resources' might be presumed to mean something other than 'resources' of the Area, which is used throughout Part XI, to denote specifically the mineral resources (Article 133 UNCLOS); and

(c) it is unclear why the amendment does not read 'protection and preservation of the marine environment' in keeping with Council instructions, the exploration regulations, and UNCLOS (Articles 197 and 202, and paragraph 5(g) of the Annex to the 1994 Agreement).

A reference to Article 145 (in its entirety), or reproduction of the text of Article 145 in full, would be better than an attempt to paraphrase UNCLOS.

(i) A fundamental consideration for the development of environmental objectives shall be the effective protection and conservation offor the Marine Environment, including biological diversity and ecological integrity;

The message of DR2(i) is certainly welcome from an environmental point of view. But its placement in DR2 is confusing. It would be better re-located into a standalone provision regulating how environmental objectives should be set (rather than including a 'fundamental consideration' for a specific activity, in a list of 'fundamental policies and principles' applicable to the Regulations generally).

Who is responsible for 'the development of environmental objectives' (and when, and by what process)? [This point is discussed more thoroughly under DR46(2)(a), below.]

(ii) The application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development; ~~(c) The application of an ecosystem approach;~~ and

(iii) The application of an ecosystem approach; ~~(d)~~

'Ecosystem approach' is a welcome reference, but not mentioned or defined elsewhere in the Regulations. What is meant? How, where and by whom should it be applied?

A possible definition could be derived from existing sources, for example –

- Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean: "*an integrated approach under which decisions ... are considered in the context of the functioning of the wider marine ecosystems.*"
- 2003 OSPAR and HELCOM Joint Ministerial Meeting: "*the comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity.*"

(iv) The application of the polluter pays principle through market-based instruments, mechanisms and other relevant measures; and

The Regulations now include the 'polluter pays principle' ['PPP'] (as used in Principle 16 of the Rio Declaration 1992, and numerous regional conventions, national laws, and OECD instruments).

It is unclear though whether, or why, the PPP is circumscribed by this inserted wording in the Regulations to apply only through 'market-based instruments' (or similar). Further explanation may be helpful, particularly with regard to:

(a) the extent to which the ISA is able to implement market-based instruments, and
(b) why other modalities for implementing the PPP are not included within the scope of this DR2(e)(iv). Regulatory requirements around pollution prevention, liability for harm caused by pollution an, cost-recovery for pollution clean-up would appear to be highly pertinent PPP instruments in this context.

Operative wording in the Regulations may also be necessary for implementation of the PPP in the ISA's regime. Currently PPP is included only as a 'fundamental policy (or principle)' in DR2.

(v) Access to data and information relating to the protection and preservation of the Marine Environment; ~~accountability;~~

(vi) ~~Accountability~~ and transparency in decision-making; and

Accountability and transparency should apply to all facets of ISA regulation, not just decision-making. This could be re-worded as "*accountability and transparency in all aspects of ISA governance, decision-making and regulation*".

encouragement

(vii) Encouragement of effective public participation;

'Encouragement and facilitation of effective public participation' would better reflect the Rio Declaration (Principle 10).

(f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline;

(g) Incorporate the Best Available Scientific Evidence into decision-making processes; and

(h) Ensure the effective management and regulation of the Area and its Resources in a way that promotes the development of the common heritage for the benefit of mankind as a whole; and

(i) Ensure that these Regulations ~~shall be interpreted compatibly with these fundamental principles~~, and that all the functions performed under these Regulations ~~shall be undertaken~~any decision-making thereunder, are implemented in conformity with these fundamental policies and principles.

Consideration should be given to separating out paragraph (i) from the rest of DR2. Reading paragraph (i) in conjunction with the wording at the beginning of DR2 (that applies to all the sub-paragraphs) gives a rather circular and ineffective formulation, thus: *"the fundamental policies and principles of these Regulations are…to ensure these Regulations and decision-making thereunder are implemented in conformity with these fundamental policies and principles"*.

This point could also be operationalised elsewhere – e.g. DR 13 ("assessment of applicants") should cross-refer to DR 2.

III-Stakeholders

Nauru Ocean Resources Inc.

Regulation 2

NORI agrees with the new Regulation 2, which now reflects the policies set out in Article 150 of the Convention. We believe this is now much more balanced.

Ecologistas en Accion

Esta sección (DR 2) se ha debilitado. Ahora incluye «Políticas» fundamentales, así como «Principios».

Esta es una sección crucial. Por ejemplo, el patrimonio común SOLO aparece en DR2 y DR12(4) como «la realización de los beneficios para la humanidad en su conjunto». El principio de precaución (enfoque) se encuentra solo en DR 2 y DR 44.

El ascenso de las políticas del artículo 150 a «Políticas fundamentales» es erróneo. Con ello, se incluye una «necesidad» de la minería, la cual es subjetiva, justificable y está lejos de ser unánime. De modo que «(v) una mayor disponibilidad de los minerales derivados de la región, según sea necesario, junto con los minerales derivados de otras fuentes para garantizar las provisiones de los mismos a los consumidores» ahora se encuentra al mismo nivel que el Patrimonio de la Humanidad. Las políticas deben eliminarse del artículo de los «Principios fundamentales» para que los principios fundamentales sean fundamentales y no sean políticas que deban sopesarse contra otras políticas. Además, los «Principios fundamentales» no están integrados ni se han incorporado a la normativa. Por ejemplo, el DR 2(e)(i) «...la protección efectiva del medio marino, incluida la diversidad biológica y la integridad ecológica» debería ponerse en práctica en el Reglamento posterior. Con ello, se debería exigir la obtención de un inventario completo de la biodiversidad en un área de protesta, que se incluya en una EIA y que se evite la pérdida de biodiversidad como condición para la aprobación de un Plan de Trabajo para la Explotación.

El DR 2(e) debe ser elevado al frente del Reglamento como el principio fundamental crucial que subyace a cualquier explotación de minerales, ya que si los principios en el DR 2(e) no pueden ser cumplidos, entonces el resto no puede ocurrir.

El Dr. 2(h) debe afirmar «La región y sus recursos son el Patrimonio de la Humanidad» para reflejar el Artículo 133 central de la Convención. La redacción actual es la del Artículo 151(i) de la Convención, que es una política, y se duplica en el DR 2(b)(ix), el cual debería suprimirse.

Regulation 3
Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority and Contractors shall use their best endeavours to cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

(b) The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(c) The Authority shall develop, implement and promote effective and transparent communication, public information and public participation procedures;

(d) The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to:

(i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and

(ii) Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards;

(e) Contractors, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of 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 and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority, to cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area;

(ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;

(iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;

(iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;

(v) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; and

(vi) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance

of Contractors beyond the legal requirements, including through technology development and innovation; and

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall use their best endeavours, upon the request of the Secretary-General, to provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

I - Members of the International Seabed Authority

Australia

(a) Members of the Authority and Contractors shall [~~use their best endeavours to~~] cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

Commented [AUS7]: Australia considers the duty to cooperate should not be watered down by the addition of "use their best endeavours to" in this provision.

(f) Members of the Authority and Contractors shall [~~use their best endeavours~~], in conjunction with the Authority, [~~to~~]cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall [~~use their best endeavours~~], upon the request of the Secretary-General, [~~to~~] provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

Belgium

Regulation 3
Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority and Contractors shall cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

Commented [VS20]: 'use their best endeavours' suggests 'obligation of means', whilst most of the articles are 'obligation of result', i.e. shall cooperate.

(b) The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(c) The Authority and sponsoring States shall develop, implement and promote effective and transparent communication, public information and public participation procedures;

Commented [VS21]: Sponsoring States play an important role in the permit procedure, so should also be addressed in this regard.

(d) The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to implement these regulations, including to:

Commented [VS22]: This para should go broader than what it is now.

(i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and

Chile

Proyecto de Artículo 3
Deber de cooperar e intercambio de información

Literal a):

Es necesario establecer, antes de aprobarse el Reglamento:
¿Cuáles serían los criterios o parámetros que determinarían que los datos o información sean "*razonablemente necesarios*"?
¿Existiría algún nivel de confidencialidad de los mismos?
¿Cuáles serían los criterios para asegurar confidencialidad en este punto?

En este sentido, se podría partir de la base que los actores deben estar comprometidos a **compartir datos e información sobre los efectos de la explotación en el medio marino, para resguardar su protección eficaz**, aun cuando estos efectos sean negativos y supongan bases para tomar medidas restrictivas de la actividad propiamente tal.

Pero, de manera equilibrada, **debe existir un área de confidencialidad.**

Proyecto de Artículo 4
Medidas de protección con respecto a los Estados ribereños

Junto con las medidas de protección, es también necesario respetar los derechos y los intereses legítimos de los **Estados ribereños**, los que también deben tenerse debidamente en cuenta, de conformidad con lo dispuesto en el **artículo 142** y otras disposiciones de la CONVEMAR.

El **artículo 142** de la CONVEMAR se titula "***Derechos e Intereses Legítimos de los Estados Ribereños***", por tanto, no existiría razón alguna para que el Reglamento se refiera únicamente a "*measures*" de los Estados ribereños, en circunstancias que la CONVEMAR se refiere también a "**derechos**" e "**intereses legítimos**".

Por tal razón, Chile propone sustituir el encabezado por "***Derechos e intereses legítimos de los Estados ribereños***" y todo aquello que se deba modificar en atención a este punto.

Cabe señalar que el proyecto de Reglamento anterior a la última versión circulada, hacía expresa mención a los **derechos del Estado ribereño en su plataforma continental, el establecimiento del borde exterior del margen continental (plataforma continental extendida) y los acuerdos de delimitación marítima de los Estados situados frente a frente o con costas adyacente**s.

El procedimiento para establecer el borde exterior de la plataforma continental extendida es complejo y se requiere bastante tiempo para ello. Además, la *Comisión de Límites de la Plataforma Continental* no se puede pronunciar en áreas bajo disputa, por lo que existirían áreas que son reclamadas por dos Estados, pero sobre la cual no se ha establecido el borde exterior del margen continental y, por tanto, no habría claridad donde comienza el régimen jurídico de la Zona.

Por lo anterior, **se debería entender que el Reglamento se aplica a la Zona, pero sin afectar los derechos que le correspondan al Estado ribereño en su plataforma continental extendida**. En caso que el borde externo se encuentre pendiente de revisión ante la

Costa Rica

(a) Members of the Authority and Contractors shall (text deleted from here) cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

RATIONALE: Costa Rica's proposal deletes que wording included by the LTC "use their best endeavours", as both members of the Authority and Contractors shall cooperate, not just " use their best endeavours to cooperate".

g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall,(text deleted from here) upon the request of the Secretary-General, provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

RATIONALE: Costa Rica's proposal deletes que wording included by the LTC "use their best endeavours", since contractors shall facilitate access, not just use their best endeavours.

France

Projet article 3, alinéas a, f et g : Le recours à la formule « font de leur mieux » n'est pas le plus approprié au contexte règlementaire (la version anglaise du projet de règlement emploie la formule « *use their best endeavours* »). L'utilisation du terme « coopèrent » serait plus adapté et plus contraignant.

Germany

Draft Regulation 3 (g) requires the Contractor to assist the Authority in carrying out its policies and duties under section 7 of the annex to the Agreement. However, in doing so, the legal standard it uses seems to be weak and essentially unenforceable ("*[…] Contractors shall use their best endeavours […]*"). Given the Authority's track record so far in ensuring compliance by the Contractors with rather simple obligations such as document formats, it seems prudent and advisable to (at least) establish a wording in these regulations which can actually be enforced. Further suggested changes are as follows:

Draft Regulation 3:
"[…] (g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall ~~use their best endeavours~~, upon the request of the Secretary-General, ~~to~~ provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines. (h) The Council shall, taking into account recommendations by the Commission, adopt Guidelines concerning the duties mentioned in paras. (c) to (f) which establish requirements, obligations and procedural arrangements within three years after the adoption of these regulations."

Indonesia

	Regulation 3 **Duty to cooperate and exchange of information** (a) In matters relating to these Regulations: Members of the Authority and Contractors shall use their best endeavours to cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;	▪ In order to enable the Authority to effectively discharge its mandate, members of the Authority effectively, Indonesia believes that provision regarding duty to exchange information should be well-founded as mandated by Article 200 of the Convention. We, therefore propose to remove the phrase "as is reasonably necessary" from DR 3 (a).	The DR 3 (a), (d) and (e) should be reconstructed as follows: (a) Members of the Authority and Contractors shall cooperate with the Authority to provide such data and information ~~as is reasonably necessary~~ for the Authority to discharge its duties and responsibilities under the Convention;

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	(b) The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements; (c) The Authority shall develop, implement and promote effective and transparent communication, public information and public participation procedures, ~~in accordance with Good Industry Practice;~~ (d) The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to: i. Promote the health and safety of life and property at sea and the protection of the Marine Environment; and ii. Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards; (e) Contractors, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of 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 and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area; (f) Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority, to cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:	▪ DR 3 (d) and (e) should be constructed by reflecting to the *Due Regard* principle mandated by Article 141 (1). Thus, to fully recognize the rights and legitimate interest of [relevant adjacent] coastal state. Indonesia suggest to adding coastal state in the draft. ▪ Indonesia is also of the view that to fully reflect the intention of article 150 (c) of the Convention and to effectively support the spirit of proposed Regulation 3 (f), the incentive structures that would be devised should not be directed only to support research and innovation that would enhance the capacity of contractors in complying with the Regulation but also [and for Indonesia is most crucial] to empower and enhance the opportunities of developing states to participate in the Area. In this regard Indonesia proposing additional text to complement the proposed regulation 3 (f)(iii)	(d) The Authority shall consult and cooperate with sponsoring States, [relevant adjacent] coastal states, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to: i. Promote the health and safety of life and property at sea and the protection of the Marine Environment; and ii. Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards; (e) Contractors, sponsoring States, [relevant adjacent] coastal states, and members of the Authority shall cooperate with the Authority in the establishment and implementation of 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 and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area; Proposed text Regulation 3 (f)(vi): (vi) Developing incentive structures, including market-based instruments, to support transfer of technology and capacity enhancement of developing states and to enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation; and

Italy

	DR3 (a)	The description of the DR is "Duty to Cooperate", while the use of "their best endeavours" and "reasonably" dilute its essence.	Members of the Authority and Contractors shall ~~use their best endeavours to~~ cooperate with the Authority to provide such data and information ~~as is reasonably~~ necessary for the Authority to discharge its duties and responsibilities under the Convention; [...]	
	DR3 (g)	The wording of the regulation appears too loose and convoluted, reducing significantly its effectiveness.	In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall ~~use their best endeavours~~, upon the request of the Secretary-General, ~~to~~ provide or facilitate access to ~~such~~ information ~~as is reasonably required by the Secretary-General necessary to~~ prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.	

Jamaica

Regulation 3 Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority and Contractors shall ~~use their best endeavours to~~ cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

RATIONALE:

The obligation placed on Members and Contractors is simply to cooperate with the ISA in discharging their duties and responsibilities under UNCLOS. The obligation is minimal and there is no reason to further qualify this.

Japan

Regulation 3 (Duty to cooperate and exchange of information)

Regulation 3 (a) and (g) includes ambiguous provisions where what kind of data and information Contractors are required to provide is unclear, such as "provide such data and information as is reasonably necessary" and "provide or facilitate access to such information as is reasonably required by the Secretary." Under such circumstance, Japan previously proposed to incorporate "use their best endeavours" into text for the sake of eliminating a possibility to unduly broaden obligations of Contractors.

Following the discussion at the meeting of part one of the twenty-fifth session, where some council members pointed out that the phrase "use their best endeavors" would obscure the obligation of Member states and Contractors and it therefore should be deleted, Japan suggests deleting the phrase "use their best endeavours …" subject to the conditions that the request to members of the Authority and Contractors is made by the

Secretary-General in writing with an explanation that such data and information is necessary for the Authority and that this rule applies to all member of the Authroity and Contractors in a uniform and non-discriminatory manner.

< Regulation 3(a) and (g) >

In matters relating to these regulations:

(a) Members of the Authority and Contractors shall ~~use their best endeavours to~~ cooperate with the Authority to provide such data and information upon the request by the Secretary-General in writing with an explanation that such data and information is ~~as is reasonably~~ necessary for the Authority to discharge its duties and responsibilities under the Convention. This provision shall be applied to all members of the Authority and Contractors in a uniform and non-discriminatory manner;

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall ~~use their best endeavours, upon the request of the Secretary-General, to~~ provide or facilitate access to such information upon the request ~~as is reasonably required~~ by the Secretary-General in writing with an explanation that such information is necessary for the Authority. to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines. This provision shall be applied to all Contractors in a uniform and non-discriminatory manner.

Mexico

Por otro lado, dejar al arbitrio de los contratistas y/o del Estado patrocinador la definición y alcance de "*daño grave*", resultaría en un posible perjuicio del Estado Ribereño que pudiera tener una afectación por las actividades de los contratistas. Es por ello que se reitera la necesidad de la participación de los Estados Costeros en la determinación tanto del alcance de las actividades, la definición de "daño grave" y el establecimiento de "todas las medidas necesarias", para asegurar la protección del medio ambiente marino. En todo caso, la revisión de los Planes de Monitoreo, el de Respuestas a emergencias, de seguridad e higiene y demás planes a los que se hace referencia en el **proyecto de artículo 3**, deberán de ser revisados conjuntamente con los Estados Ribereños que podrían tener afectaciones por las actividades de los contratistas. En todo caso, es importante considerar dentro de los planes, a los agentes que tendrán la capacidad de respuesta y las disposiciones internacionalmente aceptadas sobre la seguridad y protección internacional de instalaciones, buques y equipos que operen en las actividades de explotación del subsuelo marino.

Spain

SEGUNDA.- **ARTÍCULO 3**

El Reino de España interpreta que al referirse en el artículo 3 a las "organizaciones internacionales competentes" con quien la Autoridad realizará consultas y cooperará, están incluidas las Organizaciones Regionales de Pesca (OROPs).

United Kingdom

3. Duty to cooperate and exchange of information	(a) Members of the Authority and Contractors shall use their best endeavours to cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;	(a) Members of the Authority and Contractors shall ~~use their best endeavours to~~ cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;	Language needs to be strengthened throughout Regulation 3 to reflect that these duties are mandatory, not optional. The phrase "best endeavours" should therefore be removed throughout Regulation 3 (except for certain elements of 3(f) – see below).
	(f) Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority, to cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:	(f) Members of the Authority and Contractors shall ~~use their best endeavours, in conjunction with the Authority, to~~ cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to: ~~(i)~~ S sharing, exchanging and assessing	Proposed re-ordering of section 3(f) to clarify which obligations are appropriate to which entity.

	(i) Sharing, exchanging and assessing environmental data and information for the Area; (ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps; (iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information; (iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area; and (v) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; (vi) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation;	environmental data and information for the Area; (fbis) Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority to cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies with a view to: (ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps; (iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information; (iiiv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area; and (iv) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; (vi) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation;	
	(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall use their best endeavours, upon the	(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall ~~use their best endeavours~~, upon the	See comments on 3(a) above.

	request of the Secretary-General, to provide or facilitate access […]	request of the Secretary-General, ~~to~~ provide or facilitate access […]	

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) Members of the Authority and Contractors shall ~~use their best endeavours to~~ cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

(b) The Authority, sponsoring States and flag States shall cooperate towards

Commented [A11]: This addition weakens the duty to cooperate unnecessarily, in particular noting that the provision of such data and information will only be "as is reasonably necessary."

(f) Members of the Authority and Contractors shall ~~use their best endeavours~~, in conjunction with the Authority, ~~to~~ cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area;

Commented [A12]: This addition weakens the duty to cooperate unnecessarily, in particular given the subparagraphs address such activities as information sharing, promotion of MSR, and education.

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall ~~use their best endeavours~~, upon the request of the Secretary-General, ~~to~~ provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

Commented [A13]: This addition weakens the duty to cooperate unnecessarily, in particular noting that the provision of such data and information will only be "as is reasonably necessary."

DR 3(g): **It is in context of the above quote from Ambassador Pinto that we voice our concern here. We recall that Section 7 of the Part XI Implementing Agreement (IA) refers to economic assistance to developing countries with regard to the effects on their economies of activities in the Area. This is of crucial importance in implementing,* inter alia, *LOSC Art. 150. As drafted, however, DR 3(g) will be impossible to implement.*

Legal problems that immediately arise include, e.g., how to implement this without discriminating between contractors? The ISA cannot legally require this information from only some contractors; all contractors must be required to provide it. Next, all the land-based producers must be required to produce similar information, because the ISA cannot discriminate, or be thought to be discriminating, in their favour by not subjecting them to this requirement as well. Furthermore, the views of land-based producers on the possible effects of DSM in the Area are essential to obtain a complete picture of the "relevant market" (a well-known anti-trust concept, the definition and application of which is recommended to the regulator).

The problems are further compounded by the fact that some contractors are also themselves and/or have interests in land-based production operations. Also, how will sensitive commercial information belonging to the contractors and the land-based producers be protected? Potential anti-trust consequences must here be considered as well (for example, sharing of this type of information between competitors is particularly sensitive and maybe prohibited outright in certain jurisdictions). How and by whom will the responses be evaluated? Will the responses be public, and if not, why not?

Finally, we note that the phrase "use their best endeavours" is not recommended in legally binding instruments, because even if, as here, it is prefaced with a mandatory "shall", this clause remains essentially unenforceable in practice. It is recommended to delete DR 3(g).

Our original objection to DR 3(g) (reprised below insofar as it has not been also expressed in plenary above) has been addressed in part by weakening the "shall" to "shall use their best endeavours", but this change still does not address the *ultra vires*, level playing field and implementation issues we raised, to which we now add the issue of Contractors who are also land-based producers and/or have interests in land-based production operations. We further note that DR 3(a) could, under appropriate circumstances, be invoked should the Authority find it impossible to accomplish its duties under Section 7 of the Annex to the IA of the LOSC without enlisting the help of the Contractors.

We can find no specific power in the LOSC or the Implementing Agreement (IA) for the ISA to require this of the contractors. Even if some residual or implied power to this effect could be found in either of these instruments, it would be impossible to implement.

Deep Ocean Stewardship Initiative

DR 3(a) and (f): The addition of the terms "use their best endeavours" unnecessarily diminishes the standard of cooperation required. Data sharing through cooperation is fundamental to the ISA's ability to incorporate best scientific evidence into decision-making, as required by DR 2(g). Suggest returning to previous wording ('shall cooperate').

DR3(f)(i) calls for members of the ISA to share environmental data. We recommend that the importance of data repositories and open-access databases in facilitating the data sharing and mobilisation be noted here.

DR 3(f)(iii) calls for the ISA and Contractors to collaborate with the scientific community to identify and develop best practices with regard to data collection and assessment. This is a welcome point but consultation with scientists should be initiated ahead of exploitation to set an initial standard for best practices. Most importantly, a standardized approach for entire regions is seen as necessary to obtain robust and comparable data within a region. We recommend that this is managed via REMPs. We recommend that standardised procedures for REMP development and review are adopted, including that a REMP expert committee responsible for identifying best practices is established. Work by the REMP expert committee should be externally reviewed following scientific standards for review.

DR 3(f): The addition of DR 3(f)(vii) "Establishing a community which links the ocean data with data product users such as biogeographers, and ecologists" would be welcome.

Deep Sea Conservation Coalition

In addition, it should be a fundamental principle that a loss of biodiversity will be prevented.

DR 3: The LTC has restricted the obligation for contractors to cooperate with the ISA to provide data and information, to an obligation now only "to use best endeavours."

Institute for Advanced Sustainability Studies

7. With respect to DR 3(a), we recommend the deletion of the words "use their best endeavours to" and "reasonably". Therefore, DR 3(a) should read: "Members of the Authority and Contractors shall cooperate with the Authority to provide such data and information as is necessary for the Authority to discharge its duties and responsibilities". In this respect, DR 3(f) and (g) should also be amended accordingly to delete the words "use their best endeavours" (DR 3(f) and (g) and "reasonably" (DR 3(g)).

The Pew Charitable Trusts

Regulation 3
Duty to cooperate and exchange of information

In matters relating to these Regulations:

(a) Members of the Authority and Contractors shall use their best endeavours to cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

'Best endeavours' wording has been added into DR3(a) and elsewhere. The effect is to reduce the standard of cooperation required from States and Contractors from the previous *absolute* duty to cooperate. An obligation to cooperate is in itself an obligation of conduct. Requiring the parties only to endeavour to cooperate seems an unnecessary watering down of this information-sharing regulation. 'Shall cooperate' (without proviso) is a formulation ISA members have adopted previously, in similar requirements, including in the Exploration Regulations: *'Contractors, sponsoring States and other interested States or entities shall cooperate with the Authority in the establishment and implementation of programmes for monitoring and evaluating the impacts of deep seabed mining on the marine environment.'*

(b) The Authority and, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(c) The Authority shall develop, implement and promote effective and transparent communication, public information and public participation procedures, in accordance with Good Industry Practice;; [...]

This seems a sensible deletion, accurately reflecting that 'Good Industry Practice' is a standard applicable to Contractors, not to the ISA.

(f) Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority, to cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area;

(i)(ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;

(ii)(iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;

(iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area; and

(iii)(v) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; and

(iv)(vi) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation; and

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall use their best endeavours, upon the request of the Secretary-General, to provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall be in accordance withtake account of the relevant Guidelines.

Regulation 4
Protection measures in respect of coastal States

1. Nothing in these regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the Legal and Technical Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within a reasonable time.

4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention.

5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to a breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) of the Convention and Part XI of these regulations.

I - Members of the International Seabed Authority

Australia

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. **Such measures shall include consulting with any coastal State in close proximity to a proposed exploitation area prior to submitting an application for approval of a plan of work. Consultations shall be maintained with any coastal State concerned with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.**

Commented [AUS8]: Australia acknowledges that, as highlighted by the LTC Note, Article 142 of the Convention only requires prior consultation with coastal states where resource deposits straddle national jurisdiction. However, our preference remains for a contractor to be required, or at least encouraged, to consult with coastal states prior to submitting a plan of work to the Commission for assessment, and on an ongoing basis for the life of the activity and proposes text to this effect.

Canada

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, in areas under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

Chile

Proyecto de Artículo 4
Medidas de protección con respecto a los Estados ribereños

Junto con las medidas de protección, es también necesario respetar los derechos y los intereses legítimos de los **Estados ribereños**, los que también deben tenerse debidamente en cuenta, de conformidad con lo dispuesto en el **artículo 142** y otras disposiciones de la CONVEMAR.

El **artículo 142** de la CONVEMAR se titula "***Derechos e Intereses Legítimos de los Estados Ribereños***", por tanto, no existiría razón alguna para que el Reglamento se refiera únicamente a "*measures*" de los Estados ribereños, en circunstancias que la CONVEMAR se refiere también a "**derechos**" e "**intereses legítimos**".

Por tal razón, Chile propone sustituir el encabezado por "***Derechos e intereses legítimos de los Estados ribereños***" y todo aquello que se deba modificar en atención a este punto.

Cabe señalar que el proyecto de Reglamento anterior a la última versión circulada, hacía expresa mención a los **derechos del Estado ribereño en su plataforma continental, el establecimiento del borde exterior del margen continental (plataforma continental extendida) y los acuerdos de delimitación marítima de los Estados situados frente a frente o con costas adyacente**s.

El procedimiento para establecer el borde exterior de la plataforma continental extendida es complejo y se requiere bastante tiempo para ello. Además, la *Comisión de Límites de la Plataforma Continental* no se puede pronunciar en áreas bajo disputa, por lo que existirían áreas que son reclamadas por dos Estados, pero sobre la cual no se ha establecido el borde exterior del margen continental y, por tanto, no habría claridad donde comienza el régimen jurídico de la Zona.

Por lo anterior, **se debería entender que el Reglamento se aplica a la Zona, pero sin afectar los derechos que le correspondan al Estado ribereño en su plataforma continental extendida**. En caso que el borde externo se encuentre pendiente de revisión ante la

Comisión, o bien, que por existir una disputa ésta no se haya podido pronunciar, entonces el Reglamento no debería aplicarse allí.

El Reglamento no establece un ámbito espacial específico para su aplicación, entendiéndose por tanto que se aplica a todos los fondos marinos y oceánicos.

Chile sugiere plantear la opción de separar dos escenarios:

a) Cuando el Estado ribereño tenga sospechas o inquietudes frente a posibles daños producto de actividades de los contratistas y los fundamentos asociados.

b) Cuando el Estado ribereño tenga pruebas del daño que causan las actividades de los contratistas.

Eso daría mayor certeza acerca del ámbito en el cual se está abordando este punto.

Chile recomienda sugerir una explicación más detallada en este punto.

¿Qué procedimiento debería aplicarse en caso de comprobarse la existencia de daños graves en el medio marino bajo jurisdicción y soberanía de los Estados ribereños? ¿Cómo se notificaría?

Aún quedan muchos puntos sin esclarecer, que son necesarios tener en consideración antes que el Reglamento entre en vigor.

Chile considera que es necesario abordar con mayor detalle la situación en la que, pese a todas las medidas que se adopten, efectivamente se produzcan daños graves y/o contaminación dentro de zonas bajo la jurisdicción de los Estados ribereños.

Preguntas que requieren respuestas:
¿Cómo se hace cargo el contratista para remediar la situación?
¿Puede continuar operando?
¿Cómo operaría la responsabilidad ambiental en este caso?
¿Compatibilidad de medidas y sanciones?
¿Debería existir un anexo que establezca el procedimiento a seguir?

Chile considera que se debería incorporar un nuevo numeral, estableciendo que en el caso de daños graves al medio marino producto de accidentes o contingencias que no

puedan ser contenidas, mitigadas o reparadas, el contratista en conjunto con la Autoridad, deberían fijar las medidas de compensación, proporcionalmente al daño causado.

Todas estas interrogantes deben ser respondidas para prevenir situaciones que generen discordancias durante esta negociación y, a futuro, cuando el Reglamento este vigente.

Contaminación transfronteriza:

Chile hace presente que el procedimiento de notificación del **párrafo 2**, no refleja adecuadamente **el deber de consulta y notificación** y, en su caso, la obtención del consentimiento al que se refiere el **párrafo 2 del artículo 142** de la Convención, sino más bien, lo dispuesto en su **párrafo 3**.

Es necesario complementar armónicamente lo establecido en el **párrafo 2**, mediante la adopción de normas, resguardando los derechos e intereses legítimos de los Estados ribereños, así como también en otras disposiciones del proyecto de Reglamento, como lo señalado en el **proyecto de artículo 36**, respecto de acontecimientos que deben notificarse.

Podría ser necesario que la cooperación de la que trata el proyecto de **artículo 3** precedente, incluya expresamente a los Estados ribereños, especialmente aquellos adyacentes a operaciones cuya autorización se solicita. Se trata de resguardar a los **Estados ribereños** de actividades que se generen en áreas adyacentes a su ZEE o que generen consecuencias en áreas dentro de su jurisdicción nacional.

China

2. Draft regulation 4

With regard to paragraph 4 of this regulation, in order that the issuance of emergency orders by the Council is more authoritative, China proposes to substitute the legally binding "standards" for the term "guidelines" in regulation 4(4). It is also suggested that the procedures and rules through which the Council issues emergency orders should be clarified to make this paragraph more operational.

With regard to paragraph 5 of this regulation, in accordance with the Convention, if the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment is attributable to a breach by the Contractor, it shall make recommendations to the Council, the organ that is entitled to make decisions on the measures to be taken. The Secretary-General has no authority to issue a compliance notice or to order an inspection on the Contractor's activities. If there is need to delegate relevant power to the Secretary-General, it should be authorized by the Council with specific terms of reference provided for in the Exploitation Regulations.

Costa Rica

Regulation 4
Protection measures in respect of coastal States

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Harmful Effects to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Harmful Effects of pollution arising from activities in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

RATIONALE: Serious harm is a very high threshold, and the conventions requires the effective protection and preservation of the marine environment, which goes beyond the prevention of serious harm.

4. If the Commission determines, taking account of the relevant Standards and Guidelines, that there are clear grounds for believing that Harmful Effects to the Marine Environment are likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention.

RATIONALE: Standards should be included as they are the ones which will dictate binding dispositions.

Germany

- In our view, **Draft Regulation 4** should also include an information obligation by means of which the Secretary-General informs potentially affected coastal States about an application which has been submitted to the Authority. In order to provide guidance to the Secretary-General in this regard, the applicable Regional Environmental Management Plan should identify which coastal State may potentially be affected from such activities in each region (or part thereof, if considered necessary).

Draft Regulation 4:
"[...] 1.bis The Secretary-General shall inform potentially affected coastal States, as identified in the applicable Regional Environmental Management Plan, upon the submission of an application for exploitation. Appropriate consultation and notification protocols will be developed. 2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause ~~Serious~~ Significant Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such ~~Serious~~ Significant Harm or pollution arising from Incidents in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. [...]"

Indonesia

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	Regulation 4 **Protection measures in respect of coastal States** 1. Nothing in these Regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention. 2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. 3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within a reasonable time. 4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environments likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165(2)(k) of the Convention. 5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has	▪ In order to fully reflect the Convention, Indonesia holds the view that the Heading of Regulation 4 should be restored to the original text, namely Rights of Coastal State. ▪ Indonesia understands that proposed text of R 4 (3) strives to strike a right balance for both contractors and coastal states. That said, Indonesia notes that present text may produces significant additional burden to coastal state, especially the developing ones with very limited resources. In this respect, to fully respect the concern of coastal state adjacent to or across the exploitation site, Indonesia suggest that new provisions are to be added after regulation 3 ▪ Moreover, Indonesia also notes that some phrase used in the text such as "reasonable opportunity" and "reasonable time" may generate ambiguity should the timeframe is not clearly defined in this regulation or further in the standard and guidelines, ▪ Indonesia also holds that in the event of the occurrence of visible pollution resulting in direct loss to economy and damage to marine environment of a coastal state, the regulation should provide a mechanism for which a coastal state can directly activate controlling and evaluation mechanism under ISA and request for inspection, no later than 24 hours, toward the activities carried out by contractor whose site adjacent to its jurisdiction. We therefore suggest other two new paragraphs added to DR 4 .	The new paragraph to be added after R 3 (4)(bis) the Coastal states in providing the evidence of potential serious harm or a threat of serious harm to marine environment under its jurisdiction may submit the result of independent overview on the result of environmental impact assessment and mitigation and respond plan of the contractor site whose site adjacent or across to its jurisdiction. The new R (5) (6) (bis) (5) In the event of pollution causing serious harm to marine environment and livelihood of coastal community, [relevant adjacent] Coastal States which have grounds for believing that pollution is originating from activities in the Area, shall notify Secretary General in writing through appropriate channels of the grounds upon which such belief is based and request for prompt inspection as regulated in R 96 (6) The Secretary General, upon request of [relevant adjacent] Coastal States, shall instruct prompt inspection in which affected Coastal states shall be invited to accompany the inspection, no later than 24 hours after such request was made by affected coastal states to assess whether pollution is attributable to activities in the Area.

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	occurred, is attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (n) and part XI of these Regulations. 6.		

Italy

	DR4 (3-5)	It is a very slow process to address potential emergency situations and it is not clear by which measures a Coastal State may become aware of the content of a Plan of Work, which is examined in detail only by the Commission. There should be criteria in the guidelines by which a Coastal State is directly entitled to be provided with relevant information contained in the Plan of Work (e.g. minimum distance from jurisdictional waters) in order to make considerations on their own. The boundaries of the area of application should be known and made public (refer also to DR 8).		

Jamaica

Regulation 4 Protection measures in respect of coastal States

5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to a breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to ~~article 165 (2) (m) of the Convention and Part XI of these~~ regulations 96.

RATIONALE:

UNCLOS article 165(2)(m) concerns LTC recommendations to Council on the direction and supervision of a staff of inspectors and does not of itself authorize action by the Secretary-General. DR 96(3) appears to confer such authority on the Secretary-General and would therefore seem to be the more appropriate reference.

Japan

Regulation 4 (Protection measures in respect of coastal States)

Japan welcomes the revised text that newly defines an issuance of an emergency order, which is considered as the first and foremost measure to be taken, pursuant to paragraph (2)(w) of article 162 and paragraph (2)(k) of article 165, in a situation where "there are clear grounds for believing that Serious Harms to the Marine Environment is likely to occur," and also appreciates text revision where the Commission and the Council will be involved in its decision-making process.

In the previous text, the whole responsibility for issuing a compliance notice, which may lead to serious consequence such as suspension and termination of an exploitation contract, was sorely placed on the Secretary-General alone. Japan is pleased to see the revisions that a compliance notice is issued in case where Serious Harm or threat of

Serious Harm to the Marine Environment is attributable only to the breach by the Contractor of the terms and conditions of its exploitation contract, and that a decision-making process leading to the compliance notice is institutionalized by involving the Commission and the Council. We believe these modifications bring these provisions into conformity with the provisions of the Convention.

Japan supports developing the relevant Guidelines for the assessment of "Serious Harm to the Marine Environment." Considering that the determination of the Serious Harm has a crucial importance in handling of serious situations, Japan suggest that common understanding on the interpretation of the terms be established by stakeholders and therefore the Guideline on Serious Harm be developed before the Regulations are adopted.

Mexico

En relación con el **proyecto de artículo 4**, México considera que, a efecto de no caer en imprecisiones, la referencia a *"todas las medidas" (**numeral 2**),* debe especificar qué tipo de medidas de contención, mitigación, respuesta a una contingencia o emergencia de contaminación marina deben de adoptar, tanto los contratistas como los Estados patrocinadores, para evitar un daño grave al Medio Ambiente Marino, mismos que deberán de definirse para su aplicación de conformidad con la participación del Estado Ribereño que pueda resultar afectado.

Por lo que hace a la referencia del "tiempo razonable" (**numeral 3 del mismo proyecto de artículo 4**), el Estado Mexicano considera que, al hablarse de "daños graves" que puedan afectar al medio ambiente y los recursos marinos dentro de las jurisdicciones nacionales, el tiempo y capacidad de respuesta debe de ser casi inmediata para los mecanismos de atención a contingencias y emergencias. Es por ello que se sugiere establecer un plazo específico de 24 a 72 horas como tiempo de respuesta tanto de la Autoridad como de los Estados patrocinadores.

Para concluir con el **proyecto de artículo 4**, México entiende que, cuando exista una denuncia/notificación por parte de uno de los Estados Ribereños que pueda verse afectado por las actividades de los contratistas y cuando la Comisión determine la existencia o posible existencia de un daño grave por el incumplimiento de un contratista, el Secretario General deberá de ordenar la inspección obligatoria como respuesta.

Micronesia

5. On Draft Regulation 4, the FSM welcomes revisions that clarify the roles of the Legal and Technical Commission ("LTC") and the Council of the ISA in the event of Serious Harm or a threat of Serious Harm to the Marine Environment from activities in the Area, including to the coastlines or Marine Environments of adjacent coastal States. However, in the FSM's view, the threshold of Serious Harm is too high as the basis for notification by an adjacent coastal State to the ISA Secretary-General, especially as the data in support of a notification might not be readily available to the coastal State. This is particularly burdensome for adjacent coastal States that are small island developing States such as the FSM, which are acutely vulnerable to harms to the Marine Environment but lack the capacity and wherewithal to fully assess such harms in a timely manner. The FSM proposes a two-tiered approach for Draft Regulation 4: one for likely harm to trigger notification by the adjacent coastal State, and one for Serious Harm to govern the LTC's review and recommendations to the Council.

   Additionally, the FSM stresses the importance of requiring consultations between a Contractor and an adjacent coastal State prior to submitting a Plan of Work for Exploitation in the region of the Area adjacent to the maritime zone(s) of that coastal State. These consultations can ward off any potential concerns about harms to the Marine Environment of that adjacent coastal State, or at the very least provide that State with enough information to assess a likelihood of harm and justify a notification under Draft Regulation 4.

   Furthermore, the definition of Serious Harm in the Schedule of the Draft Regulations relates to harm to the Marine Environment, whereas Draft Regulation 4(3) refers to Serious Harm to either the Marine Environment or the coastline of the notifying adjacent coastal State. There might be a need to tweak the definition of Serious Harm or the wording in Draft Regulation 4(3) to cover this discrepancy.

Netherlands

➢ Regulation 4
Protection measures in respect of coastal States

Paragraph 3

- While the Secretary-General shall immediately inform the LTC, the contractor and the sponsoring State, after having being notified by the coastal State, the follow up is based on reasonable opportunity and reasonable time.

Question: what is reasonable?

Paragraph 4

*4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order**, which may include an order for the suspension or adjustment of operations,** pursuant to article 165(2)(k) of the Convention .*

Comment: Paragraph 4 addresses the situation of the LTC determining that there are clear grounds for believing that serious harm is likely to occur, based on Guidelines (to be developed). Accordingly, the LTC shall recommend that the Council issue emergency orders to prevent serious harm to the marine environment. In accordance with article 165 (2)(k), the emergency order may include orders of suspension or adjustment of operations.

Suggestion: include "**which may include an order for the suspension or adjustment of operations**" to the sentence.

Paragraph 5

Paragraph 5 addresses the situation where the LTC determines that serious harm or threat of serious harm is likely to occur or has occurred and has determined that this is attributable to a breach of contract. The actions to be undertaken after this determination by the LTC refer to draft regulation 103 (*Compliance notice and termination of exploitation contract*) as well as article 165 (2) (m) of the Convention.

Comment: Under Regulation 4 (5), following determination by the Commission of a possible breach of contract, the Secretary-General shall issue a compliance notice or direct an inspection of the contractor's activities. We would suggest adding a paragraph that requires the Secretary-General to inform the Council of the actions taken under paragraph 5 (cf. draft regulation 33 (4)).

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

Regulation 4
Protection measures in respect of coastal States

1. Nothing in these regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention including its provisions on consultation, prior notification, and the taking of measures."

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of

4. If the Commission determines, taking account of the relevant Standards and Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention.

Commented [A14]: Although Regulation 4 (1) confirms that this Regulation does not affect the applicability of article 142, we do not view this Regulation as sufficiently reflective of the right described in article 142 of a coast State concerned to have consultations, including a system of prior notification, concerning rights and legitimate interests referenced in that article. This Regulation should include an explicit reference to consultations and prior notification. It should also include a specific reference to reflect the rights of coastal States pursuant to article 142(3) to take measures against contractors consistent with the relevant provisions of Part XII.

Commented [A15]: Propose the Commission also take into account relevant standards.

Regulation 5
Conflicts of Interest

Member States, Sponsors, Contractors, and the Authority shall not engage on decisions in which they have a clear conflict of interest.

Commented [A16]: The avoidance of conflicts of interest should be stated explicitly.

International Union for the Conservation of Nature and Natural Resources

Regulation 4

Protection measures in respect of coastal States

DR 4 IUCN General Comments: The burden of showing a potential for serious harm in DR 4 appears to rest with the Coastal State. As noted by several States during the Council meeting, this is not an accurate reflection of the precautionary approach. Instead, the burden should be placed on the Contractor to monitor and to share that data with potentially affected states and to continually demonstrate the absence of a risk for serious harm. This will require the ISA to develop environmental objectives, standards and relevant triggers to enable a timely response to avoid serious harm. As pointed out by the Code Project submission, provision also needs to be made to address harms that do not meet the threshold of "serous harm" but which may none the less affect the marine environment, including through cumulative effects.

To enable a proactive response, the Contractor will need to be required to provide the coastal state with information on and continued input from monitoring of potential cumulative impacts from mining, other activities as well as the climate change impacts of warming temps, deoxygenation, and increasing acidification.

As the avoidance of "serious harm" is also an obligation owed to the international community, a similar provision to DR4 is needed to outline the right of all States and stakeholders to require a response to a potential risk or threat of Serious Harm to the marine environment due to the activities of Contractors. Such a provision is needed in order to reflect the provisions of UNCLOS Article 162.2(w) which requires the Council to: "(w) issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area". This provision is not limited to just impacts on coastal States.

1. Nothing in these Regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Harmful Effects ~~Serious Harm~~ to the Marine Environment, including, but not restricted to, pollution or damage to the flora and fauna, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from activities ~~Incidents~~ in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

2bis. The Contractor shall be required to demonstrate that it has technology, procedures and knowledge necessary to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects and demonstrate its ability to respond by modifying operating procedures. The results of such a monitoring program shall be made available in real time to the coastal State and other stakeholders.

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause ~~Serious~~ Harmful Effects or a threat of ~~Serious~~ Harmful Effects to its coastline or to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately

inform the Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General ~~within a reasonable time~~.

4.If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that ~~Serious~~ Harmful Effects to the Marine Environment that has the potential to lead to Serious Harm is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165(2)(k) of the Convention.

5. The Contractor shall be strictly liable for environmental harm as well as any response and clean-up costs if the Commission determines that ~~the~~ Serious Harm or threat of Serious Harm to the Marine Environment, ~~which~~ is likely to occur or has occurred., ~~is attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) and part XI of these Regulations~~.

Regulation 4bis. Protection measures in respect of non-coastal States and other Stakeholders
Comment: Regulation 4bis could be based on Regulation 4, only without paragraph 1.

Deep Ocean Stewardship Initiative

DR 4: This contravenes the precautionary approach by placing an unreasonable burden on coastal states, namely to identify when a threat of serious harm exists without the coastal state necessarily having access to the information on plume modelling, which the Contractor and the ISA have access to. This could be rectified by allowing concerned coastal states to access the modelling and relevant information on environmental effects of a Plan of Work held by the ISA.

DR 4: The obligation to protect and preserve the marine environment beyond national jurisdiction is owed to the international community as a whole (erga omnes obligation) as confirmed by the 2011 Seabed Disputes Chamber's Advisory Opinion at paragraph 180. In line with this status, the draft Regulations should include a provision parallel to DR 4 to enable any concerned state that suspects mining operations may cause (a threat of) serious harm to the marine environment to access information about the environmental effects of the mining operation and trigger the procedure set out in DR 4.

DR 4(3) The expression "within a reasonable time" leaves a gap in how much time a coastal State may wait until a final response from the Contractor regarding the possibility of mining activities in the Area impacting the coastline. In that sense, a deadline for the Contractor and sponsoring State to examine the evidence, if any, and submit their observations thereon to the Secretary-General should be set. Similarly, a second deadline referring to the result of the analysis by the Secretary-General, together with the due measures should be stipulated.

Deep Sea Conservation Coalition

4	Compliance notice/Coastal States	Firstly, "serious harm" is too high a threshold: Article 142 provides for "due regard" to coastal States, and for consultations. There is no test of "serious harm" for coastal States in the Convention. Moreover the threshold for a compliance notice in DR 4 should not be that [the applicable test] [Serious Harm] is 'likely' (revised paragraphs 3 and 4). A more appropriate test is suggested with respect to disapproving areas, where 'substantial evidence indicates' the risk of [serious harm] to the marine environment (UNCLOS Art 165(2)(l).)

Institute for Advanced Sustainability Studies

8. In reference to DR 4(2), we are concerned about the use to the term "Serious Harm". Some guidance can be gained from references to customary international law on transboundary harm (and the 'no harm rule'), as well as to Article 194(2) of the Convention which does not use the term "serious harm" or anything similar. Accordingly, there is no need to set such a high threshold of harm with respect to transboundary harm. We suggest using the term "harmful effects to the Marine Environment" instead. The rest of DR 4(2) and (3) should be amended accordingly.

9. While DR 4(4) and (5) can maintain the term "Serious Harm", since it involves emergency orders and compliance notices, we would recommend including the phrase "Notwithstanding paragraph (3), if the Commission determines [...]" at the beginning of both DR 4(4) and (5). This is to make clear that the Authority can take immediate action by issuing an emergency order or a compliance notice if the actual harm or threat of harm is of a "Serious Harm" nature, thereby circumventing the "reasonable opportunity" and "reasonable time" requirements under DR 4(3) for the time being due to the urgency of the matter at hand.

10. Concerning DR 4, we recommend that more concrete action be taken, in particular to develop a system of consultation and cooperation with adjacent coastal States in cases where activities in the Area are proposed to be conducted within an area that is in close proximity with areas under the jurisdiction of the adjacent coastal States. Guidelines shall be developed to determine an appropriate distance for 'close proximity'. In addition, buffer zones along the borders should be created on the side of the Area, wherein activities in the Area shall be subjected to greater constraints and may only take place after necessary measures to protect the rights and interests of the adjacent coastal State(s) have been agreed upon with the adjacent coastal State(s). In this regard, REMPs that potentially cover a part of the Area which is adjacent to one or several coastal State(s) shall be designed with the particular involvement of those State(s).

The Pew Charitable Trusts

Regulation 4

Rights Protection measures in respect of coastal States

1. Nothing in these Regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall ~~provide the Contractor and its sponsoring State or States with a reasonable opportunity to examine the evidence, if any, provided by the coastal State as the basis for its belief. The Contractor and its sponsoring State or States may~~ immediately inform the Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within a reasonable time.

4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, ~~the Secretary-General shall issue a compliance notice in accordance with regulation 101~~ it shall recommend that the Council issue an emergency order pursuant to article 165(2)(k) of the Convention.

5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) and part XI of these Regulations.

Allocation of responsibilities (from the Secretary-General to the Commission) has been amended in this DR4 to reflect comments made by stakeholders. Other changes were not made, such as:

(a) provision to address harms that do not meet the threshold of 'serious' but which may nonetheless affect the marine environment and activities in State jurisdictions;

(b) amendment of the 'likely to occur' threshold, to avoid setting an unreasonably high hurdle for action to protect the marine environment;

(c) shifting the onus of identifying harm or likely harm, to avoid imposing sole responsibility on the coastal state (which is unlikely to have access to the modelling or monitoring data of the Contractor, sponsoring State and the ISA);

(d) compensation in the event that harm has occurred, including harm not due to breach of contract or violation of other ISA rules by the Contractor;

(e) provision for Contractors to consult with Coastal States prior to submitting a Plan of Work;

(f) a parallel provision addressing the potential for harm beyond national waters: an obligation is owed to the international community, in addition to coastal States.

The reference to (non-binding) 'Guidelines' in DR4(4) could be amended to (binding) 'Standards'.

Part II
Applications for approval of Plans of Work in the form of contracts

Section 1
Applications

Regulation 5
Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

(a) The Enterprise, on its own behalf or in a joint arrangement; and

(b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of these regulations.

2. Each application shall be submitted:

(a) In the case of a State, by the authority designated for that purpose by it;

(b) In the case of the Enterprise, by its competent authority; and

(c) In the case of any other qualified applicant, by a designated representative, or by the authority designated for that purpose by the sponsoring State or States.

3. Each application by a State enterprise or one of the entities referred to in paragraph 1 (b) above shall also contain:

(a) Sufficient information to determine the nationality of the applicant or the identity of the State or States by which, or by whose nationals, the applicant is effectively controlled; and

(b) The principal place of business or domicile and, if applicable, the place of registration of the applicant.

4. Each application submitted by a partnership or consortium of entities shall contain the information required by these regulations in respect of each member of the partnership or consortium.

5. In the case of a consortium or any group, the consortium or group shall specify in its application a lead member of the consortium or group.

I - Members of the International Seabed Authority

Australia

Regulation 5
Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

3. Each application by a State enterprise or **[one] another** of the entities referred to in paragraph 1 (b) above shall **be in one of the languages of the Authority and [also] shall** contain:

(a) **The name of the applicant, and** sufficient information to determine the

Commented [AUS9]: This section no longer contains the broad point that an application for a plan will not be accepted by persons who have conducted unauthorised activities previously. Suggest reinserting a similar provision.

Commented [AUS10]: Australia suggests the application should contain the name of the applicant and be in one of the languages of the ISA. This would more closely align these Exploitation Regulations with the Exploration Regulations (ie. Regulation 3(4) of the Polymetallic Nodule Regulations).

Belgium

3. Each application by an entity referred to in paragraph 1 (b) above shall also contain:

(a) Sufficient information to determine the nationality of the applicant or the

Commented [VS25]: Name, contact details, legal and financial structure, others?

Chile

Se debe definir el rol y la estructura que tendrá la **Empresa** dentro del marco de la Autoridad. Antes de la entrada en vigor del Reglamento, es necesario que esté constituida completamente la estructura específica de la **Empresa**, establecida en el Acuerdo de 1994.

China

3. Draft regulation 5

It is not clear which body the "competent authority" herein refers to in subparagraph 2 (b). If the competent authority is the Authority, it will lead to such a situation where the Authority submits application to itself, which is apparently inappropriate. It is suggested that the term "competent authority" be clarified. Otherwise, it could be deleted, and the application can be submitted directly by the Enterprise.

Germany

- While the Commission is asked in Draft Regulation 13 to assess inter alia the technical capabilities of a Contractor, currently an obligation is missing asking the Contractor to provide such references. We suggest that such an obligation be included as new **Draft Regulation 5 para. 3 (c)**.

Draft Regulation 5:
"[...] 3. Each application by a State enterprise or one of the entities referred to in paragraph 1 (b) above shall also contain: [...] (c) Sufficient information that the applicant has the necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel; [...]."

Italy

	DRS	Italy would like to raise the point that criteria leading to qualification of applicants (States enterprises and natural or juridical persons) should include also their economic capacity since the very beginning of the assessment process and without waiting the consideration of applications by the Commission, under regulation 13. In many national legislations, including for instance the Italian law, a minimum economic capacity is required to apply for a license of exploitation of marine abiotic resources under their jurisdiction. This minimum guarantee would mitigate the issues relating to change of control of the ownership of a Contractor, or of the membership of a joint venture or consortium (draft regulation 24), and transfer of rights of a contract of exploitation (draft regulation 23).		Offshore incident Statistics provide evidence that there is a relation between the size of enterprises and the repetitive occurrence of small-scale accidents. These accidents are often related to deficiencies in safety measures, design requirements and design methodologies, operations planning and component reliability. Furthermore, it must be taken into account that there are not only accidents caused by the negligence of an offshore operator but there are also risks of "natural-hazard triggered technological accidents (Natech)" for offshore industrial installations and the ability to recover from those accidents is proportional to the economic capacity of the operator.

Morocco

Partie II: Demandes d'approbation de plans de travail revêtant la forme de contrats.	-Injecter plus de transparence dans le processus d'admission des candidatures; -Exiger des candidats, des capacités techniques leur permettant de se conformer aux exigences environnementales; -Exiger la capacité économique de l'opérateur.

Myanmar

3. In the "Part II: Applications for approval of Plans of Work in the form of contracts", guideline for the preparation of Plans of Worm and submitting the application with reconnaissance survey report, feasibility report and other necessary documents should be developed. On the other hand, information and feedback to contractor should be released as soon as possible when their submission of applications for the approval of Plans of Work is being considered by ISA and prompt notifications should be made for the initiation of serial phases of operation procedure through exploration to exploitation. The time framework of ISA personnel concerned for the assessment on the contractor's application should be clearly scheduled in the additional guidelines. In addition the workload of ISA for the handling of the applications and assessment should be expected and scheduled.

Netherlands

- Regulation 5
Qualified applicants

Comment: The issue of effective control requires clarification enabling the sponsoring State to carry out its obligations and assume responsibility under articles 139 and 153 of the Convention and article 4(4) of Annex III to the Convention.

Regulation 6
Certificate of sponsorship

1. Each application by a State enterprise or one of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

(a) The name of the applicant;

(b) The name of the sponsoring State;

(c) A statement that the applicant is:

(i) A national of the sponsoring State; or

(ii) Subject to the effective control of the sponsoring State or its nationals;

(d) A statement by the sponsoring State that it sponsors the applicant;

(e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and

(f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this regulation.

I - Members of the International Seabed Authority

Australia

1. Each application by a State enterprise or [~~one~~] **another** of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

Commented [AUS11]: This paragraph reads: 'Each application by a State enterprise or one of the entities referred to in regulation 5 (1) (b)…'.As a State enterprise is referred to in Reg 5(1)(b) we suggest that this language be reframed to read: 'Each application by a State enterprise or **another** of the entities referred to in regulation 5 (1) (b)…'

(a) The name**, address and contact details** of the applicant;

(b) The name of the sponsoring State;

Commented [AUS12]: Australia considers there would be merit in including contact details on the certificates of sponsorship.

Belgium

1. Each application by a State enterprise or one of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a

Commented [VS26]: Mention both cases by name or both cases by reference to 5, 1, b. Not both.

Poland

DR 6 (1) (2) Clearly defining what "effective control" means is crucial to ensure that sponsoring states fulfil their obligations as party to the ISA. Clear understanding of the term could be useful also in determining whether there is a risk of monopolization of the conduct of activities in the Area. The definition of this term could be inserted in the Schedule 1.

Republic of Korea

The term "effectively controlled" used in in Regulations 5 and 6. In Regulation 6, this term is used to define the State which will issue the certificate of sponsorship. Although the term "effective control" is commonly used under international law, the term seems rather unclear by itself. And it would be better if we can predict what it is going to be when this term is applied in the specific context. In order to enhance the predictability, conducting further studies such as comparative studies on domestic laws or stocktaking of practices related to this term could be useful.

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

Institute for Advanced Sustainability Studies

12. With respect to DR 6(1) and (2), we wish to point out that while there may be two or more sponsoring States that are sponsoring an entity, including in cases where there is a partnership of consortium or entities, it is not clear how responsibilities will be shared between these States. One particular question is how liability will be apportioned in the event of a dispute. We request that the Authority conducts an in-depth study on this matter.

Regulation 7
Form of applications and information to accompany a Plan of Work

1. Each application for approval of a Plan of Work shall be in the form prescribed in annex I to these regulations, shall be addressed to the Secretary-General and shall conform to the requirements of these regulations.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

(b) Accept control by the Authority of activities in the Area, as authorized by the Convention;

(c) Provide the Authority with a written assurance that its obligations under its contract will be fulfilled in good faith; and

(d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

3. An application shall be prepared in accordance with these regulations and accompanied by the following:

(a) The data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts, as annexed to the relevant Exploration Regulations;

(b) A Mining Workplan prepared in accordance with annex II to these regulations;

(c) A Financing Plan prepared in accordance with annex III to these regulations;

(d) An Environmental Impact Statement prepared in accordance with regulation 47 and in the format prescribed in annex IV to these regulations;

(e) An Emergency Response and Contingency Plan prepared in accordance with annex V to these regulations;

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with annex VI to these regulations;

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines;

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations;

(i) A Closure Plan prepared in accordance with regulation 59 of and annex VIII to these regulations; and

(j) An application processing fee in the amount specified in appendix II.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission may require separate documents

under paragraphs 3 (d), (h) and (i) above for each Mining Area, unless the applicant demonstrates that a single set of documents is appropriate, taking account of the relevant Guidelines.

I - Members of the International Seabed Authority

Australia

1. Each application for approval of a Plan of Work shall be in the form prescribed in annex I to these regulations, shall be addressed to the Secretary-General and shall conform to the requirements of these regulations.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, **the Agreement,** the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

Commented [AUS13]: We have suggested amendments to the form to include a section on submarine cables and guidelines (i) identifying the location of in-service and planned submarine cables and pipelines, and (ii) outlining the agreed measures to mitigate the risk of damage.

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with annex VI to these regulations;

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines;

Commented [AUS14]: The Annex for the Health, Safety and Maritime Security Plan is still blank in this version of the draft regulations. Australia would need to see this document before commenting. We suggest they be two separate Plans, one for Health and Safety, and the other for Maritime Security.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission may require separate documents under paragraphs 3 (d), (h) and (i) above for each Mining Area, unless the applicant demonstrates **to the satisfaction of the Commission** that a single set of documents is appropriate, taking account of the relevant Guidelines.

Commented [AUS15]: This section requires separate documentation under paras 3(d), (h) and (i) for multiple mining areas unless the applicant demonstrates that a single set of documents is appropriate according to the Guidelines. Australia suggests this should be demonstrated to the satisfaction of the Commission.

5. Where a single set of documents is submitted by the applicant and the Commission considers it is not appropriate, the Commission may reject the application and request separate documents under paragraphs 3 (d), (h) and (i) above for each Mining Area.

Commented [AUS16]: The Commission should have recourse to reject the consolidated documents if it not appropriate.

Belgium

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

Commented [VS27]: This shall not be accepted by a statement. Just by submitting an application, the applicant commits to accept. And this is valid for all points a-d. Such a written statement casts doubt on the mandatory character of the draft Regulations as such.

(b) Accept control by the Authority of activities in the Area, as authorized by the Convention;

(c) Provide the Authority with a written assurance that its obligations under

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with regulation 30 and annex VI to these regulations;

Commented [VS28]: Is there a good reason to put both plans in one sentence?

Chile

Proyecto de artículo 7
Forma de la solicitud e información que debe acompañar al plan de trabajo

Chile propone estudiar la forma que tendrá la solicitud y la información que se debe acompañar al plan de trabajo.

Se recomienda un sistema que tenga las bases necesarias, donde los contenidos de información que deben generar estos proyectos sean los más completo posibles, por su alta complejidad ambiental y que será regulada por el Reglamento.

Párrafo 2

Agregar en el **literal d)** el cumplimiento de aquellas directrices cuya condición jurídica sea obligatoria y el cumplimiento de buena fe de aquellas directrices que no sean vinculantes, siguiendo lo mencionado en el documento ISBA/25/C/3 *"Contenido y elaboración de normas y directrices para las actividades realizadas en la Zona conforme al marco regulador de la Autoridad"*

Párrafo 3

La solicitud debe incluir la información referente al sistema de gestión ambiental que debería implementar el contratista.

Costa Rica

2.

a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures,- including the Standards- of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

RATIONALE: Since Standards are binding, they should be included.

Germany

- In relation to **Draft Regulation 7**, Germany would like to highlight that the obligations applicable to applicants apply throughout all the time. The reference in Draft Regulation 7 para. 3 to "regulations" should, in our view, also explicitly mention "Standards" *unless* it is made clear in Draft Regulation 1 para. 5, as suggested above, that "Standards" form an integral part of the regulations.

Draft Regulation 7:
"[...] 2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will: (a) Accept as enforceable during all stages of the process chain and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority; (b) Accept control by the Authority of activities in the Area during all stages of the process chain, as authorized by the Convention; (c) Provide the Authority with a written, substantiated assurance that its obligations under its contract will be fulfilled in good faith; and [...]. 3. An application shall be prepared in accordance with these regulations [and Standards] and accompanied by the following: [...] (a bis) A test mining study prepared in accordance with Regulation [48bis] Paragraph 2 or 3, as applicable, and Annex [IVter]; [...] (h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these Regulations which documents that management and monitoring are in compliance with the applicable Regional Environment Management Plan; [...]."

Mexico

Por otro lado, se considera positivo la inclusión de especialistas dentro de la Comisión Jurídica y Técnica para fortalecer su especialización. Tomando en cuenta que la viabilidad y sustentabilidad de las actividades de minería submarina abarca tanto elementos medioambientales como técnicos y financieros, México sugiere que el *expertise* de estos especialistas técnicos, cubra todos los aspectos a evaluarse dentro de los Planes de Trabajo en términos del **proyecto de artículo 7** del Código de Explotación y no limitar su alcance únicamente a las disposiciones medioambientales. Lo anterior, en aras de garantizar el cumplimiento del artículo 150 de la CONVEMAR sobre asegurar que las actividades en la Zona se realicen de tal forma que fomenten el desarrollo saludable de la economía global y un equilibrio entre la actividad comercial internacional y la continuidad de los trabajos de minería submarina en términos de la sección 2 de la parte III del proyecto de Código de Explotación.

Poland

DR 7 (2) (d) The current version of this provision may allow a situation where a contractor – when sponsored by more than one state - is obliged to comply with national legislations, regulations etc. which - even though in line with relevant articles of UNCLOS - is nevertheless incompatible with each other. Articles of UNCLOS referred to in this provision are fairly general but at the same time national laws may be (and probably will be) more specific – hence, the risk of differences in more detailed national rules. In order to avoid a situation where a contractor is obliged to comply with incompatible obligations PL would propose either adopting a standard that would deal with the problem of incompatible obligations or adding a special clause in Reg. 7 (2) (d).

Russian Federation

	Regulation	Text of the Regulation	Comments / Remarks	Explanation
5.	**Regulation 7(2)(d)**	d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.	It is suggested to omit this provision.	Determination of such requirements is the exclusive prerogative of the sponsoring state that may establish them in its national legislation. Establishing such requirement would be outside the mandate of the Authority. Therefore, the applicant cannot undertake such a written commitment before the Authority in its application. Besides that, requirements listed in paragraph 2 shall also apply to the Enterprise, which also makes this provision irrelevant.

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) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures, and standards of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

(b) Accept control by the Authority of activities in the Area, as authorized by the Convention;

Commented [A17]: Standards are not included here, although they are established as legally binding, and previous text suggests that standards are separate from the rules, regulations, and procedures of the Authority.

Deep Sea Conservation Coalition

DR 7(3)(a), 18(7),40(2)(k), Annex II	Data	Data from EIAs conducted during exploration (e.g. equipment testing) and including data collected should also be included in an application.

Institute for Advanced Sustainability Studies

13. Concerning DR 7(3), we suggest to include a link to the respective Regional Environmental Management Plan, as well as to applicable Standards and Guidelines. Thus, DR 7(3) should read as follows: "An application shall be prepared in accordance with these regulations, as well as the respective Regional Environmental Management Plan and the applicable Standards and Guidelines, and accompanied by the following: [...]".

14. Concerning DR 7(4), we query as to why an 'Emergency Response and Contingency Plan' is not among the documents that the Commission may require separate presentations of in cases where two or more non-contiguous Mining Areas are involved.

The Pew Charitable Trusts

Regulation 7

Form of applications and information to accompany a Plan of Work

The Exploration Regulations envisage Contractors establishing impact reference zones (IRZs) and preservation reference zones (PRZs) for monitoring and evaluating the environmental impacts of any future Exploitation. However, PRZ and IRZs are barely referenced in the draft Exploitation Regulations. Although Annexes IV and VII (respectively) do require locations of IRZs and PRZs to be proposed in the EIS and EMMP prepared for an application for Exploitation, there is no corresponding Regulation requiring their designation, or setting rules or parameters for their size, design, management, monitoring or reporting.

[…] 2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

a. Accept as enforceable and comply with the applicable obligations created by the Rulesprovisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority; […]

It is unclear why 'Standards' – which are designated as 'legally binding' by DR94(4) – have not been included in this DR.7(2)(a) lists of instruments that create enforceable obligations upon Contractors.

3. An application shall ~~also be~~ be prepared in accordance with these Regulations and accompanied by the following, ~~prepared in accordance with the Guidelines, where applicable:~~ […]

The reasons for the deletion of "*in accordance with the Guidelines…*" [on applications] are unclear. Other sub-paragraphs in this Regulation continue to refer to Guidelines on matters relevant to application procedure and/or content.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission shallmay require separate documents under paragraphs 3 (d),(h) and (i) above for each Mining Area, unless the applicant demonstrates that a single set of documents is appropriate ~~according to~~taking account of the relevant Guidelines.

The draft Regulations appear to envisage that an EIS and EMMP will be submitted at application stage to cover any and all anticipated mining projects in the area covered by the contract. The Regulations do not obviously enable an applicant to submit, or the ISA to review and decide upon, separate EIS and EMMP for different mining projects within the same contract area (e.g. different sites, or different methodologies), at different times mid-way through the contract term.

Regulation 8
Area covered by an application

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of coordinates in accordance with the most recent applicable international standard used by the Authority.

2. The areas under application need not be contiguous and shall be defined in the application in the form of blocks comprising one or more cells of a grid, as provided by the Authority.

I - Members of the International Seabed Authority

Chile

Proyecto de Artículo 8
Área comprendida en la solicitud

La solicitud debe incluir la lista de coordenadas geográficas y un mapa con los límites del área solicitada, tomando en consideración todos los instrumentos y organismos internacionales que han desarrollado trabajos en esta materia, en colaboración con los Estados.

Se debe entender que el Reglamento se aplica solamente a la Zona, pero sin afectar los derechos que le corresponden al Estado ribereño en su plataforma continental extendida. Eso debe quedar claramente establecido en el proyecto de Reglamento.

En caso que el borde externo se encuentre pendiente de revisión ante la Comisión de Límites de la Plataforma Continental, o bien, que por existir una disputa vigente no se haya podido solucionar, entonces el Reglamento no debiera aplicarse en ese caso.

Germany

- It seems an obvious issue, but we would like to explicitly state in **Draft Regulation 8** that exploitation should only happen in the local area where exploration took place.

Draft Regulation 8:
"[...] 3. The area under application shall be located within an exploration contract area."

Mexico

Es por ello que se sugiere una disposición expresa dentro del **artículo 8** del proyecto del Código de Explotación, que limite la participación del mismo contratista, que individual o conjuntamente tenga un poder sustancial en el mismo mercado relevante, en la explotación de varios bloques no sólo contiguos sino también dentro de la misma zona de explotación y respecto de los mismos minerales. Esta disposición no deberá entenderse que limita el derecho de uso exclusivo al que se hace mención en los **proyectos de artículos 15 y 18 y el anexo X, cláusula 4** del Código de Explotación.

New Zealand

8	**Area covered by an application** 1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of coordinates in accordance with the most recent applicable international standard used by the Authority. 2. The areas under application need not be contiguous and shall be defined in the application in the form of blocks comprising one or more cells of a grid, as provided by the Authority. 3. The areas under application must be covered by a relevant Regional Environmental Management Plans.	The understanding that mining shall not occur in a particular area until there is a Regional Environmental Management Plan in place is not sufficiently captured by the regulations.

Russian Federation

6.	**Regulation 8(1)**	Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of coordinates in accordance with the most recent applicable international standard used by the Authority.	It is suggested that the provision shall be read as follows: "*Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of geographical coordinates in accordance with the World Geodetic System 84*".	In order to unify the regulations and, in particular, to provide clarity with respect to the usage of terminology, it is suggested to use the wording of paragraph 17 in Section II of Annex I and paragraph (b) of Annex II to the Regulations: "*list of geographical coordinates (in accordance with the World Geodetic System 84)*".

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

Institute for Advanced Sustainability Studies

15. Pertaining to DR 8, we recommend the insertion of a new paragraph (c) which states that "The areas covered by the application shall be one that has either been subjected to prior exploration, or an area in which adequate and satisfactory environmental baseline data is in existence and is publically available". The rationale for this is that exploitation contracts should not be granted over areas that has not been previously explored or especially where inadequate or substandard environmental baseline data exists. This also ensures transparency in the exploration stage, whereby it is in the interest of contractors to commit to full disclosure of environmental data which they obtain from their exploration activities and test mining exercises conducted during that phase.

Section 2
Processing and review of applications

Regulation 9
Receipt, acknowledgement and safe custody of applications

1. The Secretary-General shall:

(a) Acknowledge in writing, within 14 Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

(b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and

(c) Within 30 Days of receipt of every application for approval of a Plan of Work submitted under this Part:

(i) Notify the members of the Authority of the receipt of such application and circulate to them information of a general nature which is not confidential regarding the application; and

(ii) Notify the members of the Commission of receipt of such application.

2. The Commission shall, subject to regulation 11 (4), consider such application at its next meeting, provided that the notifications and information under paragraph 1 (c) above have been circulated at least 30 Days prior to the commencement of that meeting of the Commission.

I - Members of the International Seabed Authority

Australia

(a) Acknowledge in writing, within **[14] 30** Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

(b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information

2. The Commission shall, subject to regulation 11 (4), consider such application at its next meeting, provided that the notifications and information under paragraph 1 (c) above have been circulated at least **[30] 90** Days prior to the commencement of that meeting of the Commission. **The Commission may defer consideration of such application to its next meeting if it considers the application to be overly complex.**

Commented [AUS17]: Australia notes that the timeframe for acknowledging receipt of applications under the Exploration Regulations is 30 days (ie. Polymetallic Sulphides Regs, regulation 22) and recommend the same timeframe in the draft exploitation regulations.

Commented [AUS18]: Australia considers that 30 days before the next Commission meeting is not sufficient for consideration of all of the information set out in DRs 5-7. Suggest this should be a minimum of 90 days. There should also be scope to delay to the next meeting if the application is overly complex.

Belgium

(i) Notify the members of the Authority of the receipt of such application and circulate to them information which is not confidential regarding the application; and

(ii) Notify the members of the Commission of receipt of such application.

Commented [VS29]: Also of specific nature, as long as confidential information remains undisclosed. The more information available to the members, the better.

Chile

Proyecto de Artículo 9
Recepción, acuse de recibo y custodia de las solicitudes

Párrafo 1, c), i)

¿Cuáles serán los criterios de confidencialidad? Chile estima que éstos se deben explicitar claramente en el texto.

New Zealand

9	**Receipt, acknowledgement and safe custody of applications** 1. The Secretary-General shall: (a) Acknowledge in writing, within 14 Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt; (b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and (c) Within 30 Days of receipt of every application for approval of a Plan of Work submitted under this Part in accordance with regulation 10(1): (i) Notify the members of the Authority of the receipt of such application and circulate to them information of a general nature which is not confidential regarding the application; and (ii) Notify the members of the Commission of receipt of such application. ~~2. The Commission shall, subject to regulation 11 (4), consider such application at its next meeting, provided that the notifications and information under paragraph 1 (c) above have been circulated at least 30 Days prior to the commencement of that meeting of the Commission.~~	Regulation 9(1)(c) needs to specify that notification should occur within 30 days from the receipt of an application that contains all the information required by regulation 7, as specified in proposed change to regulation 10(1). We suggest deletion of regulation 9(2) as it duplicates what is required in regulation 11(3).

Regulation 10
Preliminary review of application by the Secretary-General

1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application is complete for further processing. Should there be more than one application for the same area and same Resource category, the Secretary-General shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention.

2. Where an application is not complete, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, together with a justification in writing as to why the information is necessary and a date by which the application must be completed. Further processing of an application will not begin until the Secretary-General determines that the application is complete, which includes payment of the administrative fee specified in appendix II.

I - Members of the International Seabed Authority

Australia

Regulation 10
Preliminary review of application by the Secretary-General

1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application is complete for further processing. Should there be more than one application for the same area and same Resource category, the

Commented [AUS19]: This draft regulation provides for the Secretary-General to review an application for approval of a Plan of Work to determine if it is complete. Where the Secretary-General is from the sponsoring state, consideration should be given to some form of provision to avoid a real or perceived conflict of interest.

Chile

Proyecto de Artículo 10
Examen preliminar de la solicitud por el Secretario General

Párrafo 2

Se debe considerar un caso práctico.

En el supuesto que una solicitud no esté completa y el Secretario General notifique de esto al solicitante, éste no tendría por qué justificar las razones de la necesidad de la información faltante, a lo sumo debería indicar que es lo que falta, ya que es el solicitante quien no está cumpliendo con los requisitos estipulados.

Por otra parte, debería establecerse el número de veces en que un solicitante puede rectificar la información de su solicitud y cuántas veces debería pagar el derecho especificado en el apéndice II, como una medida para desincentivar malas prácticas y generar un sistema óptimo y serio en cuanto al establecimiento de un régimen de explotación en la Zona.

China

4. Draft regulation 10

Article 10 of Annex III to the Convention not only stipulates the preferences and priorities enjoyed by an exploration Contractor, but also provides that such preferences and priorities may be withdrawn if the performance of the operator has not been satisfactory. It is suggested that the Secretary-General only carry out preliminary review on the form of the application for approval of a Plan of Work, and it should be left for the Commission or the Council to determine whether the performance of the applicant has been satisfactory and whether a situation of withdrawal of preferences and priorities occurs. Therefore, it is suggested that in paragraph 1, the sentence "the Secretary-General shall determine whether the applicant has preference and priority in accordance with Article 10 of Annex III to the Convention" be replaced by "the Secretary-General shall determine whether an applicant has preference and priority in accordance with Article 10 of Annex III to the Convention, and in case of any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision."

Jamaica

Regulation 10 Preliminary review of application by the Secretary-General

1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application is complete for further processing. Should there be more than one application for the same area and same Resource category, the Secretary-General shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention. Where the application concerns a reserved area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention.

RATIONALE:

UNCLOS, annex III, article 9(3) provides that

> "3. The Authority may prescribe, in its rules, regulations and procedures, substantive and procedural requirements and conditions with respect to such contracts and joint ventures [with the Enterprise]."

The 1994 Agreement, annex, section 2, paragraph 2 requires that the initial deep seabed mining operations of the Enterprise shall be conducted through joint ventures. Additionally, paragraph 4 of section 2 requires that obligations applicable to contractors shall apply to the Enterprise. However, as regards reserved areas UNCLOS, annex III, article 9 gives the Enterprise the right of first refusal. This provision should be interpreted in context which includes article 10 of annex III on whether an applicant has preference and priority. Thus it is proposed that reference should be made to both provisions (articles 9 and 10 of annex III) in DR 10.

Japan

Regulation 10: Preliminary review of application by the Secretary-General and Regulation 15: Commission's recommendation for the approval of a Plan of Work

Japan welcomes the text addition that clearly differentiates an operator who has a preference and a priority for a Plan of Work covering exploitation of the same area and resources from other applicants. However, current provisions do not inhibit an operator who has no approved Plan of Work for exploration from applying for exploitation. We have concern that if such operators mentioned above (i.e., those who apply for exploration based on the result of marine scientific research or prospecting carried out from above the sea surface in some parts of the Area where exploration is yet to be carried out by any operators) is qualified for applying for exploitation, which would open the pathway for a Contractor to go for exploitation without exploration, which takes a huge investment in time and money.

There may be a case in which an operator, who has no preference and priority for exploitation, applies for exploitation prior to the submission of application by an operator who has a preference and a priority. In order to prevent such an application from being proceeded in vain it is crucial to confirm an intention of an operator, who has a preference and a priority, to apply for exploitation along with determination of whether the applicant has a preference and a priority in accordance with article 10 of annex II to the Convention, at the time of preliminary review by the Secretary-General.

< Regulation 10 >

1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application is complete for further processing. Should there be more than one application for the same area and same Resource category, the Secretary-General shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention. In case there is a potential applicant who has preference and prioirty in the same area and same Resource category under Exploration contract, the Secretary-General shall confirm the intention of such a potential applicant to apply.
2. Where an application is not complete, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, together with a justification in writing as to why the information is necessary and a date by which the application must be completed. Further processing of an application will not begin until the Secretary-General determines that the application is complete, which includes payment of the administrative fee specified in appendix II. An application will not be processed further if there is another operator who has a preferece and priority and an intention to apply in accordance with regulation 10 (1).

As a consequence of the above revision, regulation 10 duplicates by regulation 15 (2) (a), which should be deleted. The provision should be deleted also because even if the proposed Plan of Work for exploitation by some applicant is included in a Plan of Work for exploration approved by the Council for the same Resource category for a different qualified applicant, such proposed Plan of Work of the former could be approved in so far as the qualified applicant have no intention to apply.

Morocco

Article 10: Examen préliminaire de la demande par le Secrétaire général.	-Soumettre l'examen préliminaire des demandes des candidatures à une décision collégiale.

New Zealand

10	**Preliminary review of application by the Secretary-General** 1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application ~~is complete~~ contains all the information required by regulation 7 for further processing. Should there be more than one application for the	A Plan of Work should be in the correct form prescribed in the regulations. There is still a danger that applications will contain all the information required by regulation (i.e. "complete" applications) yet they may not contain sufficient information. Especially in light of regulation 12(1) whereby applications
	same area and same Resource category, the Secretary-General shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention. 2. Where an application does not contain all the information required by regulation 7 ~~is not complete~~, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, together with a justification in writing as to why the information is necessary and a date by which the application must be completed. Further processing of an application will not begin until the Secretary-General determines that the application is complete, which includes payment of the administrative fee specified in appendix II.	are assessed in the order they are received. New Zealand legislation avoids 'complete' and prefers to use the plain meaning of what is required for the relevant authority to consider an application "complete" e.g. A Plan of Work is complete when it contains all of the information that is required by regulation 7.

Poland

DR 10 (1) This provision refers to article 10 of annex III to the Convention. The said article stipulates that preference or priority given to applicants previously engaged in exploration in a given area "may be withdrawn if the operator's performance has not been satisfactory". In PL's view there is a need for more clarity on what basis the satisfactory element would be assessed. And whether an applicant whose preference or priority status has been withdrawn has any means to challenge such decision.

Republic of Korea

In Regulation 10, clarification is needed whether the Secretary-General, Council or the LTC holds the authority to determine the applicant's preferences and priorities.

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

Deep Sea Conservation Coalition

10	Preliminary review by SG	The review by the S/G does not indicate whether it is a procedural or substantive review. If it is substantive review, a lot more detail needs to be specified – is it a review for compliance with the EIA, EIS , EMMP – e.g. is baseline adequate? There is no transparency in this process and should be, together with reporting to Council. This is important, as if the preliminary review were to result in a determination of completeness when, for instance, the baseline information is inadequate, the EIA will be inadequate and the entire examination process undermined by the initial flaw.

The Pew Charitable Trusts

Draft regulationRegulation 10

Preliminary review of application by the Secretary-General

1.The Secretary-General shall review an application for approval of a Plan of Work and shall determine whether an application is complete for further processing, and in the case of more than one application for the same area and same Resource category, determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention. [...]

Regulation 11
Publication and review of the Environmental Plans

1. The Secretary-General shall, within seven days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Plans on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing, taking account of the relevant Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans within the comment period.

2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period.

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans in the light of the comments made under paragraph 2 above, together with any responses by the applicant, and any additional information provided by the Secretary-General.

4. Notwithstanding the provisions of regulation 12 (2), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans have been published and reviewed in accordance with this regulation.

5. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13 (4) I as well as a summary of the comments or responses made under regulation 11 (2). The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

I – Members of the International Seabed Authority

Australia

(a) Place the Environmental Plans on the Authority's website for a period of 60 Days, and **notify and** invite members of the Authority and Stakeholders to submit comments in writing, taking account of the relevant Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans within the comment period.

Commented [AUS20]: Australia is pleased the environmental plans will be published on the website for 60 days to enable stakeholders to submit any comments. However, Australia needs to review the guideline that will be developed that outlines how the comments are to be received. There should also be notification to members when plans are published so that members do not have to continually monitor the website.

Belgium

(c) Establish an independent review team, making use of the roster of independent competent persons, to provide comments on the Environmental Plans within the comment period.

2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission, the independent review team and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period.

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans in the light of the comments made under paragraph 1 above, together with any responses by the applicant, made under

Commented [VS30]: This concurs with the Belgian proposal on the independent review.

Commented [VS31]: Cf. former comment.

Commented [VS32]: Is 30 days enough in case fundamental issues have been raised? We should suppress this deadline. The next step, that is the examination by the Commission, would anyway only begin when the revised Environmental Plans or the responses are submitted. Besides, the regulation does not foresee what happens if that deadline is not respected.

Canada

1. The Secretary-General shall, within seven days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Plans on the Authority's website for a period of 60 Days, and invite members of the Authority ~~and~~ Stakeholders and the general public to submit comments in writing, taking account of the relevant Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans within the comment period.

2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the general public, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period.

Chile

Párrafo 1

Literal a)

Se debe incluir la propuesta de un sistema de gestión ambiental y aumentar los plazos señalados.

Literal b)
Chile solicita aclaración de quiénes son los "*interesados*".

Literal c)
Debe aclararse:

¿Son vinculantes las observaciones?
¿Cómo se hace cargo el solicitante de las observaciones recibidas?
¿Quién determina si las observaciones están subsanadas?

Estas interrogantes están orientadas a desarrollar un diálogo que permita evitar conflictos posteriores, fortaleciendo la certeza y aplicabilidad efectiva del Reglamento.

Costa Rica

5. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as a summary of the comments or responses made under regulation 11 (2), as well as the relevant rationale when said comments or responses are disregarded. The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

RATIONALE: this proposal is included for the sake of transparency.

France

Projet article 11 – Affichage et examen des plans de travail relatifs à l'environnement :

Au paragraphe 1, alinéa b, il serait utile de préciser le « délai prévu ».

Au paragraphe 2, pour alléger la formule, suggestion de supprimer la mention « pour examen » à la fin de la 1ère phrase. Cette précision complique inutilement la phrase et n'est pas nécessaire étant donné que la phrase suivante commence par « Après avoir examiné les observations [...] ».

Germany

According to **Draft Regulation 11**, only the environmental plans are to be placed on the Authority's website. However, it needs to be ensured that general information on the project – in particular with regard to the exploitation techniques – is made accessible so that the public is in a position to comment on the environmental plans. In this respect, it is important that the requirements of the EIS with regard to the provision of information on, inter alia, project viability, mineral resource, and mining technology are sufficiently clear (Annex IV, paras. 1 and 3).

We support the establishment of a mandatory mechanism for independent review of environmental plans and performance assessments under the Draft Regulation 11. We hold the view that a mechanism based on expertise, independence and transparency supports well-informed decision-making and contains advantages in comparison to external input on an ad-hoc basis.

Draft Regulation 11:
"1. The Secretary-General shall, within seven days after determining that an application for the approval of a Plan of Work is complete under regulation 10: (a) Place the Environmental Plans and any information necessary for their assessment as well as the non-confidential parts of the test mining study on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing, taking account of the relevant Guidelines; and (b) Request the Commission to provide its comments on the Environmental Plans and the test mining study, prepared in accordance with Regulation [48bis] Paragraph 2 or 3, as applicable, and Annex [IVter], within the comment period. Confidential information pursuant to Regulation 89 contained in the test mining study shall not be made publicly available. 2. The Secretary-General shall within 7 Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall

consider the comments and may revise the Environmental Plans and the test mining study or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period. All comments shall be published on the ISA-Website.

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans and the test mining study in the light of the comments made under paragraph 2 above, together with any responses by the applicant, and any additional information provided by the Secretary-General.

4. Notwithstanding the provisions of regulation 12 (2), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans and the test mining study have been published and reviewed in accordance with this regulation.

5. The Commission shall prepare a report on the Environmental Plans and the test mining study. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as a summary of the comments or responses made under regulation 11 (2). The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15. [...]."

Indonesia

	Regulation 11 **Publication and review of the Environmental Plans** 1. The Secretary-General shall, within 7 Days after determining that an application for the approval of a Plan of Work is complete under regulation 10: (a) Place the Environmental Plans on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing taking account of the relevant Guidelines; and (b) Request the Commission to provide its comments on the Environmental Plans within the comment period. 2. The Secretary-General shall within 7 days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period.	• Pursuant to the implementation of due regard mandated by article 142 of the Convention, Indonesia holds the view relevant adjacent coastal state should worthy the position to be formally notified in writing, consulted, and invited in advance to review the contractor submission outlined in DR 11 (1)(a). • Article 142 paragraph (2) states that Consultation, including system of prior notification shall be maintained with the state concerned, with a view to avoiding infringement of such rights and interests.	We suggest the text to be reformulated in this fashion: a. Notify [the relevant adjacent] coastal states in writing and Place the Environmental Impact Statement, the [Regional] Environmental Management and Monitoring Plan and the Closure Plan on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing in accordance with the Guidelines;

Italy

DR11 (a)	We propose to increase to 90 days the process.		Regarding the timeline of the reviewing process, there are some concerns. Basically, the Commission in merely 60 days should identify and appoint reviewers, provide comments on the plan, gather together the stakeholders' comments, ponder and evaluate all of them and make a decision.

DR11 (a)	An effort should be made to build the reviewing process as much open and transparent as possible to anybody. One way would be to have an open system, where the Environmental Plans are immediately published in an open access discussion forum on the Authority's website, where users shall register and provide public comments. They would be then subject to interactive public discussion, during which the applicants may also have the opportunity to reply to comments.		
DR11 (b)	Belgium's proposal of three independent reviewers does resemble the traditional mechanism of peer-review which is well established in the scientific community. In analogy to such system, we suggest that the Commission, only when it is unable to provide an in-depth evaluation of a specific Environmental Plan, shall seek independent comments from experts At the same time, point b) of paragraph 1 of Draft Regulation 11 indicates that the Commission should elaborate their own comments on the plan during the same commenting period of 60 days. Thus, the independent reviews will provide additional assessment of the plans to the Commission, which will remain the only authoritative organ, as under the provisions of the Convention, that can make a decision and asking for minor or major revision or rejection of the environmental plans. This process of reviewing makes the selection of the future compositions of the Commission of crucial importance. In order to effectively pursue the objectives of the Authority in the phase of exploitation, the Commission, in its future arrangements, will have to be comprised itself by committed and independent experts on prioritized fields, such as those concerning the marine environment in its broader context.	[Addendum] In the case the Commission evaluates that there are aspects of the Envrionmental Plans that are not covered entirely by its own internal expertise, should nominate within 7 days from the publication of the Environmental Plans on the Authority's website at least three independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector.	

Japan

Regulation 11: Publication and review of the Environmental Plans

As mentioned in paragraph 14 of the Note by the Legal and Technical Commission on draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/18), the review of the Environmental Plans should be conducted by the Commission pursuant to article 152 (2) of the Convention. In case where such review is supplemented by external independent experts, the engagement of such experts should be discretionary and not mandatory. For the sake of transparency, necessity of engaging with the discretionary experts should be well clarified in advance and process of selecting and appointing the experts should be developed in the relevant Guidelines. Japan would like to know who will bear the cost of hiring the experts on a discretionary basis.

The applicant is required to revise the Environmental Plans or provide responses in reply to the comments in principle within a period of 30 Days. Japan is of the view that while maintaining that time period, upon a request the applicant the extension should be granted if the applicant needs additional time to revise the plans or respond to the comments depending on nature of the comments received.

< Regulation 11 (2) and (5)>

2. The Secretary-General shall, within 7 Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period, unless otherwise decided by the Secretary-General after considering a request by the applicant for the extension of the period. Such an extension of the period may be requested only when revision of plans or responses takes more than 30 Days and the request shall be made before the time period of 30 Days expires. The extension of the period shall be informed by posting on the Authority's website.

5. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as a summary of the comments or responses made under regulation 11 (2). The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15. In preparing the report, the Commission may seek advice from recognized experts as necessary. In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council. The experts shall be selected and appointed in accordance with the relevant Guidelines.

Morocco

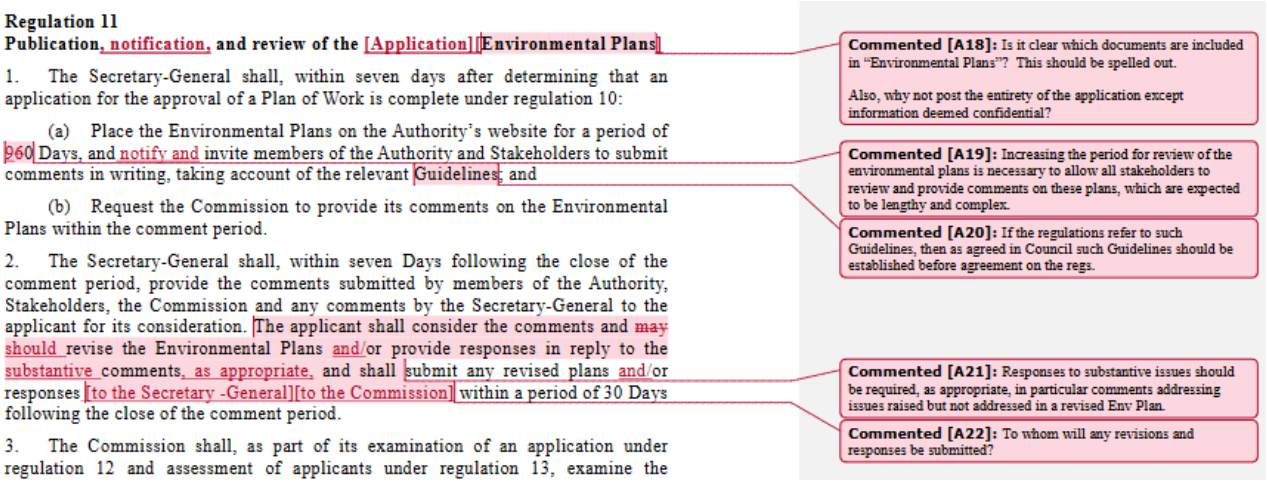
Article 11 : Affichage et examen des plans relatifs à l'environnement.	-Inclure des experts indépendants pour conseiller les Commissions pour plus d'impartialité et de transparence ; -Appel à une stratégie de lutte contre les conflits d'intérêts.

New Zealand

	12 (2), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans have been published and, ~~reviewed~~ if necessary, revised in accordance with this regulation.	
	(a) Place the Environmental Plans on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing, taking account of the relevant Guidelines; and (b) Request the Commission to provide its comments on the Environmental Plans within the comment period. 2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period. 3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans in the light of the comments made under paragraph 2 above, together with any responses by the applicant, and any additional information provided by the Secretary-General. 4. Notwithstanding the provisions of regulation	provides the applicant with the opportunity to revise Environmental Plans. It is not clear whether the Commission's report under 11(4) is the same or different to the report under 12(2). One refers to Environmental Plans and the other to Plans of Work. Given reference to regulation 15, we assume only one report is expected to be submitted to the Council (under regulation 15) but should include information set out in regulation 11(5) and taking account of regulation 12. Suggest text from regulation 11(5) is moved/amalgamated with regulation 12 if this is the case or a cross-reference to the other regulations referencing the report are included in regulation 11(5) There may be some confusion over the terms "Plan of Work" which is intended to refer to all activities proposed under these regulations, and the collective "Environmental Plan" which comprises the EIS, EMMP and CP. Care is needed to ensure there is consistent reference to these terms in the review articles.

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



Regulation 11
Publication, notification, and review of the [Application][Environmental Plans]

1. The Secretary-General shall, within seven days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Plans on the Authority's website for a period of 960 Days, and notify and invite members of the Authority and Stakeholders to submit comments in writing, taking account of the relevant Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans within the comment period.

2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and ~~may~~ should revise the Environmental Plans and/or provide responses in reply to the substantive comments, as appropriate, and shall submit any revised plans and/or responses [to the Secretary -General][to the Commission] within a period of 30 Days following the close of the comment period.

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the

Commented [A18]: Is it clear which documents are included in "Environmental Plans"? This should be spelled out.

Also, why not post the entirety of the application except information deemed confidential?

Commented [A19]: Increasing the period for review of the environmental plans is necessary to allow all stakeholders to review and provide comments on these plans, which are expected to be lengthy and complex.

Commented [A20]: If the regulations refer to such Guidelines, then as agreed in Council such Guidelines should be established before agreement on the regs.

Commented [A21]: Responses to substantive issues should be required, as appropriate, in particular comments addressing issues raised but not addressed in a revised Env Plan.

Commented [A22]: To whom will any revisions and responses be submitted?

Deep Ocean Stewardship Initiative

DR 11(1)(a): We welcome the opportunity for public stakeholder comment on the Environmental Plans and hope every effort will be made to publicize when an Environmental Plan is open for comment. This is an important form of public consultation.

Deep Sea Conservation Coalition

DR 11: As drafted, it is up to the Applicant to change the Environmental Documents – or not. The ISA has no opportunity to prescribe changes to the Environmental Documents: the only changes made are those the applicant chooses to make. This is unacceptable. At the end of the day, the ISA as regulator must be able to make necessary changes.

DSCC has long advocated that there is a role for an Environmental or Scientific Committee in examining the EIA, EMMP and other environmental documents. In turn, Belgium has proposed the use of experts. The LTC responded that "While the Commission sees merit in seeking inputs from external experts to complement the expertise within the Commission, the Commission was conscious to avoid establishing a mechanism that would be overly bureaucratic and formalistic." Having outside experts is not formalistic or bureaucratic: it is essential with all the scientific uncertainties. This is supported by Article 165(2)(e): The LTC is to "make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field"

International Marine Minerals Society

Regulation 11 (2)	Is 30 days to respond long enough to fully respond?

11	Environmental Plans	The Authority should revise environmental plans in DR 11.2, rather than the Applicant. This is fundamental: the Applicant contractor should not be in control of all environmental plans and revisions; the ISA should be. This objection runs throughout the Draft Regulations.

The Pew Charitable Trusts

Draft regulationRegulation 11

Publication and review of the Environmental Plans

1.The Secretary-General shall, within seven7 Days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure PlanPlans on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing in accordance withtaking account of the relevant Guidelines; and

(b) Provide Request the Commission to provide its comments on the Environmental Plans within the comment period.

(a) The Secretary-General shall within 7 days following the close of the comment period, provide the comments submitted by members of the Authority and, Stakeholders, the Commission and any comments by the Secretary-General to the applicant for its consideration

Note: These amendments enable the Commission to provide comments to the Applicant on its EIS, EMMP and Closure Plans at this early stage, simultaneously with ISA member States and other stakeholders, and prior to conducting its formal review of the Application (at which point the Commission has another opportunity to recommend modifications or amendments to the plans: see DR 11(5) and DR 14, below).

; and

2.Consult with the. The applicant, who shall consider the comments and may revise the Environmental Plans or provide responses in responsereply to the comments made by members of the Authority, Stakeholdersand shall submit any revised plans or the Secretary-Generalresponses within a period of 6030 Days following the close of the comment period.

2.3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans in the light of the comments made under paragraph 2 above, together with any responses by the applicant, and any additional information provided by the Secretary-General.

References here to Regulation 12 and 13 are outdated since these two Regulations have been merged into a single DR13 in the latest draft Regulations.

It may be helpful to clarify DR11(3) by amending the drafting as follows: '*in light of the comments made submitted in accordance with paragraph 21, together with any responses by the Applicant provided under paragraph 2.*'

The Regulations do not indicate how (from whom or when) the Commission will receive copies of the comments submitted by States parties, Stakeholders and the Secretary-General (which the Commission are required by Regulation 11(3) to consider in their review of the application, and by Regulation 11(5) to summarise).

3.4. Notwithstanding the provisions of regulation 12 (32), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans have been published and reviewed in accordance with this regulation.

4.5. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13(4)(e) as well as a summary of the comments or responses made under regulation 11(2). The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

Earlier commentary to DR11(3) also applies here.

In the last round of submissions, several Stakeholders suggested that, in addition to summarising Stakeholder comments in its report to Council, the Commission should also provide its response to those comments.

It may also be helpful to elaborate further how this new DR11(5) [requirement for the Commission to publish a report including its recommendation for amendment to Environmental Plans] integrates with DR14(1) and (2) [power for the Commission bilaterally to request the applicant to amend its plans]. DR 11(5) may be better located in DR15, to reflect that the report is produced and published after the Commission has completed its consideration of an application, and before (or at the same time as?) the Commission submits its recommendation to the Council.

Section 3
Consideration of applications by the Commission

Regulation 12
General

1. The Commission shall examine applications in the order in which they are received by the Secretary-General.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1) (a) and subject to regulation 14 (2).

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole.

4. In considering the proposed Plan of Work, the Commission shall take into account:

(a) Any reports from the Secretary-General;

(b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

(c) The previous operating record of responsibility of the applicant; and

(d) Any further information supplied by the applicant prior to, and during the period of, the Commission's evaluation.

I - Members of the International Seabed Authority

Australia

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1) (a) and subject to regulation 14 (2).

2*bis*. **If an application is overly complex or incomplete information has been submitted by the applicant, the Commission may delay its reports and recommendations under regulation 12(2) by a further 90 days.**

Commented [AUS21]: We suggest there should be provision for the Commission to delay its report under DR 12(2) where the application is overly complex or incomplete information has been submitted i.e. at an initial review the application might appear to be complete but through the course of assessing the application, it becomes evident that the applicant needs to submit additional information.

(d) Any [~~further~~] **additional** information [~~supplied by~~] **from** the applicant **sought by the Commission** prior to, and during the period of, the Commission's evaluation **pursuant to regulation 14**.

Commented [AUS22]: This provision should make it clear the applicant can't continually submit new information for assessment (the risk being there would be a never-ending assessment). This could be achieved by requiring new information to be requested by the Commission.

Belgium

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole.

Commented [VS33]: This is already prescribed by Regulations 1 & 2.

4. In considering the proposed Plan of Work, the Commission shall take into account:

(a) Any reports from the Secretary-General;

Commented [VS34]: Also to be taken into account: comments by stakeholders (not only via report of SG).

(b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

(bbis) The independent review of environmental plans and performance assessments, as conducted in accordance with **;

Commented [VS35]: In accordance with BE proposal on independent review.

(c) The previous operating record of responsibility of the applicant; and

Canada

( ) The previous operating record of the sponsoring state(s) and the sponsoring state's technical, resources, and enforcement capabilities to monitor the applicant's activities; and

Chile

Proyecto de artículo 12
Disposiciones generales

Chile propone agregar un numeral más, con una redacción que permita una correcta evaluación de la solicitud y del estudio. La Comisión evaluadora debería poseer las competencias técnicas y profesionales multisectoriales o multidisciplinarias necesarias para llevar a cabo, de forma adecuada y correcta, el proceso de evaluación ambiental de las iniciativas.

Lo anterior, tomando en consideración la alta complejidad ambiental y de intereses que presentan las iniciativas a ser evaluadas.

China

5. Draft regulation 12

It is suggested that a new paragraph be added after paragraph 1. That is "should there be more than one application for the same area and same Resource category, the Commission shall make recommendations to the Council on whether the applicant has preference and priority in accordance with Article 10 of Annex III to the Convention."

On paragraph 4, since the Commission shall have full discretion in reviewing the proposed Plan of Work, it is suggested that the wording "the Commission shall" be replaced by "the Commission may". Furthermore, the scope of "any reports from the Secretary-General" mentioned in subparagraph (a) is too broad, and it is suggested to be replaced by "relevant reports of the Secretary-General".

According to the Convention, matters upon which independent experts or independent competent persons may advise are mainly confined to environmental issues. It is suggested that the word "application" in respect of

Costa Rica

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall ensure its compliance with the fundamental principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular consider the extent in which the proposed Plan of Work ensures the effective protection of the marine environment and contributes to realizing benefits for humankind as a whole.

RATIONALE: The text proposed by the LTC used the wording " shall have regard to the principles, policies and objectives". That language is too flexible and insufficient to ensure the effective protection of the marine environment. In addition, in order to be able to evaluate its contribution, the Commission should consider the extent in which it ensures the effective protection of the marine environment and contributes to the benefits of humankind, not the "manner" in which contributes, which is not measurable.

France

Projet d'article 12, paragraphe 3 – Dispositions générales : La version française traduit la formule « *the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole* » par la « contribution du projet de plan de travail à la réalisation des avantages dans l'intérêt de l'humanité tout entière ». D'une part, cette obligation ne découle pas directement de la Convention des Nations unies sur le droit de la mer (ci-après CNUDM) qui se contente d'établir une obligation générale de mener les activités dans la Zone « dans l'intérêt de l'humanité tout entière » (art 140), voire de préciser que les activités doivent être menées dans la Zone en vue de « mettre en valeur le patrimoine commun dans l'intérêt de l'humanité tout entière » (article 150 CNUDM). D'autre part, l'utilisation du terme « avantages » est inadéquate dans ce contexte qui fait davantage référence à des « bénéfices ».

Nous notons par ailleurs que ce critère n'est pas exigé pour les plans de travail relatifs à l'exploration, auxquels s'appliquent pourtant les articles 140 et 150 de la CNUDM. Dans un souci de cohérence, ce paragraphe devrait donc s'arrêter après le terme « Accord ».

Jamaica

Section 3 Consideration of applications by the Commission

Regulation 12 General

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniformed and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole as specified in the decisions of the Council and Assembly .

4. In considering the proposed Plan of Work, the Commission shall take into account: ...

(b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons identified in the Commission's report to Council, in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

RATIONALE:

As regards DR12(3), what should be treated as contributing to the benefits for mankind as a whole is a political determination and therefore one on which the LTC, as a purely technical body, requires guidance. It is incumbent on the Council and Assembly to provide the necessary guidance.

With respect to DR 12(4), UNCLOS article 163(13) provides that "[i]n the exercise of its functions, each Commission may, where appropriate, consult another commission, any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject-matter of such consultation." Article 163(13) of UNCLOS is essentially reproduced in rule 15 of the Operational Rules concerning the LTC/Rules of Procedure of the LTC. Thus the persons to be consulted are international entities that may be expected to reflect a plurality of views. Consultations with other persons (outside of the UN system), whether identified as "independent competent persons" or "recognized experts" (as in the context of DR 94) should only be pursued through transparent processes that ensure that the views obtained may be objectively characterized of a similar quality and generally internationally accepted nature as that which would have been provided by the UN or its specialized agencies.

We note that reference is made to "independent competent persons" in DR 12(4)(b) (above); 38(2)(h) (annual reports); 52(5)(c) & (6) (performance assessments of the EMMP); and annex VII(1)(b) (EMMP). The persons referred to in the afore-mentioned provisions, save for DR 12(4)(b) would necessarily be identified as having verified the report (in the instances of DR 38(2)(h) and annex VII(1)(b) or been contracted by the LTC at the cost of the Contractor to conduct the whole or part of a performance assessment. In light thereof, similar amendments have not been proposed in relation to DR 38, 52 and annex VII.

A distinction is made in the Draft Regulations between "independent competent persons" and "recognized experts"; the latter term is found in DR 94(1). Proposed amendments to DR 94 are advanced further below.

Indonesia

	Regulation 12: General 1. The Commission shall examine applications in the order in which they are received by the Secretary-General.	See our comments on the protection of rights and legitimate interests of Coastal State:	We propose the addition of a new paragraph to be reformulated as R 12 (4) (b) with formulation as follows: 4. In considering the proposed Plan of Work, the Commission shall take into account: a. Any reports from the Secretary-General; b. (bis)
	2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1)(a) and		Any concern of [relevant adjacent] coastal states with respect to the plan of work, REMP, and closure Plan submitted; c. ..... d. .....

Mexico

Por otro lado y en aras de asegurar una adecuada autorización y designación de los contratos de explotación y el cumplimiento de las obligaciones que de ellos se deriven, se sugiere establecer como requisito de solicitud de aprobación de los planes de trabajo **(Anexo 1 del Código de Explotación y proyectos de artículos 12, 13)** la evidencia de que los contratistas no cuentan con denuncias o incidentes ambientales o sociales de importancia en; i) los países en donde realizan actividades de minería, de exploración y/o explotación costa afuera, submarina; ii) en los países con quien tienen patrocinio y; iii) en los países que con calidad de Estados Ribereños respecto de la zona en donde se llevarán a cabo las actividades de explotación.

Morocco

Article 12: Dispositions générales Examen des demandes par la Commission	-Le bénéfice de l'humanité résultant des plans de travail ne doit pas seulement être pris en compte mais observé et respecté.

New Zealand

12	**General** 1. The Commission shall examine applications in the order in which they are received by the Secretary-General. 2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from whichever date occurs later: (a) The close of the comment period, in accordance with regulation 11(1)(a), or (b) The date of submission of a revised plan, in accordance with regulation 11(2). ~~the date of completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1) (a) and subject to regulation 14 (2).~~ 3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole. 3bis. The Commission and the Secretary-General may seek advice and reports from independent competent persons on any matters considered to be relevant. 4. In considering the proposed Plan of Work, the Commission shall take into account: (a) Any reports from the Secretary-General; (b) Any advice or reports sought by the Commission or the Secretary-General from	The 120 day timeframe for the Commission to submit its reports and recommendations to the Council needs to start either after the close of comments or after the applicant has provided a revised plan (under regulation 11(2)). As not all applicants will need to provide a revised plan or response under regulation 11(2), it would be appropriate to provide for the 120 days to begin on whichever date occurs later. There should be an ability for the Commission to extend the timeframe for providing its recommendations under regulation 12(2) if amendments are made to the Plan of Work as a result of regulation 14 (given that regulation 14 allows the applicant 90 days to respond to a request from the Commission).
	independent competent persons in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant; (c) The previous operating record of responsibility of the applicant; and (d) Any further information supplied by the applicant prior to, and during the period of, the Commission's evaluation. (e) Any relevant Standards and Guidelines developed in accordance with regulations 94 and 95.	

Russian Federation

7.	**Regulation 12(4)(b)**	b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons in respect of the	It is suggested to clarify this provision with respect to the procedure for outsourcing of "*independent competent persons*".	This provision refers to "*independent competent persons*". The same wording is used in Regulation 38(2)(h), Regulation 52(5)(c) and paragraph 1(b) in Annex VII.

	Regulation	Text of the Regulation	Comments / Remarks	Explanation
		application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;		Besides that, the Regulations refer to "*recognized experts*" in Regulation 94(1), "other experts" and "independent scientists" in paragraph 15 in Annex IV. In this regard, the following questions arise. How all the listed above persons differ from each other for the purposes of the Regulations and in the context of the used phrases? What are the criteria used to attract such persons? Who is considering and approving the candidates? Where is the list of such persons published? It is also worth mentioning that in accordance with Article 165(2)(e) of the UNCLOS, the Commission shall "*make recommendations to the Council **on the protection of the marine environment**, taking into account the views of recognized experts in that field*". As a guide it is possible to use the Rules of Procedure of the Commission on the Limits of the Continental Shelf of 2008 (Rule 57 "*Advice by specialists*"): "*1. The Commission may, to the extent considered necessary and useful, consult specialists in any field relevant to the work of the Commission.*
				2. The Commission shall decide in each case the way in which such consultations may be conducted".

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

Regulation 12
General

1. The Commission shall examine applications in the order in which they are received by the Secretary-General.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1) (a) and subject to regulation 14 (2).

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in ~~Part XI of and annex III to~~ the Convention, and in the Agreement, ~~and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole~~.

4. In considering the proposed Plan of Work, the Commission shall take into account:

(a) Any reports from the Secretary-General;

(b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an

Commented [A23]: Note: "The Commission shall, in the case of more than one application for the same area and same Resource category, determine whether the applicant has preference and priority in accordance with article 10 of annex III of the Convention" has been struck, and it is unclear why.

Commented [A24]: The deleted text at the end of this sentence is one of a list of fundamental policies and principles in regulation 2, so the deletion is proposed to maintain balance among the fundamental policies and principles.

Commented [A25]: We do not view singling out of particular provisions of the Convention as necessary in this situation; nonetheless, we would not view such a reference as limiting the applicability or importance of other provisions of the Convention should this remain.

Commented [A26]: It is unclear what this means in this context and should be covered by the references to the Convention regardless.

International Union for the Conservation of Nature and Natural Resources

DR 12 IUCN General Comments:

IUCN would like to highlight two issues here:

1. The principles, policies and objectives should be "applied," not given regard, with prominence given to the principles to ensure effective protection of the marine environment and to apply the precautionary approach.
2. The phrase "in a manner that contributes to realizing benefits" presumes that all seabed mining will benefit mankind as a whole: this issue needs to be weighed carefully because there are also costs to humankind both directly via potential harm to States and communities affected by mining by pollution and economic competition, but also to humankind as a whole—by way of subsidies, the loss of future option values, loss of biodiversity and loss of ecosystem services. These losses are not compensable through monetary benefits alone.

DR 12 IUCN Specific Comments:

1. The Commission shall examine applications in the order in which they are received by the Secretary-General.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11(1)(a) and subject to regulation 14 (2).

4. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall apply ~~have regard to~~ the fundamental principles as set forth in Regulation 2, and have regard to the policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the Convention, and in the Agreement, and in particular ~~the manner in which~~ whether the proposed Plan of Work is ensures effective protection of the marine environment and contributes to realizing benefits for humankind as a whole.

4. In considering the proposed Plan of Work, the Commission shall take into account:

(a) Any reports from the Secretary-General;

(abis) Any advice or reports from a panel of independent scientific experts/Scientific Committee established by Council to review the sufficiency of the environmental components of the proposed Plan of Work;

(b) Any advice or reports sought by the Commission or the Secretary General from independent competent persons in respect of the application to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

(bbis) Any comments received following revision and publication of Environmental Plans;

(c) The previous operating record of responsibility of the applicant; and

(d) Any further information supplied by the applicant prior to, and during the period of, the Commission's evaluation.

Advisory Committee on Protection of the Sea

DR 12(3):: **This appears to be an effort to reprise the Art. 150(i) requirement ("ensuring ... the development of the common heritage for the benefit of mankind as a whole") in the context of setting criteria for evaluating Plans of Work by the LTC. The many problems with the highlighted portion include:*

First, the precise LOSC language of Art. 150(i) is not used. Legally binding documents (such as the LOSC/IA) must not be paraphrased in their implementing instruments (such as the exploitation Regulations). Paraphrasing will not operate to change the text or the meaning of the governing instrument. It is the governing instrument that will prevail if the text of the implementing instrument is submitted to judicial or arbitral scrutiny. It is necessary for the Regulations to implement what is actually written in the governing instrument, not what one might have wished had been written.

DR 12(3):: **This appears to be an effort to reprise the Art. 150(i) requirement ("ensuring ... the development of the common heritage for the benefit of mankind as a whole") in the context of setting criteria for evaluating Plans of Work by the LTC. The many problems with the highlighted portion include:*

First, the precise LOSC language of Art. 150(i) is not used. Legally binding documents (such as the LOSC/IA) must not be paraphrased in their implementing instruments (such as the exploitation Regulations). Paraphrasing will not operate to change the text or the meaning of the governing instrument. It is the governing instrument that will prevail if the text of the implementing instrument is submitted to judicial or arbitral scrutiny. It is necessary for the Regulations to implement what is actually written in the governing instrument, not what one might have wished had been written.

Deep Ocean Stewardship Initiative

DR 12(4) lists sources of information that the Commission will take into account when considering a proposed Plan of Work. Within this list, stakeholder comments are not included. This assumes that all comments on the Environmental Plans generated in the public consultation (DR 11(1)(a)) will be addressed. We suggest adding the point DR12(4)(e) "Any comments received following the publication of the Environmental Plans or the Commission's report on the Environmental Plans".

Deep Sea Conservation Coalition

DR 12: This is actually a crucial provision, despite being named 'general'. The important consideration is in DR 12(4). This is given special status in DR 13, yet rather than provide for incorporation of the Fundamental Principles, it instead requires "regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the Convention, and in the Agreement and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole". This potentially sets the Fundamental Principles listed in DR 2 against the (other, undefined) principles, policies and objectives in the Convention. It should simply refer to the Fundamental Principles, possibly in addition to the provisions of the Convention. Worse, the second half of the sentence may at first sight be thought to be referring to common heritage of mankind, but it does not use those words, and could be reflecting "the interests and needs of mankind as a whole", paragraph 5 of the Preamble, instead of the following paragraph, being the common heritage of mankind, or something else different or broader than common heritage of mankind. This is a good illustration why DR 12 and 13 should simply incorporate DR 2, which should be carefully drafted.

DR 12(4)(a) requires the LTC to determine whether a Plan of Work is technically achievable and economically viable, but not environmentally sustainable. As they are potentially in conflict, it is clear under Article 145 that the effective protection should be "ensured," not balanced against economic viability.

12	General	This is actually a crucial provision, despite being named 'general', and it needs to be redrafted. Important is the consideration in DR 12(4): this is given special status in DR 13, yet rather than provide for incorporation of the Fundamental Principles, instead requires "regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the Convention, and in the Agreement". This potentially sets the Fundamental Principles against the principles, policies and objectives in the Convention. It should simply refer to and require compliance with the Fundamental Principles, possibly in addition to the provisions of the Convention. For example, in doing so, DR 12 should ensure that no application for a plan of work for exploitation may be approved unless it can be clearly demonstrated that the loss of biodiversity will be prevented. DR 12(4) refers to "benefits of mankind as a whole" – which echoes the preamble "interests and needs of mankind as a whole" rather than common heritage of mankind. This is another reason DR 12 and 13 should simply refer to DR 2 rather than reformulate the considerations.
		In DR 12(4), the phrase "realizing benefits for mankind as a whole" evokes common heritage of mankind but should use those words. The review in DR 12(1)(3), like DR 14, should take into account public comments. An application for Exploitation not be recommended for approval unless and until the Commission has satisfied itself as to the adequacy of the baseline data in line with the relevant Standards. This is a substantive determination which should not be made by SG under DR 10.

International Marine Minerals Society

Regulation 12 (4) b	How are independent competent persons defined to review exploitation proposals? Who selects them?

The Pew Charitable Trusts

Section 3 Consideration of applications by the Commission

Regulation 12
General

1. The Commission shall examine applications in the order in which they are received by the Secretary-General. [...]

4. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the Convention, and in the Agreement, and in particular ~~to~~ the extent to~~manner in~~ which the proposed Plan of Work contributes to realizing benefits for mankind as a whole.

Should the DR2 'Fundamental Principles [and Policies] be included in DR12(4)'s list of '*principles, policies and objectives…*' to which the Commission is required to regard, in considering a proposed Plan of Work? Are there intended to be '[strategic] environmental objectives' established by the ISA that should also be referenced here?

It is unclear why '*the extent to which*' terminology (which speaks to quantum) has been replaced here by '*the manner in which*' (which speaks to modality), in relation to the benefits to mankind that will be realised. It seems logical that the manner in which benefits are realised should be the same for any contract (royalties, training, technology transfer etc). But the extent / quantum of those benefits is likely to differ from contract to contract, and should be a factor in the Commission's review (and cost-benefit analysis) of any application.

Regulation 13
Assessment of applicants

This DR13 subsumes what once was DR14 'Consideration of the Environmental Plans by the Commission'. It could now be more accurately entitled 'Assessment of applicants **and applications**'.

[...]

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have:

a) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and, where applicable, adequately supervised personnel;

III-Stakeholders
Global Sea Mineral Resources

DR 12(4)	When considering an application, the Commission must consider the way the proposed Plan of Work contributes to realizing benefits for mankind.	The Commission does not have objective Guidelines to establish whether an application for a Plan of Work realizes benefits for mankind. Suggestion is to delete DR 12(4).

Regulation 13
Assessment of applicants

1. The Commission shall determine if the applicant:

(a) Is a qualified applicant under regulation 5;

(b) Has prepared the application in conformity with these regulations, the Standards and the applicable Guidelines;

(c) Has given the undertakings and assurances specified in regulation 7 (2);

(d) Has satisfactorily discharged its obligations to the Authority;

(e) Has, or can demonstrate that it will have, the financial and technical capability to carry out the Plan of Work and to meet all obligations under an exploitation contract; and

(f) Has demonstrated the economic viability of the mining project.

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether:

(a) The Financing Plan is compatible with proposed Exploitation activities; and

(b) The applicant will be capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:

(i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations;

(ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan;

(iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan; and

(iv) Necessary access to insurance products that are appropriate to the financing of exposure to risk in accordance with Good Industry Practice.

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have:

(a) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel;

(b) The technology and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate;

(c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques and Best

Environmental Practices and these regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(d) The capability to respond effectively to Incidents, in accordance with the Emergency Response and Contingency Plan; and

(e) The capability to utilize and apply Best Available Techniques.

4. The Commission shall determine if the proposed Plan of Work:

(a) Is technically achievable and economically viable;

(b) Reflects the economic life of the project;

(c) Provides for the effective protection of human health and safety of individuals engaged in Exploitation activities;

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, including navigation, the laying of submarine cables and pipelines, fishing and marine scientific research, as referred to in article 87 of the Convention; and

(e) Provides, under the Environmental Plans, for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2.

I - Members of the International Seabed Authority

Australia

(e) Has, or can demonstrate that it will have, the financial and technical capability **and capacity** to carry out the Plan of Work and to meet all obligations under an exploitation contract; ~~and~~

(f) Has demonstrated the economic viability of the mining project;

(g) Has demonstrated, in relation to the accommodation of other activities in the Marine Environment, due diligence to:

(i) identify in-service and planned submarine cables and pipelines in, or adjacent to, the area under application using the publically-available data and resources as listed in the Guidelines;

(ii) where such submarine cables and pipelines are identified, consult with the operators of the cables and pipelines to agree measures the contractor will take to reduce the risk of damage to the in-service and planned submarine cables and pipelines (ie. such as an easement, or a mining exclusion zone within a reasonable radius);

(iii) identify sea lanes in, or adjacent to, the area under application that are essential to international navigation; and

(iv) identify areas of intense fishing activity in, or adjacent to, the area under application.

(h) Has demonstrated a satisfactory record of past performance both within the Area and in other States' jurisdictions.

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether:

Commented [AUS23]: This provision refers to the financial and technical capability of an applicant. We would recommend including reference to 'capacity' here as well, as an applicant might have the capability, but not the capacity due to other commitments.

Commented [AUS24]: This provision requires the Commission to determine whether the applicant has demonstrated the economic viability of the project. Details need to be provided on the criteria which will be used to determine commerciality before it is possible to comment on this provision.

Commented [AUS25]: We suggest the specific procedures for identifying in-service and planned submarine cables and pipelines be set out in Guidelines (including the practical coordination tools identified during the October 2018 joint workshop of the ICPC and the Authority).

Commented [AUS26]: Australia suggests a new provision requiring the Commission to determine if an applicant has a satisfactory record of past performance both within the Area and in other states' jurisdictions.

(ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan **and to restore and remediate the affected Marine Environment in case of a significant incident**;

(iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan; and

(iv) Necessary access to insurance products that are appropriate to the financing of exposure to risk in accordance with Good Industry Practice.

Commented [AUS27]: Draft regulation 13(2)(b)(ii) requires the Commission to determine whether the applicant can commit or raise sufficient financial resources to cover the estimated costs of the proposed exploitation activities, including implementation of environmental plans. Australia recommends this include the financial capability to restore and remediate the environment in case of a significant incident. We would welcome further information as to what guidance will be provided to the Commission to help it determine costs.

(e) The capability **and capacity** to utilize and apply Best Available Techniques.

Commented [AUS28]: This provision refers to the financial and technical capability of an applicant. We would recommend including reference to 'capacity' here as well, as an applicant might have the capability, but not the capacity due to other commitments.

4. The Commission shall determine if the proposed Plan of Work:

(a) Is technically achievable and economically viable;

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, **as referred to in articles 87 and 147 of the Convention,** including ***inter alia*** navigation, the laying of submarine cables and pipelines, **the right to maintain and repair existing submarine cables and pipelines,** fishing and marine scientific research, [~~**as referred to in article 87 of the Convention**~~]; and

Commented [AUS29]: Insofar as this provision relates to submarine cables and pipelines, it does not sufficiently give effect to the 'reasonable regard' requirement of UNCLOS Article 147(1). It does not make reference to existing cables and pipelines and the right of States to maintain and repair them, nor does it operationalise or provide content to how Exploitation activities are to be carried out with reasonable regard for other activities in the Marine Environment.

Canada

(e) Has~~, or can demonstrate that it will have,~~ the financial and technical capability to carry out the Plan of Work, meet or exceed environmental performance obligations and to meet all obligations under an exploitation contract; and

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has provided sufficient information to demonstrate they have~~has or will have~~:

Chile

Proyecto de Artículo 13
Evaluación de los solicitantes

Este artículo del Reglamento debe contemplar expresamente *"los más altos estándares ambientales"*.

Es necesario establecer en el texto la opción de ser específicos sobre quién puede presentar **planes de trabajo** (**artículo 5**), evaluando su capacidad de ser responsable frente a un daño ambiental, la prevención de la contaminación, así como, la forma y contenido de la solicitud (**artículo 7**).

En cuanto a la calidad de la información entregada, se debe establecer que el Reglamento no sea solamente un *"check list"*, sino que debe resguardar las obligaciones establecidas en los instrumentos internacionales para la protección del medio ambiente, dado que se debe priorizar el contenido.

Costa Rica

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have:

(b) The technology, knowledge and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan , the applicable Regional Environmental Management Plan and the Closure Plan, including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate;

RATIONALE: Since REMPS must be in place, and the EMMP has to comply with it, REMPs should be present in the regulations .

(e) Ensures through the Environmental Plans, for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental principles and the relevant policies and procedures under regulation 2.

(e)bis The effective protection referred in paragraph (e) supra implies that the activity will not cause, inter alia:

(i) Significant adverse effect on air and water quality;

(ii)Significant changes in atmospheric, terrestrial or marine environment;

(iii)Significant changes in the distribution, abundance or productivity or especies of flora and fauna;

(iv)Further jeopardy to endangered or threatened species or populations of said species

(v) Degradation, or risk of degradation to special biological, scientific, archeological, or historical significance;

(vi) Significant adverse effect on climate of weather patterns.

RATIONALE: Costa Rica considers that a more detailed description of what the effective protection of the marine environment implies is needed.

France

Projet d'article 13, paragraphe 1, alinéa f – Evaluation des demandeurs : Le contenu de cet article aborde des questions différentes : alors que les paragraphes 1 à 3 du projet d'article 13 correspondent effectivement à l'évaluation des demandeurs, le paragraphe 4 est uniquement consacré à l'évaluation du plan de travail. Par conséquent, le paragraphe 4 devrait faire l'objet d'un article séparé.

Par ailleurs, la formule employée devrait être celle de la « viabilité commerciale du projet » pour s'aligner sur la formule employée dans la CNUDM (Annexe III, article 17, 2, b, iii). Et ce critère ne devrait pas s'appliquer à l'évaluation des demandeurs mais seulement à l'évaluation de leurs plans de travail. Dès lors, ce critère devrait être supprimé au paragraphe 1 et n'être maintenu qu'au paragraphe 4.

Projet d'article 13, paragraphe 4, alinéa a : Comme indiqué ci-dessus, la formule employée devrait être celle qui est employée dans la CNUDM, à savoir « commercialement viable ». Si ce critère est justifié pour évaluer le projet de plan de travail, il pourrait néanmoins être difficile à mettre en œuvre (technicité et expertise requise pour une telle évaluation, projection sur une longue période de temps, etc.).

Germany

In relation to **Draft Regulation 13 para. 1(e)**, the wording ("*Has, or can demonstrate it will have, […]*") seems to provide utmost flexibility to the Contractor. However, it is Germany's view that this kind of flexibility is neither appropriate nor reasonable. By allowing for such flexibility, the Authority basically entitles each Contractor to determine by itself, on the basis of board presentations and the-like, that, while not yet possessing the necessary financial and technical capabilities, it plans to obtain the necessary financial and technical capabilities to carry out its suggested Plan of Work in an appropriate manner at some point in the future. It is Germany's view that there needs to be clarity in relation to the financial and technical capability that is actually available to the Contractor at the point in time when the application is assessed.

Additionally, Germany suggests including an additional provision as new **Draft Regulation 13 para. 3(a)** which asks the Contractor to provide references and/or certificates, as appropriate, to illustrate a certain level of proficiency in terms of quality control and management.

Lastly, Germany would like to point out that **Draft Regulation 13 paras. 1–3** address the assessment of the applicant, while **Draft Regulation 13 para. 4**

establishes rules for the assessment of the application (i.e. the Plan of Work). It may therefore be prudent to either reflect this aspect in this regulation's title or to split this regulation into two separate provisions.

Draft Regulation 13:
"1. The Commission shall determine, ~~under consideration of~~ taking into account the comments made by State Parties and Stakeholders, ~~any~~ responses by the applicant and any additional information or comments provided by the Secretary-General, if the applicant: […] (e) Has~~, or can demonstrate that it will have,~~ the financial and technical capability to carry out the Plan of Work and to meet all obligations under an exploitation contract, according to criteria defined by the Council; and […]. 3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have: (a) Certification to operate under internationally recognised quality control and management standards; (a bis) The necessary technical and operational capability […]. 4. The Commission shall determine if the proposed Plan of Work: […] (c) Provides for the effective protection of human health and safety of individuals engaged in Exploitation activities, in accordance with the rules, regulations and procedures adopted by the Authority and by any other competent international organisations; […] (e) Provides, under the Environmental Plans, for the effective protection for the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2, taking into account in particular the cumulative effects of all relevant activities."

Italy

DR13 (1) (e)	This request is related to the initial assessment of the economic capacity of an applicant. The applicant should be able to demonstrate the ability to remediate eventual harms caused to the Environment during the operations and having financial means sufficient to sustain the entire life-cycle of the activities, including the closure plan. Thought reasonable the condition in which potential applicants may be in the necessity of raising capitals and building their financial framework, at the beginning of the seabed mining venture, it cannot become common practice for the long-term and comprised in the final regulations.	Has~~, or can demonstrate it will have,~~ the financial and technical capability to carry out the Plan of Work and to meet all obligations under an exploitation contract; and	
DR13 (2) (b)	Ibidem	The applicant ~~will be~~ is capable [...]	
DR13 (3)	Ibidem	[...] the applicant has ~~or will~~ have:	

Japan

Regulation 13: Assessment of applicants and Regulation 31: Reasonable regard for other activities in the Marine Environment

Regulation 31 (1) contains a provision that Contractor shall, "consistent with the relevant Guidelines," carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment. The Guidelines pertaining to reasonable regard are of great important and Japan supports their development. On the other hand, regulation 13 (4) (d) provides "the Commission shall determine if the proposed Plan of Work provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment" without mentioning any reference to the relevant Guidelines, which Japan thinks should be taken into account in process of determination by the Commission.

In the previous text, regulation 31 (2) provided "other activities in the Marne Environment shall be conducted with reasonable regard for the activities of Contractors in the Area." Japan welcomes the revised text, which replaces the phrases above with "the Authority … shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard…," as in most cases identification of legal subject of "other activities in the Marnie Environment" is unknown and it is not possible the Regulations provide legally-biding measures for these other activities. In light of this, it is expected that the Authority plays a role as mediator and facilitates between Contractors and other activities in the Marine Environment through information sharing at least at initial stage.

< Regulation 13 (4) >

4. The Commission shall determine if the proposed Plan of Work:

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, including, but not limited to, navigation, the laying of submarine cables and pipelines, fishing and marine scientific research, as referred to

in article 87 of the Convention in accordance with the relevant Guidelines; and

<Regulation 31>

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations. In particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.

2. The Authority, in conjunction with member States, shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area., which includes but not limited to the Authority's facilitation of the coordination between two parties at early stages. For this reason, the Authority shall promote, inter alia, effective and early-stage consultations between the contractors and the proponents of the other activities in the Area.

Mexico

En esta tesitura, México considera que debe existir certeza sobre qué se entenderá y cómo se aplicarán el término **"buenas prácticas del sector"**, puesto que resulta importante que los solicitantes y demás interesados en las actividades de explotación, tengan clara la información que deben presentar para llevar a cabo operaciones mineras y estar en cumplimiento con los estándares a los que hace referencia el **proyecto de artículo 13** del Código de Explotación. De otro modo, se estaría en un escenario de incertidumbre y subjetividad en la aplicación y evaluación de dicho criterio.

Por otro lado y en aras de asegurar una adecuada autorización y designación de los contratos de explotación y el cumplimiento de las obligaciones que de ellos se deriven, se sugiere establecer como requisito de solicitud de aprobación de los planes de trabajo **(Anexo 1 del Código de Explotación y proyectos de artículos 12, 13)** la evidencia de que los contratistas no cuentan con denuncias o incidentes ambientales o sociales de importancia en; i) los países en donde realizan actividades de minería, de exploración y/o explotación costa afuera, submarina; ii) en los países con quien tienen patrocinio y; iii) en los países que con calidad de Estados Ribereños respecto de la zona en donde se llevarán a cabo las actividades de explotación.

Micronesia

6. On Draft Regulation 13(3)(c), the FSM supports the insertion of references to Best Available Techniques and Best Environmental Practices alongside Good Industry Practice rather than subsumed therein. As mentioned above, the FSM considers the traditional knowledge of IPLCs to be elements of Best Environmental Practices that can complement the Best Available Scientific Evidence in management and decision-making pertaining to Plans of Work as well as in the implementation of Plans of Work.

   Additionally, on Draft Regulation 13(4), as noted by many ISA member delegations in previous debates of the Council of the ISA, it is the FSM's view that the LTC's review of a proposed Plan of Work can greatly benefit from the involvement of independent experts to assist the LTC (as well as the Council) in the assessment process under this Draft Regulation. (The FSM also sees relevance of this approach in Draft Regulation 11 pertaining to the LTC examining Environmental Plans.) The assessment process is a complex undertaking that will benefit from full expert input with broad geographical backgrounds and areas of expertise, particularly for areas of expertise not traditionally within the expertise of LTC members, including socio-cultural considerations and interests. UNCLOS already recognizes the possibility of the LTC seeking advice from recognized experts, but this can be formalized to the extent necessary in the Draft Regulations, while fully respecting the mandates of the LTC as well as the Council to make recommendations and take decisions with respect to Plans of Work. A roster of experts can be helpful in this regard, selected in a transparent and inclusive manner. Belgium's proposal along these lines is one that the FSM views with great interest.

Netherlands

- Regulation 13

Assessment of applicants

Paragraph 1

1. The Commission shall determine if the applicant:
……;
(d) Has satisfactorily discharged its obligations to the Authority;
……..

Comment: With respect to draft regulation 13 (1)(d), we suggest specifying/clarifying what is meant by "the obligations of the applicant". Are these the obligations of the contractor under the exploration contract or any other obligations? Since the Commission will be assessing the capability of the applicant, having clarity on what exactly is meant by "its obligations to the Authority" under paragraph 1(d) is necessary. This comment is also related to the fact that under Regulation 12 (4)(c), the Commission shall consider "the previous operating record of responsibility of the applicant".

New Zealand

13	**Assessment of applicants** 1. The Commission shall determine if the applicant: (a) Is a qualified applicant under regulation 5; (b) Has prepared the application in conformity with these regulations, the Standards and the applicable Guidelines; (c) Has given the undertakings and assurances specified in regulation 7 (2); (d) Has satisfactorily discharged its obligations to the Authority; (e) Has, or can demonstrate that it will have, the financial and technical capability to carry out the Plan of Work and to meet all obligations under an exploitation contract; and (f) Has demonstrated the economic viability of the mining project. 2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether: (a) The Financing Plan is compatible with proposed Exploitation activities; and (b) The applicant will be capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including: (i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations; (ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan; (iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan; and (iv) Necessary access to insurance products that are appropriate to the financing of exposure to risk in accordance with Good Industry Practice. 3. In considering the technical capability of an applicant, the Commission shall determine in	The regulations should include clear criteria for determining whether Environmental Plans provide for effective protection of the Marine Environment. It is important that there is a clear and robust framework in place, for decision-makers and applicants, that ensures a certain standard for assessment and decision-making. Without specifying the matters a decision-maker must take into account and how they must take account of information, there is room for interpretation which could lead to inconsistent and uncertain decisions. Furthermore, Commission members serve relatively short terms which could lead to inconsistent application of the regulations- and decisions over time. We have drawn from New Zealand's national experience when proposing the amendments below, notably the detailed criteria our Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (section 59-61) requires for robust decision making. We note the intention given in the Report of the Chair of the LTC for the Commission to develop "Guidelines for the preparation and assessment of an application for the approval of a plan of work for exploitation" by July 2020. We agree with this recommendation (including its deadline), as currently there is no certainty about what the Commission needs to take into account when considering applications for Plans of Work.

	5. For the purposes of determining effective protection of the Marine Environment under regulation 13(4)(e), the Commission must take into account: (a) Any Environmental Effects or impact on other activities of allowing the Exploitation	

	activity; (b) The effects on human health that may arise from effects on the environment; (c) The importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; (d) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; (e) Traditional knowledge or cultural interests relevant to an area (f) The assessment framework for Mining Discharges as set out in the Guidelines; (g) Any relevant Standards and Guidelines developed in accordance with regulations 94 and 95. 6. When assessing a Plan of Work, the Commission shall apply the principles set out in regulation 44(a)-(c).	

Russian Federation

8.	**Regulation 13(3)(b)**	«…including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate»	It is proposed to clarify what is meant by "*key environmental parameters*".	To ensure that the content of the document is clear and unambiguous.

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

(c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques, ~~and~~ Best Environmental Practices, Best Available Scientific Information and these regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, including navigation, the laying of submarine cables and pipelines, fishing and marine scientific research, as referred to in article 87 of the Convention; and

(e) Provides, under the Environmental Plans, for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, ~~in particular the fundamental policies and procedures under regulation 2~~.

Commented [A27]: Recommend inserting here language from the France.ICPC proposal to demonstrate in the application evidence of due diligence and consultations with affected users.

Commented [A28]: As noted under our comments on Regulation 2, we propose the deletion of regulation 2, objecting, in particular to the phrasing "fundamental principles."

International Union for the Conservation of Nature and Natural Resources

DR 13 IUCN General Comments:

1. To effectively reflect and operationalize the precautionary approach in 13.3.(b) (assessments of applicant's technical capacity), as provided in CRAMRA Article 4 this provision should include a requirement that the application will not be approved if the applicant cannot
    i. demonstrate that it possesses the technology, procedures and knowledge necessary to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects and
    ii. demonstrate its ability to respond by modifying operating procedures.
2. In addition, in DR13.4 (d) there should be an explicit requirement as in CRAMRA Article 4 that no application shall be approved or mining take place until it is judged by an

independent expert review process/Scientific Committee that the activity in question would not cause, inter alia:

(a) significant adverse effects on air and water quality;
(b) significant changes in atmospheric, terrestrial or marine environments;
(c) significant changes in the distribution, abundance or productivity of populations of species of fauna or flora;
(d) further jeopardy to endangered or threatened species or populations of such species; or
(e) degradation of, or substantial risk to, areas of special biological, scientific, historic, aesthetic or wilderness significance.
(f) significant adverse effects on global or regional climate or weather patterns.

- Such assessments shall take into account potential cumulative effects.

DR 13 IUCN Specific Comments:

(b) The technology, and procedures, and knowledge necessary to comply with the terms of the Environmental Management and Monitoring Plan, ~~and~~ the Closure Plan and the relevant Regional Environmental Management Plan, including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects and to modify management and operating procedures as required to avoid the potential for Serious Harm ~~when appropriate~~;

(bbis) The adequacy of the baseline data and assessment of potential mining impacts through research including a test mining operation during the exploration phase;

(c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with ~~Good~~ Best Industry Practice, Best Available Techniques and Best Environmental Practices and these Regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(e) Demonstrates that ~~Provides, under~~ the Environmental Plans will secure ~~for~~ the effective protection for the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental principles ~~policies and procedures~~ under regulation 2.

(ebis) Such determination shall not be made unless it is judged [by an independent expert panel/Scientific Committee established by Council,] that the activity in question would not cause, inter alia:

(i) significant adverse effects on air and water quality;
(ii) significant changes in atmospheric, terrestrial or marine environments;
(iii) significant changes in the distribution, abundance or productivity of populations of species of fauna or flora;
(iv) further jeopardy to endangered or threatened species or populations of such species; or
(v) degradation of, or substantial risk to, areas of special biological, scientific, archeological, historic, aesthetic or wilderness significance; or
(vi) significant adverse effects on global or regional climate or weather patterns.

Such assessments shall take into account potential cumulative effects.

DR 13(1)(e): **Our concern here relates to the language "or can demonstrate it will have", which we will refer to as the "future capability" option. It is not at all clear that such a 'future capability' facility - which is at least implicit, if not explicit, in the "will have" criterion - is compatible with the LOSC (see, e.g., Annex III Art. 13(1)(c)). Furthermore, many implementation questions immediately arise. These include the following. How and when will this 'future capability' be determined? What is the cut-off date? How will it be decided which contractors will benefit from what is essentially a relaxation of the financial and technical requirements that are supposed to be applicable to all? How will the requirement that the ISA must treat contractors uniformly and without discrimination be met under these circumstances?*

If this 'future capability' option is to be retained, although we ***recommend that it be deleted****, this part of the DR requires much more detailed elaboration on how it will work in practice.*

The above comments were also made our written submission to the ISA on the previous version of the draft regulations and are not reprised here. We note as well that our objection to Regulation 13(1)(e) has not been satisfied by substitution in the current text of the language "or can demonstrate it will have" for the "or will have" original. Although the amendment testifies to the validity of our objection, it does not cure the issues raised therein, as set out above.

DR 13(1)(f): Our objection to DR 13(1)(f) (reprised below) has not been addressed. We add here two further comments in support of our recommendation to delete DR 13(1)(f).

a) The criterion - if retained - must read "commercial viability" as per LOSC Annex III Art.17(2)(b)iii, because "economic viability" is not found in the LOSC.

b) The criterion of "commercial viability", according to the LOSC ***only*** relates to setting the contractual duration of exploitation, which in DR 20 the Authority has set at an initial maximum of 30 years. It can be shorter, by mutual agreement. It is incompatible with the LOSC - and makes no sense - to also make this criterion an element in the assessment of the suitability of the *applicant* for an exploitation contract, which is what is being done here in this DR 13.

This first presents a problem of legal competence. Where in the LOSC/IA is the ISA given the power to substitute its economic - i.e., commercial - judgement for that of the contractor? Next, if the *ultra vires*/legal competence issue raised above is overcome, how will 'economic viability' be defined and by whom will it be determined whether it has been credibly demonstrated? Where will the ISA find the appropriate expertise to advise it? The evaluation of the economic viability of a commercial enterprise, especially an emerging one, is very difficult, as venture capitalists, fund managers, investors, accountants, bankers and others for whom this type of evaluation is their profession will attest. Even some long-established companies have collapsed shortly after and despite apparently having been given a clean bill of health by their auditors.

DR 13(1)(f) also illustrates an overall problem permeating these draft Regulations, i.e., they currently require the making of commercial judgments by a regulatory body for which we can find no authority in the LOSC/IA and for which, even if some such power could be implied, the regulator (regardless of whether it is the LTC or the Council) is neither equipped nor qualified. Furthermore, it is likely to be impossible to apply these requirements to contractors uniformly and without discrimination.

DR 13(3)(a): Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this part of the DR.

DR 13(4)(a): Our objection (reprised below) to DR 13(4)(a) has not been addressed. Furthermore, in that the "commercial viability" criterion is here applied to assessing the *Plan of Work*, rather than the *applicant*, as in DR 13(1)(f), its inclusion here makes more sense, in that the Authority is asking the applicant to justify its request for a given contract term. This is arguably compatible with the LOSC but the actual feasibility, let alone the credibility of an applicant doing this for 30 years in the future are open to question. Even so, this still runs afoul of the other objections made under DR 13(1)(f) above. It is recommended to delete DR 13(4)(a).

See comments made under DR 13(1)(f) above re economic - which here should also be "commercial" (not "economic") - viability and *ultra vires*/substantive legal competence aspects. These comments also apply with regard to the determination of technical achievability.

DR 13(4)(b): Our objections (reprised below) to DR 13(4)(b) have not been addressed. It is recommended to delete DR 13(4)(b). The same problems set out above for DR 13(1)(f) and DR 13(4)(a) apply here.

Deep Ocean Stewardship Initiative

DR 13: To make it easier for the Commission to know whether a proposed Plan of Work covers an area of specific attention by another international organization, DR 13 could include a requirement for the applicant to provide a statement confirming whether the area(s) under consideration have received specific attention by another international organization or treaty regime. This could prevent repetition of the situation that occurred in 2017 where the Polish application covered parts of the Lost City site, which has been designated as an Ecologically and Biologically Significant Area (EBSA). This would support the ISA in meeting its strategic direction 1.5 to '[s]trengthen cooperation and coordination with other relevant international organizations and stakeholders in order to promote mutual "reasonable regard" between activities in the Area and other activities in the marine environment and to effectively safeguard the legitimate interests of members of the Authority and Contractors, as well as other users of the marine environment' (ISBA/24/A/10).

DR 13: This should also require the Commission to assess each Plan of Work against the relevant REMP to ensure proposed environmental measures are in line with regional requirements.

DR 13: The Commission should be required to check that a proposed Plan of Work does not overlap with an APEI.

DR 13: The Commission should further be required to assess the adequacy of environmental baseline data from the applicant's exploration phase.

DR 13(1)(f): The Commission should also determine if the applicant has demonstrated the benefit to the common heritage of mankind of the mining project beyond "economic viability" e.g. environmental sustainability or viability.

DR 13(3)(b): It is encouraging that the ability to comply with the EMMP and to conduct monitoring and adaptive management forms part of the requirements from the applicant. However, how this "ability" will be evaluated, and under what conditions it will be deemed insufficient is not laid out and thus, could fall short. Clarification is needed as to how "ability" will be evaluated and against what criteria.

DR 13(3)(e) The type of information expected from applicants in order to satisfy "The capability to utilize and apply Best Environmental Practices" should be clarified.

DR 13(4)(e): This now requires the LTC to assess environmental plans against the policies and principles listed in DR2, some of which should not have any bearing on environmental plans (e.g. production policies, growth of international trade, increased availability of minerals etc.).

Deep Sea Conservation Coalition

DR 13: (now combined with former DR 14): The newly combined DR 13 and 14 should be renamed "Assessment of Applicants and Applications" if it is to be continued to be merged: the current DR 13(4) is clearly an assessment of the application, not the applicant.

Secondly, DR 13 should simply provide for the assessment of compliance with the Fundamental Principles contained in DR 2: e.g. the precautionary approach is not included in DR 13, but is in the Fundamental Principles. These should clearly be at a higher level than e.g. DR 13(4) "(a) is technically achievable and economically viable". The Fundamental Principles should be just that: fundamental, not on the same level as other considerations.

This wording (inadvertently, one presumes) requires the LTC to consider whether the Environmental Plans will *inter alia* promote the '[i]ncreased availability of the minerals derived from the Area…' which is clearly not an appropriate criterion for assessing effective protection of the marine environment

13	Assessment	Firstly, the newly combined DR 13 and 14 should be renamed "Assessment of Applicants and Applications" if it is to be continued to be merged: the current DR 13(4) is clearly an assessment of the application, not the applicant. Secondly, DR 13 should simply provide for the assessment of compliance with Fundamental Principles (e.g. the precautionary approach is not included in DR 13, but is in the Fundamental Principles: the new DR 13(4)(e) now does provide for "Provides, under the Environmental Plans, for the effective protection for the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2" but these are at the same level as e.g. "(a) is technically achievable and economically viable". The Fundamental Principles should be just that: fundamental, not on the same level as other considerations. DR 13(4)(a) requires the LTC to determine whether a Plan of Work is technically achievable and economically viable, but not environmentally sustainable. As they are potentially in conflict, it is clear under Article 145 that the effective protection should be "ensured," not balanced against environmental sustainability. The Draft Regulations should require compliance with the fundamental principles (in DR 2), which should be enlarged to include, but not be limited to, REMPs, Article 145 in all its facets, Article 192, Article 194(5), the ecosystem approach as well as the precautionary approach, and the LTC and Council should measure proposed Plans of Work in their entirety against the fundamental principles. The Draft omits the concept of an Impact Area. Impacts of mining may go beyond the mined area, or even a contract area. The term Project Area (Annex VII paras 3.1, 30) should be defined accordingly.

		While reserved areas are excluded from applications, nowhere is provision made for application for reserved areas. The provisions on suitability of applicants must be applied to all contractors undertaking the mining- including transferees. An additional point should be added that the Applicant has demonstrated best practice environmental, social and governance performance.

Institute for Advanced Sustainability Studies

19. Concerning DR 13, we recommend a new provision, i.e. DR 13(3 bis) to require the LTC to consider the performance during the exploration stage of the applicant that is applying for an exploitation contract. This include a consideration of the annual reports submitted during the exploration stage, as well as the environmental baseline data submitted by Contractors. It is noteworthy to mention here that this assessment should be primarily based on publically available environment related information, of which contractors are obligated to submit at the exploration stage. It should also include the consideration of any results of test mining activities that may have been carried out over the exploration period, with a view of considering the technical ability of the Contractor from an environmental perspective.

20. Concerning DR 13, we recommend the addition of a new provision before the current DR13(4)(a) requiring the Commission to determine if a proposed Plan of Work "foreseeably contributes to realizing the benefits for mankind as a whole". This is in line with DR 12(3), which incorporates this terminology, and it necessary to give effect to the said provision.

21. We suggest to make DR 13(4)(e) more concrete by adding a reference to the relevant REMP, and suggest as follows: " (e) Provides, under the Environmental Plans, for the effective protection for the Marine Environment, including from cumulative effects of all relevant human activities and climate change, in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2, as well as the objectives and measures under the applicable regional environmental management plan."

22. Also in relation to DR 13, we recommend the insertion of a new provision, e.g. a new paragraph 5, to say that "The Commission shall determine whether the sponsoring State has enacted domestic legislation covering activities in the Area, whether such legislation is already in force and applicable, whether it provides adequate avenues for recourse through the domestic legal system, and whether there are provisions within the legislation that appear to exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area. The Commission shall also determine if the prospective sponsored entity is, in effect, under the effective control of the sponsoring State. Guidelines shall be developed for these purposes". Prospective applicants shall be required to provide such information through DR5 and DR6, as mentioned above. We recommend that Guidelines for this be developed, in order to achieve consistency throughout the domestic legislations of sponsoring State(s).

International Marine Minerals Society

Regulation 13 (1) f	How are independent competent persons defined to review economic viability of a project? Who selects them?

The Pew Charitable Trusts

Regulation 13
Assessment of applicants

This DR13 subsumes what once was DR14 'Consideration of the Environmental Plans by the Commission'. It could now be more accurately entitled 'Assessment of applicants **and applications**'.

[...]

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have:

a) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and, where applicable, adequately supervised personnel;

b) The technology and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate;

c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques and Best Environmental Practices and these Regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

Note: The wording 'Best Environmental Practices' has been removed from the definition of 'Good Industry Practice' in this version of the Regulations (see Schedule 1, below). This is why 'Best Environmental Practices' has been added into the text, alongside 'Good Industry Practice' here (and elsewhere in the Regulations).

4. The Commission shall determine if the proposed Plan of Work:

[...]

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, including, but not limited to, navigation, the laying of submarine cables and pipelines, fishing and marine scientific research, as referred to in article 87 of the Convention; and

Provides, under the Environmental Plans ~~by the Commission~~

~~1. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans in the light of the comments made by members of the Authority and Stakeholders, any responses by the applicant and any additional information or comments provided by the Secretary-General.~~

~~2.~~(e) ~~The Commission shall determine whether the Environmental Plans provide,~~ for the effective protection ~~of~~for the Marine Environment in accordance with ~~article 145 of the Convention, including through the application of a precautionary approach and Good Industry Practice, the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2.~~

~~3. The report of the Commission on the Environmental Plans, and any amendments or modifications thereto recommended by the Commission, shall be published on the Authority's website and shall be included as part of the report and recommendations to the Council pursuant to regulation 16.~~

Below are a number of separate comments relating to DR13(4).

(1) 'Fundamental policies and procedures' in DR13(4)(e) should read 'Fundamental principles [and policies] and procedures'

(2) DR13(4) in general and DR13(4)(e) in particular cover the point at which the Commission decides whether or not to recommend the approval of a Plan of Work for Exploitation from an environmental point of view. The Commission must ask whether the environmental impacts likely to result from the mining (as forecast in the EIS) are judged to be acceptable. The answer to that question will be complex, important and potentially controversial. It will depend on both technical insights and legal interpretations, as well as value judgements (on behalf of [hu]mankind). The Regulations could provide more guidance as to the relevant factors, data, thresholds and values to guide the Commission in making this determination – recognising that the Commission is an advisory committee of technical expert individuals, not an aggregation of representatives of specific populations or stakeholders. It would seem sensible for the Regulations to require Standards or Guidelines to be issued on these points. These may include stipulations on the technical composition of the Commission, and may encourage the use of outside experts and consultations. As the Commission observed in its note accompanying the draft Regulations: "*The Commission recognised the merit of engaging with external experts in supplementing its work and expertise of the Commission, but that this should be discretionary and not mandatory. The Commission noted that such recourse would also be related to the composition of the Commission at the particular time, and its constituent expertise.*" [ISBA/25/C/18]

(3) It would be more appropriate for DR13(4)(e) to limit its reference to the principles in DR2 to those relevant to the review of Environmental Plans, namely DR2(e), (f) and (g). And/or the Commission and the Council should be required to assess proposed Plans of Work in their entirety (not only the environmental aspects) against all the DR2 principles.

(4) The reference in DR13(4)(e) to DR2 appears, via DR2(e) to suggest that:

(i) the Commission cannot conduct its review of an application unless and until there is a REMP adopted for the relevant region, and

(ii) the Commission should consider the extent to which the proposed Plan of Work complies with or otherwise takes into account the relevant REMP, in assessing an application.

These two points could be more clearly stated to avoid ambiguity or dispute. Further, the Commission should not recommend approval of any application deemed to be non-conforming with the relevant REMP (for example, by proposing exploration or exploitation activities within a designated Area of Particular Environmental Interest). Stakeholders have repeatedly held up the view that there should be no mining without a REMP in place, both in their 2018 submissions and at ISA Council meetings.

Regulation 14
Amendments to the proposed Plan of Work

1. At any time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may:

(a) Request the applicant to provide additional information on any aspect of the application within 30 Days of the date when the application is first considered; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations.

2. Where the Commission proposes any amendment to the Plan of Work under paragraph 1 (b) above, the Commission shall provide to the applicant a brief justification and rationale for such proposed amendment. The applicant must respond within 90 Days following receipt of such proposal from the Commission by agreeing to the proposal, rejecting the proposal or making an alternative proposal for the Commission's consideration. The Commission shall then, in the light of the applicant's response, make its recommendations to the Council.

I - Members of the International Seabed Authority

Australia

(a) Request the applicant to provide additional information on any aspect of the application **[within 30 Days of the date when the application is first considered] prior to making a recommendation**; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations.

2. Where the Commission **[proposes any amendment to the Plan of Work] makes a request** under paragraph 1 **(a) or** (b) above, the Commission shall provide to the applicant a brief justification and rationale for such **[proposed amendment] a request**. The applicant must respond within 90 Days following receipt of such **[proposal] request** from the Commission by agreeing to the **[proposal] request**, rejecting the **[proposal] request** or making an alternative **[proposal] request** for the Commission's consideration. The Commission shall then, in the light of the applicant's response, make its recommendations to the Council.

Commented [AUS30]: This provision seeks to restrict the Commission from requesting additional information from the applicant outside of the 30 day timeframe from when the application is first considered. The Commission should be able to request information at any time prior to making its recommendation to Council in order to make an informed decision.

Commented [AUS31]: As a general point, there needs to be further consideration on what a request for additional information means for assessment timeframes. While the applicant has 90 days to respond to a requested modification, there is no similar timeframe for a response for requests for additional information. Preferred approach would be for the consideration period to recommence in both circumstances, including the period for requesting additional information.

Chile

Proyecto de Artículo 14
Examen de los planes ambientales por la Comisión

Chile considera que se debe establecer expresamente cuál será el procedimiento en el caso de identificarse impactos no previstos, o de una magnitud, intensidad o significado superior a lo previsto.

¿Cómo se abordarán estos puntos?
¿Qué sucederá en caso que el plan de cierre no logre su objetivo?

Al igual, deben contemplarse mecanismos para asegurar que los planes de cierre propuestos sean pertinentes y consideren la viabilidad efectiva que, luego del cierre, el entorno logre cierta resiliencia y vuelva a ser equivalente al hábitat previo a la intervención.

Estos son puntos que deben estar claramente establecidos en el Reglamento.

Por su parte, en caso de falta de información relevante y fundamental/esencial para la evaluación ¿**Se rechazará el plan de trabajo**? Es necesario entonces que este punto también esté en el texto del Reglamento.

New Zealand

14	**Amendments to the proposed Plan of Work** 1. At any reasonable time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may: (a) Request the applicant to provide additional information on any aspect of the application ~~within 30 Days of the date when the application is first considered~~; and (b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations. 2. Where the Commission proposes any amendment to the Plan of Work under paragraph 1 (b) above, the Commission shall provide to the applicant a brief justification and rationale for such proposed amendment. The applicant must respond ~~within 90 Days following receipt of such proposal from the Commission~~ within the timeframe requested by the Commission by agreeing to the proposal, rejecting the proposal or making an alternative proposal for the Commission's consideration. The Commission shall then, in the light of the applicant's response, make its recommendations to the Council.	We suggest deletion of the 30 and 90 day timeframes and instead allow the Commission to determine when a response is required. Otherwise the Commission cannot request additional information at any time as suggested in regulation 14(1).

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

Deep Sea Conservation Coalition

DR 14: This should enable the ISA to make the amendments, not 'request' the applicant to amend its Plan of Work. As noted elsewhere, the ISA is in the role of a regulator, not allowing the Applicant to choose its conditions. In response to the suggestion that the ISA can reject the application if suggested wording is not accepted, that is not entirely correct. Firstly, if the regulations allow the Applicant to reject the proposal (as they currently do in DR 14(2)), the Applicant cannot be legally faulted for availing itself of an option granted in the Regulation.

14	Amendments to a proposed Plan of Work	This should enable the ISA to make the amendments, not 'request' the applicant to amend its Plan of Work, for reasons set out earlier. Far less should there be a discretion by the contractor to refuse a request.

The Pew Charitable Trusts

Regulation 14
Amendments to the proposed Plan of Work

1.1 At any time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may:

~~(a)~~ Request the applicant to provide additional information on any aspect of the application within
(a) 30 Days of the date when the application is first considered; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these Regulations ~~and Good Industry Practice~~.

[...]

Regulation 15
Commission's recommendation for the approval of a Plan of Work

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it shall recommend approval of the Plan of Work to the Council.

2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in:

(a) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;

(b) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(c) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

(d) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work; or

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

(i) 75,000 square kilometres in the case of polymetallic nodules;

(ii) 2,500 square kilometres in the case of polymetallic sulphides; or

(iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts.

4. If the Commission determines that the applicant does not meet the criteria set out in regulations 12 (4) and 13, the Commission shall so inform the applicant in writing by providing the reasons why any criterion has not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant.

5. At its next available meeting, the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting. The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.

I - Members of the International Seabed Authority

Australia

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it shall recommend approval of the Plan of Work to the Council.

Commented [AUS32]: Australia considers there may be a general discretion for the Commission to recommend approval of a Plan of Work to the Council.

(e) An area or areas of particular environmental interest.

(ii) 2,500 square kilometres in the case of polymetallic sulphides; **or**

(iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts. **or**

(c) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work; or

Commented [AUS33]: Australia proposes a new provision in draft regulation 15 which would require the Commission to not recommend a plan of work to the Council for approval if such approval would pose a reasonable risk of damage to an in-service or planned submarine cable, or cause undue interference with the freedom to lay new submarine cables and pipelines.

(d) Any area included in a proposed Plan of Work is not covered by a regional environmental management plan.

Commented [AUS34]: Australia proposes a new provision in draft regulation 15 that would prevent the Commission from recommending that the Council approve a plan of work if the area is not covered by a regional environmental management plan.

4. If the Commission determines that the applicant does not meet the criteria set out in regulations 12 (4) and 13, the Commission shall so inform the applicant in writing by providing the reasons why any criterion has not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. **During this period the Commission shall not make a recommendation to the Council on the application.**

Commented [AUS35]: Draft regulation 15 covers the Commission's recommendation for the approval of a plan of work. Australia would be grateful for confirmation that if the Commission determines the application does not meet the criteria, the application does not proceed to the Council for consideration.

5. At its next available meeting, the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been

Commented [AUS36]: Draft regulation 15(5) requires the Commission to consider representations from applicants providing they are circulated at least 30 days in advance of the next meeting, then consider the application afresh. Further consideration should be given as to if the 30 day time-frame is sufficient.

Canada

( ) Such approval would permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally ; or

Costa Rica

Commission's recommendation for the approval of a Plan of Work

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it may recommend approval of the Plan of Work to the Council.

RATIONALE: The Commission should retain the possibility of not approving a plan in circumstances when even meeting the criteria of regulations 12(4) and 13, the plan cannot ensure the effective protection of the marine environment (because of cumulative impact, insufficient mitigation measures, etc.) That is why Costa Rica proposes the wording "may", instead of "shall".

2. The Commission shall not recommend approval of a proposed Plan of Work if said Plan does not ensure effective protection of the marine environment , based on the criteria set in Regulation 13 (e) and (e)bis, or if part or all of the area covered by the proposed Plan of Work is included in:

RATIONALE: As explained before, the effective protection of the marine environment must be ensured.

3.(c) If the Commission is unable to determine if the Plan of Work meets the necessary approval criteria.

RATIONALE : If there is doubt, the Plan of Work shall not be approved by the Commission.

Commission's recommendation for the approval of a Plan of Work

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it may recommend approval of the Plan of Work to the Council.

RATIONALE: The Commission should retain the possibility of not approving a plan in circumstances when even meeting the criteria of regulations 12(4) and 13, the plan cannot ensure the effective protection of the marine environment (because of cumulative impact, insufficient mitigation measures, etc.) That is why Costa Rica proposes the wording "may", instead of "shall".

2. The Commission shall not recommend approval of a proposed Plan of Work if said Plan does not ensure effective protection of the marine environment , based on the criteria set in Regulation 13 (e) and (e)bis, or if part or all of the area covered by the proposed Plan of Work is included in:

RATIONALE: As explained before, the effective protection of the marine environment must be ensured.

3.(c) If the Commission is unable to determine if the Plan of Work meets the necessary approval criteria.

RATIONALE : If there is doubt, the Plan of Work shall not be approved by the Commission.

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall ensure its compliance with the fundamental principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular consider the extent in which the proposed Plan of Work ensures the effective protection of the marine environment and contributes to realizing benefits for humankind as a whole.

RATIONALE: The text proposed by the LTC used the wording " shall have regard to the principles, policies and objectives". That language is too flexible and insufficient to ensure the effective protection of the marine environment. In addition, in order to be able to evaluate its contribution, the Commission should consider the extent in which it ensures the effective protection of the marine environment and contributes to the benefits of humankind, not the "manner" in which contributes, which is not measurable.

Germany

- With regard to **Draft Regulation 15**, Germany advocates for two specific references to the applicable Regional Environmental Management Plan.

Draft Regulation 15:
"[...] 2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in: [...] (c bis) An area disapproved for Exploitation by the Council, as determined in the applicable Regional Environmental Management Plan; [...].
3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that: [...] (b) The total area allocated to a Contractor under any approved Plan of Work would exceed: [...] (c bis) Such approval would undermine or contradict the regional goals, objectives or measures as determined by the requirements of the applicable Regional Environmental Management Plan."

Italy

DR15 (2) (a)	Why this is not part of the first assessment by Secretary General? This appears to be a very important prerequisite and should not be in the discretion of the Commission not to recommend the approval of a Plan of Work if there are overlapping areas with activities of exploration of another applicant. **There should not be exploitation where exploration is still in the undertaking.**	Move to DR 10	

Jamaica

Regulation 15 Commission's recommendation for the approval of a Plan of Work

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:
(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work as set out in the relevant Guidelines;

RATIONALE:

The discussions in Council and the reports of the LTC Chairs have consistently noted the need for further clarification and guidance on the concept of monopolization. However, the LTC has for a number of years continued to defer consideration of issues related to the monopolization of activities in the Area; see, for example, LTC Report, ISBA/20/C/20 (2014); ISBA/25/C/19/Add.1 (2019). In order to promote a consistent and fair application of DR 15 the criteria for determining monopolization should be established in guidelines or the rules.

Japan

Regulation 10: Preliminary review of application by the Secretary-General and Regulation 15: Commission's recommendation for the approval of a Plan of Work

Japan welcomes the text addition that clearly differentiates an operator who has a preference and a priority for a Plan of Work covering exploitation of the same area and resources from other applicants. However, current provisions do not inhibit an operator who has no approved Plan of Work for exploration from applying for exploitation. We have concern that if such operators mentioned above (i.e., those who apply for exploration based on the result of marine scientific research or prospecting carried out from above the sea surface in some parts of the Area where exploration is yet to be carried out by any operators) is qualified for applying for exploitation, which would open the pathway for a Contractor to go for exploitation without exploration, which takes a huge investment in time and money.

There may be a case in which an operator, who has no preference and priority for exploitation, applies for exploitation prior to the submission of application by an operator who has a preference and a priority. In order to prevent such an application from being proceeded in vain it is crucial to confirm an intention of an operator, who has a preference and a priority, to apply for exploitation along with determination of whether the applicant has a preference and a priority in accordance with article 10 of annex II to the Convention, at the time of preliminary review by the Secretary-General.

<Regulation 15 (1) and (2)>

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it shall recommend approval of the Plan of Work to the Council.
2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in:

~~(a) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;~~

(~~a~~b) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(be) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

(cd) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area.

Mexico

Es por ello que se sugiere una disposición expresa dentro del **artículo 8** del proyecto del Código de Explotación, que limite la participación del mismo contratista, que individual o conjuntamente tenga un poder sustancial en el mismo mercado relevante, en la explotación de varios bloques no sólo contiguos sino también dentro de la misma zona de explotación y respecto de los mismos minerales. Esta disposición no deberá entenderse que limita el derecho de uso exclusivo al que se hace mención en los **proyectos de artículos 15 y 18 y el anexo X, cláusula 4** del Código de Explotación.

Micronesia

7. On Draft Regulation 15, the FSM is inclined to allow the LTC some discretion in approving or disapproving Plans of Work even if they meet criteria in Draft Regulations 12(4) and 13, particularly where there is substantial evidence to indicate risk of Serious Harm to the Marine Environment, which is a discretion granted to the LTC by article 165 of UNCLOS. It is not clear that the criteria in Draft Regulations 12(4) and 13 take this point about substantial evidence of Serious Harm to the Marine Environment into consideration, other than perhaps the very general language in Draft Regulation 13(1)(b) on an application being in conformity with the Regulations, Standards, and Guidelines as well as in Draft Regulation 13(4)(e) on Environmental Plans providing for the effective protection of the Marine Environment. These Draft Regulations should be clarified to indicate that they include considerations of Serious Harm to the Marine Environment. There is also value in giving general discretion to the LTC in case some matters arise in the future that are not currently contemplated in Draft Regulations 12(4) and 13.

Netherlands

➢ Regulation 15
Commission's recommendation for the approval of a Plan of Work

Paragraph 3

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work; or

Comment: The term "monopolize" needs to be clarified (cf. also Regulation 23 (5)(b)).

New Zealand

15	**Commission's recommendation for the approval of a Plan of Work**	Regulations 12(4) and 13 do not set out *criteria* that need to be met. They should, however, be taken into account. If an application is not approved, it should start again as a new application and go to the back of the queue. The last sentence of regulation 15(5) should be deleted to remove the never ending loop to request further information and 'appeal'. We suggest adding regulation 15(5bis) to provide an end point for applications that should not be approved even after changes have been made.
	1. Taking into account regulations 12(4) and 13, If the Commission determines that the applicant meets the relevant requirements ~~meets the criteria set out in regulations 12 (4) and 13,~~ it shall recommend approval of the Plan of Work to the Council. 1bis. The Commission's recommendation shall include any conditions it considers appropriate to deal with adverse effects of the activity. 2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in: (a) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;	
	4. If the Commission determines that the applicant does not meet the ~~criteria~~ requirements set out in regulations 12 (4) and 13, the Commission shall so inform the applicant in writing by providing the reasons why any ~~criterion has~~ requirements have not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. 5. At its next available meeting, the	

	Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting. ~~The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.~~ 5 bis. The Commission may refuse an application and return it to the applicant. The Commission must provide reasons for refusing an application.	

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. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it shall recommend approval of the Plan of Work to the Council. The Commission shall also accompany the recommendation of approval with a summary on the divergences of opinion in the Commission, where necessary.

2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work; [or][and]

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

Commented [A29]: Per UNCLOS Article 163.11: "Recommendations to the Council shall, where necessary, be accompanied by a summary on the divergences of opinion in the Commission."

Commented [A30]: The United States notes that the non-monopolization provision of draft regulation 15 is inconsistent with article 6(4) of Annex III, which in fact permits exceptions to article 6(3)(c) unless monopolization or preclusion would result.

International Union for the Conservation of Nature and Natural Resources

DR 15 IUCN General Comment: As suggested by Australia during the Council meeting, there needs to be an explicit recognition of the discretion in Commission to not recommend approval of the plan of work if the applicant cannot demonstrate that the plan of work will ensure the effective protection of the marine environment from harmful effects. This is particularly important with respect to sites of international and regional conservation interest and in light of the potential for cumulative effects from other mining activities as well as other impacts, including climate change related effects. Given that the Commission's recommendation for approval of a Plan of Work is essentially binding on Council (i.e., unless 2/3rd of Council rejects the recommendation, including a majority of each chamber), it is crucial that the Commission and Council retain a discretion to approve or disapprove a Plan of work in light of the great uncertainties and concerns, including about the direct and cumulative impacts of mining on the marine environment.

1.If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it ~~shall~~ may recommend approval of the Plan of Work to the Council.

2.The Commission shall not recommend approval of a proposed Plan of Work if the applicant cannot demonstrate that the Plan of Work, alone or in combination with other activities or impacts, will ensure effective protection of the marine environment, based on the assessment criteria in Regulation 13 (ebis) taking into consideration the best available scientific information and the precautionary approach; or

(2bis) part or all of the area covered by the proposed Plan of Work is included in:

(c) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention or is within an Area of Particular Environmental Interest or other area of special biological, scientific, archeological, historic, aesthetic or wilderness significance; or

Deep Ocean Stewardship Initiative

DR 15(2): This should also refer to APEIs and other areas of significance, e.g. areas containing human remains, objects or sites of archaeological or historical nature, as reasons for the Commission to not recommend approval for a proposed Plan of Work. Following the duty to protect such areas under Article 303 of the Convention, DR 15(2) could include an additional component whereby "The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in: An area disapproved for Exploitation by the Council pursuant to article 149 of the Convention."

Deep Sea Conservation Coalition

DR 15: DR 15(1) reads that "1. If the Commission determines that the applicant meets the criteria set out in regulations 12(4) and 13, it shall recommend approval of the Plan of Work to the Council." Firstly, there are no criteria in Regulation 12(4). The criteria in Regulation 13 relate to the applicant. It is worth noting there that these provisions in Regulation 13 are effectively bypassed if the contract is sold or otherwise transferred, such as by way of mortgage.

Under DR 15(1), as drafted, if the Commission determines that the applicant meets the criteria set out in Regulations 12(4) and 13, it *shall* recommend approval of the Plan of Work to the Council. There must be discretion, taking into account the many uncertainties (including cumulative impacts that may be caused by adding a new mining project to other activities in the region), potential environmental damage, precautionary approach and (as drafted) 30 year contract terms.

The only applicable criteria on environmental matters is in DR 13(4)(e): "(e) Provides, under the Environmental Plans, for the effective protection for the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2." This formulation does not reproduce Article 145 when it references "effective protection." The structure of DR 12(4) gives no primacy to the Fundamental Principles. In other words, it is effectively weighing environmental protection against matters such as whether it is economically viable (DR 13(4)(a)). The LTC must have a discretion to refuse the application, taking into account the criteria and overall objectives.

Rather than provide for incorporation of the Fundamental Principles, instead requires "regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the Convention, and in the Agreement, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole." This is setting up a conflict between these criteria and the Fundamental Principles, which should be the principal reference point.

15	Commission's Recommendation for approval of a Plan of Work	(1) Reads that "1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it shall recommend approval of the Plan of Work to the Council." Instead, there must be discretion, taking into account the many uncertainties, potential environmental damage precautionary approach and 30 year contract terms. The Recommendation in DR 15 should take into account compliance with the Fundamental Principles in DR 12 and the LTC should retain a general discretion to approve or deny a Plan of Work. If reasonable and practical mitigation measures are insufficient to achieve the fundamental principles (including the effective protection of the marine environment and protection and preservation of rare and fragile ecosystems and the habitat of depleted, threatened or endangered species), then the Plan of Work should not be approved. Likewise, if the baseline is inadequate, the Plan of Work should not be approved. If a Plan of Work is approved, and after work commences, it is shown that assumptions with respect to harm to the marine environment were wrong, then there must be mechanisms to amend and when necessary suspend or cease operations to protect the marine environment. Regulation 15 should require the Commission to provide sufficient detail as to the Plans of Work and a record of the LTC's deliberations to be placed before the Council in order to facilitate informed decision-making about whether or not to approve a Plan of Work, or take compliance action etc. This should include: • a record of the LTC's deliberations, what inputs they've received, what they've taken into account, how they have weighted / assessed these etc. The Regs should

		recognise that some of the confidential info might need to be shared with the Council (under conditions of confidentiality), and • a draft contract. • A requirement for Council decisions relating to Plans of Work (e.g. contract award) to be published with reasons. Regulation 15(2) should include a catchall to the effect that taking into account the precautionary principle, there is insufficient evidence that approving the proposed Plan of Work would enable effectively protect the marine environment.

Institute for Advanced Sustainability Studies

23. With respect to DR 15, we recommend that the title be amended to: "Commission's recommendation for the approval or disapproval of a Plan of Work". This is because there are more provisions that describe circumstances for the disapproval of Plan of Works than there are for the approval of the same.

24. Concerning 15(1), we recommend to delete the word "shall" and replace it with "may". The LTC should retain the discretion to recommend the disapproval of any application based on the information in its possession. Further, instead of making specific reference to "regulations 12(4) and 13", we recommend that this be deleted and replaced with "... the criteria set out in regulations 12 and 13 ...". Similarly, DR 15(4) should be amended accordingly. Further, since it is closely connected to DR 15(1), and not related to DR 15(2) or (3), DR 15(4) and (5) should be moved to DR 15(1 bis) and (1 ter) in order to avoid any confusion.

25. In reference to DR 15(2), there should be a paragraph DR 15(2)(c bis) that states "An area that is covered by an existing spatial or temporal measure under an applicable REMP". Further, there should be a new paragraph (e) which says: "A buffer area that has been created to protected the rights and interests of an adjacent coastal State(s) area(s), unless an agreement with the adjacent coastal State(s) is in place".

26. Concerning DR 15(3), there should be several new paragraphs:

a. New DR 15(3)(c): "The area covered by the proposed Plan of Work or part of it involves an area in which no REMP is in existence as of the date of the application."

b. New DR 15(3)(c): "Such approval would undermine or contradict the region-specific objectives, criteria or prescribed measures as determined in the applicable REMP".

c. New DR 15(3)(e): "The area covered by the proposed Plan of Work or part of it involves an area that has not been subjected to prior exploration activities."

d. New DR 15(3)(f): "There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work or part of it."

The Pew Charitable Trusts

Draft regulation 16Regulation 15

Commission's recommendation for the approval of a Plan of Work

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, and that regulation 14 (2) is complied with, it shall recommend approval of the Plan of Work to the Council.

It is crucial that the Commission (and thus the Council) retains a general discretion to approve or disapprove the Plan of Work. Currently if it meets criteria in DR 12(4) and 13, it must recommend approval. The Regulations should also include situations in which applications may or, in some circumstances must, be disapproved (see UNCLOS Article 165(2)(l) and 162(2)(x), for example)

If reasonable and practical mitigation measures are insufficient to achieve the DR2 fundamental principles (including the effective protection of the marine environment and protection and preservation of rare and fragile ecosystems and the habitat of depleted, threatened or endangered species), then the Plan of Work should not be approved. Likewise, if the environmental baseline data is inadequate, the Plan of Work should not be approved. These are just two examples

[...]

1.2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in: [...]

DR15(2) lists areas in which a Plan of Work for Exploitation cannot be recommended for approval. Areas of Particular Environmental Interest ('APEI's) should join this list. APEIs are intended to be identified though ISA strategic and regional environmental management planning as no-mining zones, but will have no regulatory force unless mining is prohibited within them in the Regulations.

2.3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

a. Another qualified applicant has a preference and a priority in accordance with article 10 of annex III to the Convention; oror [...]

DR15(3) lists narrow circumstances in which a Plan of Work for Exploitation cannot be recommended for approval (in summary: where it would interfere with another party's contract claim). DR15(3) should also include the circumstance where the Commission finds itself unable to determine that the applicant or Plan of Work meets the approval criteria set out in the relevant regulations.

DR15 could also be expanded to require the Commission to provide the Council with sufficient detail as to the Plans of Work, and a record of the Commission's deliberations (including dissenting views), in order to facilitate informed decision-making about whether or not to approve the Plan of Work.

III-Stakeholders

Global Sea Mineral Resources

DR 15 (3)	The Commission shall not recommend approval of a proposed Plan of Work if it determines that such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work.	For the Commission to determine if a conduct monopolizes the conduct of activities in the Area, the Commission should carry out a study of the relevant market for such Resource and the ability of such a State to effectively monopolize activities therein.

Section 4
Consideration of an application by the Council

Regulation 16
Consideration and approval of Plans of Work

The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

I - Members of the International Seabed Authority

Australia

Regulation 16
Consideration and approval of Plans of Work

The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

Commented [AUS37]: As per comment above relating to the Secretary-General, consideration should be given as to whether members of the Council who represent the sponsoring states should have to recuse themselves due to a potential conflict of interest.

Belgium

After due consideration, the Council shall approve or disapprove the Plan of Work.

Commented [VS37]: Not yet covered by R16,whilst mentioned in the title.

Republic of Korea

In Regulation 16, the Council will consider and approve Plans of Work, but there is no mentioning of any procedure to appeal the Council's decision, in case the Council disapproves the Plans of Work and if a dispute arises. Just like the exploration regulations, Korea believes that there is a need to set up a dispute settlement procedure by mentioning not only paragraph 11 but also paragraph 12 of section 3 of the annex to the Agreement.

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

Institute for Advanced Sustainability Studies

27. In relation to DR 16, we recommend to include the possibility of the creation of one or more advisory bodies within the Authority's set-up in future, such as an Environment and Scientific Committee. Thus, it should read: "The Council shall consider the reports and recommendations of the Commission, and any other subsidiary body that it creates in future in accordance with the Convention and the Agreement, relating to approval of Plans of Work [...]." This is essential, because the Council will not be in possession of the primary documents that were considered by the LTC and will only have the reports and recommendations that were prepared by the LTC to rely on. Given that the LTC's current composition (where environmental expertise are seriously lacking) calls into question its capability to actually make an informed recommendation to the Council.

III-Stakeholders

Global Sea Mineral Resources

DR 16	For consideration and approval of Plans of Work, the Council follows the procedure established in paragraph 11 of section 3 of the Annex to the Implementation Agreement.	The Draft Regulations should include an explicit provision stating that if the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 days, the Plan of Work shall be deemed to have been approved by the Council.

Part III
Rights and obligations of Contractors

Section 1
Exploitation contracts

Regulation 17
The contract

1. Upon the Council's approval of a Plan of Work, the Secretary-General shall prepare an exploitation contract between the Authority and the applicant in the form prescribed in annex IX to these regulations.

2. The exploitation contract shall be signed on behalf of the Authority by the Secretary-General or duly authorized representative. The designated representative or the authority designated under regulation 5 (2) shall sign the exploitation contract on behalf of the applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each exploitation contract.

3. The exploitation contract and its schedules is a public document, and shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

I - Members of the International Seabed Authority

Belgium

Commented [VS2]: Be more consistent with use singular/plural.

Commented [VS3]: Doesn't add anything

Commented [VS4]: To be put in title?

Commented [VS5]: Property not covered

2. The exploitation contract shall be signed on behalf of the Authority by the Secretary-General or duly authorized representative. The designated representative or the authority designated under regulation 5 (2) shall sign the exploitation contract on behalf of the applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each exploitation contract.

Commented [VS38]: Belgium wishes that the regulation foresees that the exploitation contract shall be countersigned by the sponsoring State, in this capacity.

Italy

DR17 (3)	It is considered useful to indicate where the Seabed Mining Register will be published. Furthermore, it is important to define which information is confidential or where it is possible to find the definition, on the contrary indicate the minimum data to be published.

Myanmar

4. In the "Part III: Rights and obligations of Contractors", responsibility and accountability of the contractors should be clearly and comprehensively ratified. Guidelines for the reconnaissance exploration and extraction, test-mining, and pilot-ore-dressing plan should be in detailed.

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

DR 17(3): A deadline for making the contract and its schedules public through Seabed Mining Register should be stipulated.

Deep Sea Conservation Coalition

17	Contract	The terms of the contract are important and should not be left to the Secretary-General to draft and negotiate, with no involvement of the public or the Council. The contract is under DR 17 a public document, and transparency should also apply to its negotiation and conclusion, subject to provisions for confidentiality which can be applied.

Institute for Advanced Sustainability Studies

28. In reference to DR 17(3), we welcome the fact that exploitation contracts and its schedules will be made public; however, we will make our comments on 'Confidential Information' when we arrive at Part XI of the Draft Regulations. We also recommend the insertion of the word "forthwith" in DR 17(3), to wit, "[...] and shall be published forthwith in the [...]" to ensure that this process is not delayed. In addition, we would like to pose the question as to why a copy of the exploitation contract in a draft format is not made public at an early stage, prior to the actual conclusion of the contract, in order to enable for sufficient scrutiny.

Regulation 18
Rights and exclusivity under an exploitation contract

1. An exploitation contract shall confer on a Contractor the exclusive right to:

(a) Explore for the specified Resource category in accordance with paragraph 7 below; and

(b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work, provided that production shall only take place in approved Mining Areas.

2. The Authority shall not permit any other entity to exploit or explore for the same Resource category in the Contract Area for the entire duration of an exploitation contract.

3. The Authority, in consultation with a Contractor, shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner which might interfere with the rights granted to the Contractor.

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in accordance with the terms thereof.

5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources other than those rights expressly granted by the terms of the exploitation contract or these regulations.

6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for and be granted a renewal of its exploitation contract.

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply as set out in the relevant Guidelines. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k).

I - Members of the International Seabed Authority

Australia

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in accordance with the terms thereof**, and articles 18 and 19 of Annex III of the Convention**.

5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources other than those rights expressly granted by the terms of the exploitation contract or these regulations.

6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for and be granted a renewal of its exploitation contract.

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply as set out in the relevant **[~~Guidelines~~] Standards**. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of

Commented [AUS38]: We note that draft regulation 18(4) has been amended to refer to the exploitation contract. We suggest reference to the exploitation contract be made in addition to Articles 18 and 19 of Annex III of the Convention.

Commented [AUS39]: Draft regulation 18(4) has been amended to refer to the exploitation contract. Suggest reference to the exploitation contract be made in addition to Articles 18 and 19 of Annex III of the Convention, relating to penalties and revision of contract.

Commented [AUS40]: Australia suggests that the circumstances in which the Exploration Regulations continue to apply should be set out in a binding document, rather than 'guidelines'.

Chile

Proyecto de Artículo 18
Derechos y exclusividad con arreglo al contrato de explotación.

¿Se entiende verdaderamente que las técnicas de explotación son diferentes para nódulos polimetálicos, sulfuros polimetálicos y costras de ferromanganeso?

¿Cómo nos aseguraremos de que, si un contrato es para la explotación de una categoría de recursos, el contratista no extraiga también otra categoría de recursos?

Son puntos que Chile considera son plenamente válidos para resguardar el objetivo de explotar lo estrictamente evaluado y permitido. Por tanto, esto debe quedar claramente establecido antes de la aprobación del Reglamento.

China

6. Draft regulation 18

The Contractor has paid an annual fixed fee or royalties for the total Contract Area in obtaining and performing the exploitation contract. The exploration activities carried out in the exploitation contract Area are preparatory and incidental to exploitation. Therefore, no further payment should be required from the exploitation Contractor for exploration activities. It is suggested to delete the relevant content.

Costa Rica

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in observance of the applicable rules, regulations and procedures, including Standards, as well as in accordance with the terms thereof.

RATIONALE: In the current LTC text amendments can only happen according to the terms of the contract. This is not coherent with the regulations that indicate that amendments to the plan of Work can happen under certain circumstances. Also, it is important for the Authority to maintain its legal power to revise terms of contracts.

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply as set out in the relevant Guidelines. In particular, the Contractor shall (wording deleted from here) continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k).

RATIONALE: Costa Rica proposes the deletion of the wording " be expected to" . The contractor shall continue to show due diligence, period.

France

Projet d'article 18, paragraphe 7 – Droits et exclusivité découlant du contrat d'exploitation :

Il conviendrait de clarifier le paragraphe 7 qui mentionne « les activités d'exploration menées dans le secteur visé par le contrat au titre d'un contrat d'exploitation ». S'agit-il du même contrat ?

Par ailleurs, la formule de « diligence voulue » actuellement employée devrait être remplacée par celle, habituellement consacrée, de **« diligence requise »** (la version anglaise fait bien référence à la « *due diligence* »).

Germany

- It should be clarified within the related provision that the right to conduct marine scientific research is not limited by the exclusivity rights under an exploitation contract (**Draft Regulation 18**). We therefore suggest adding a provision which explicitly grants access to the contract area for marine scientific research activities.

Draft Regulation 18:
„[…] 5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources other than those rights expressly granted by the terms of the exploitation contract or these regulations nor limit any (other) freedoms of the high seas. […]"

Jamaica

Regulation 18 Rights and exclusivity under an exploitation contract

3. The Authority, in consultation with a Contractor, shall ensure that no other entity holding a contract with the Authority operates in the Contract Area for a different category of Resources in a manner which might interfere with the rights granted to the Contractor.

RATIONALE:

The term "entity" is not defined and potentially includes persons over which the Authority has no control. The phrase "entity holding a contract with the Authority" is suggested as it may be desirable to include entities with an exploration contract that have not received an exploitation contract.

Japan

Regulation 18 Rights and exclusivity under an exploitation contract

Japan welcomes the reference to "the relevant Guidelines" in application of Exploration Regulations to exploration activities in the Contract Area conducted under an exploitation contract in regulation 18 (7). The relevant Guidelines should be listed in guidelines to be developed in due course. It is expected that due consideration is given in the process of developing relevant Guidelines to whether regulations under Exploration Regulations, including those related to reporting of activities, are uniformly applied to exploration activities under an exploitation contract. Japan suggests deleting the reference to "the payment of applicable fees" as fees for exploration activities conducted under an exploitation contract should not be charged twice under the exploration and exploitation contracts.

<Regulation 18 (7)>

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply as set out in the relevant Guidelines. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area,

together with ~~the payment of applicable fees and~~ the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38(2)(k).

Mexico

Es por ello que se sugiere una disposición expresa dentro del **artículo 8** del proyecto del Código de Explotación, que limite la participación del mismo contratista, que individual o conjuntamente tenga un poder sustancial en el mismo mercado relevante, en la explotación de varios bloques no sólo contiguos sino también dentro de la misma zona de explotación y respecto de los mismos minerales. Esta disposición no deberá entenderse que limita el derecho de uso exclusivo al que se hace mención en los **proyectos de artículos 15 y 18 y el anexo X, cláusula 4** del Código de Explotación.

Morocco

Partie III **Droits et obligations des contractants.** **Article 18** : Droits et exclusivité découlant du contrat d'exploitation	-Préciser que la recherche scientifique marine n'est pas limitée par des droits exclusifs qu'il convient de remplacer par droits préférentiels ; -Séparer l'exploration de l'exploitation en soulignant l'importance de l'exploration en tant que condition préalable à la passation d'un contrat d'exploitation.

Netherlands

➢ Regulation 18
Rights and exclusivity under an exploitation contract

Paragraph 1

1. An exploitation contract shall confer on a Contractor the exclusive right to:
(a) Explore for the specified Resource category in accordance with paragraph 7 below; and
(b) …….

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply and as set out in the relevant Guidelines. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38(2)(k).

Comment: The Netherlands seeks clarification as to the content of "the relevant Guidelines". In accordance with e.g. Regulation 26 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters, the contractor can apply for a plan of work for exploitation upon expiration of a plan of work for exploration. Regulation 7 (3) (a) of these draft regulations states that an application for a plan of work for exploitation "…. shall be accompanied by the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts, as annexed to the relevant Exploration Regulations". This section 11.2 refers to data to be submitted upon expiration or termination of an exploration contract. Draft regulation 18(7) further stipulates that the contractor be required to pay an applicable fee and report on the exploration activities *in accordance with the applicable Exploration Regulations*. Therefore, in the event that a contractor carries out exploration activities under the exploitation contract, these exploration activities must be governed by the relevant exploration regulations. Unless clarified, the reference to the relevant Guidelines should be deleted.

Republic of Korea

In Regulation 18 para. 7, the fees applied during the exploration phase are required at the exploitation phase. As a result, the contractors may have to make payment of both applicable fees under Regulation 18 para. 7 and annual reporting fee under Regulation 84. This could cause double burdens on the contractors, considering that exploration can continue even after they enter into the exploitation phase. Korea is of the view that we should avoid the overlap of payments and need further reviews on how to coordinate the multiple fees imposed by the regulations.

Russian Federation

9.	**Regulation 18, title**	Regulation 18 Rights and exclusivity under an exploitation contract	It is suggested that the title of this provision shall be read as follows: "*Exclusive rights of a Contractor under an exploitation contract*".	The proposed title more accurately reflects the content of the regulation, as it deals with the exclusive rights of a Contractor under an exploitation contract.
10.	**Regulation 18(1)(a)**	(a) Explore for the specified Resource category in accordance with paragraph 7 below;	It is suggested to modify this provision so that it reads as follows: "*a) Explore for the specified Resource in accordance with the rules, regulations and procedures of the Authority, where the approved Plan of Work provides for the stage of exploration;*"	In accordance with Article 3(4)(c) of Annex III of the UNCLOS: "*4. Every approved plan of work shall: ...* *(c) confer on the operator, in accordance with the rules, regulations and procedures of the Authority, the exclusive right to explore for and exploit the specified categories of resources in the area covered by the plan of work. If, however, the applicant presents for approval a plan of work covering only the stage of exploration or the stage of exploitation, the approved plan of work shall confer such exclusive right with respect to that stage only*". In this regard, the modification suggested intends to clarify and specify the exclusive rights of a Contractor under an Exploitation Contract, where such contract provides for both exploration and exploitation stages.
11.	**Regulation 18**		It is suggested to amend this regulation with the paragraph of the following content: "*The Contractor shall exercise the exclusive rights provided for in this regulation in consistence with articles 87 and 147 of the Convention*".	Such amendment establishes a legal framework for the exercise of the exclusive rights granted to a Contractor under an exploitation contract.

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

DR 18: The latest changes to DR 18(5) restrict the ISA's powers to revise, suspend, or terminate a Plan of Work by subjecting such action to the terms of the exploitation contract instead of the Convention. This goes against advice that was already set out in the ISA's Technical Study No 11 (2013), including for the ISA to reserve 'substantial power and authority to manage, regulate and oversee the exploitation regime' not least to enable a precautionary approach (p. 20). Given the dearth of scientific information on the effects of mining in these remote environments (or about most of the potentially-affected ecosystems), it is likely that unforeseeable outcomes will be encountered. Cumulative effects from mining, climate change and other human pressures are one example. Please consider giving the ISA an 'out clause', perhaps based on its strategic environmental goals.

Deep Sea Conservation Coalition

18	Rights and Exclusivity	DR 18.4 provides that "4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in accordance with the terms of the exploitation contract." It is important that a contract be flexible, and be able to be modified under the Regulations. The contract should not prevail over the Regulations.

Institute for Advanced Sustainability Studies

29. With respect to DR 18(1)(b), we recommend making it clear that commercial production may only take place after a determination that no 'Material Change' to the Plan of Work is necessary. As such, DR 18(1)(b) should read: "Exploit the specific Resource [...], provide that production shall only take place in approved Mining Areas and subject to prerequisite prescribed under DR 25(6)".

30. Concerning DR 18(6), we are troubled by the possibility of an exploitation contract being renewed indefinitely. Since reference is made here to DR 20, we will address this concern via DR 20(6). Although there are several conditions listed herein, DR 20(6) leaves no discretion to the LTC and to the Council because of the use of the word "shall" on two occasions. We suggest that this word be replaced with the word "may" on both occasions. There may be instances, such as an indication that land-based producing developing States cannot be adequately compensated for the adverse impacts caused to their economies, or non-conformity with the anti-monopolization constrains, among others, that justify the refusal of an application for renewal.

The Pew Charitable Trusts

Regulation 18

Rights and exclusivity under an exploitation contract

[...]

4. The Authority, in consultation with a Contractor, shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner which might interfere with the rights granted to the Contractor.

5. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in accordance with articles 18 and 19 of annex III to the Convention the terms of the exploitation contract.

As amended, DR18(5) provides that revision, suspension or termination of contracts can only occur in accordance with the terms of the contract. The implications of this amendment may be far-reaching and could benefit from further consideration. The Plan of Work constitutes part of the contract and the Regulations contain various circumstances and procedures for amending it during the contract term. For example, in DR60(4) the Commission can unilaterally require amendments to a deficient Closure Plan. Conversely, the standard contract terms (section 16, in Annex X) permit amendment to the contract only in more limited circumstances, and where both ISA and Contractor consent. This amendment therefore has potential to create conflict between the Regulations and the contract terms. Better regulatory control may result from the ISA seeking to maximise its legal powers to revise, suspend or terminate a contract and Plan of Work, not reducing them.

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply and as set out in the relevant Guidelines. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations., including under regulation 38(2)(k).

DR18(7) contains a new insertion to indicate that Guidelines will further elaborate aspects of the Exploration Regulations which should also apply to an Exploitation Contractor. This point would certainly benefit from further unpacking and cross-reference to specific Exploration Regulations, to avoid ambiguity or dispute.

The Regulations might also:

(a) indicate whether all Exploitation Contractors are required to conduct Exploration activities (in different locations to, but simultaneously with) their Exploitation activities, or whether this is optional,

(b) include details of planned Exploration activities within the list of information required for an application for a Plan of Work for Exploitation, and

(c) clarify the application process to commence exploitation in a mining site located within an existing Exploitation contract, but where that site was not covered by the original EIS and Plan of Work.

Regulation 19
Joint arrangements

1. Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.

2. The Council shall enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of the Convention.

I - Members of the International Seabed Authority

Republic of Korea

Regulation 19 is about the joint arrangements with the Enterprise, but it is necessary to establish clear conditions for the joint arrangements by stating the specific conditions for the joint arrangements with the Enterprise in the exploration regulations for polymetallic sulphides and cobalt-rich ferromanganese crusts.

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

International Marine Minerals Society

Regulation 19 (2)	How is independent control of the activities executed if the ISA is a partner in the exploitation project through the Enterprise?

Regulation 20
Term of exploitation contracts

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years, taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.

2. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than one year before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.

3. The Contractor shall supply such documentation as may be specified in the Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, the contractor shall submit a revised Plan of Work.

4. The Commission shall consider such application to renew an exploitation contract at its next meeting, provided the documentation required under paragraph 3 has been circulated at least 30 Days prior to the commencement of that meeting of the Commission.

5. In making its recommendations to the Council under paragraph 6 below, including any proposed amendments to the Plan of Work or revised Plan of Work, the Commission shall take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58.

6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract shall be renewed by the Council, provided that:

(a) The Resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority, including the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(c) The exploitation contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II.

7. Each renewal period shall be a maximum of 10 years.

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

9. Sponsorship is deemed to continue throughout the renewal period unless the sponsoring State or States terminates its sponsorship in accordance with regulation 21.

10. An exploitation contract in respect of which an application for renewal has been made shall, despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

I - Members of the International Seabed Authority

Australia

3. The Contractor shall supply such documentation as may be specified in the Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, the contractor shall submit a revised Plan of Work.

4. The Commission shall consider such application to renew an exploitation contract at its next meeting, provided the documentation required under paragraph 3

Commented [AUS41]: Australia welcomes amendments to this provision that provide a greater level of scrutiny for renewal requests. Our preference is that the entire Plan of Work is reviewed at the point of renewal. We would also like consideration of a provision that allows the Authority to review a contractor's decision about whether something constitutes a Material Change.

(e) The Commission has reassessed the Contractor consistent with the requirements of regulation 13(1), 13(2) and 13(3) and is satisfied that the Contractor has the ability to continue exploitation; and.

(f) The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.

7. Each renewal period shall be a maximum of 10 years.

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms

Commented [AUS42]: Draft regulation 19(6) would give contractors the exclusive right to apply for a renewal of its exploitation contract. It should not be a given that the renewal will occur. Further assessment should be required, particularly as the initial term may be as long as 30 years, and the renewal for up to 10 years. Renewal of contracts can be supported if a thorough enough assessment of the contractor's ability to continue exploitation has been undertaken, similar to that when obtaining a contract, and so long as the resource is still commercially viable.

Commented [AUS43]: Australia proposes a new subparagraph (f) to clarify that the Sponsoring State should reconfirm their sponsorship as part of the renewal process.

Belgium

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years, taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.

Commented [VS39]: Where is this section?

2. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than one year before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.

3. The Contractor shall supply such documentation as may be specified in the Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, Part II Applications for approval of Plans of Work in the form of contracts is applicable. If the Contractor wishes to make any changes to a Plan of Work and such changes are no Material Changes, the paragraphs 4 to 10 are applicable.

Commented [VS40]: A Material Change to a Plan of Work is comparable to applying for a new Plan of Work. Therefore, the criteria for a new Plan need to be followed in case of a material change. In case of non-material changes, a simplified procedure may be followed.

[The renewal of an exploitation contract is deemed to be a Material Change.]

Commented [VS41]: When a contract is adopted for a determined period, the evaluation takes that the period into account. Prolonging that period entails a need for an updated evaluation.

4. The Commission shall consider such application to renew an exploitation contract at its next meeting, provided the documentation required under paragraph 3 has been circulated at least 30 Days prior to the commencement of that meeting of

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

Commented [VS42]: As with the exploitation contract itself (see comments under Regulation 17), Belgium wishes that any renewal of an exploitation contract shall also be countersigned by the sponsoring State, in this capacity.

Costa Rica

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years. The parties may agree to a minimum initial term of 15 years, taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.

   RATIONALE: The current draft eliminated the previous version which contemplated the possibility of a shorter period for the exploitation contracts. Costa Rica suggests including the option of 15 year contracts

2. The Contractor shall supply a revised Plan of Work, as well as such documentation as may be specified in the Standards and Guidelines.

   RATIONALE: the renewal should not be automatic. After 30 years it must be mandatory for a revised Plan of Work to be presented; conditions and circumstances would have change. We need to be able to consider possible unforeseen situations, or cumulative impacts, for example. Also new technology. From the practical point of view, Work Plans are developed for the period of the contract, so after 30 years the Plan expires, so there is a need for a new revised plan.

   Such plan should comply with every disposition of Part II of the regulations. Provision may be included so that the application may be presented 18 months prior to the expiration of the contract.

5. In making its recommendations to the Council under paragraph 6 below, including any proposed amendments to the Plan of Work or revised Plan of Work, the Commission shall take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58, as well as any other relevant information from , inter alia, performance assessments, annual reports, environmental reports, legal actions against the contractor.

RATIONALE: The Commission shall take into account all relevant information, not only reports under Regulation 58.

6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract may be renewed by the Council, provided that:

RATIONALE: The Council must not be left without discretion. Recommendations are not binding. The council must have the possibility of evaluating environmental reasons for not renewing the contract, such as, but not limited to: cumulative impacts, climate change impact, unforeseeable impacts. With the current drafting only the conditions related to the Constructor behaviour are considered. It may not be enough to ensure the effective protection of the marine environment.

(b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority, including the rules, regulations, procedures and Standards adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

RATIONALE: Standards are binding, and should be included.

France

Projet d'article 20, paragraphe 1 – Durée des contrats d'exploitation : Il pourrait être utile de revoir la rédaction de ce paragraphe, dont le libellé et la longueur le rendent peu compréhensible en français. Suggestion de le rédiger comme suit : « Sous réserve des dispositions de la section 8.3 du contrat d'exploitation, la durée initiale maximale d'un contrat d'exploitation est de 30 ans. Cette limite est ajustée en fonction de la durée de vie économique estimée des activités d'exploitation de la catégorie de ressources visée par le plan de travail et comprend un délai raisonnable pour la construction des installations d'extraction minière et de traitement à l'échelle commerciale ».

Germany

- Germany considers it essential that also regional and regionally adapted requirements, as developed under applicable Regional Environmental Management Plans, inform decision-making with regard to exploitation contracts, as referred to in **Draft Regulation 20**. Environmental thresholds always need a consideration of cumulative effects of all relevant human activities.

Draft Regulation 20:
"[...] 6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract shall be renewed by the Council, provided that: [...] (b bis) The cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan; [...]."

Italy

DR20 (2)	The initial renewal period is not determined. Suggest to indicate a period limited to 5 years for assessing the feasibility of the renewal.	
DR20 (7)	This sets the possibility to prolong an exploitation contract for an undetermined amount of time.	Each renewal period shall be a maximum of 10 years for a maximum overall duration of the exploitation contract of 60 years.

Japan

Regulation 20: Terms of exploitation contracts

As the Contractor invests considerable time and money in exploration activities, exploitation activities have to be undertaken over a period of time sufficiently long enough for the Contractor to recover the prior investment. In light of sound commercial principle, the initial term of an exploitation contract for 30 years along with renewal period for 10 years is quite reasonable.

Procedure needs to be identified for applying for an additional Mining Area within the existing Contract Area by the same contractor as a result of exploration activities under the exploitation contract under regulation 18 (7).

Mexico

Tomando en consideración que para estos países los costos de inversión e implementación de planes de explotación resultan más elevados, los periodos de retorno y ganancia suelen tomar un periodo más extenso que para los países en desarrollo. Es por ello y con el objeto de incentivar una participación mayor y más activa de estos países, México considera que el periodo inicial de explotación autorizado por los contratos de explotación debería de ampliarse para los contratistas patrocinados por un país en vías de desarrollo. En este sentido se sugiere que el **proyecto de artículo 20** establezca un plazo mínimo inicial de 50 años, para las actividades de explotación de estos países.

En este mismo sentido, consideramos que una de las maneras de garantizar esta participación de los países en desarrollo, así como la libre concurrencia y competencia económica, es la de evitar las prácticas monopólicas, las concentraciones de las actividades de explotación y demás restricciones al funcionamiento de los mercados.

Micronesia

8. On Draft Regulation 20(1), the FSM prefers the previous formulation of the text that had an explicit reference to the ISA and the Contractor possibly agreeing to a period shorter than 30 years for the initial term of an exploitation contract. Text on a shorter initial term gives flexibility to all parties involved in light of changes in relevant knowledge and circumstances without discounting the possibility of granting a full initial term of 30 years.

   Additionally, with respect to Draft Regulation 20(3), it is the FSM's view that a Contractor applying to renew an exploitation contract must submit a revised Plan of Work unless otherwise determined by the Council of the ISA. This is particularly necessary if the initial term of contract can be for as long as 30 years, during which time there will likely be significant changes in relevant knowledge and circumstances that will justify modification of the Plan of Work. Draft Regulation 20(3) trusts the Contractor to make the determination as to whether a Material Change has occurred to necessitate the submission of a revised Plan of Work, but this does not provide for sufficient regulatory oversight by the ISA.

   Furthermore, with respect to Draft Regulation 20(6), and in line with the preceding comment, it is the FSM's view that the LTC and the Council of the ISA should have greater discretion when assessing an application to renew an exploitation contract than currently envisioned in this particular Draft Regulation. The FSM welcomes the criterion in Draft Regulation 20(6)(b) requiring the Contractor's compliance with the rules, regulations, and procedures adopted by the ISA to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area as a precondition for approval of an application to renew. However, there may be other considerations of an unforeseen nature that are not captured in this text but which the LTC and the Council should have discretion to consider in the assessment process.

Morocco

Article 20 : Durée des contrats d'exploitation	-Envisager de réduire la durée initiale de 30 ans pour les contrats d'exploitation.

Russian Federation

Regulation 20(6)	The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract shall be renewed by the Council, provided that …	It is suggested that this provision shall be read as follows: "*The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and the Council approves the renewal application provided that…*".	The need for clarification is justified by the difference in wording used in paragraphs 6 and 8 of this regulation: *«6. … and an exploitation contract shall be **renewed** by the Council …»;* *«8. … on the date that the Council **approves the renewal application**».*

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

DR 20 (former DR 21) Term of exploitation contracts: DR 20(6)(a): **How will be 'commercial and profitable quantities' be defined and by whom will it be determined whether this has been credibly demonstrated? What is the difference between 'commercial' and 'profitable'?*

See also our comments made under **Annex X Section 9.1(a)**.

Deep Ocean Stewardship Initiative

DR 20: Contracts for 30 years, renewable for 10 years: The rigidity of wording in this draft Regulation makes no room for flexibility and presumes towards renewal. It should be made clear that renewals cannot continue in perpetuity, and should give guidance as to when or how term lengths, including shorter than maximum terms, should be decided upon.

Deep Sea Conservation Coalition

DR 20: DSCC has long said that 30 years for a contract period is too long given the many uncertainties inherent in deep sea mining. Yet instead of reducing a possible contract time, the latest draft regulations in effect increased it (to a maximum of 30 years) by adding "and including a reasonable time period for construction of commercial-scale mining and processing systems," without adding countervailing considerations, such as uncertainties. And worse, the indefinite extensions are all but automatic, with no discretion: in effect, mining contracts are indefinite. DR 20(6) provides that "[t]he Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract shall be renewed by the Council, provided that […] (the only criterion relevant to the environmental protection is that "[t]he Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority…), and DR 20(7) provides that "7. Each renewal period shall be a maximum of 10 years", clearly envisaging more than one renewal period, with no qualification or limitation of the number of periods.

20	Term, Flexibility	The ability to change the EMMP and other necessary parts of the Plan of Work, particularly in light of new information, new developments and new science is crucial to flexibility and adaptability. DR 20 provides for a maximum term of 30 years. The ISA needs to be able to set a shorter period. The 1994 Agreement provides for a term of exploration contracts of 15 years (Annex, Section 1, Paragraph 9). This may be a guide for the default term. 30 years is a very long time given the current lack of knowledge of the deep-sea environment. Any further 10 year period should be able to be modified in the same way as the initial term. There must be a discretion for renewal, rather than the current "(6)… shall be renewed by the Council (subject to the conditions). For example, the environmental conditions, or numerous other issues may preclude a
		renewal. Any renewal should taken into account the Fundamental Principles. Currently, the contract must be renewed for consecutive 10 year terms indefinitely. This makes the contract in essence indefinite in its term. Public comment needs to be included in the review. These also apply to the contract Section 9 (renewal)

Institute for Advanced Sustainability Studies

31. We also recommend a clear provision, e.g. a new DR 20(4 bis), that stipulates a process whereby the LTC may require the Contractor to submit a revised Plan of Work, and that the Contractor shall do so accordingly. At the moment, only the Contractor has the option of doing so on its own accord pursuant to DR 20(3). Although DR 20(5) mentions that the LTC may propose amendments or revisions to the Council, this is not reflected again in DR 20(6). Accordingly, there should be an explicit power for the Council to only approve a renewal application if the Plan of Work is revised by the Contractor to satisfaction of the LTC and/or the Council.

32. Further, we suggest that the a new provision be added under DR 20(6)(b bis) to stipulate the following: "The cumulative environmental impacts do not exceed the thresholds set by pertinent regional environmental management plans as a result of the renewal, and that such renewal does not hinder the achievement of the strategic and regional environmental goals and objectives."

The Pew Charitable Trusts

~~Draft regulation 21~~ ~~Regulation 20~~

Term of exploitation contracts

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years~~. The Authority and the Contractor may agree to a shorter period in the light,~~ taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan~~.~~ and including a reasonable time period for construction of commercial-scale mining and processing systems.

DR20(1) has been confusingly re-drafted. The sub-clause that commences '*taking account of…*' speaks to criteria for determining the length of the contract term. But wording indicating that a term of less than 30 years may be set has been removed. Re-inserting language into DR20(1) that indicates or even encourages the possibility of a shorter term may provide comfort to stakeholders concerned with the ISA's ability to improve regulatory standards as scientific knowledge improves over time.

2. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than one year before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.

2.3. The Contractor shall supply such documentation as may be specified in the Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, the contractor shall submit a revised Plan of Work.

The Commission, in its cover note to the draft Regulations [ISBA/25/C/18], stated that it: "*took note of stakeholder comments of the need for a greater level of scrutiny at the time of a renewal application, including the submission of a revised plan of work.*" This note is not well-reflected in the amended DR20, which gives the **Contractor** the power to decide whether or not to submit a new Plan of Work. This is likely to make the decision a commercial (rather than regulatory) one. While a streamlined contract renewal process can be desirable, an appropriate level of regulatory control should be retained.

It is difficult to see how the ISA could access information adequate for the extension of an Exploitation contract without first requiring submission and review of a new or materially amended Plan of Work, particularly given that:

(i) the Contractor is legally bound to adhere to its Plan of Work and is not legally bound to comply with other paperwork that may be supplied under DR20(3) – and nor indeed to supply it, as Guidelines do not have legally binding force;

(ii) the previous Plan of Work would have been timebound within the initial contract period, and therefore would need alteration to extend beyond that time period;

(iii) there are likely to be new and unanticipated developments to take into account in renewal decisions that take place some 30 years after the original application; and

(iv) DR20 does not limit the number of contract renewals that may be granted and sets a presumption in favour of renewal (see DR20(6), which contains only limited circumstances in which a renewal will not be granted). As currently drafted, the Regulations could allow infinite contract extensions without any new Plan of Work being submitted, nor any consultation with Stakeholders.

The Regulations could therefore be amended to:

(a) require a new Plan of Work upon application to renew an Exploitation contract, unless it is determined to be unnecessary by the Council (upon recommendation from the Commission, who will draw upon criteria set by Standards or Guidelines), and

(b) clarify that Regulation 57 applies where a new Plan of Work is submitted under a renewal application.

4. The Commission shall consider such application to renew an exploitation contract at its next meeting, provided the documentation required under paragraph 23 has been circulated at least 30 Days prior to the commencement of that meeting of the Commission.

3.5. In making its recommendations to the Council under paragraph 6 below, including any proposed amendments to the Plan of Work or revised Plan of Work, the Commission shall take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58.

It is notable that reviews under DR58 are conducted by the Contractor itself (and the ISA Secretariat), and may not have occurred in up to five years prior to the extension application. It would seem sensible to include other items in the DR20(5) list that the Commission should take into account in considering a renewal application, including at least: performance assessments under DR58, annual reports, inspection reports, compliance notices, sponsoring State monitoring and compliance data, whistle-blower reports, and third-party legal actions against the Contractor for harm caused. There should also be a public comment period.

4.6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract shall be renewed by the Council, provided that:

(a) The Resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority;, including the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(c) The exploitation contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II.

The criteria for assessing an application for extension of a contract contained in DR20(6) are narrowly focused on Contractor behaviour. As currently drafted, absent a breach, a Contractor can obtain ten-year contract renewals almost by default. This presumption impedes the Council's oversight based on regional or strategic issues, for example consideration of cumulative or unforeseen impacts. The extension should be discretionary.

5.7. Each renewal period shall be a maximum of 10 years. [...]

Regulation 21
Termination of sponsorship

1. Each Contractor shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6, and to the extent necessary that it complies with regulations 6 (1) and (2).

2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination. Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General, except for termination due to a Contractor's non-compliance under its terms of sponsorship, in which case termination takes effect no later than 6 months after the date of such notification.

3. In the event of termination of sponsorship, the Contractor shall, within the period referred to in paragraph 2 above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a sponsoring State or States within the required period.

4. A sponsoring State or States is not discharged from any obligations accrued while it was a sponsoring State by reason of the termination of its sponsorship, nor shall such termination affect any legal rights and obligations created during such sponsorship.

5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.

6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted.

I - Members of the International Seabed Authority

Australia

2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination **and the date termination is to take effect taking into account the following timeframes:**.

(i) Termination **due to a Contractor's non-compliance under its terms of sponsorship, negligence or environmental damage: termination to take effect no later than 6 months after the date of receipt of the notification by the Secretary-General;**

(ii) **Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect** [~~of sponsorship takes effect~~] no later than 12 months after the date of receipt of the notification by the Secretary-General[~~, except for termination due to a Contractor's non-compliance under its terms of sponsorship, in which case termination takes effect no later than 6 months after the date of such notification~~].

2*bis*. If the reasons for termination of sponsorship include non-compliance under its terms of sponsorship, negligence or environmental damage, the Contractor must suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.

3. In the event of termination of sponsorship **due to reasons other than those listed at subparagraph 2(i) above**, the Contractor shall, within the period referred to in **sub**paragraph 2**(ii)** above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates

Commented [AUS44]: The reduction in the maximum termination period from 12 to 6 months for periods of non-compliance is a welcome amendment. However, given it is a maximum period (ie 'takes effect no later than…), it is not clear when the termination of sponsorship will commence. Recommend the text be amended to require the State terminating its sponsorship to include the termination date in the written notice provided to the Secretary-General.

Commented [AUS45]: Termination of sponsorship. If the State terminates its sponsorship on the basis that the Contractor is negligent or not meeting terms of the contract, or has withdrawn because of the environmental damage, the Contractor shouldn't be given the opportunity to find sponsorship elsewhere. Suggest there might need to be further consideration of when it would be appropriate to find alternative sponsorship.

6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend**, or continue the suspension of,** its mining operations until such time as **the Contractor has proved to the satisfaction of the Council that the reasons for the termination of sponsorship have been addressed and** a new certificate of sponsorship is submitted.

Commented [AUS46]: We note that there is no obligation for a Contractor to cease operations following termination of sponsorship (the Council may require suspension based on recommendations of the LTC). Suggest the provision be tightened to ensure that a Contractor is suspended if malfeasance occurred.

Chile

Proyecto de Artículo 21
Rescición del patrocinio

¿Son indefinidas las solicitudes de renovación de los contratos?

Chile considera que se debe establecer un tiempo máximo de explotación de un área por parte de un contratista.

Por ejemplo, un contrato y dos renovaciones. De lo contrario, si hay financiamiento no habría razón alguna para dejar de explotar y activar el plan de cierre. Ello permitiría, de alguna forma, restaurar el sitio explotado a como estaba antes de su explotación.

Chile considera que debe estipularse alguna restricción para aquellos contratistas que registren malas prácticas o generen algún daño ambiental, por una vez o en reiteradas ocasiones. Justamente, se trata de generar acciones que tiendan a prevenir, desincentivar y, en lo posible, eliminar malas prácticas.

China

7. Draft regulation 21

On paragraph 2 of this regulation, after a State asks to terminate its sponsorship, the termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General. However, this regulation only specifies the latest date for the termination of sponsorship to take effect. It is still unclear when the termination of sponsorship will take effect and how to determine that. Further clarification is required on this issue in the Exploitation Regulations.

Costa Rica

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an exploitation contract, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an exploitation contract.

Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of a termination of sponsorship.

RATIONALE: The paragraph proposed by Costa Rica was part of the previous draft regulations. Costa Rica finds no reason to eliminate it, as residual responsibility must remain in the regulations.

Cuba

1	Pág. 23, Sección 1, Art. 21, inciso 3	"3. En el caso de que se rescinda el patrocinio, el contratista dispondrá del plazo mencionado en el párrafo 2 del presente artículo para obtener uno o varios nuevos Estados patrocinantes de conformidad con los requisitos del artículo 6 y, en particular, a fin de cumplir lo dispuesto en el artículo 6 1) y 2). Ese Estado o Estados deberán presentar un certificado de patrocinio de conformidad con lo dispuesto en el artículo 6. El contrato de explotación quedará automáticamente resuelto si el contratista no logra obtener uno o varios Estados patrocinantes en el plazo prescrito."	Se propone 1) agregar: "Cuando se rescinda el patrocinio y se tenga ya acordado y presentado un nuevo patrocinador, no deberá detenerse las operaciones, aunque no se concluyera la formalización del nuevo patrocinador". O 2) valorar modificar el artículo 21.6 de manera que se puedan mantener las operaciones cuando uno de los Estados rescinda de su patrocinio.

Indonesia

	Regulation 21 **Termination of sponsorship** 1. Each Contractor shall ensure it is sponsored by a sponsoring State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6, and to the extent necessary to comply with regulations 6(1) and (2).	▪ Indonesia is of the view that members of the authority should develop thorough mechanism regulating the discharge of responsibility and obligation of contractor and its sponsoring state in the event of sponsorship be terminated or transferred due to breach of obligation	The formulation of DR 22 (6) to be transformed as follows: After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission which shall take account of the reasons for the termination of sponsorship,

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for terminating its sponsorship. Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General, save that where such termination is due to a Contractor's non-compliance under its terms of sponsorship, termination of sponsorship shall take effect no later than 6 months after the date of such notification. 3. In the event of termination of sponsorship, the Contractor shall, within the period referred to in paragraph 2 above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a sponsoring State or States within the required period. 4. A sponsoring State or States is not discharged from any obligations accrued while it was a sponsoring State by reason of the termination of its sponsorship, nor shall such termination affect any legal rights and obligations created during such sponsorship. 5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship. 6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission which shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted.	(non-compliance) as outlined in DR 22 (2), particularly in the light of the possibility of incident occurring during ad-interim period and assessment conducted by the Commission. ▪ In order to prevent the possibility of incidents occurring during ad-interim or transfer period, Indonesia suggests the provision in DR 22 (6) to be reformulated by requesting the Commission to immediately suspend contractor mining operations, especially in the light of the fact that the . ▪ DR 21 should also clarify how many times termination and transfer sponsorship may occur and how it would affect the credibility of contractor.	[especially in the case of termination of contract is attributable to breach of compliance], should require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted.

Jamaica

Regulation 21 Termination of sponsorship

1. Each Contractor shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6~~, and to the extent necessary that it complies with regulations 6 (1) and (2)~~.

2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination. Termination of sponsorship takes effect ~~no later than~~ 12 months after the date of receipt of the notification by the Secretary-General unless the notification specifies an earlier date, except for termination due to a Contractor's non-compliance under its terms of sponsorship, in which case termination takes effect no later than 6 months after the date of such notification.

4. A sponsoring State or States is not discharged from any obligations or deprived of any rights accrued while it was a sponsoring State by reason of the termination of its sponsorship~~, nor shall such termination affect any legal rights and obligations created during such sponsorship~~.

RATIONALE:

As regards DR 21(1), DR 6(1) and (2) use the word "shall" and, as such, where applicable they are not optional. The current phrasing of the draft text may, unnecessarily create ambiguity.

With respect to DR 21(2), the current wording does not require the sponsoring State to inform Council of the precise date on which sponsorship terminates. The proposed rewording, which draws on the previous version of the text, would provide a date certain.

With respect to DR 21(4), the reference to obligations in both the first and second parts of the paragraph raises questions as to whether distinct sets of obligations are contemplated or, alternatively, whether there may be unnecessary repetition. The proposed rephrasing presumes the latter.

Republic of Korea

Regulation 21 states that termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification. However, in accordance with the exploration regulation relating to the termination of sponsorship, we recommend the termination to take effect no later than 6 months after the receipt of the notification.

Russian Federation

Regulation 21		It is suggested to revert to the previous draft of this Regulation (July, 2018) and add para. 7 to it, which would state	This suggestion is justified by the need to provide legal clarity with regard to the obligations of a Contractor.
		that: "*7. Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship*".	

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

4. A sponsoring State or States is not discharged from any obligations accrued while it was a sponsoring State by reason of the termination of its sponsorship, nor shall such termination affect any legal rights and obligations created during such sponsorship consistent with the requirements of contractors, including as set forth in Annex III, Article 17.2.(e) of the Convention .

5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.

6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted.

Regulation 22
Use of exploitation contract as security

1. The Contractor may, with the prior consent of the sponsoring State or States and

Commented [A31]: The new language in the latter part of this para is confusing, It is important that it be consistent with the requirements of contractors, as set forth in Annex III, Article 17.2 (e) of the Convention.

Commented [A32]: Note: Language stating that "Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for performance of its obligations under its exploitation contract in the event of any termination of sponsorship" has been struck without explanation.

Advisory Committee on Protection of the Sea

DR 21 (former DR 22): Termination of sponsorship
We note with approval deletion of former DR 22(7), given the objections we made. We also note that the LTC is awaiting a report by the Secretariat on this DR.

Deep Sea Conservation Coalition

DR 21: Change of sponsorship: no provision is made for liability for existing damage when sponsorship is terminated. A former provision was deleted which has provided that "7. Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship." The LTC provided no explanation for this deletion.

21	Termination of Sponsorship	The sponsorship of a contractor may be terminated for cause such as breach or other malfeasance. It should lead to termination of contract: the situation has fundamentally changed. Termination of sponsorship should entail termination or at least suspension of contract, as it is a fundamental change under the Convention, whereas DR 21.3 was amended to add "nor shall such termination affect any legal rights and obligations created during such sponsorship." (Article 153(2)(b) provides for activities in the Area "when sponsored by such States". The latest draft has removed the wording "Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship." This should be re-inserted.

Institute for Advanced Sustainability Studies

33. Some clarification is requested for DR 21(2), in particular on the time period mentioned therein. The time periods mentioned therein are "no later than 12 months" from the date of receipt, and "no later than 6 months" in the case of non-compliance of the sponsorship terms. This gives rise to the question if a sponsoring State is entitled to determine a date of which the sponsorship is terminated, so long as it is within the applicable time period. Thus, can a sponsoring State terminate its sponsorship with immediate effect? Or does the time period here actually mean "no sooner than", thereby giving the Contractor in question some time to source for another sponsoring State? This has big implications, as provided for in DR 21(3), including automatic termination of the contract. As such, we suggest the use of clear wordings to avoid any confusion.

34. Furthermore, with respect to DR 21(6), we recommend that this provision be clarified to state clearly that under no circumstances shall a Contractor carry out mining operations without a subsisting certificate of sponsorship. At present, this is not clearly stated and may even lead to a perverse result whereby a Contractor may still carry out mining operations without it being answerable under any domestic court system and without any member State being answerable under international law.

The Pew Charitable Trusts

Regulation 21
Termination of sponsorship

Each Contractor shall ensure it is sponsored by a sponsoring State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6, and to the extent necessary to comply with regulations 6(1) and (2).

1. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for terminating its sponsorship. Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General, unlesssave that where such termination is due to a Contractor's non-compliance under its terms of sponsorship, termination of sponsorship shall take effect no later than 6 months after the date of such notification specifies a later date.

Where a State terminates sponsorship on the grounds of Contractor's non-compliance, the ISA might wish to reserve the right to conduct further inquiry, or its own review of the Contractor's operations and compliance.

2. In the event of termination of sponsorship, the Contractor shall, within the period referred to in paragraph 2 above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a sponsoring State or States within the required period.

3. A sponsoring State or States is not discharged from any obligations accrued while it was a sponsoring State by reason of the termination of its sponsorship., nor shall such termination affect any legal rights and obligations created during such sponsorship.

4. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.

5. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission and taking intowhich shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted.
Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship.

It is not clear why this residual liability wording was deleted from DR21.

It is difficult to see how DR21 as currently drafted takes proper account of the requirement for a Contractor to possess the nationality or be effectively controlled by the nationals of its sponsoring State (UNCLOS Article 153(2)). Obtaining a new sponsoring State may not be straightforward. To have met the nationality / effective control requirement for its previous sponsorship, a Contractor would be incorporated in and/or owned by nationals of, the first sponsoring State. Obtaining a second sponsoring State would most likely necessitate a significant change in corporate status (e.g. incorporation in the new sponsoring State) or a change of control, either effectively rendering the Contractor a new entity or transferee, or without 'effective control' under Article 153(2).

III-Stakeholders

Nauru Ocean Resources Inc.

NORI does not agree with the changes that have been made to Regulation 21. This Regulation now potentially creates a situation where a Contractor, through no fault of its own, has its exploitation contract terminated simply because a Sponsoring State stipulates an unreasonably short time period in its sponsorship termination notice submitted to the Secretary-General. Previously, the wording used in this section was "Termination of sponsorship takes effect 12 months after the date of receipt of the notification by the Secretary-General". However, the wording now reads "Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General".

This now leaves open the possibility that the termination of sponsorship can happen at any up to 12 months, including immediately.

Pursuant to Regulation 21(3), the exploitation contract terminates automatically if the Contractor fails to obtain a new sponsoring State within the time period set out in the notice given by the former sponsoring State to the Secretary-General. However, what if that State notifies the Secretary-General that it wishes to terminate its sponsorship with immediate effect? Alternatively, what if the time period detailed in its notice is unreasonably short and impractical? This would make it impossible for the Contractor to obtain a new sponsoring State, and would in turn result in the Contractor's exploitation contract being automatically terminated, even if the Contractor has done nothing to breach the exploitation contract.

It is strongly recommended that Contractor's be given at least 12 months to obtain a new Sponsoring State. Obtaining a new Sponsoring State is not something that can happen in a short period of time. Changing a Sponsoring State involves a number of practical and legal steps. For example, it involves having to incorporate and register a new entity, as well as negotiate new sponsorship terms with a new Government. The new Sponsoring State will also likely have minimum time periods needed for departments, authorities and Government officials to assess the sponsorship application (with such minimum time periods likely to be prescribed under legislation). As such, obtaining a new Sponsoring State cannot be done in a short period of time. Given the serious implications of not meeting the strict deadline (i.e. termination of the exploitation contract), and the significant investment that would be lost, it is strongly advised that there must be a reasonable period of time allowed to obtain a new Sponsoring State.

Regulation 22
Use of exploitation contract as security

1. The Contractor may, with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract for the purpose of raising financing to effect its obligations under an exploitation contract.

2. In seeking consent under this regulation, a Contractor shall disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the exploitation contract in the event of any default by the Contractor.

3. As a condition to giving consent under this regulation, the Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above shall agree either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the exploitation contract and these regulations, or to transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23.

4. In giving consent under this regulation, the Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

(a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted; and

(b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an exploitation contract, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an exploitation contract.

6. The Authority shall not be obliged to provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an exploitation contract.

I - Members of the International Seabed Authority

Australia

Regulation 22
Use of exploitation contract as security

1. The Contractor may, with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract for the purpose of raising financing to effect its obligations under an exploitation contract.

2. In seeking consent under this regulation, a Contractor shall disclose to the Council and Commission the terms and conditions of any such encumbrance referred

Commented [AUS47]: These provisions (reg 22, 23, 24) cover:
- Use of the exploitation contract as security;
- Transfer of rights and obligations;
- Change of control

These draft regulations need to be assessed carefully to ensure they are compatible with developing state preferential access, ie where commercial contractors with licenses obtained via developing states use contracts as collateral, it does not result in effective control passing to a third state, with no benefit accruing to the developing state.

Canada

1. The Contractor may~~, with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission,~~ mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an

2. ~~In seeking consent under this regulation, a~~ The Contractor shall disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the exploitation contract in the event of any default by the Contractor.

3. ~~As a condition to giving consent under this regulation, t~~The Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above shall agree either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the exploitation contract and these regulations, or to transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23.

4. ~~In giving consent under this regulation, t~~The Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

Chile

Proyecto de Artículo 22
Uso del contrato de explotación como garantía

Chile considera que es necesario establecer firmemente que cada contratista cuente con el patrocinio de uno o más Estados, para cualquier contrato de explotación. No sería optimo, bajo ninguna circunstancia, que existan contratistas que exploten los fondos marinos sin contar con el patrocinio de al menos un Estado parte.

Se trata de resguardar que las actividades de explotación en la Zona sean serias, responsables y concretas.

France

Projet d'article 22 – **« Utilisation d'un contrat d'exploitation comme sûreté »** : Il serait utile que la Commission juridique et technique (CJT) examine s'il y a des moyens supplémentaires, outre ceux qui sont déjà prévus dans l'article 22, pour s'assurer que le bénéficiaire de la garantie est réellement en mesure de reprendre les activités d'exploitation dans les mêmes conditions que celles prévues par le contrat. En effet, tel qu'il est actuellement rédigé, le premier paragraphe pourrait être mal compris. Il conviendra donc d'être vigilant sur sa reformulation.

Il sera également nécessaire de préciser au **paragraphe 3** l'organe dont il est question lorsqu'il est fait mention de « l'Autorité ».

Jamaica

Regulation 22 Use of exploitation contract as security

3. As a condition to giving consent under this regulation, the Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above shall agree either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the exploitation contract and these regulations in which case the beneficiary must fulfil the requirements of paragraphs 4 and 5 of regulation 23, or that such beneficiary shall~~to~~ transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23 as determined by the Commission.

RATIONALE:

The proposed amendments are for purposes of clarity based on the assumption that the provision was designed to convey that the beneficiary or transferee must objectively satisfy the requirements of the Draft Regulations as determined by the LTC.

Netherlands

- Regulation 22

Use of exploitation contract as security

Paragraph 1

1. The Contractor may, with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract for the purpose of raising financing to effect its obligations under an exploitation contract.

Comment: With the current formulation of this paragraph there seems to be a risk that the exploitation contract could be used as a security for a purpose other than the financing of the exploitation obligations. In order to avoid what seems to be a loophole, the Netherlands would suggest the following amendment (**in bold**):

*The Contractor may, **solely** for the purpose of raising financing to effect its obligations under an exploitation contract and **only** with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract.*

Russian Federation

Regulation 22(4)(a)	a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted;	It suggested to clarify this provision with respect to words "*any*" and "*standards for the extractive industries*".	To avoid legal uncertainty, the vagueness and ambiguity of the used wording should be eliminated. This would enable the Council to properly assess the beneficiary of the encumbrance for the purposes of expressing its consent.
Regulation 22(4)(b)	b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.	It is suggested to clarify this provision with respect to words "*properly regulated through a national financial conduct authority*".	To avoid legal uncertainty, the vagueness and ambiguity of the used wording should be eliminated. This would enable the Council to properly assess the beneficiary of the encumbrance for the purposes of expressing its consent.

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

Deep Sea Conservation Coalition

22	Use of exploitation contract as security	This provision raises the possibility of a contract being pledged as security, and therefore of the mortgagor stepping in the place of the contractor or selling the contract: then the provisions ensuring the suitability of the contractor in Draft Regulation 13 are pointless.

Institute for Advanced Sustainability Studies

35. With respect to DR 22(3), we are concerned with the fact that the beneficiary of any encumbrance will, upon foreclosure, be able to undertake exploitation activities despite not having to meet the requirements under DR 5 (which deals with qualified applicants), DR 6 (which deals with certificate of sponsorships), DR 13 (which deals with the assessment of applicants), and DR 15 (which deals with the LTC's recommendations for the approval or disapproval of a Plan of Work). This has quite serious implications, as it is unknown if such a beneficiary is in possession of the necessary technical ability to conduct such activities (in particular to manage the environmental effects arising therefrom).

36. As for DR 22(6), we recommend deleting the words "be obliged to".

III-Stakeholders

Global Sea Mineral Resources

DR 22 (4)	The Council needs to give consent prior to recording a security interest on the contract.	Consent could be issued by the Secretary General. Please note: - The Secretary General has all the necessary information to approve the security interest, so it is best placed to give timely consent on this regard. - As the Council has two sessions per year, an approval by the Council may largely delay the registration of the security interest.

Regulation 23
Transfer of rights and obligations under an exploitation contract

1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission.

2. An application for consent to transfer the rights and obligations under an exploitation contract shall be made to the Secretary-General jointly by the Contractor and transferee.

3. The Commission shall consider the application for consent to transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. The Commission shall consider whether the transferee:

(a) Meets the requirements of a qualified applicant as set out in regulation 5;

(b) Has submitted a certificate of sponsorship as set out in regulation 6;

(c) Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a Material Change to the Plan of Work;

(d) Has paid the administrative fee as set out in appendix II;

(e) Meets the criteria set out in regulations 12 (4) and 13, and has provided Environmental Plans that comply with regulation 13 (4) (e); and

(f) Has deposited an Environmental Performance Guarantee as set out in regulation 26.

5. The Commission shall not recommend approval of the transfer if it would:

(a) Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or

(b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract.

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not unreasonably withhold consent to a transfer if the requirements of this regulation are complied with.

8. A transfer is validly effected only upon:

(a) Execution of the assignment and novation agreement between the Authority, the transferor and the transferee;

(b) Payment of the prescribed transfer fee pursuant to appendix II; and

(c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.

9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the transferee by their duly authorized representatives.

I - Members of the International Seabed Authority

Canada

~~1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission.~~

2. ~~An application for consent to transfer the rights and obligations under an exploitation contract shall be made to t~~The Secretary-General will be informed jointly by the Contractor and transferee of the transfer of the rights and obligations under an exploitation contract.

3. The Commission shall review and confirm the ~~consider the application for consent to~~ transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. The Commission shall ensure that~~consider whether~~ the transferee:

5. The Commission shall not ~~recommend approval of~~sanction the transfer if it would:

(a) Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or

(b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract~~.~~ Or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally.

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not ~~recommend consent to~~sanction the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall ~~recommend approval of~~confirm the transfer ~~application for consent~~ to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not ~~unreasonably~~ withhold ~~consent to a~~sanctioning of the transfer if the requirements of this regulation are complied with.

France

Projet d'article 23 – Transfert des droits et obligations découlant du contrat d'exploitation : La transition entre les paragraphes 1 et 2 n'est pas claire quant à la façon dont la Commission est saisie. Le paragraphe 2 pourrait éventuellement préciser que « toute demande de consentement au transfert des droits et obligations découlant d'un contrat d'exploitation est adressé conjointement par le contractant et le cessionnaire au Secrétaire général**, qui se charge de la communiquer à la Commission.** »

Jamaica

Regulation 23 Transfer of rights and obligations under an exploitation contract

We propose the reinsertion of paragraph 10 of the former version of the text:

> "10. The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary-General or a duly authorized representative executes the assignment and novation agreement."

RATIONALE:

DR 20(8) provides: "Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application." (added emphasis)

The balance currently reflected in the Draft Regulations allows for an adjustment of contractual terms at the time of renewal. Should there be a transfer of a contract this would also be an appropriate time to introduce any adjustments that may have been made to the standard terms and conditions.

Republic of Korea

Regulation 23 para 5 stipulates that monopolization shall not be allowed, but this can apply only to polymetallic nodules, since Annex 3, Article 6(3)(c) of the United Nations Convention on the Law of the Sea only mentions polymetallic nodules and not the polymetallic sulphides nor cobalt-rich ferromanganese crusts. Therefore, since the exploitation regulations cover all of them, namely, polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts, the exclusive criteria for polymetallic sulphides and cobalt-rich ferromanganese crusts needs to be added to this Regulation.

Russian Federation

Regulation 23(1)	A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part	It is suggested to amend the text of this paragraph with the word "*and with notification to the sponsoring State or States*" and read it as follows: "*A*	The amendment of this provision is necessary to establish internal links with other provisions of the Regulations, in particular, paragraphs 1 and 2 of Regulation 21.
	only with the prior consent of the Council, based on the recommendations of the Commission.	*Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission and with notification to the sponsoring State or States*".	
Regulation 23(8)(c)	c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.	It is suggested to omit this provision.	Requirement of the transfer being effective only upon its recording in the Seabed Mining Register leads to the question of legal significance of the Register. In the case that the recording of certain information in the Register has an informative nature, then the mentioned provision is excessive. If, as appears from the text of this provision, the recording in the Register is a registration of a right, i.e. a legal fact giving rise to legal effects, a similar requirement should be included for an exploitation contract to enter into force. In the latter case, this should be explicitly stated in Regulation 17. However, as it follows from Regulation 92, the Register has an informative nature.

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

(c) Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a Material Change to the Plan of Work;

(d) Has paid the administrative fee as set out in appendix II;

Commented [A33]: Material Change is not adequately defined in the regulations.

(b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract.

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer

Commented [A34]: Recommend considering whether this text is already contained within Article 6(3)(c) and, thus, redundant.

Deep Sea Conservation Coalition

23	Transfer of rights and obligations under an exploitation contract	There must be a discretion to refuse a transfer: the identity of the contractor is very important. Currently DR 23(7) reads the LTC "shall recommend approval of the application" if criteria are satisfied.

Institute for Advanced Sustainability Studies

37. Concerning DR 23(4)(e), we recommend replacing the words "in regulations 12(4) and 13" with "in regulations 12 and 13", consistent with an earlier recommendation above.

38. With respect to DR 23(5), we recommend a new paragraph (c) which states "If any circumstances under DR 15(2) or (3) are applicable". Note that this insertion should also address the suggestions we made above in relation to DR 15.

III-Stakeholders

Global Sea Mineral Resources

DR 23 (7)	The Council needs to give consent for the transfer of Contractor's rights and obligations under an exploitation contract.	Consent could be issued by the Secretary General. Please note: - The Secretary General has all the necessary information to approve the transfer, so it is best placed to give timely consent on this regard. - As the Council has two sessions per year, an approval by the Council may largely delay the transfer of the rights and obligations under the Contract.

Regulation 24
Change of control

1. For the purposes of this regulation, a "change in control" occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, where practicable, notify the Secretary-General in advance of such change of control, but in any event within 90 Days thereafter. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:

(a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect;

(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or

(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.

4. Where the Secretary-General determines that, following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall submit a report of its findings and recommendations to the Council.

I - Members of the International Seabed Authority

Australia

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall [~~where practicable,~~] notify the Secretary-General in advance of such change of control, [~~but in any event within 90 Days thereafter~~]. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:

Commented [AUS48]: Draft regulation 24 enables contractors to provide notification to the Secretary-General after a change of control. Australia considers the Secretary-General should be notified in advance of the change of control taking place, not after. There should not be circumstances whereby an activity is taking place without the Secretary-General having full confidence that the environmental performance guarantee is being met. The regulations should also cover what happens if the change of control is not deemed acceptable by the Secretary-General, eg whether the contract ceases immediately

Belgium

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

Commented [VS42]: As with the exploitation contract itself (see comments under Regulation 17), Belgium wishes that any renewal of an exploitation contract shall also be countersigned by the sponsoring State, in this capacity.

China

8. Draft regulation 24

Paragraph 1 of this regulation states that a "change in control" occurs where there is a change of 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership. In practice, however, one party can gain control over a company with less than 50 per cent of the holding. Further study is needed on how to determine "change of control". In addition, paragraph 2 provides that the Contractor shall notify the Secretary-General where there is a change of control. It is worth noting that a change of control may pertain to the obligations of the sponsoring State. Therefore, the Contractor should also notify the sponsoring State in case a change of control occurs. A change of control may further lead to the change of the sponsoring State, and it is suggested that relevant provisions be put in place accordingly.

Costa Rica

1. For the purposes of this regulation, a "change in control" occurs where there is a change in the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change of the ownership of the entity providing an Environmental Performance Guarantee, which by bringing the ownership to 50% constitutes a change in the effective control.

RATIONALE: Costa Rica wants to highlight the difference between change of control as it was established in the draft regulation regulation and the effective change of control that can happen under different circumstances.The LTC draft regulation established that a change in 50% of the ownership is needed for a change of control to take place, when the truth is that if a corporation owns 30% of the shares, by acquiring another 20% it would bring about an effective change of control.Costa Rica's wording pretends to reflect when a change in the effective control happens.

Indonesia

NO	DRAFT REGULATION REVISI ISBA/25/C/WP.1 – (UNIFIED TEXT)	COMMENTS	PROPOSED TEXT CHANGES
	Regulation 24 **Change of control** 1. For the purposes of this regulation, a "change in control" occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee. 2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, where practicable, notify the Secretary-General in advance of such change of control, but in any event within 90 Days thereafter. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control. 3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may: (a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect; or (b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these Regulations, in which case regulation 23 shall apply; or (c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with	▪ With respect to provision on change of control, Indonesia holds view that the term "where practicable" and 90 days window of time proposed in DR 24 may render ISA ineffective in discharging effective control role. The provision may also produce complexity to impose financial responsibility to contractor whenever liability occur during assessment on capability of the new controller to meet its financial obligation as outlined in the contract. ▪ In addition, given that the process of transferring the majority of control within business entity normally demand meticulous and time-consuming process and that information technology has provided means to communicate virtually from any part of the globe, Indonesia proposes the phrase " where practicable" and " 90 days thereafter" to be removed from R 24 and be replaced with another phrase such as phrase used in DR 36 that is "as soon as reasonably practicable but no later than 24 hours"	R 24 (1): Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, ~~where practicable~~, as soon as reasonably practicable but no later than 24 hours, notify the Secretary-General in advance of such change of control, but in any event ~~within 90 Days thereafter~~. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.

Italy

DR24 (4)	Also The Commission should be able to rise questions if, following a change of control, a Contractor may not be able to prove to have the financial capability to meet its obligations.	Where the Secretary-General determines that following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission itself shall inquire the Secretary-General about the financial capability of a Contractor, following a change of control. The Commission shall make a report of its findings and recommendations to the Council.

Jamaica

Regulation 24 Change of control

1. For the purposes of this regulation, a "change in control" occurs where there is a change in ~~50 per cent or more of~~ the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be,

that results in the holding of the beneficial ownership of 50% or more of the Contractor or the controlling interest in the Contractor by an entity that previously held a minority share or had no prior equity interest, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall~~, where practicable,~~ notify the Secretary-General in advance of such change of control, and in the case of an entity providing an Environmental Performance Guarantee, no later than ~~but in any event~~ within 90 Days thereafter. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.

RATIONALE:

The definition of 'change in control' as provided in DR 24(1) is inadequate in that a change of much less than fifty per cent (50%) of the ownership of a Contractor may result in a change of effective control depending on the initial division of ownership interests. This may have implications for, *inter alia*, sponsorship. DR 6(2) provides that where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship. Thus where there is a change in effective control additional States may be required to assume a sponsorship role.

Notification should be made of the proposed change of control of the Contractor prior to the event.

Micronesia

9. On Draft Regulation 24(1), a "change of control" should not be limited to an instance where ownership changes by 50 percent or more, but should also include an instance where there is a change in ownership that is less than 50 percent in that particular case but which results in a cumulative amassing of ownership of 50 percent or more. A simple tweak to the language in this Draft Regulation can resolve this—i.e., "a 'change in control' occurs where is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee."

   Additionally, regarding Draft Regulation 24 more generally, there is too much regulatory authority given to the ISA Secretary-General with respect to determining whether there has been a "change of control" without sufficient oversight by (an)other organ(s) of the ISA. There should also be a requirement that the decision-making entity take into consideration the determination by the relevant Sponsoring State (including relevant ministries and agencies therein) that a "change of control" has actually taken place with respect to the sponsored Contractor.

Netherlands

- Regulation 24

Change of control

Paragraph 3

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:
(a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect;
(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or

Comment: Matters pertaining to the institutional functioning under the draft regulations need to be further clarified. This relates in particular to the appropriate allocation of powers and functions to the different organs of the Authority (cf. paragraph 3).

Poland

DR 24 (1) PL is not sure whether "a change of 50 per cent or more of the ownership" is the best way of defining "change in control". In some cases a change of only 1 percent of the ownership may result in a change of control. PL believes that this provision requires further work.

Russian Federation

Regulation 24	The regulation in the new edition is supplemented by paragraph 4: "Where the Secretary-General determines that, following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall submit a report of its findings and recommendations to the Council"	It is proposed to supplement this paragraph with possible varies for the decisions of the Council in such a situation. The current version of the paragraph looks unfinished.	To ensure that the content of the document is clear and unambiguous.

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

Deep Sea Conservation Coalition

DR 24: This still provides that "a "change in control" occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee." This is absurd: a change in control can occur with 1% or any other share far below 50% (e.g. if one party owns 49.9% and one owns 50.1%, a change of control could take place by 0.2%)

A change of control is important as for financing/security reasons, for instance, or through sale and purchase, a completely separate party may end up carrying out the mining than that which applied for and was granted the Contract. This may also require a new sponsorship arrangement with a different sponsoring State. Yet DR 24 now only provides that "4. Where the Secretary-General determines that following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall make a report of its findings and recommendations to the Council." There is no provision for discretion other than whether "the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee". Instead, DR 24 should provide that a change of control always triggers a Council review and prior consent under DR 23.

24	Change of Control	A change in control does not require a change in 50% of the ownership. A change in control can occur with a far smaller change in ownership: if one party owns 49%, a change of control could take place with transfer of 1% ownership. New Paragraph 4 reads "Where the Secretary-General determines that following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission
		accordingly. The Commission shall make a report of its findings and recommendations to the Council." Change of control relates to more than financial capability – it is fundamental to the Plan of Work. This needs to be fundamentally revised as discussed in the context of effective control.

Institute for Advanced Sustainability Studies

39. In reference to DR 24(2), we suggest that this information be disclosed to member States and disseminated on the Authority's website for general scrutiny.

40. DR 24(3)(a) should not only be restricted to financial capability, but also extended to include technical capability. Further, there is a need for a new paragraph (d) here to include a determination that the sponsoring State that has issued the initial certificate of sponsorship still maintains effective control over the sponsored entity following the change of control.

41. We are concerned with DR 24(3), in which the Secretary-General is given decision-making powers to make the determinations stated therein. We reiterate our view that the Secretariat should only perform administrative functions. Hence, the "Secretary-General" should be replaced with the "Commission" and DR 24(4) should be amended accordingly. If this suggestion is not accepted, we recommend that DR 24(4) should also make reference to an outcome where the Secretary-General makes a finding that the Contractor still has the financial (and technical) capacity to meet its obligation under the exploitation contract, whereby it is more critical for this finding to be subjected to the scrutiny of the Commission and the Council as opposed to the reverse finding. In simple words, there needs to be check and balance mechanisms in place whenever the Secretary-General is given decision-making powers that are not of a pure administrative nature.

The Pew Charitable Trusts

Regulation 24 Change of control

1. For the purposes of this regulation, a "change in control" occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee. The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary-General or a duly authorized representative executes the assignment and novation agreement.

Several Member States in 2018 submissions requested clarification on the meaning of 'change of control' and 'effective control'. This provision could still benefit from re-examination. A change in control does not require a change in 50% of the ownership. A change in control can occur with any change in ownership: if one party owns 49.9%, a change of control could take place if that party acquires a further 0.2% ownership)

Draft regulation 25
Change of control
1.

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, where practicable, notify the Secretary-General in advance of such change of control, but in any event within 90 Days thereafter. The Contractor shall provide the

Secretary-General with such details as he or she shall reasonably request of the change of control.

3.After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:

(a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect; or

(a)(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these Regulations, in which case regulation 2423 shall apply; or

(b)(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 2726, within such time frame as the SecretaryGeneralSecretary-General shall stipulate.

4.Where the Secretary-General determines that following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall make a report of its findings and recommendations to the Council. ~~For the purposes of this regulation, a "change in control" occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.~~

A change of control may result in a new entity owning or performing the Exploitation contract. As such, the considerable discretionary power retained by the Secretary-General in this DR24 might benefit from additional checks, or Standards and Guidelines. A decision regarding financial capability may be better reserved for the Commission or other expert body. The examination should not be restricted to financial capability. Effective control is another important criterion.

III-Stakeholders

Global Sea Mineral Resources

DR 24 (3) (b)	In the event of a change of control, the Secretary-General may choose to treat a change of control as a transfer of rights and obligations, pursuant to regulation 23.	Treating a change of control as a transfer of rights and obligations may not render the desired effects. In an event of change of control, the controlling entity of a contractor changes while the identity, qualifications and assets of the contractor, in principle, remains the same. This is different than transferring Contractor's rights and obligations under the contract to Contractor's controlling entity. If the regulation on transfer of Contracts (23) is applied to Contractor's controlling entity, as a transferee, it can be the case that such controlling entity does not fulfil all conditions, while the initial Contractor remains compliant with the required criteria. It is suggested to elaborate further on how the transfer of rights and obligations provisions would be applied to a change of control.

Section 2
Matters relating to production

Regulation 25
Documents to be submitted prior to production

1. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines. In the light of the Feasibility Study, the Secretary-General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation 57 (2). If he or she determines that any such Material Change needs to be made, the Contractor shall prepare and submit to the Secretary-General a revised Plan of Work accordingly.

2. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57 (2) shall apply mutatis mutandis to such Environmental Plans if the modification to the Environmental Plans constitutes a Material Change, and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.

3. Provided that, where applicable, the procedure under regulation 11 has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine the Feasibility Study and any revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 14, continues to meet the requirements of regulation 13, it shall recommend to the Council the approval of the revised Plan of Work.

5. The Council shall consider the report and recommendation of the Commission relating to the approval of the revised Plan of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

6. The Contractor may not commence production in any part of the Area covered by the Plan of Work until either:

(a) The Secretary-General has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2); or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph 5 above; and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26.

I - Members of the International Seabed Authority

Australia

3. Provided that, where applicable, the procedure under regulation 11 has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine the Feasibility Study and any revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

Commented [AUS49]: Documents to be submitted prior to production. The provision sets down another 30 day timeframe ahead of the next Commission meeting for consideration of revised documents. If the Plan of Work has been revised significantly, this may not be sufficient.

China

9. Draft regulation 25

In paragraph 1 of this regulation, the Secretary-General shall, on the basis of the feasibility study provided by the Contractor, determine whether any Material Change needs to be made to the Plan of Work. In view of the fact that Material Change is an important but not urgent matter, it seems more appropriate for the Commission to assume this function. It is proposed that paragraph 1 of this regulation be revised as: "At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines. In the light of the Feasibility Study, if the Secretary-General considers any Material Change needs to be made to the Plan of Work, he or she shall submit this matter to the Commission. If the Commission determines as such, the Contractor shall prepare and submit to the Commission a revised Plan of Work accordingly."

Costa Rica

Regulation 25
Documents to be submitted prior to production

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 14, continues to meet the requirements of regulation 13, it shall recommend to the Council the approval of the revised Plan of Work. If the Commision determines that it does not meet said requirements, the procedure established in Regulation 14 (b) will be applied.

RATIONALE: The previous draft proposal does not specify what would happen if the revised Plan of Work doesn't meet the requirements, Costa Rica's proposal addresses said situation.

Germany

- Before commencement of commercial production, in particular the environmental plans should have to be revised by the contractor. Thereafter, (only) the revised parts should be considered by the Commission, and finally approved by the Council. In case of substantial changes, the public needs to be involved in this approval procedure (**Draft Regulation 25 para 1**, in connection with the amendments to Draft Regulation 57 para. 2).

  Furthermore, it is Germany's view that a Test Mining Study should be among the list of documents to be submitted prior to production.

Draft Regulation 25:
"1. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines as well as the results of the test mining study pursuant to Regulation [48bis] Paragraph 2 or 3, as applicable, and in accordance with Annex [IVter]. In the light of the Feasibility Study and the test mining study, the Secretary-General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation 57 (2). If he or she determines that any such Material Change needs to be made, the Contractor shall prepare and submit to the Secretary-General a revised Plan of Work accordingly. [...]."

Japan

Regulation 25: Documents to be submitted prior to production

Japan supports for the revised text with reference to mutatis mutandis application of regulation 57(2) in case the proposed modification of the Environmental Plans prior to production. Environmental Plans need to be modified from time to time in order to improve their effectiveness. If environmental plans with minor modifications are required to go through the same procedures which the original plans went through, this would significantly delay commencement of Commercial Production and may affect a project itself. To avoid such a procedural delay, Japan considered that it would be better if such process is limited to the case of "Material Change." We welcome the revision.

Netherlands

- Regulation 25

Documents to be submitted prior to production

Paragraph 1

1. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines. In the light of the Feasibility Study, the Secretary-General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation 57 (2). If he or she determines that any such Material Change needs to be made, the Contractor shall prepare and submit to the Secretary-General a revised Plan of Work accordingly.

Comment: Paragraph 1 addresses the Material Change to a Plan of Work based on a Feasibility Study.

"Feasibility Study" means a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

Based on such a Feasibility Study, the Secretary-General can determine whether any Material Change needs to be made to the Plan of Work. If the Secretary-General, on the basis of the Feasibility Study, determines that a Material Change is needed to Plan of Work, Regulation 57(2) applies.

"Material Change" means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.

Questions:

- How can/will the Secretary-General assess the comprehensiveness of the Feasibility Study?
- How can/will the Secretary-General make the determination that would address the actual content of a Material change?

Paragraph 2

2. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57(2) shall apply mutatis mutandis to such Environmental Plans ~~if the modification to the Environmental Plans constitute a Material Change,~~ and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.

Comment: Paragraph 2 follows on from paragraph 1 where the Feasibility Study has been the basis for the Material Change to the Plan of Work: *the contractor is required to prepare and submit to the Secretary-General a revised Plan of Work* (last sentence of paragraph 1). In paragraph 2,

this revised Plan of Work also includes a revision of the Environmental Plans. We suggest the deletion of the text in yellow since this seems circular. The Feasibility Study that led to the decision for a Material Change of the Plan of Work should necessarily have covered a modification of the Environmental Plans ("*…. a comprehensive study of a mineral deposit in which all ……, environmental and other relevant factors are considered*" cf. definition above).

Paragraph 3

3. Provided that, ~~where applicable,~~ the procedure under regulation 11 has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine the ~~Feasibility Study and any~~ revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

Comment:

- Use of the words "where applicable" in paragraph 3, seems superfluous since revision of the Environmental Plans shall be dealt with in accordance with regulation 11 (cf. paragraph 2 above).
- What is the purpose of having the Commission examine the Feasibility Study? According to the process described in paragraphs 1 and 2, the Feasibility Study is the basis for considering a Material change to the Plan of Work and a subsequent revised Plan of Work. If anything, the Commission should be involved in the examination of the Feasibility Study at the very beginning of the process under paragraph 1.
- We suggest adding a role for the Commission to examine the Feasibility Study, under paragraph 1.
- We suggest the deletion of the text marked in yellow.

Paragraph 6

6. The Contractor may not commence production in any part of the Area covered by the Plan of Work until either:
(a) The Secretary-General has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2); or

Comment: The questions posed in relation to paragraph 1 above, are equally relevant to this paragraph 6 (a):

Questions:

- How can the Secretary-General make the determination that would address the content of a Material Change?

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

DR 25(2): We are pleased to see that any Material Changes to the Environmental Plans will be fed back into DR 11 providing opportunity for stakeholder comment.

DR 25(2) and 25(6)(a): To ensure transparency in the decision as to what constitutes a Material Change, documentation should be provided whenever a change is allowed to the Environmental Plans but not considered a Material Change. Stakeholders should be made aware of 1) what the change is and 2) the rationale of the Secretary General as to why it was not considered a Material Change. Additionally, determining whether or not there is a "Material Change" should be performed by the LTC, in particular if the finding is 'no Material Change'; or if it remains solely with the Secretary-General, then it must be endorsed by the LTC or Council.

Deep Sea Conservation Coalition

25	Documents to be submitted prior to production	This allows revision of Plans of Work. While Material Changes are addressed under DR 11, the Feasibility Study and subsequent determinations should be subject to transparency.

42. In relation to DR 25, we are gravely concerned with the wide and discretionary decision-making powers that this provision confers upon the Secretary-General. Once again, we reiterate our view that the Secretariat is established under the Convention as the administrative arm of the Authority. We consider the determination of whether any 'Material Change' needs to be made to the Plan of Work prior to the commencement of commercial production to be beyond the scope of an administrative function, and is in fact a substantive function. We recommend that the "Secretary-General" be replaced with the "Commission" in DR 25(1). Further, where the LTC finds that no 'Material Change' is needed, we suggest that this finding needs to be endorsed by the Council. If this suggestion is not accepted, we recommend that a finding by the Secretary-General that no 'Material Change' is needed is then forwarded to the LTC (and preferably then to the Council) for endorsement. We reiterate our view that ample check and balance mechanisms are necessary whenever the Secretary-General exercises decision-making powers. Otherwise, such discretion may be considered as unfettered.

43. Similarly, DR 25(6)(a) should be amended accordingly to replace "Secretary-General" with "Commission", and should read as follows: "The Commission has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57(2), and this determination has been endorsed by the Council; or […]".

44. Pertaining to DR 25, we wish to put forward a recommendation that a Contractor shall not be permitted to commence actual production until it has successfully demonstrated, via a full-scale test mining activity, that it has the capability to manage the harmful effects to the marine environment that would potentially arise from such actual commercial production. In this regard, a Contractor shall be required to submit a 'Test Mining Report' at least 12 months prior to the proposed commencement of production in a Mining Area. This Test Mining Report shall be considered by the LTC, which in turn shall make recommendations to the Council. If the Council is satisfied that the Contractor has successfully demonstrated its capability to manage the potentially ensuing environmental harm, it shall allow the commencement of production. We recommend the insertion of a new provision under DR 25 (6 bis) to give effect to this recommendation, as well as the creation of a new Annex III bis to particularize what a Contractor would need to successfully demonstrate. We suggest that a study or workshop be convened to consider this topic.

The Pew Charitable Trusts

~~Draft regulation 26~~Regulation 25

Documents to be submitted prior to production

1. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines. In the light of the Feasibility Study, the Secretary-General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation ~~55~~57 (2). If he or she determines that any such Material Change needs to be made, the Contractor shall prepare and submit to the Secretary-General a revised Plan of Work accordingly.

DR25(1) requires submission of a feasibility study 12 months before mining commences, and gives the Contractor an opportunity to revise the Plan of Work at that point. It is unclear why the submission of the feasibility study is not required at the application stage. The Contractor is likely to have conducted feasibility studies prior to applying for Exploitation. It seems onerous and uncertain to review of a Plan of Work so soon after the initial contract execution. The Regulations could be amended to enable an applicant to include its feasibility study at contract application stage.

2. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57(2) shall apply mutatis mutandis to such Environmental Plans if the modification to the Environmental Plans constitute a Material Change, and such Environmental Plans shall be dealt with in accordance with the procedure set out in ~~regulations~~regulation 11 ~~and 14~~.

DR25(2) appears to require a revised Plan of Work to undergo a full consultation, Commission review and Council decision (under DRs 57, and 11-14) only if environmental plans are altered at this stage. An entity could thereby obtain a contract based on unsupported or estimated feasibility information, and then request changes to its Mining or Financial Plan based on subsequent assessments of prospectivity or recovery rates. This could significantly reduce the proceeds derived by the ISA (and humankind), without stakeholder input or an opportunity for the Council to re-consider its original decision.

3. Provided that, where applicable, the procedure under ~~regulations~~regulation 11 ~~and 14~~ has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine the Feasibility Study and any revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 1514, continues to meet the requirements of ~~regulations~~regulation 13 ~~and 14 (2),~~, it shall recommend to the Council the approval of the revised Plan of Work. [...]

It would be helpful if DR25 also covered what happens if the Commission determines that the revised Plan of Work does *not* meet the necessary requirements.

Regulation 26
Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the Guidelines, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

(b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

(c) The post-closure monitoring and management of residual Environmental Effects.

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant Guidelines.

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated, where:

(a) The Closure Plan is updated in accordance with these regulations; or

(b) As the result of:

(i) A performance assessment under regulation 52;

(ii) A modification of a Plan of Work under regulation 57; or

(iii) A review of activities under a Plan of Work under regulation 58; and

(c) At the time of review by the Commission of a final Closure Plan under regulation 60.

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

(a) The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee; or

(b) The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform and non-discriminatory manner.

8. The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee.

I - Members of the International Seabed Authority

Australia

Regulation 26
Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the Guidelines, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

(aa) The repair of an in-service submarine cable or pipeline in, or adjacent to, the application area that was damaged as a result of the Contractors activities;

(ab) Responding to, and remediating, a significant environmental incident;

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated, where:

(a) The Closure Plan is updated in accordance with these regulations; or

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(d) Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.

7. The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform [~~and non-discriminatory~~] manner **taking into account relevant factors such as: a Contractor's level of experience, record of past performance (ie environment or safety record), and the location of the activity, including proximity to in service cables or pipelines.**

8. The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee.

Commented [AUS50]: In principle Australia supports the Environmental Performance Guarantee (EPG) but, as highlighted in the Note of the Legal and Technical Commission of 10 July 2018, we endorse the need for the ISA to explore further the objective and purpose of such a guarantee (page 8), together with the rationale and implications of this regulation.

Commented [AUS51]: This provision states the form and amount of the EPG shall reflect the likely costs of: premature closure of exploitation activities; decommissioning and final closure of exploitation activities; and the post closure monitoring and management of residual environmental effects. We recommend that it also include the likely cost of responding to and remediation in the event of a significant environmental incident. Text proposed in subparagraph 2(ab).

Commented [AUS52]: This provision, which deals with reviewing and updating the amount of the EPG, does not currently reflect the need to take into account inflation and other market/economic conditions that can impact on the amount of the guarantee that must be held. Text proposed in subparagraph 4(d).

Commented [AUS53]: This provision provides that the EPG will be applied in a uniform and non-discriminatory manner. Australia considers it might be appropriate to apply in a non-uniform manner. While discrimination on the basis of sponsoring country should not occur, there are other circumstances where it would be appropriate for additional guarantee/security to be given, eg, a new company with less experience, a company with a poor international environmental or safety record, the location of the activity and proximity to sensitive receptors or cables. These factors should be considered at a minimum when determining the EPG.

Belgium

Regulation 26
Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than 30 days before the commencement date of production in the Mining Area.

Commented [VS45]: There should be a period during which the Guarantee can be rejected by the Authority.

Canada

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated annually by the Contractor, where:

China

10. Draft regulation 26

Paragraph 2 of this regulation involves the calculation of the Environmental Performance Guarantee. It is suggested that the Finance Committee study the calculation method and the ceiling of the Environmental Performance Guarantee and make relevant recommendations to the Council.

Paragraph 3 stipulates that the amount of an Environmental Performance Guarantee is determined according to the relevant Guidelines. Given that Guidelines are not legally binding, it is suggested that the term "Guidelines" in this paragraph be replaced by "Standards".

Paragraph 6 stipulates that upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee, the Guarantee or part thereof can be repaid or released. However, it is unclear what obligations are implicated with the Environmental Performance Guarantee. It is suggested to make clarification.

France

Projet d'article 26 – « Caution environnementale » : Nous notons que l'examen de ce projet d'article est toujours pendant. Il nous semble notamment nécessaire de préciser, au **paragraphe 6, alinéa a,** les modalités de remboursement de la caution environnementale par l'Autorité : qui décide ? Sur quelle base ?

Il semble également surprenant, au **paragraphe 5**, que le recalcul de la caution environnementale incombe au contractant. Cette fonction devrait revenir à l'Autorité.

Le **paragraphe 8** devrait également être précisé – jusqu'où s'étend la responsabilité du contractant ? –, d'autant qu'aucune définition de la caution environnementale et de son champ d'application n'est proposée. Il faudrait préciser l'objet de cette caution et les mécanismes de sa mise en œuvre totale ou partielle.

Italy

DR26 (7)	Unclear wording, either delete or explain. Uniform among Contractors and contracts? Equality of treatment as in DR 62?

Jamaica

Regulation 26 Environmental Performance Guarantee

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the relevant [Standards] [rules]~~Guidelines~~, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

(b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

(c) The post-closure monitoring and management of residual Environmental Effects.

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant Guidelines.

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated~~, where~~:

(a) Where t~~T~~he Closure Plan is updated in accordance with these regulations; or

(b) As the result of:

(i) A performance assessment under regulation 52;

(ii) A modification of a Plan of Work under regulation 57; or

(iii) A review of activities under a Plan of Work under regulation 58; and

(c) At the time of review by the Commission of a final Closure Plan under regulation 60.

RATIONALE:

The form and amount and the possibility of payment by instalments of the Environmental Performance Guarantee are to be determined by the Guidelines. It would seem preferable that the principles for determining the amount of the Guarantee should be addressed in binding texts as opposed to non-binding Guidelines. This may be through Standards or other relevant rules as generally alluded to under the umbrella term "Rules of the Authority" which means "the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time." (added emphasis)

As regards DR 26(4), the suggested amendment is purely editorial so as to read with the chapeau.

Japan

Regulation 26: Environmental Performance Guarantee

There is no description which organ of the Authority decides the amount of the Environmental Performance Guarantee. As the amount of the Guarantee is of critical importance, it is the Council that should decide its amount in relevant Standard, taking into account the recommendations of the Commission and Finance Committee.

<Regulation 26>

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of production in the Mining Area.
2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the Guidelines, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

(b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

(c) The post-closure monitoring and management of residual Environmental Effects.

3. The Council shall decide the amount of an Environmental Performance Guarantee in Standard, taking into account the recommendation of the Commission and Finance Committee. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant Guidelines.

Mexico

Respecto de los planes de monitoreo y mitigación, se estima que resultan ambiguas las disposiciones relativas a las garantías que permitan atender y responder por el incumplimiento de las obligaciones de los contratistas **(proyecto de artículo 26)**. Consideramos que dichas garantías deberían de contener estipulaciones no sólo sobre el tipo de instrumento financiero, el cálculo del monto de la garantía y las implicaciones tributarias, sino las cuestiones relativas a la ejecución de dicha garantía, particularmente en casos en que existan daños a los Estados Ribereños y a los ecosistemas dentro de las áreas marinas de su jurisdicción.

Micronesia

10. On Draft Regulation 26, as a general matter, the FSM supports robust language obligating a Contractor to deposit a financial security as a guarantee of performance of environmental obligations attached to an approved Plan of Work and that may be used to rectify any damage, clean-up, compensation or other loss arising or resulting from a failure or fault by the Contractor to adhere to its obligations under such Plan of Work. An Environmental Performance Guarantee is a welcome tool along those lines, but the FSM notes that specific language on rectifying damage, clean-up, compensation, and/or other environmental loss can be incorporated in Draft Regulation 26(2) along with the other items listed therein.

Russian Federation

Regulation 26(5)	A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and lodge a revised guarantee in favour of the Authority.	It is suggested to modify this provision taking into account paragraph 3 of this regulation.	Paragraph 3 of this regulation states that "*The amount of an Environmental Performance Guarantee may be provided* ***by way of instalments over a specified period according to the relevant Guidelines***". If paragraph 3 applies to the situation described in paragraph 5, then the relevant modification (availability of payment by way of instalments) should be made to the later.

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

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the ~~Guidelines~~Standards, and shall reflect the likely costs required for:

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant Guidelines.

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated, where:

Commented [A35]: This should be Standards, as the Guidelines will not be legally binding.

Commented [A36]: This regulation should include a paragraph stating the consequence to the Contractor for not making an instalment payment on time.

Deep Ocean Stewardship Initiative

DR 26(3): The Guidelines for the Environmental Performance Guarantee are highly relevant, especially in view of the many unknowns. These should be drafted as soon as possible.

Deep Sea Conservation Coalition

26	Environmental Performance Guarantee	The list of criteria is too narrow, exclusively addressing closure. The Guarantee is applicable during mining, and the list in DR 26(2) should reflect this.

Institute for Advanced Sustainability Studies

45. With respect to DR 26(2), we recommend the inclusion of situations where the Authority orders the suspension of mining operations or issues an emergency order for on the ground of environmental harm. Further, we consider the Guidelines pursuant to DR 26 to be essential and that it should be developed prior to the adoption of the Draft Regulations.

Regulation 27
Commencement of production

Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, consistent with Good Industry Practice, shall make commercially reasonable efforts to bring the Mining Area into Commercial Production in accordance with the Plan of Work.

I - Members of the International Seabed Authority

Australia

Regulation 27
Commencement of production

1. Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, consistent with Good Industry Practice, shall make commercially reasonable efforts to bring the Mining Area into Commercial Production in accordance with the Plan of Work.

2. **Once Commercial Production has begun, the Contractor shall notify the Secretary-General. Upon notification, the Secretary-General shall notify members of the Authority, in particular coastal states in close proximity to the Mining Area, that Commercial Production has begun and the location of the Mining Area.**

Commented [AUS54]: Australia suggests this provision include a requirement for the Contractor to notify the Secretary-General, who in turn must notify member states, in particular any neighbouring states, that production has commenced and where. Text proposal in new paragraph 27(2).

Australia notes the current definition of 'Commercial Production' has been taken from the Convention, and acknowledges the footnote to the definition in these draft regulations which states that a clearer definition of Commercial Production will be required.

Italy

DR27	The wording opens to the possibility that a Contractor, after having a Plan of Work for exploitation approved, may have the liberty not to commence production citing commercial-scale obstacles.	[...] shall make ~~commercially reasonable~~ all efforts to bring the Mining Area into Commercial Production in accordance with the Plan of Work.	A Contractor shall have implemented a business plan before applying for a Plan of Work for exploitation, in case of prevailing economic circumstances, all Contractors should be treated the same and should suspend or not start commercial exploitation based on a similar scenario.

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

Deep Sea Conservation Coalition

27	Commencement of production	The requirement to make commercially reasonable efforts to bring the Mining Area into Commercial Production should be deleted: there may be non-commercial reasons not to do so.

Regulation 28
Maintaining Commercial Production

1. The Contractor shall maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.

2. The Contractor shall notify the Secretary-General if it:

(a) Fails to comply with the Plan of Work; or

(b) Determines that it will not be able to adhere to the Plan of Work in future.

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.

I - Members of the International Seabed Authority

Australia

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than ~~[72]~~ **24** hours after production is reduced or suspended.

3*bis*. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

Commented [AUS55]: Australia welcomes the new subparagraph 3 in this iteration of the draft regulations. We suggest the timeframe for notifying the Secretary-General be revised down, as reduction and suspension are generally known events, and cases where it is to protect human life or the marine environment are major events and the Secretary-General should be notified within 24 hours or less.

The Secretary General should also be notified within a set timeframe of when operations re-commence. Text proposal in 28 (3*bis*) based on Regulation 29(4).

Canada

1. The Contractor will make best efforts to ~~shall~~ maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations, and market conditions. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.

2. ~~The Contractor shall notify the Secretary-General if it:~~

~~(a) Fails to comply with the Plan of Work; or~~

~~(b) Determines that it will not be able to adhere to the Plan of Work in future.~~

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily ~~reduce or~~ suspend production whenever such ~~reduction or~~ suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is ~~reduced or~~ suspended.

Chile

Proyecto de Artículo 28
Mantenimiento de la producción comercial

Chile recomienda evaluar con mayor profundidad la opción de que sea el mismo contratista, el mandatado a dar aviso del incumplimiento del **plan de trabajo** o su incapacidad de cumplirlo, ya que podría generar dificultad en la información. Si bien es lógico y una buena práctica la existencia de opciones de **auto denuncia**, quizás debería complementarse **con otros mecanismos que permitan un control y una fiscalización efectiva en estos casos.**

Costa Rica

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment (wording deleted here) or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.

RATIONALE: Costa Rica proposes de deletion of "from serious harm or the threat of serious harm". Since all activities need to contemplate the effective protection of the marine environment, regulation 28.3 should not include such a high threshold. If the suspension is required to protect the marine environment or human life and safety, then production must be reduced or suspended.

Japan

Regulation 28: Maintaining Commercial Production and Regulation 4: Protection measures in respect of coastal States

Regulation 28 (3) places the Contractor under an obligation to temporarily reduce or suspend production whenever such behavior is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety. With the understanding that this provision is applied to both the temporary reduction or suspension upon an emergency order under regulation 4 (4) and the temporary reduction or suspension on a voluntary basis by Contractor based on its own judgement that there is Serious Harm or a threat of Serious Harm if it maintains Commercial Production.

<Regulation 28>

1. The Contractor shall maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.
2. The Contractor shall notify the Secretary-General if it:

(a) Fails to comply with the Plan of Work; or

(b) Determines that it will not be able to adhere to the Plan of Work in future.

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety upon the receipt of emergency order pursuant to regulation 4(4) or on the Contractor's own decision that maintaning the level of production would result in Serious Harm or a threat of Serious Harm. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.

<Regulation 4 (4)>

4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28 (3).

Russian Federation

Regulation 28(2)	The Contractor shall notify the Secretary-General if it: a) Fails to comply with the Plan of Work; or b) Determines that it will not be able to adhere to the Plan of Work in future.	It is suggested to amend this provision with the words "*and the sponsoring State or States*" and read it as follows: "*The Contractor shall notify the Secretary-General and the sponsoring State or States if it:* *a) Fails to comply with the Plan of Work; or* *b) Determines that it will not be able to adhere to the Plan of Work in future*".	Such amendment is suggested in order to ensure that a sponsoring State duly fulfils its obligations under the UNCLOS and the Agreement relating to the implementation of Part XI of the UNCLOS.
Regulation 28(3) second sentence	<…> A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.	It is suggested to amend this provision with the words "*and the sponsoring State or States*" and read it as follows: "*…A Contractor shall notify the Secretary-General and the sponsoring State or States of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended*".	Such amendment is suggested in order to ensure that a sponsoring State duly fulfils its obligations under the UNCLOS and the Agreement relating to the implementation of Part XI of the UNCLOS.

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

DR 28 (former DR 29) Maintaining Commercial Production: Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR.

Deep Ocean Stewardship Initiative

DR 28(3): The Contractor shall temporarily reduce or suspend production "to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety." This Regulation should also refer to the need to protect human remains, objects or sites from disturbance as outlined in DR 35. DR 28(3) could be extended to read: "to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety or to protect human remains, objects or sites of archaeological or historical nature." See also relevant comments on DR 35 below.

Deep Sea Conservation Coalition

28	Maintaining production	This provide that "the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety." This test is too high: a contractor should be required, not just permitted, to reduce or suspend production to protect the marine environment in any circumstances.

Institute for Advanced Sustainability Studies

46. Concerning DR 28(3), we recommend that the word "temporarily" be replaced with "immediately". Further, a Contractor shall also be required to bring operations to a halt as soon as it discovers that any unforeseen adverse environmental impacts are occurring or are imminently likely to occur as a result of its production (as opposed to the expected extent of the potential harm that has already been anticipated and identified in the Plan of Work through the EIS and EMMP). Guidelines should be developed to provide more guidance on what Contractors should do in such instances. We note that this is distinct from an 'Incident', which is covered under DR 32-33, and encompasses instances of 'Serious Harm'.

The Pew Charitable Trusts

Draft regulation 29Regulation 28

Maintaining Commercial Production

1. The Contractor shall maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these Regulations. A
1. Contractor shall, consistent with Good Industry Practice, optimizemanage the recovery of the Minerals removed from the Mining Area at rates contemplated by the Feasibility Study.

2. The Contractor shall notify the Secretary-General if it:

(a) Fails to comply with the Plan of Work; or

(b) Determines that it will not be able to adhere to the Plan of Work in future.

Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.

It may be helpful to clarify who is responsible to determine (on what evidence and against what criteria) whether reduction or suspension of production '*is required to protection the Marine Environment*…etc' for the purposes of DR28. The ISA may elect to take a more active regulatory control here, rather than relying upon the **Contractor** to notify the ISA of the threat.

III-Stakeholders

Global Sea Mineral Resources

DR 28 (3)	The Contractor is requested to reduce or suspend production when such is needed to protect the Marine Environment from Serious Harm or a threat of Serious Harm.	The Contractor should only temporarily reduce or suspend production if Contractor deviates from what has been foreseen in the Plan of Work , approved EIS, EMMP, and Closure Plan or when Serious Harm is caused by a wrongful act.

Regulation 29
Reduction or suspension in production due to market conditions

1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions but shall notify the Secretary-General thereof as soon as practicable thereafter. Such reduction or suspension may be for a period of up to 12 months.

2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. The Commission shall, upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, consider the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension.

3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60. Where the Contractor suspends all production for more than five years, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan.

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

I - Members of the International Seabed Authority

Belgium

3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with all requirements of the exploitation contract, including the the Closure Plan. Where suspension continues for a period of more than 12 months, the Commission may

Commented [VS46]: Possible that requirements are incorporated in other documents.

Canada

Regulation 29

Extended ~~Reduction or~~ suspension in production due to market conditions

1. ~~Notwithstanding regulation 28, a~~ A Contractor may temporarily ~~reduce or~~ suspend production due to market conditions~~, but shall notify the Secretary-General thereof as soon as practicable thereafter. Such reduction or suspension may be for a period of up to 12 months.~~

2. If the Contractor ~~proposes to continue the reduction or~~ suspen~~d~~sion production for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a ~~further reduction or~~ suspension of that length of time. ~~The Commission shall, upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, consider the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension.~~

3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. ~~Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60.~~ Where the Contractor suspends all production for more than five years, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan.

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such non-market information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

China

11. Draft regulation 29

It is proposed to add to paragraph 2 the following provision: "during the period when the Contractor reduces or suspends production, the annual fixed fee or royalties paid by the Contractor shall be exempted or deducted appropriately".

The provision in paragraph 3 that "where the Contractor suspends all production for more than five years, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan" is too arbitrary. The contract should remain valid even after five years of suspension, if the suspension is caused by force majeure. Alternatively, it may provide that the contract can be terminated after five years of suspension on the condition that the Contractor is entitled to priority and preference in exploiting the same area for the same resource.

Costa Rica

1. In pursuance of regulation2(2)(a) relating to the efficient conduct of activities, and the avoidance of unnecessary waste, and to ensure that the resources are being mined optimally in accordance with the Mining Work Plan, a Contractor shall, in accordance with Best Industry Practices:

   (a) Avoid inefficient mining practices;

   (b) Minimize the generation of waste in the conduct of exploitation in the Area

2. A Contractor shall include in its annual report under Regulation 40 such information and Reports as the Secretary General requests, in accordance with the Standards and Guidelines, to demonstrate that the Contractor is meeting the obligations in paragraph 1 above.

3. If the Secretary General becomes aware that Contractor is not meeting the obligations in paragraph 1 above, by way of written notice to the Contractor, request a review of mining and processing activities carried out under the Plan of Work. The Contractor shall implement any modifications to bring the Mining Workplan and any mining and processing practice into conformity with Best Industry Practices.

4. Members of the Authority shall, to the best of their abilities, assist the Secretary General through the provision of Data and information in connection with this regulation where processing, treatment and refining of ore from seabed mining occur under their jurisdiction and/or control.

RATIONALE: This Regulation was eliminated from the March 2019 draft, without any justification. Costa Rica considers it is important to keep it as a Regulation

France

Projet d'article 29 – Réduction ou suspension de la production en raison de la situation de marché : Le paragraphe 2 devrait être modifié de sorte que le Conseil ne se contente pas seulement d'examiner la demande de réduction ou de suspension de la production, mais qu'il se *prononce* à ce sujet. La phrase pourrait se lire comme suit : « Sur la base de la recommandation de la Commission, le Conseil **se prononce** sur la réduction ou la suspension demandée par le contractant ». La version anglaise pourrait se lire comme suit : « The Council shall, based on the recommendation of the Commission, **decide on** the reduction or suspension requested by the Contractor."

En outre, que se passe-t-il si le Conseil n'approuve pas la suspension ?

Indonesia

	Regulation 29 **Reduction or suspension in production due to market conditions** 1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions but shall notify the Secretary - General thereof as soon as practicable thereafter. Such reduction or suspension may be for a period of up to 12 months. 2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, and 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. The Commission shall, upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, consider the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension. 3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. Where suspension continues for a period of more than 12 months, the Commission	▪ Pursuant to article 150 (h) of the Convention, Indonesia believes that the formulated provision has not yet provided equal policy space among relevant stakeholders. Draft Regulation 30, while providing extensive policy space for contractor to amend its competitiveness does not yet provide similar space for developing-land-based producer. ▪ Indonesia is of the view that a mechanism to amend distortion to the economy of developing state(s) through sharing benefit mechanism and economic assistance fund is significantly essential and thus should be fully operational. ▪ Taking into account the concern above, Indonesia appreciates and support the proposal of China on the importance of benefit sharing mechanism in the exploitation regulation as it reflects the spirit of section 7 of the Annex of Agreement relating the Implementation of Part XI of UNCLOS 1982.	The comprehensive proposal text on establishment of economic assistance fund and sharing benefit mechanism to be further discussed in the meeting.

Italy

DR29 (1)	The decision to suspend the production in this case is unilateral, we believe it would require a formal authorizatoin by the Secretary-General, once a Contractor has provided sufficient reasoning and explanation on cases of force majeure that prevent from continuing the commercial phase.	
DR29 (3)	Considering the pattern of meetings of the Council, the decision could apply well after the end of the fifth year of suspension.	Where the Contractor suspends all production for ~~more than~~ 5-years or more, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan.

Japan

Regulation 29: Reduction or suspension in production due to market condition

Timing of the notification to the Secretary-General by a Contractor on temporary reduction and suspension of production in Regualation 29 should be clarified.

<Regulation 29 (1)>

1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions but shall notify the Secretary-General thereof no later than one month from the date of the reduction or suspension ~~as soon as practicable thereafter~~. Such reduction or suspension may be for a period of up to 12 months.

Regulation 33: Preventing and responding to Incidents and Regulation 34: Notifiable events

Regulation 33 (2)(e) requires the Contractor to record notifiable events under regulation 34 in the Incidents Register whereas no such provision appears under regulation 34 itself. In light of consistency, the same provision should be spelled out in regulation 34.

< Regulation 34 (2) >

2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such event~~,~~:

(a) Provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken~~.~~ ; and

(b) Record the notifiable events in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under this regulation.

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. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions or other factors but shall notify the Secretary-General thereof as soon as practicable thereafter. Such reduction or suspension may be for a period of up to 12 months.

Commented [A37]: Propose addition as there are likely to be other relevant factors that could lead to the reduction or suspension of production.

good cause, including where the prevailing economic conditions make Commercial Production impracticable or for other circumstances beyond the Contractor's control, recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, consider the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension.

Commented [A38]: Propose this addition to recognize that there may be other situations where temporary reduction or cessation may be warranted.

Advisory Committee on Protection of the Sea

DR 29 (former DR 30): Reduction or suspension in production due to market conditions
We note that the LTC is awaiting a report by the Secretariat on DR 29. We reprise our comments on the previous version with regard to the current **DR 29(2)**: This is another example of the combined *ultra vires*/substantive legal competence problem with regard to commercial judgements by regulatory bodies described under **DR 13(1)(f).**

Deep Sea Conservation Coalition

29	Reduction or suspension in production due to market conditions	Market conditions should not be the only reason for reduction or suspension in production.

Institute for Advanced Sustainability Studies

47. With respect to DR 29, as mining operations shall be carried out for the benefit of mankind as a whole, this requires that mankind receive a fair amount of return from the conduct of such activities, including a fair compensation for the losses (not just the depletion of non-renewable minerals, but also, inter alia, the loss of biodiversity, degradation of ecosystems and deprivation in the functional provision of ecosystem services) suffered by mankind as a result of such activities. Although the 1994 Implementing Agreement altered the power of the Authority to control commercial production by significantly modifying Article 151 of the Convention, the Authority can still encourage Contractors to reduce or suspend production due to unfavourable market conditions. Given that unfavourable market conditions would likely result in less income for distribution pursuant to an adequate mechanism for equitable benefit sharing, the Authority could consider the availability of any means within its disposal to persuade Contractors to reduce or suspend production under this scenario, such as the provision of exemptions or non-monetary incentives.

The Pew Charitable Trusts

Regulation 29

Reduction or suspension in production due to market conditions

1.Notwithstanding regulation 2928, a Contractor may temporarily reduce or suspend production due to market conditions but shall notify the Secretary-General thereof as soon as practicable thereafter. Such reduction or suspension may be for a period of up to 12 months.

2.If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall ~~submit to~~notify the Secretary-General in writing, and 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. The Commission shall, upon

1. determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, consider the reduction or suspension requested by the Contractor.

2. ~~The reduction or suspension may be for a period of up to 12 months, but the~~The Contractor may apply for more than one suspension.

~~The Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.~~

~~2.~~3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the ~~project area~~Mining Area in accordance with the Closure Plan, ~~as modified~~. Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation ~~58~~ 60. Where the Contractor suspends all production for more than 5-years, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan.

The insertion in DR29(3) enabling the Council to terminate an exploitation contract after a suspension in production of more than five years, needs to be mirrored by an equivalent insertion into section 12 ['Suspension and termination of Contract and penalties'] of Annex X ['Standard Clauses for Exploitation Contracts'].

~~3.~~4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

~~Draft regulation 31~~

~~**Optimal Exploitation under a Plan of Work**~~

~~1. In pursuance of regulation 2 (2) (a) relating to the efficient conduct of activities, and the avoidance of unnecessary waste, and to ensure that the Resources are being mined optimally in accordance with the Mining Workplan, a Contractor shall, in accordance with Good Industry Practice:~~

~~(a) Avoid inefficient mining practices; and~~

~~(b) Minimize the generation of waste in the conduct of Exploitation in the Area.~~

~~2. A Contractor shall include in its annual report under regulation 40 such information and reports as the Secretary-General requests, in accordance with the Guidelines, to demonstrate that the Contractor is meeting the obligation in paragraph 1 above under the Mining Workplan.~~

~~3. If the Secretary-General becomes aware that the Contractor is not meeting its obligation in paragraph 1 above, the Secretary-General may, by way of written notice to the Contractor, request of a review of mining and processing activities carried out under the Plan of Work. The Contractor and Secretary-General shall agree any modifications to bring the Mining Workplan and any mining and processing practice into conformity with Good Industry Practice, taking account of the technical and financial resources of the Contractor, the prevailing market conditions and, where applicable, the effect on the Marine Environment. The Contractor shall implement such modifications and by such time as agreed between it and the Secretary-General.~~

~~4. Members of the Authority shall, to the best of their abilities, assist the SecretaryGeneral through the provision of data or information in connection with this regulation where processing, treatment and refining of ore from seabed mining occurs under their jurisdiction and control.~~

Note: The Commission advises that this deletion has been made in light of: (i) Stakeholder concerns over enforcement challenges; (ii) a concern that the draft regulation potentially modified proper procedures for the review and modification of Plans of Work; and (iii) because the requirements it sought to impose should already be captured in the requirement for Contractors to employ 'Good Industry Practice' in any event [ISBA/25/C/18].

III-Stakeholders

Global Sea Mineral Resources

DR 29 (3)	In the event Contractor suspends all production for more than five years, the Council may terminate the exploitation Contract.	Contractor should be given the opportunity to justify suspension of production for more than 5 years, prior to the termination of the contract.

Section 3
Safety of life and property at sea

Regulation 30
Safety, labour and health standards

1. The Contractor shall ensure at all times that:

(a) All vessels and Installations operating and engaged in Exploitation activities are in good repair, in a safe and sound condition and adequately manned, and comply with paragraphs 2 and 3 below; and

(b) All vessels and Installations employed in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.

2. The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea and the treatment of crew members, as well as any rules, regulations and procedures and Standards adopted from time to time by the Council relating to these matters.

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their sponsoring State or States in the case of Installations; and

(b) Comply with the national laws of its sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker rights for non-crew members and human health and safety that pertains to the mining process rather than to ship operation.

4. The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.

5. The Contractor shall ensure that:

(a) All of its personnel, before assuming their duties, have the necessary experience, training and qualifications and are able to conduct their duties safely, competently and in compliance with the Rules of the Authority and the terms of the exploitation contract;

(b) An occupational health, safety and environmental awareness plan is put in place to inform all personnel engaged in Exploitation activities as to the occupational and environmental risks which may result from their work and the manner in which such risks are to be dealt with; and

(c) Records of the experience, training and qualifications of all of its personnel are kept and made available to the Secretary-General upon request.

6. A Contractor shall implement and maintain a safety management system, taking account of the relevant Guidelines.

I - Members of the International Seabed Authority

Australia

3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60. Where the Contractor suspends all production for more than five years, the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan.

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

Section 3
Safety of life and property at sea

Regulation 30
Safety, labour and health standards

Commented [AUS56]: Australia notes the comment by the LTC (ISBA/25/C/18) that, in reviewing this draft regulation and comments from stakeholders, the Commission noted the possible inadequacy of its content, especially in connection with safety matters, such as the need for a safety management system, monitoring and continuous improvement. The Commission indicated that further discussion with the IMO is required, in particular to gain a better understanding of the supplementary rules, regulations and procedures envisaged under article 146 of the Convention and clarity on the "applicable international rules and standards" to be complied with under draft regulation 30(2). We note that the Commission requested that the secretariat continue to explore these issues and report to the Commission in July 2019.

Australia has previously submitted that the level of safety regulation is insufficient and not commensurate with the risks of the high hazard offshore industry. There does not appear to be any focus on process safety and design safety. Things that need further consideration include:
-Identification of hazards and assessment risks
-Measures to eliminate and control risks
-Monitoring, audit, review and continuous improvement
-Safety management system
There are no regulations that cover off on safety for dive personnel.

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their sponsoring State or States in the case of Installations; and

(b) Comply with the national laws of its sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker

Commented [AUS57]: Australia notes the ongoing work between the Authority and the International Maritime Organisation regarding jurisdictional competence and areas of cooperation, and the development of a matrix of duties and responsibilities of regulatory actors, including sponsoring states, flag states and port states. We note that this provision is one which will benefit from the clarification of these roles and with which laws the contractors are obliged to comply.

Belgium

Section 3
Safety, labour and health at sea

Commented [VS47]: So as to match with the title of the unique Regulation 30.

Regulation 30
Safety, labour and health standards

1. The Contractor shall ensure at all times that:

(a) All vessels and Installations operating and engaged in Exploitation activities are in good repair, in a safe and sound condition and adequately manned, and comply with paragraphs 2 and 3 below; and

(b) All vessels and Installations employed in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.

2. The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the prevention of collisions at sea and maritime labour conditions, as adopted by the Maritime Labour Convention, as well as any rules, regulations and procedures and Standards adopted from time to time by the Council relating to these matters.

Commented [VS49]: This is a fundamental convention, so it is worthwhile to mention it here.

Canada

(a) All vessels and Installations operating and engaged in Exploitation activities are in good repair, in a safe and sound condition and adequately manned, display navigation lights and shapes as per Collision Regulations, and comply with paragraphs 2 and 3 below; and

Chile

Proyecto de artículo 30
Normas de seguridad, de trabajo y de salud

Párrafo 1 a)

Junto con la suficiencia de cantidad de dotación, se sugiere agregar "*exigencias de calificación*".

Párrafo 2: junto con el tratamiento de la *gente de mar*, se sugiere agregar **su formación**, sin perjuicio de la mención al criterio amplio de seguridad de la vida humana. También deberían agregarse aquellas reglas y normas relativas a la seguridad de los barcos.

Párrafo 3 a):

En relación con las normas domésticas que se deben cumplir adicionalmente, se sugiere hacer referencia a las mismas categorías de las que trata el párrafo precedente.

Párrafo 4:

Se sugiere incorporar el criterio de vigencia junto con el de validez. Pareciera conveniente que la referencia hecha a los convenios se efectúe mediante remisión al **párrafo 2 precedente**, salvo que se busque hacer alusión a otros Convenios que rigen aspectos comerciales del transporte marítimo. Esto es un punto que quizás requiere de un mayor diálogo entre los Estados.

France

Projet d'article 30 – Normes relatives à la sécurité, au travail et à la santé : l'obligation prévue au paragraphe 1, alinéa b ne peut pas être garantie par le contractant. En effet, le maintien de ses navires et installations au même niveau de classification ne dépend pas uniquement de lui, mais des sociétés de classification. Dès lors, le paragraphe 1er pourrait être divisé en deux paragraphes distincts qui se liraient comme suit :

« 1) Le contractant garantit que, en tout temps, tous les navires et toutes les installations servant aux activités d'exploitation sont en bon état, sains et sûrs et dotés d'un personnel suffisant, et que les paragraphes 2 et 3 ci-dessous sont respectés.

2) **Il veille à prendre toutes les mesures nécessaires** pour que tous les navires et toutes les installations servant aux activités d'exploitation font l'objet d'une classification adéquate et conservent la même classe pendant toute la durée du contrat d'exploitation. »

Section 4 relative aux « Autres utilisateurs du milieu marin » : La France a soumis en octobre 2018 une proposition conjointe avec le Comité international de protection des câbles (*International Cable Protection Committee*, ICPC) pour un nouveau projet d'article visant à renforcer la protection et la prise en compte des câbles sous-marins dans la Zone. Lors de la réunion du Conseil de juillet 2019, plusieurs délégations ont également soulevé cette question.

Nous soutenons la rédaction actuelle du projet d'article 31 mais considérons que cette disposition est insuffisante en l'état pour apporter une solution pratique aux problèmes qui pourront se poser dans les cas où des câbles sous-marins traverseraient un permis d'exploitation. De notre point de vue, le renvoi à l'adoption ultérieure de directives n'est pas suffisamment satisfaisant étant donné leur caractère non contraignant (en effet, en l'état actuel du projet de règlement – articles 94 et 95 –, seules les normes sont contraignantes).

Nous appelons donc à l'élaboration d'un article supplémentaire, qui offrirait une solution équilibrée et protectrice des intérêts et activités de chacun.

Une solution alternative pourrait également consister à intégrer, au nombre des éléments requis pour constituer le plan de travail relatif à l'extraction, un paragraphe sur l'identification des câble sous-marins situés dans le secteur concerné.

Nous pourrions concrètement intégrer à l'Annexe II du projet de règlement un nouveau paragraphe qui se lirait comme suit : « Le plan de travail relatif à l'extraction […] doit comporter les éléments suivants : […] j) Des informations détaillées sur le tracé des câbles sous-marins situés dans le secteur visé par le contrat, ainsi que les solutions ou mesures envisagées pour les préserver de tout dommage. »

En ce qui concerne les projets de pose de câbles qui n'ont pas encore été réalisés, une place particulière devrait être accordée à la procédure de consultation sur les plans relatifs à l'environnement prévue au projet d'article 11, au cours de laquelle un opérateur de câbles pourrait communiquer au contractant tous les éléments relatifs à un projet de pose de câble sous-marin dans le secteur couvert par le contrat. Il suffirait alors d'intégrer une obligation de mener des consultations de bonne foi avec l'opérateur de câbles concerné pour permettre à ces activités de coexister sans engendrer de charges disproportionnées à l'égard du contractant ou de l'opérateur de câbles.

Russian Federation

22.	**Part III, Section 3, title**	Section 3 Safety of life and property at sea	It is suggested to omit words "*and property*" in the title and read it as follows: "*Section 3 Safety of life at sea*".	This Section of the Regulations does not establish requirements for safety of property at sea. Regulation 30(1) does not refer to property, but to the condition of property (vessels, equipment, etc.) that would ensure safety at sea and, first of all, the protection of human life at sea. The essence of the institute for the protection of human life at sea includes requirements for the design of vessels, equipment, crew qualifications, etc. This remark is based on Article 146 of the UNCLOS, which states: "With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end the Authority shall adopt appropriate rules, regulations and procedures ***to supplement existing international law as embodied in relevant treaties***". The main universal international treaty on this matter is the International Convention for the Safety of Life at Sea (SOLAS).
23.	**Regulation 30(2)**	The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the	It is suggested to amend the last part of this provision: "*as well as any rules, regulations and procedures and Standards adopted from time to time by the Council relating to these matters*" by replacing it with the following words: "*as well as rules, regulations and procedures of the Authority on these matters*".	Such amendment is necessary in order to harmonize the usage of terms and definitions in the UNCLOS and the Regulations.
24.	**Regulation 30(6)**	A Contractor shall implement and maintain a safety management system, taking account of the relevant Guidelines.	It is suggested to clarify this provision so that it reads as follows: "*When conducting its operations, a Contractor shall develop, implement and maintain a safety management system, taking account of the relevant Guidelines*".	Such amendment is required in order to clarify obligations of a Contractor.

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

2. The Contractor shall ensure, via periodic assessment by an independent entity as may be required, compliance with the [applicable][relevant] international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea and the treatment of crew members, as well as any rules, regulations and procedures and Standards adopted from time to time by the Council relating to these matters.

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their sponsoring State or States

Commented [A39]: This proposed text would cover, e.g., periodic inspections and certificates under relevant IMO instruments and requirements on matters not subject to IMO requirements that the Authority may adopt.

Commented [A40]: "Applicable" may not be the accurate term. These rules would be applicable to States Parties to the underlying instrument and not as such to nationals of those States. The rules would be relevant to contractors when a sponsoring State, because of its obligations as a party to the underlying instrument, apply them by domestic law or regulation to its nationals and other persons under its jurisdiction.

Advisory Committee on Protection of the Sea

DR 30 (former DR 32): Safety, labour and health standards
Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR.

The Pew Charitable Trusts

~~Draft regulation 32~~Regulation 30

Safety, labour and health standards
[...]

6. A Contractor shall implement and maintain a safety management system taking account of the relevant Guidelines.

Note: The Commission indicates that it intends to elaborate this DR30 in July 2019, and upon receipt of a report from the Secretariat [ISBA/25/C/18].

Section 4
Other users of the Marine Environment

Regulation 31
Reasonable regard for other activities in the Marine Environment

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations. In particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.

2. The Authority, in conjunction with member States, shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area.

I - Members of the International Seabed Authority

Australia

Section 4
Other users of the Marine Environment

Regulation 31
Reasonable regard for other activities in the Marine Environment

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations**, and relevant national laws and regulations of sponsoring States and flag States**. **[In particular, e]**

1bis. **E**ach Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area. **In particular, the Contractor shall:**

(a) comply with the measures it agreed with the operators of the submarine cables and pipelines to reduce the risk of damage to any in-service cables and pipelines (such as an easement, or a mining exclusion zone within a reasonable radius); and

(b) ensure that any actions it takes will not interfere with the route of a planned submarine cable or pipeline.

Commented [AUS58]: Australia notes that subparagraph 1 essentially restates Article 147 of UNCLOS with some additions. The first sentence refers to the obligation on Contractors to comply with 'any applicable international rules and standards established by competent international organizations'. However, it does not make reference to national laws and regulations which is critical given that there is no competent international organization with responsibility for the protection and regulation of submarine cables. However, Article 113 of UNCLOS makes clear that it is up to 'Every State' to adopt laws and regulations necessary to punish the breaking of or damage to submarine cables. Australia suggests that a reference to 'relevant national laws and regulations of contracting states and flag states' be included in the first sentence for this reason.

Belgium

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the

Commented [VS50]: This part should rather be put next to 'in accordance with article 147 of the Convention'.

China

12. Draft regulation 31

"Article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan" mentioned in paragraph 1 can sufficiently cover the Contractor's obligations of reasonable regard for other marine activities. The phrase "any applicable international rules and standards established by competent international organizations" is unclear and too board. It is suggested to delete it.

The provision "in particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area" creates obligations for the Contractor beyond those set forth in the Convention. It is proposed to change the provision as "in particular, each Contractor should carry out exploitation activities with reasonable regard to submarine cables or pipelines so as to avoid destroying or damaging them".

Costa Rica

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations. In particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.

   1.bis Contractors shall carry out Exploitation under an exploitation contract with reasonable regard for climate mitigation carried out by ecosystems in the area, such as carbon burial and sequestration and nutrients recycling.

   Rationale: The activities carried out by the Ocean related to Climate Change must be regarded as they also constitute other activities in the Marine Environment to be taken into account.

Germany

In relation to **Draft Regulation 31 para. 1**, Germany suggests including a reference to the applicable Regional Environmental Management Plan.

Furthermore, it is Germany's view that this regulation so far lacks a provision regarding exploitation in an area close to the border of a neighboring license area. The far-field drift of a suspension plume produced by mining activities may cause severe impacts on the exploitation potential and the environment e.g. in a nodule field of another contractor. To avoid this, the spatial extent of an exploitation area could, e.g. by means of a guideline, be limited to a certain minimum distance with respect to the limits of other contractor areas.

In general, Germany is of the opinion that the "reasonable regard"-obligation (Art. 147 para. 1 UNCLOS) illustrates the very need for a consultation among the stakeholders and their differing activities. This balancing exercise, as well as the necessary consultative efforts which should, in Germany's opinion, be initiated as early as possible, require procedural assistance on the basis of this Draft Regulation 31, but also on the basis of a related recommendatory Guideline addressed to Contractors. It seems that, on the basis of the current wording of this regulation, the implications of Art. 147 para. 1 UNCLOS and in particular the different freedoms' abstract equality have not yet been properly reflected. It is recommended that Draft Regulation 31 accordingly be reconsidered and possibly redrafted.

Italy

DR31 (2)	A prioritizazion of common-benefit interests should be foreseen in the regulations, international telecommunication cables should have a high-rank priority and no exploitation area should prevent them to be laid down in the Area. There is a risk that exploitation areas may become a tool to monopolize or influence future strategic direction in submarine communications, thus representing a menace on a security issue.

Micronesia

11. On Draft Regulation 31, the FSM welcomes language requiring Contractors to show reasonable regard for other activities in the Marine Environment when carrying out Exploitation under an exploitation contract. It is the FSM's view that, in line with the expansive language on "other activities" in article 147 of UNCLOS, such "other activities" include, among other things, instrument-free traditional navigation on the open Ocean by IPLCs, including those in the Pacific, which is highly dependent on the consistency of wave patterns and other marine processes as well as food sources of the Ocean that could be impacted by activities in the Area; as well as other uses of the Marine Environment by IPLCs, including with respect to their traditional conservation and sustainable use of marine species that range between coastal waters on the one hand and the high seas and the Area on the other hand. Contractors must show reasonable regard to such traditional uses of the Marine Environment when conducting Exploitation in the Area, including to the extent that such Exploitation potentially interferes with navigational routes, the ability of traditional navigators to use marine ecosystems as guides in their voyages, the reliance of traditional navigators on marine life for sustenance as well as for navigational aid, and the longstanding cultural uses of the Marine Environment (inclusive of its biological diversity) by IPLCs, including in coastal waters with connectivity to the high seas and the Area . The FSM envisions that the relevant Guidelines will capture these concerns.

Poland

DR 31 (1) PL is of the opinion that we should not use the term "due diligence" in DR as it is not referred to in UNCLOS. Moreover, it may be interpreted as a different legal concept related to sovereignty rather than to activities in the Area. We would prefer to use the term "reasonable regard".

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. Contractors shall, ~~consistent with~~taking into account the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment, including but not limited to submarine cables and pipelines in the Contract Area, fishing activites, and other activities, in accordance with article 147 of the Convention and the approved Environmental

Commented [A41]: As written, it appeared to state that Contractors "shall" act consistent with the non-legally binding Guidelines.

2. The Authority[, in conjunction with member States, shall endeavour to coordinate, including with other global, regional, and sectoral bodies, ~~take measures~~in an effort to ensure][underscores that Article 147 further provides] that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area.

Commented [A42]: This text is proposed to address the Authority's lack of competence over other activities, and therefore cannot legally ensure that other activities are conducted with reasonable regard.

Deep Ocean Stewardship Initiative

DR 31(1): In addition to submarine cables or pipelines in the Contract Area, Contractors should also exercise due diligence to ensure activities do not cause damage to scientific equipment (such as observatories or those installed long term) or fishery equipment. We recommend adding "or structures deriving from other marine uses" to encompass this.

International Cable Protection Committee

At present, the draft Exploitation Regulations do not pay such reasonable regard to submarine cables and pipelines. Draft Regulation 31(1) simply states that "Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area."

ICPC therefore recommends that the Authority replace the existing language in Draft Regulation 31(1) pertaining to submarine cables with the attached new Draft Regulation that ICPC has developed in collaboration with the Government of France and included the submissions of ICPC and France in their submissions for the Authority's September 2018 consultation and included as an attachment to this letter. The attached new Draft Regulation is labeled as Draft Regulation 33A, reflecting an earlier numbering of the draft Exploitation Regulations at the time of the September 2018 consultation.

The Pew Charitable Trusts

Regulation 31
Reasonable regard for other activities in the Marine Environment

Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations. In particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.

1.OtherThe Authority, in conjunction with member States, shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area.

These seem like sensible insertions: recognising that Guidelines would assist Contractors in meeting this duty of 'reasonable regard for other activities', and that reciprocal responsibilities should be allocated to the ISA and States for the Contractors' benefit.

III-Stakeholders

Global Sea Mineral Resources

DR 31(1)	Contractors are required to exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.	Contractors should only be required to exercise such due diligence with pre-existing or agreed to submarine cables or pipelines.

Section 5
Incidents and notifiable events

Regulation 32
Risk of Incidents

A Contractor shall reduce the risk of Incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction, taking into account the relevant Guidelines. The reasonable practicability of risk reduction measures shall be kept under review in the light of new knowledge and technology developments and Good Industry Practice, Best Available Techniques and Best Environmental Practices. In assessing whether the time, cost and effort would be grossly disproportionate to the benefits of further reducing the risk, consideration shall be given to best practice risk levels compatible with the operations being conducted.

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

DR 32 (former DR 34): Risk of Incidents
Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR.

Deep Ocean Stewardship Initiative

DR 32: This is unclear in the absence of Guidelines.

Deep Sea Conservation Coalition

32	Risk of Incidents	It is unacceptable for the contractor to be able to not reduce risk to the "point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction, and taking into account the relevant Guidelines." The environment should be effectively protected without cost being a consideration.

The Pew Charitable Trusts

Regulation 32
Risk of Incidents

A Contractor shall reduce the risk of Incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction., and taking into account the relevant Guidelines. The reasonable practicability of risk reduction measures shouldshall be kept under review in the light of new knowledge and technology developments and Good Industry Practice., Best Available Techniques and Best Environmental Practices. In assessing whether the time, cost and effort would be grossly disproportionate to the benefits of further reducing the risk, consideration shouldshall be given to best practice risk levels compatible with the operations being conducted.

Regulation 33
Preventing and responding to Incidents

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, or prevent the effective management of such Incident.

2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the incident occurring;

(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be;

(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and

(e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation 34.

3. The Secretary-General shall report any Contractor that fails to comply with this regulation to its sponsoring State or States and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

4. The Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting.

I - Members of the International Seabed Authority

Belgium

1. The Contractor shall not proceed with Exploitation if it is reasonably foreseeable that proceeding would cause or contribute to an Incident, or prevent the

Commented [VS51]: Proceed/continue: synonyms?

China

13. Draft regulation 33

It is suggested that the phrase " no later than 24 hours from the incident occurring" in subparagraph 2 (a) of this article be replaced by "24 hours after the time at which it has reasonable grounds to believe that the Contractor should have become aware of the occurrence of the incident".

Indonesia

	Regulation 33 **Preventing and responding to Incidents** 1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an incident, or prevent the effective management of such Incident. 2. The Contractor shall, upon becoming aware of an Incident: (a) Notify its sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the incident occurring; (b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident; (c) Undertake promptly, and within such timeframe stipulated, any instructions received from the Secretary-General in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be; (d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and	With respect to our view on the rights and legitimate interest of Coastal State, and prevailing international instrument regarding pollution such as OPRC, we suggest the text in R 33 to be reformulated by taking into account the position of adjacent coastal state as one of the key stakeholders.	The R 33 (2)(a) and R 33 (3) to be reformulated as follows: 2. The Contractor shall, upon becoming aware of an Incident: a. Notify its sponsoring State or States, [relevant adjacent] Coastal States and the Secretary-General immediately, as soon as reasonably practicable but no later than 24 hours from the incident occurred ; b. ..... 1. The Secretary-General shall report any Contractor that fails to comply with this regulation to its sponsoring State or States, [relevant adjacent] Coastal States and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

Poland

Reg. 33 (2) (a) PL believes that in order to remain consistent with the chapeau of this para. the 24 hours deadline should start at the moment of the contractor becomes aware of the incident rather than from the moment of the occurrence of the incident.

Reg. 33 (3) PL would like to add the word “promptly” before “report any Contractor (…)” We believe that it is essential that sponsoring states are informed as soon as possible.

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

Deep Sea Conservation Coalition

33	Preventing and responding to Incidents	The ‘reasonably foreseeable’ test should be supplemented with ‘likely’ or if the Contractor is otherwise aware of a risk which may give rise to an incident. This Article should refer to the ability of the Council issue an emergency order pursuant to article 165(2)(k) of the Convention.

Institute for Advanced Sustainability Studies

53. DR 33, DR 34, and DR 36 involves certain matters that are of a compliance nature. Please see our comments pertaining to Part XI of these regulations below on compliance. In an upshot, the functions given to the Secretary-General here should be replaced and performed by a dedicated body established for the purpose of ensuring compliance and conformity with the Rules of the Authority.

The Pew Charitable Trusts

~~Draft regulation 35~~Regulation 33

Preventing and responding to Incidents

The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, or prevent the effective management of such Incident.

1. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the incident occurring;

It is possible that an Incident could occur without the Contractor's immediate knowledge. The DR33(1)(a) notification requirement could be re-drafted to refer to the time at which the Contractor becomes aware of the incident's occurrence, rather than the actual time of occurrence.

~~(a)~~(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly ~~any~~, and within such timeframe stipulated, any instructions received from the Secretary-General in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be;

~~(b)~~(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and

~~(c)~~(e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation ~~36~~34.

2. The Secretary-General shall report any Contractor that fails to comply with this regulation to its sponsoring State or States and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

~~Draft regulation 36~~The Secretary-General shall report such Incidents, and measures taken to the Commission and the Council at their next available meeting.

This insertion of this new DR33 Secretary-General reporting requirement to the Commission and Council is helpful.

Regulation 34
Notifiable events

1. A Contractor shall immediately notify its sponsoring State or States and the Secretary-General of the happening of any of the events listed in appendix I to these regulations.

2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such event, provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken.

3. The Secretary-General shall consult with the sponsoring State or States and other regulatory authorities as necessary.

4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate.

5. Where a complaint is made to a Contractor concerning a matter covered by these regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within seven Days of the complaint being received.

I - Members of the International Seabed Authority

Indonesia

	Regulation 34 **Notifiable events** 1. A Contractor shall immediately notify its sponsoring State or States and the Secretary-General of the happening of any of the events listed in appendix I to these Regulations. 2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such event, provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken. 3. The Secretary-General shall consult with the sponsoring State or States and other regulatory authorities as necessary. 4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate. 5. Where a complaint is made to a Contractor concerning a matter covered by these Regulations, the Contractor shall record the complaint and	With respect to our view on the rights and legitimate interest of Coastal State, and prevailing international instrument regarding pollution such as OPRC, we suggest the text in R 34 to be reformulated by taking into account the position of adjacent coastal state as one of the key stakeholders.	The proposal of text changes to R 34 is as follows: 1. A Contractor shall immediately notify its sponsoring State or States, ~~and~~ the Secretary-General, and relevant [adjacent] Coastal States of the happening of any of the events listed in appendix I to these Regulations. 3. The Secretary-General shall consult with the sponsoring State or States, relevant [adjacent] coastal state and other regulatory authorities as necessary.

Russian Federation

25.	**Regulation 34(5)**	Where a complaint is made to a Contractor concerning a matter covered by these regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within seven Days of the complaint being received	It is proposed to specify the persons whose complaints against a Contractor are meant in this provision.	To facilitate the application of the document.

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

Deep Sea Conservation Coalition

34	Notifiable Events	The list in Appendix I needs to be revised. "Adverse environmental conditions with likely significant safety and/or environmental consequences." is too restrictive "

Institute for Advanced Sustainability Studies

53. DR 33, DR 34, and DR 36 involves certain matters that are of a compliance nature. Please see our comments pertaining to Part XI of these regulations below on compliance. In an upshot, the functions given to the Secretary-General here should be replaced and performed by a dedicated body established for the purpose of ensuring compliance and conformity with the Rules of the Authority.

The Pew Charitable Trusts

Regulation 34

Notifiable events

Two different processes are described for responding to Incidents [DR33] and Notifiable Events [DR34]. Examining the definitions of these two categories reveals a large degree of overlap, albeit expressed in slightly different terms:

- "Incidents" include: death or serious injury, loss of a person from a ship, endangerment to the ship or people, collision or material damage to a ship, potential and incurred Serious Harm to the environment, and damage to submarine cables.
- "Notifiable events" include a: fatality, missing person, occupational injury or illness, vessel collision, hazardous substance leak, contact with fishing gear or submarine cable.

Including both of these separate but overlapping defined terms and specifying separate regimes for each, may be unnecessary and confusing.

[...]

7. Where a complaint is made to a Contractor concerning a matter covered by these Regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within 7 Days of the complaint being received.

Regulation 35
Human remains and objects and sites of an archaeological or historical nature

The Contractor shall immediately notify the Secretary-General in writing of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information to the sponsoring State, to the State from which the remains originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. Following the finding of any such human remains, object or site in the Contract Area, and in order to avoid disturbing such human remains, object or site, no further Exploration or Exploitation shall take place, within a reasonable radius, until such time as the Council decides otherwise, after taking into account the views of the State from which the remains originated, the Director General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization.

I - Members of the International Seabed Authority

Australia

Regulation 35
Human remains and objects and sites of an archaeological or historical nature

The Contractor shall ~~immediately~~ **within 24 hours** notify the Secretary-General in writing of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information, **within 7 Days of receiving it,** to the sponsoring State, to the State from which the remains, **object or site** originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. Following the finding of any such human remains, object or site in the Contract Area, and in order to avoid disturbing such human remains, object or site, no further Exploration or Exploitation shall take place, within a reasonable radius, **to be determined by the Authority,** until such time as the Council decides otherwise, after taking into account the views of the State from which the remains originated, the Director General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization.

Commented [AUS59]: At present, the requirement is for the contractor to notify the Secretary General in writing immediately. Australia considers this provision should have more parameters i.e. the find should be reported within a specified time period, to be followed by a written report within a specified time period. It also states that no further exploration or exploitation should happen within a "reasonable radius" of the site – this needs to be defined by the ISA at the time and may differ depending on the scale of the find. We support the council having scope to suspend operations.

China

14. Draft regulation 35

This regulation provides that following the finding in the Contract Area of any human remains, object or site, of an archaeological or historical nature, and in order to avoid disturbing such human remains, object or site, no further exploration or exploitation shall take place, within a reasonable radius, until the Council makes decision after taking into account the views of various parties. However, if the Council decides to discontinue the exploration and exploitation activities, the Contractor will sustain certain loss. In this case, it seems reasonable to consider compensating the Contractor, including through providing another exploitation area with the same size or value as that of the affected area, or reducing the Contractor's payments. These issues need to be further studied.

Micronesia

12. On Draft Regulation 35, the FSM supports this language in general, including the reference to the United Nations Educational, Scientific and Cultural Organization ("UNESCO"), but the FSM wishes to see the language strengthened. When a Contractor encounters an object or site of an archaeological or historical nature or human remains of a similar nature in its Contract Area and notifies the Secretary-General of the ISA of such an encounter, the Secretary-General must in turn notify not just the sponsoring State, the State from which the human remains originated, the Director General of UNESCO, and any other competent international organization, but also constituencies of IPLCs that might have interests in the object or site or human remains. After centuries of instrument-free traditional navigation by IPLCs on the open Ocean—a practice that continues to the present day, including in the Pacific—it is highly likely that relics of such navigational voyages are located in the Area, including large stone discs transported by IPLCs from the FSM across the open Ocean. The Secretariat of the CBD, among other secretariats, maintains contact information for representatives of IPLC constituencies that can be consulted for this purpose. The FSM also welcomes the involvement of UNESCO, as it has already done some work on this matter in the Pacific.

Poland

Reg. 35 It would merit of further discussion on whether - in case of the Contractor being unable to continue its exploration or exploitation because of the finding of human remains and objects and sites of an archaeological or historical nature – there should be some kind of compensation offered to him (e.g. by a new area for further activities or a reduced fee)

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

Regulation 35
Human remains and objects and sites of an archaeological or historical nature

The Contractor shall immediately notify the Secretary-General in writing of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit

Commented [A43]: The United States notes that many Members may not view UNESCO as the competent international organization in the context of draft regulation 37, and that the provision to take the views of the Director General of UNESCO into account should be interpreted in light of that fact.

Deep Ocean Stewardship Initiative

DR 35: We recommend this Regulation be broadened to include any items of historical significance e.g. those of a paleontological nature, not just those of human origin. When such a finding is made, the accepted protocol is that work is ceased until the site/finding can be assessed by archaeologists, paleontologists or those with other appropriate expertise. Standards and/or Guidelines should be created that include a need for review by independent experts.

Section 6
Insurance obligations

Regulation 36
Insurance

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant Guidelines.

2. Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.

3. The obligation under an exploitation contract to maintain insurance as specified in the Guidelines is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these regulations, the Secretary-General shall issue a compliance order under regulation 103. The Secretary-General shall notify the Council at its next available meeting of such failure, and the corrective measures taken by the Contractor.

4. A Contractor shall not make any material change to or terminate any insurance policy without the prior consent of the Secretary-General.

5. A Contractor shall notify the Secretary-General immediately if the insurer terminates the policy or modifies the terms of insurance.

6. A Contractor shall notify the Secretary-General immediately upon receipt of claims made under its insurance.

7. A Contractor shall provide the Secretary-General at least annually with evidence of the existence of such insurance in accordance with regulation 38 (2) (i).

I - Members of the International Seabed Authority

Australia

Regulation 36
Insurance

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with

Commented [AUS60]: Australia notes the Commission's advice in ISBA/25/C/18 that, while some changes have been made to the text, no further changes can be made until the Secretariat's review of insurance requirements is complete.

4. A Contractor shall not make any mMaterial eChange to or terminate any insurance policy without the prior consent of the Secretary-General.

7. A Contractor shall provide the Secretary-General at least annually with evidence of the existence of such insurance in accordance with regulation 38 (2) (i).

Commented [AUS61]: Australia notes that new paragraph (7) is a replication of the obligation under DR38(2)(i).

France

Projet d'article 36 – Assurance : Nous notons que le Secrétariat doit examiner les obligations et polices d'assurance disponibles sur le marché. Il s'agit en effet d'une question complexe dont les éléments devront être précisés et développés par le biais de directives. Quelques observations à cet égard :

- Il conviendra de préciser le type de risques à assurer (risques de pollutions ? autres types de risques ?) afin d'expliciter l'actuelle formulation très générale du paragraphe 1.
- Le fait de co-assurer l'Autorité sur une police d'assurance peut représenter un surcoût qui sera amplifié si le contractant multiplie les polices sur lesquelles il doit co-assurer l'Autorité. C'est la raison pour laquelle il est important de préciser le type de risques pour lesquelles l'Autorité devra être assurée. Cette observation vaut également pour les clauses de renonciation à tout droit de recours de l'assureur contre l'Autorité (quelles sont les situations qui devront être couvertes par ces clauses de renonciation ?).
- Les polices d'assurance souscrites par les contractants peuvent être très larges et couvrir de nombreux risques. Dès lors, l'obligation de validation de chaque modification substantielle des polices d'assurance du contractant ne devrait concerner que celles qui sont directement liées à ses activités d'exploitation dans la Zone. A cette fin, nous suggérons de préciser au paragraphe 4 que « le contractant ne peut modifier substantiellement ni résilier ses polices d'assurance **relatives à ses activités d'exploitation dans la Zone** sans l'accord préalable du Secrétaire général ».
- Enfin, cette obligation de faire valider toute modification substantielle des polices d'assurance par le Secrétaire général pose des problèmes de contraintes opérationnelles : le Secrétaire général devra être particulièrement réactif dans ces situations, pour permettre au contractant de faire face à l'urgence opérationnelle.

Japan

Regulation 36: Insurance

The relevant Guidelines on insurance have not been included in a list of guidelines to be in place before the adoption of the Regulations as a result of the consideration by the Commission. As regulation 36 (3) provides "the obligation under an exploitation contract to maintain insurance is a fundamental term of the contract," it is vital to ensure terms and conditions of insurance to be made clear before start of administration of the Regulations. In light of this, Japan is of the view that the Guideline on insurance needs to be completed before the adoption of the Regulations.

Regulation 36 (2) provides "contractors shall include the Authority as an additional assured" and "the underwriters *have to* waive any rights of recourse, including *subrogation rights against the Authority* in relation to Exploitation," whereas article 22, annex III to the Convention, reads "the Authority shall have responsibility or liability for any damage arising out of wrongful acts in the exercise of its powers and functions." Japan had made an inquiry if such responsibility or liability the Authority assumes is designed to be covered by the insurance of the Contractors and if such practice of mining industry exists. Given these inquiries remain unanswered, Japan would suggest deleting the whole regulation 36 (2).

<Regulation 36>

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant Guidelines.
2. ~~Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.~~
3. The obligation under an exploitation contract to maintain insurance as specified in the Guidelines is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these Regulations, the Secretary-General shall issue a compliance order under regulation 103. The Secretary-General shall notify the Council at its next available meeting of such failure, and the corrective measures taken by the Contractor.

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

DR 36 (former DR 38): Insurance
Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR as currently drafted; however, we note that the LTC is awaiting a report by the Secretariat.

Deep Sea Conservation Coalition

36	Insurance	The inclusion of terms and quantum as specific in the Guidelines is a step forward, but it is crucial that the ISA must approve insurance policies. That is not yet provided for and need to be part of Guidelines or Standards.

Institute for Advanced Sustainability Studies

53. DR 33, DR 34, and DR 36 involves certain matters that are of a compliance nature. Please see our comments pertaining to Part XI of these regulations below on compliance. In an upshot, the functions given to the Secretary-General here should be replaced and performed by a dedicated body established for the purpose of ensuring compliance and conformity with the Rules of the Authority.

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, and cause its subcontractors to maintain, appropriate insurance policies, with internationally recognized andwith financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice and, consistent with Good Industry Practice and as specified in the relevant Guidelines.

2. Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.

3. The obligation under an exploitation contract to maintain appropriate insurance policiesas specified in the Guidelines is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these Regulations, the Secretary-General shall issue a compliance order under regulation 101. 103. The Secretary-General shall notify the Council at its next available meeting of such failure, and the corrective measures taken by the Contractor.

4. A Contractor shall not materially modifymake any material change or terminate any insurance policy without the prior consent of the Secretary-General.

5. A Contractor shall notify the Secretary-General immediately if the insurer terminates the policy or modifies the terms of insurance.

6. A Contractor shall notify the Secretary-General immediately upon receipt of claims made under its insurance policies.

7. A Contractor shall provide the Secretary-General at least annually with evidence as to the existence of such insurance under regulation 38(2)(i).

The Commission advises that it anticipates further amendment to DR36 following a report by the Secretariat on insurance requirements and market availability [ISBA/25/C/18]. Points to consider in the meantime may include:

(i) whether DR36(1) should incorporate a process for approval of insurance policies to avoid a Contractor being left in a situation of uncertainty as to whether or not it may be inadvertently in breach of this fundamental contract term; and

(ii) whether the Secretary-General is the appropriate decision-maker, as provided in DR36(4), as to when a Contractor can make a material change to or terminate any insurance policy.

Section 7
Training commitment

Regulation 37
Training Plan

1. The Contractor shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under schedule 8 to the exploitation contract, these regulations and any training Guidelines.

2. The Contractor, the Authority and the sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training Guidelines.

3. Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to the exploitation contract.

I - Members of the International Seabed Authority

Indonesia

	Section 7 Training commitment **Regulation 37: Training Plan** 1. The Contract or shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under schedule 8 to the exploitation contract, these Regulations and any training Guidelines. 2. The Contractor, the Authority and the sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training Guidelines. 3. Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to the exploitation contract.	1. With respect to R 37, Indonesia is of the view that special consideration to participation of adjacent coastal state in training regarding mitigation and contingency plan of transboundary pollution may be essential to ensure similar respond capability between contractor and its adjacent coastal state.	We suggest an addition of paragraph 4 as follows: 4. In the case of specific training on mitigation and the prevention of pollution from the Area, participation of representative of the adjacent coastal state should be ensured.

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

DR 37: Consider adding "DR 37(4): The Training Plan presented by the Contractor must contain proposals of at-sea training as well as capacity building in other areas of relevance such as: Environmental Management, International Law (with a focus on the UNCLOS and the ISA Mining Code), Modeling, Statistics, Marine Spatial Planning, etc." Additionally, there should be details of measures in place to ensure the safety of trainees in DR 37(5).

Institute for Advanced Sustainability Studies

54. Concerning DR 37, we recommend that training programmes give special consideration to the special needs of developing States, in particular geographically disadvantaged States and landlocked States, in order to facilitate their participation in activities in the Area as stipulated under Article 148 of the Convention. Furthermore, greater focus should be paid on topics relating to the protection of the marine environment, as opposed to shortage of skills and requirements of the industry. In this regard, we suggest that DR 37 be revised accordingly.

Section 8
Annual reports and record maintenance

Regulation 38
Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, in such format as may be prescribed from time to time in the relevant Guidelines, covering its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.

2. Such annual reports shall include:

(a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against the approved Plan of Work;

(b) The quantity and quality of the Resources recovered during the period and the volume of Minerals and metals produced, marketed and sold during the Calendar Year, reported against the Mining Workplan;

(c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period;

(d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable to the Authority, reported against the Financing Plan;

(e) Health and safety information, including details of any accidents or Incidents arising during the period and actions taken in respect of the Contractor's health and safety procedures;

(f) Details of training carried out in accordance with the Training Plan:

(g) The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria, technical Standards and indicators pursuant to the Environmental Management and Monitoring Plan, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;

(h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons;

(i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;

(j) Details of any changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;

(k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves;

(l) A statement that the Contractor's Financing Plan is adequate for the following period; and

(m) Details of any proposed modification to the Plan of Work and the reasons for such modifications.

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

I - Members of the International Seabed Authority

Australia

Regulation 38
Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, in such format as may be prescribed from time to time in the relevant Guidelines, covering its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.

Commented [AUS62]: This draft regulation sets out the requirement for an annual report within 90 days of the end of each calendar year. It is positive this draft regulation now sets out in detail the contents of the report. Notwithstanding the addition of draft regulation 38(3), there also needs to be an assessment process, to ensure the annual report's contents are accurate and that the contractor is meeting is obligations, with consequences, ie failure may result in termination of the contract.

Canada

(a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, noting variance from ~~reported against~~ the approved Plan of Work;

(b) The quantity and quality of the Resources ~~recovered~~ extracted during the period and the volume of Minerals and metals ~~produced~~recovered, marketed and sold during the Calendar Year, reported against the Mining Workplan;

(c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, if different from the Plan of Work;

~~(j) Details of any changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;~~

(m) Details of any significant ~~proposed~~ modification to the Plan of Work ~~and the reasons for such modifications~~.

China

15. Draft regulation 38

The annual report is to be prepared by the Contractor and to be submitted to the Authority. It needs to be made clear that the term "independent competent persons" in subparagraph 2 (h) refers to "independent competent persons appointed or employed by the Contractor".

Germany

Germany suggests including a reference to Regional Environmental Management plans in **Draft Regulation 38 para. 2(g)** as well as a recommendation with regard to the Contractors' annual reports in **Draft Regulation 38 para. 3**.

Draft Regulation 38:
"[...] 2. Such annual reports shall include: [...] (g) The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria, technical and environmental Standards and indicators pursuant to the applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan; [...]. (2 bis) The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment. 3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. To this end, Contractors shall structure the annual reports such that any confidential information can clearly be identified and extracted."

Italy

DR38 (3)	See DR 17 (3)

Japan

Regulation 38: Annual report

Usage of terms provided in regulatoin 38 such as "any criteria", technical standards and indicators pursuant to the Environmental Management and Monitoring Plan" should be consistent with that of regulation 48(1).

< Regulation 36 (2)(g)>

2. Such annual reports shall include:

(g)The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any environmental objectives and standards ~~criteria, technical standards and indicators~~ pursuant to the Environmental Management and Monitoring Plan, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;

Russian Federation

26.	**Regulation 38(2)(e)**	e) Health and safety information, including details of any accidents or Incidents arising during the period and actions taken in respect of the Contractor's health and safety procedures;	It is suggested to modify this provision by omitting the words "*including details of any accidents or Incidents arising during the period*" and use these words in a separate paragraph. Paragraph (e) shall be read as follows: "*information on compliance with health, labour and safety standards*".	Such amendments to this provision would allow a Contractor to fulfil his obligations set out in Regulations 30 and 33 in a more efficient way. The differentiation between the "*health and safety information*" and "*details of any accidents or Incidents*" can be explained by the fact that the former implies information on specific compliance measures, while the latter implies individual events, which may not occur at all, and a separate response to them.

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

DR 38: The Regulations do not specify a process for the review of annual reports by the ISA or what action the ISA may take as a result of certain findings in an annual review.

DR 38(1) The Contractor shall submit an annual report to the Secretary-General, in such a format as may be described from time to time in the relevant guidelines. The wording "from time to time" is unclear.

DR 38(2)(g): "the actual results" – does this mean data? If so, the methodology should be included.

DR 38(3): Consider adding "DR 38(3)(n): Environmental data obtained and submitted via the Annual Report should be uploaded to the *DeepData* platform in order to be available to the general public, especially the scientific community, as soon as approved."

Deep Sea Conservation Coalition

38	Report	There should be a review process attached to reports. Currently, the annual report is simply submitted. The list of environmental matters to be reported in DR 48 2 (g) should be based on the matters to be reported according to the Environmental Management and Monitoring Plan, and so paragraph (g) should reflect this.

Institute for Advanced Sustainability Studies

55. With respect to DR 38(2)(g), we recommend the deletion of the words "where applicable", and suggest the inclusion of REMPs as a reference point for reporting obligations. Thus, DR 38(2)(g) should read: "The actual results [...] reported against any criteria, technical and environmental Standards as well as indicators pursuant to the applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan [...]."

56. Also concerning DR 38, we recommend the inclusion of a new provision DR 38(2)(g bis), which states: "The actual result obtained from any test mining activities, in particular information related to the extent of the environmental implications therefrom and how this was managed or proposals on how it could be effectively managed".

57. Further, we recommend a new provision of DR 38(2 bis), which states that: "All environmental related information shall promptly be uploaded onto the Authority's website and database (DeepData)."

The Pew Charitable Trusts

Regulation 38
Annual report
[...]

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

DR38's requirement for Contractors' annual reports to be published is a positive addition. Further consideration could be given to:

(i) a requirement for the publication of inspector reports, notice of incidents or notifiable events, and compliance notices, and
(ii) formalising in the Regulations the ISA's review process for annual reports, following their receipt.

Regulation 39
Books, records and samples

1. A Contractor shall keep a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses actual and direct expenditures for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.

2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals, environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with the Authority's data and information management policy.

3. To the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

4. Upon request of the Secretary-General, the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.

5. A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General to the data, information and samples.

I - Members of the International Seabed Authority

Australia

3. ~~To the extent practical, a~~ **A** Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

Commented [AUS63]: Australia notes the watering down of the requirement for Contractors to keep samples though the addition of 'to the extent practical'. The requirement to keep samples is consistent with similar provisions in the Exploration regulations (ie. Polymetallic Nodule Exploration Regulations, Section 10.4). We prefer the original provision that such samples are required, unless we receive advice that such samples are not necessary.

Belgium

3. To the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource

Commented [VS52]: Why is this part of the sentence inserted?

Costa Rica

Regulation 39

Books, records and samples

3. To the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party. After the termination of the Contract, samples will be handed over to the Authority, in accordance with the pertinent Guidelines.

RATIONALE: Samples should be conserved after the termination of the contract as they may be relevant for the Authority and its members.

Cuba

2	Pág. 35, Sección 8, Art. 39, inciso 3	En la medida de lo posible, el contratista conservará en buen estado una parte representativa de las muestras o núcleos, según sea el caso, de la categoría de recursos, junto con muestras biológicas, que haya obtenido en el curso de la explotación hasta que se extinga el contrato de explotación. Las muestras se mantendrán	Modificar el Apartado 3, proponiendo que la redacción quede de la siguiente manera "las muestras o núcleos, según sea el caso, de la categoría de recursos, junto con muestras biológicas, que haya obtenido en el curso de la explotación que ameriten ser conservados, serán preservados por el contratista o en su
		teniendo en cuenta las directrices pertinentes, que contemplarán la opción de que sea el propio contratista el que mantenga las muestras o que pueda encargar a otra entidad que las mantenga total o parcialmente en su nombre.	defecto por quien este encargue para ello, teniendo en cuenta las directrices pertinentes, durante un término no inferior a los dieciocho meses.

Germany

With regard to **Draft Regulation 39 para. 3**, it is Germany's view that this Contractor obligation cannot and should not be limited by the term "to the extent practical". The Authority will not be able to satisfactorily and appropriately fulfill its regulatory responsibilities under the system established by the Law of the Sea Convention, if it is ultimately up to the Contractor to decide which mineral resource samples or cores as well as biological samples it can easily keep. It is therefore suggested to delete the term mentioned.

Draft Regulation 39:
"[…] 3. ~~To the extent practical, a~~A Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party. […]"

Italy

DR39 (2)	At the end of the exploitation phase, geological data shall be transferred to the Authority and after a period, e.g. one year, the data should be made public.		
DR39 (5)	Not enough distinction is provided in this regulation between geological samples that have relevance for the resource estimate and the biological/environmental information that should be made readily available to anybody and not only to the Secretary-General.		
DR39 (3)	Samples shall be kept at least also during the closure monitoring.	To the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category together with biological samples obtained in the course of Exploitation until the termination of the ~~exploitation contract~~ Closure Plan.	

Japan

Regulation 39: Books, records and samples

Japan welcomes that the revised text refers to the relevant Guidelines, which include a practical and realistic option for the Contractor to maintain samples by itself or have such maintenance performed on its behalf by other agencies under regulation 39 (3).

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. To the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation

Commented [A44]: Recommend deleting. It seems evident that samples retention should be required as a contractor will retain samples as a matter of course.

Advisory Committee on Protection of the Sea

DR 39(3) Books, Records and Samples: **This has been fatally weakened - i.e., made essentially unenforceable, by the addition of the qualifying language "to the extent practical". This loophole must be closed by the deletion of that language and the reversion to the original language from the previous version (former DR 41(3)). This type of qualifying language is not recommended for use in legally binding instruments. Furthermore, we recommend that at the end of the contract, these samples be required to be transferred to an institution with public access to enable their further study. Under no circumstances must they be discarded. Where analytical methodology requires the destruction of samples, records must reflect this.*

Deep Ocean Stewardship Initiative

DR 39(3): If the Contractor maintains the samples itself, the Standards and/or Guidelines should stipulate what happens to the samples upon termination of the exploitation contract. Every effort should be made to ensure samples are passed to a third party for future use (e.g., scientific researchers, museum collections) rather than being lost at the end of an exploitation contract.

DR 39(5): "A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General to the data, information and samples." The term "reasonable" is used; Recommend defining what "reasonable" is, e.g. weeks or years.

International Marine Minerals Society

Regulation 39, Books, records and Samples	What will happen to the maps, etc, after the contract ceases? Should these be returned to the Secretary General? Or, is this is already the case through annual reporting ?

The Pew Charitable Trusts

Regulation 39
Books, records and samples
[...]
3. ATo the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category together with biological samples obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained ~~in accordance with the Guidelines~~taking into account the relevant Guidelines which shall provide the option for the Contractor to maintain samples itself or to have such maintenance performed on its behalf in whole or in part by other agencies. [...]

Section 9
Miscellaneous

Regulation 40
Prevention of corruption

1. A Contractor shall not make any gift or reward to any officials, agents or employees or contractors or subcontractors of the Authority or other individuals operating under the auspices of the Authority to induce or reward such persons for any acts undertaken in accordance with their duties under these regulations.

2. The Contractor acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled or of the jurisdiction in which the Contractor is organized or conducts business, and shall conduct its activities under the exploitation contract in accordance with its obligations under such anti-bribery and anti-corruption laws.

I - Members of the International Seabed Authority

Cuba

3	Pág. 35, Articulo 40	1. El contratista no entregará regalos ni recompensas a funcionarios, agentes, empleados, contratistas o subcontratistas de la Autoridad ni a otras personas que operen bajo los auspicios de la Autoridad para fomentar o recompensar que actúen de conformidad con las obligaciones que les incumben en virtud del presente reglamento.	Agregar en el primer renglón a continuación de no "financiará directamente auditorías y controles planificados por la Autoridad, ni...".

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

Deep Sea Conservation Coalition

DR 40: As drafted, this may permit the contractor to undertake corrupt or bribery activities insofar as the sponsoring State does not expressly prohibit this by law.

40	Prevention of Corruption	This should refer to international guidelines such as the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, rather than just national laws.

Regulation 41
Other Resource categories

1. The Contractor shall notify the Secretary-General if it finds Resources in the Area other than the Resource category to which the exploitation contract relates within 30 Days of its find.

2. The Exploration for and Exploitation of such finds must be the subject of a separate application to the Authority, in accordance with the relevant Rules of the Authority.

I - Members of the International Seabed Authority

France

Projet d'article 41 – Autres catégories de ressources : L'obligation du contractant de notifier au Secrétaire général la découverte de ressources qui n'appartiennent pas à la catégorie couverte par son contrat d'exploitation concerne-t-elle la découverte de ressources situées dans le périmètre géographique couvert par son contrat ou dans la Zone de façon générale (ce qui est le cas dans l'actuel article 41) ? Suggestion de préciser la rédaction du paragraphe 1 comme suit : « Le contractant notifie au Secrétaire général, dans un délai de 30 jours, la découverte dans **le périmètre de son contrat d'exploitation** de ressources qui n'appartiennent pas à la catégorie visée dans **ledit contrat** ».

Germany

- The current version of **Draft Regulation 41** asks the Contractor to notify the Secretary-General if it finds Resources in the Area other than the Resource category to which the exploitation contract relates. It is Germany's view that the Council should also be informed of such development in due course.

Draft Regulation 41:
"1. The Contractor shall notify the Secretary-General if it finds Resources in the Area other than the Resource category to which the exploitation contract relates within 30 Days of its find. The Secretary-General shall inform the Council about such notification during the next regular session of the Council. […]"

Russian Federation

27.	**Regulation 41(2)**	The Exploration for and Exploitation of such finds must be the subject of a separate application to the Authority, in accordance with the relevant Rules of the Authority.	It is suggested to modify this provision so that it reads as follows: "*The Exploration for and Exploitation of resources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority*".	Suggested modification is aimed at clarifying the text of the Regulation and providing inner consistency and logic of this Regulation.

Regulation 42
Restrictions on advertisements, prospectuses and other notices

No statement shall be made in any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor, or to the knowledge of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed on opinion over the commercial viability of Exploitation in the Contract Area.

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

The Pew Charitable Trusts

Regulation 42
Disclaimer

~~A Contractor shall not, and shall not permit any person, firm or company or State-owned entity controlling, controlled by or under common control with the Contractor or a subcontractor to, in any manner, claim or suggest, whether expressly or by implication, that the Authority or any official thereof has, or has expressed, any opinion with respect to the Mineral Resource in the Contract Area. No statement to that effect shall be included in or endorsed on~~**Restrictions on advertisements, prospectuses and other notices**

No statement shall be made either in **any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor,** ~~any affiliated company or any subcontractor that refers directly or indirectly to the exploitation contract or to the knowledge of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of Exploitation in the Contract Area.~~

Regulation 43
Compliance with other laws and regulations

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a sponsoring State and flag State.

2. Contractors shall maintain the currency of all permits, licences, approvals, certificates and clearances not issued by the Authority and that may be required to lawfully conduct Exploitation activities in the Area.

3. Contractors shall notify the Secretary-General promptly when a permit, licence, approval, certificate or clearance connected with its activities in the Area is withdrawn or suspended.

I - Members of the International Seabed Authority

Costa Rica

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a sponsoring State and flag State.

Constructors shall comply with all laws and regulations, whether domestic, international or other, that apply to its conduct of activities in the Area.

RATIONALE: This Regulation was eliminated from the March 2019 draft, without any justification. Costa Rica considers it is important to keep it in the Regulations to ensure compliance with domestic and international laws, and for ISA to be able to act upon eventual breaches of said laws.

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

Deep Sea Conservation Coalition

DR 43: The LTC has deleted "effective control" (formerly "lawful obligations under any national law to which it is subject by reason of effective control, incorporation or otherwise, including the laws of a sponsoring State and flag State."; now "lawful obligations under any national law to which it is subject.") This has introduced uncertainty whether failure to comply with obligations under which it is subject by reason of effective control other than that of the sponsoring State is a breach of the regulations. The LTC gives no reasons for this change.

43	Compliance with other laws and regulations	This draft has deleted the clause that "Contractors shall comply with all laws and regulations, whether domestic, international or other, that apply to its conduct of activities in the Area." This should be reinserted, to ensure compliance with domestic and international laws and regulations, and to enable the ISA to take action where it is on notice that national laws have been breached. This may include flag state laws pertaining to vessel standards, or labour conditions for workers, for example.

The Pew Charitable Trusts

~~Draft regulation 45~~Regulation 43

Compliance with other laws and regulations

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject ~~by reason of effective control, incorporation or otherwise~~, including the laws of a sponsoring State and flag State.

~~1. Contractors shall comply with all laws and regulations, whether domestic, international or other, that apply to its conduct of activities in the Area.~~ [...]

No explanation has been provided as to why the second paragraph of DR43, requiring Contractors to comply with all relevant domestic and international laws, has been deleted. This risks diminishment of the ISA's ability to exercise regulatory control over Contractors, particularly where a flag State lacks the capacity or will to implement enforcement measures.

Part IV
Protection and preservation of the Marine Environment

Section 1
Obligations relating to the Marine Environment

Regulation 44
General obligations

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects in accordance with the rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall:

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

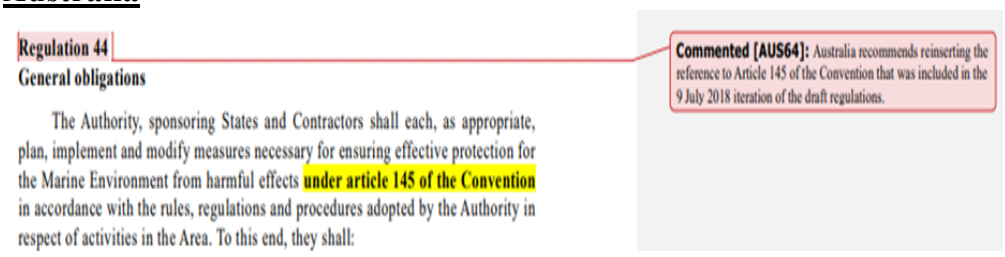
(b) Apply the Best Available Techniques and Best Environmental Practices in carrying out such measures;

(c) 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

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

I - Members of the International Seabed Authority

Australia



Canada

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring ~~effective~~ the protection an preservation ~~for~~ of the unique Marine Environment ~~from harmful effects~~, including rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life, ~~in~~ accordance with the rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall:

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

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

(c) 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

(d) ~~Promote~~ Ensure 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~~.

Chile

Proyecto de Artículo 44
Obligaciones generales.

Chile considera que es necesario clarificar, con mayor detalle, cuál es el sentido y alcance de la *frase* "***asegurar la eficaz protección del medio marino***", así como también, que es importante detallar qué se entiende como "***efectos nocivos***", ya que el **artículo 145** de la CONVEMAR establece qué actividades pueden generar dichos efectos, pero no cómo se determinan.

Lo mismo respecto del concepto de "***daño al medio ambiente***", de manera tal que quede clara la definición y el alcance de los términos empleados. No se debe olvidar el **art. 192** de la CONVEMAR, que establece la **obligación de proteger y preservar el medio ambiente marino**.

Cambiar "***aplicarán***" en la **letra a y b** por "***asegurarán***", con la finalidad de dar mayor fuerza al uso de las mejores prácticas disponibles aplicables a estas medidas.

Costa Rica

Regulation 44
General obligations

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects in accordance with the rules, regulations, procedures and Standards adopted by the Authority in respect of activities in the Area. To this end, they shall:

RATIONALE: Standards are binding, and should be included.

France

Projet d'article 44 – Obligations générales : Il apparait nécessaire de clarifier, au sein de ce projet d'article, le rôle et les responsabilités respectifs de l'Autorité, des Etats patronnants et du contractant.

En ce qui concerne l'alinéa d, l'obligation de simplement « promouvoir la transparence » n'est pas suffisante. Suggestion de renforcer le langage comme suit : « **garantissent** la transparence ». Nous nous interrogeons en revanche sur ce qui recouvre l'obligation de « promouvoir la responsabilité », trop imprécise en l'état.

Germany

- With regard to **Draft Regulation 44**, Germany would like to suggest a clear re-phrasing of the whole provision in order to clarify which general obligations are aimed at which body and/or actor mentioned. On the basis of the current wording, it seems unclear which of the four paragraphs is addressed to the Authority, Sponsoring States and/or to Contractors. Given that Part IV eventually is one of the most crucial chapters of the Draft Regulations, there should be no ambiguity whatsoever in its introductory provision spelling out "general obligations". The inclusion of the disclaimer "as appropriate" does not sufficiently help here either, as it should not be left to the discretion of any of the bodies/actors mentioned to determine whether or not it feels targeted by (any of) these general obligations.

Germany suggests including a **Draft Regulation [44bis]** on Regional Environmental Management Plans.

Draft Regulation [44bis]:
"1. The Authority shall develop Regional Environmental Management Plans in each regional area that is under consideration for the conduct of activities in the Area. 2. The purpose of Regional Environmental Management Plans is to provide region-specific information, measures and procedures in order to ensure effective protection of the marine environment in accordance with Article 145 UNCLOS. To this end, REMPs should in particular entail environmental objectives and standards, if appropriate, taking into account cumulative and synergistic effects, spatial planning instruments, such as the determination of mining areas, APEIs as well as PRZ and IRZ, and procedures and measures taking into account all relevant human activities. Regional Environmental Management Plans shall be drafted in the form prescribed by the Authority in Annex [IVbis]. 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. 4. Before the adoption of an REMP by the Council, all potentially concerned States, international and regional competent organisations and all stakeholders shall be consulted in accordance with the relevant standards or guidelines. 5. All Regional Environmental Management Plans shall undergo a review after every six years. In addition, the Council may decide to review any Regional Environmental Management Plan at any time before such a review is due, especially if such review is deemed necessary in the light of new scientific information, or if it is of an opinion that the measures to ensure the effective protection of the marine environment prescribed therein are inadequate or ineffective."

Indonesia

Regulation 44 **General obligations** The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring the effective protection for the Marine Environment from harmful effects in accordance with the rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall: (a) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area; (b) Apply the Best Available Techniques and Best Environmental Practices in carrying out such measures; (c) Integrate Best Available Scientific Evidence in environmental decision making, including all risk	In the light of our comments regarding the protection of rights and legitimate interest of Coastal State in paragraph 8 and 9 of general comments as well our comment in DR 2, we suggest the reference to Rio Declaration in R 44 (a) to be removed	The new formulation of DR 46 (a) should be (a) Apply the precautionary principle ~~approach, as reflected in principle 15 of the Rio Declaration on Environment and Development,~~ to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;
assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with Best Environmental Practices; Promote accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including timely release of and access to relevant environmental data and information and opportunities for stakeholder participation.		

Japan

Regulation 44: General obligations and Regulation: Assessment of applicants

There may be different understandings among many stakeholders with regard to the terms used under regulations 44 and 13 such as "Best Available Techniques," "Best Environmental Practice," "Best Available Scientific Evidence" and "Good Industry Practices." It is essential to identify the common understanding on those techniques, required specifications of equipment and practices in the relevant Guidelines, which should be developed taking into account the views of relevant stakeholders.

Mexico

en el principio de transparencia que debe regir la actividad de exploración se incluya de manera genérica en los **proyectos de artículos 2 y 44** no limitarlo a la sección relativa a la protección efectiva del Medio Ambiente Marino.

En todo caso, esta publicidad debe ampliarse a:

i) la identificación de los solicitantes/contratistas;
ii) todos aquellos planes y documentos que forman parte del Plan de Trabajo –cuidando los elementos sujetos a derechos de propiedad intelectual e industrial, las invenciones y las patentes-; las resoluciones, opiniones, comentarios y autorizaciones que emitan tanto el Consejo, la Comisión y la Secretaría en relación con la evaluación de las propuestas y Planes de Trabajo y sus determinaciones sobre su viabilidad para realizar las actividades de minería submarina –incluyendo toda la información relacionada con las extensiones de plazo-;
iii) los contratos de explotación con sus términos y condiciones;
iv) todos y cualesquier pagos realizados a los contratistas;
v) los ingresos percibidos por la Autoridad derivado de las actividades de explotación junto con los ingresos y ganancias de los contratistas;
vi) los reportes de los contratistas respecto de sus actividades, incluyendo aquellas relacionadas con la ejecución de los contratos y los riesgos, accidentes e incidentes ocurridos durante el desarrollo de sus actividades en el que se incluyan las medidas de mitigación y remediación que se llevaron a cabo para responder frente a dichos incidentes;
vii) los resultados de las evaluaciones, monitoreo y demás actividades de gestión que realice la Autoridad a los contratos y al Plan de Cierre;
viii) los estudios respecto de los impactos posteriores a la conclusión de los trabajos y las medidas adoptadas en aras de minimizar, mitigar, reparar y restaurar el ecosistema marino;
ix) la información técnica y científica –incluyendo los muestreos y el desarrollo de sus indicadores- respecto de las actividades de minería submarina que pueda contribuir a la transmisión de conocimiento y tecnología como una manera no monetaria de participar en el reparto de beneficios.

Micronesia

On Draft Regulation 44, the FSM reiterates that the incorporation of the traditional knowledge of IPLCs as well as the direct involvement of holders of such traditional knowledge should be considered to be part of Best Environmental Practices for carrying out measures to effectively protect the Marine Environment as well as a complement to the Best Available Scientific Evidence in environmental decision-making, as contemplated under Draft Regulation 44. Such traditional knowledge and its holders can be explicitly referenced in the definition of Best Environmental Practices as well as mentioned alongside Best Available Scientific Evidence as a complementary source of relevant knowledge and information, as done in multiple other multilateral environmental agreements and related processes.

Morocco

Partie IV: **Protection et préservation du milieu marin** **Article 44** : Obligations générales	-La transparence et la responsabilité doivent être la base en matière d'évaluation et de gestion de risques; -Les obligations de l'Autorité, de l'État parrain et du Contractant doivent être définies et différenciées; -Besoin d'élaboration de lignes directrices sur la notion de dommages graves.

Myanmar

5. In the "Part IV: Protection and preservation of the Marine Environment", it should be considered that we have insufficient knowledge of the deep sea resources and lack of thorough assessment of environmental impacts of deep marine mining operations. Therefore, an effective regulatory framework is needed to avoid lasting harm to the marine environment, based on high-quality environmental impact assessments and mitigation strategies. Therefore, some legal and technical framework for the environmental management and conservation should be designed more detail in the guidelines, manual and standard which will be developed in accordance with the developing technology and market economy. The laws and regulations applied in Myanmar should be mentioned as **"Myanmar Oil and Gas Enterprise complies the Environmental Conservation Law (2012), Environmental Conservation Rules (2014), Environmental Impact Assessment Procedure (2015), IFC Guideline – 2015 and National Environmental Quality (Emission) Guidelines (2015) concerning the preservation of Marine Environment and discharge of wastes as per described in Regulation (Draft) IV – Protection and preservation of the Marine Environment in the offshore Oil and Gas Exploration and production.**

New Zealand

44	**General obligations** The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects in accordance with the rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall: (a) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, specifically when assessing and managing ~~to the assessment and management of~~ risk of harm to the Marine Environment from Exploitation to the Area, and where information is uncertain or inadequate, the Authority shall favour caution and environmental protection; (b) Apply the Best Available Techniques and Best Environmental Practices in carrying out such measures; (c) 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 (d) Promote accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through the timely release of and access to relevant environmental data and information and opportunities for stakeholder participation.	The proposed changes aim to clarify what the application of the precautionary approach should look like in practice.

Spain

TERCERA.- **ARTÍCULO 44**

El **artículo 44 a)** recoge la obligación general de aplicar el "criterio de precaución". A diferencia de lo que ocurre con otros términos como "mejores técnicas disponibles", "mejores prácticas ambientales" o "mejores conocimientos científicos disponibles", en

la Adenda no aparece definido el alcance de este criterio. El Reino de España sugiere a la Comisión que proponga una definición al respecto.

El Reino de España entiende, además, que es absolutamente necesario "garantizar" y no solo "promover" la rendición de cuentas y la transparencia" en el examen, la evaluación y la gestión de los efectos ambientales de la explotación, como se menciona en el **apartado d).**

United Kingdom

44. General obligations	(a) Apply the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development, to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;	(a) Apply the precautionary principle, ~~approach, as reflected in principle 15 of the Rio Declaration on Environment and Development,~~ to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;	UK remains of the view that this should refer to the precautionary 'principle'.
	-	(a bis) Apply the Ecosystem Approach to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;	It is important to include the principle of an Ecosystem Approach in the Regulations, so there is an integrated approach to management of the Area, to ensure that the conservation of biodiversity is balanced alongside sustainable use and benefit sharing.

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

(c) Integrate ~~Best Available Scientific Evidence~~Best Available Scientific Information 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

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

(e) In order of priority, avoid, minimize, mitigate, and remediate harm to the marine environment.

Commented [A45]: Requiring accountability and transparency seems to be a more appropriate choice here.

Commented [A46]: NOAA sees value in explicitly stating this hierarchy and understand it to be common practice under e.g., the Clean Water Act and similar domestic legislation of Members

Advisory Committee of the Protection of the Sea

DR 44 (former DR 46): General obligations
We note that the LTC needs further information on the role of the Authority and the Sponsoring States with regard to this DR as a whole. We concur and suggest that more information is also required on the role of Contractors.

We further note that this DR is addressed to three different parties/bodies - the Authority, Sponsoring States, and Contractors. Each party/body has different powers, rights and duties under the LOSC with regard to the four obligations (a)-(d) set out in this DR. These obligations cannot be imposed in a single blanket Regulation that is not specifically differentiated for each party/body. Each obligation must be carefully defined for and allocated to the appropriate party/body/parties/bodies for implementation and enforcement. This is essential for regulatory clarity and predictability, and to maintain a level playing field for all Contractors. Consequently we await this further information before offering a final view.

We reprise our comments on the previous version with regard to the current **DR 44(d)**: It is recommended to replace "Promote" with "Require". This is consistent with Fundamental Principle 5(d) of these DRs.

Deep Ocean Stewardship Initiative

DR 44: Cognizance of climate change is required to effectively apply the Precautionary Approach, Best Available Techniques and Best Environmental Practices, Best Available Scientific Evidence, accountability, and transparency.

DR 44(d): "…Promote accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including timely access to relevant environmental information;" We suggest replacing the term "promote" with "ensure". Additionally, "timely access" is too vague and could be replaced with "immediate".

Deep Sea Conservation Coalition

44	General Obligations	There should be an obligation to avoid, remedy or mitigate any significant adverse effects on the marine environment.

Institute for Advanced Sustainability Studies

59. We recommend the introduction of a new DR 44bis to prescribe the requirement that REMPs should be in place to ensure that region-specific considerations and measures are taken into account. A new Annex III ter should be created to provide some more information on the standardized process of REMP development and adoption, including the provision of a 'template' for each specific REMP. The legal implications that REMPs would have on the process of approval or disapproval of Plan of Works, as well as other matters, should be clarified in this provision.

The Pew Charitable Trusts

~~Draft regulation 46~~Regulation 44

General obligations

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring the effective protection ~~of~~for the Marine Environment from harmful effects ~~under article 145 of~~in accordance with the ~~Convention~~rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall:

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

~~(a) Ensure~~Apply the ~~application of~~ Best Available Techniques and Best

(b) Environmental ~~Practice~~Practices in carrying out such measures;

(c) Integrate Best Available Scientific Evidence in environmental decisionmaking, including all risk assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with ~~Good Industry Practice;~~Best Environmental Practices;

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

III - Stakeholders

Nauru Ocean Resources Inc.

Regulation 44

Given Regulation 44(b) creates a legal obligation on the Contractor to ensure the application of Best Available Techniques and Best Environmental Practice, it is important that those two terms are defined in such a way as to make the requirement commercially viable and be based on reasonable economic and practical constraints.

Regulation 45
Development of environmental Standards

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

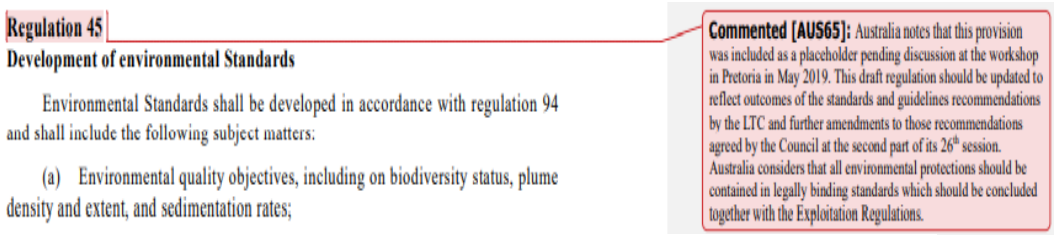
(a) Environmental quality objectives, including on biodiversity status, plume density and extent, and sedimentation rates;

(b) Monitoring procedures; and

(c) Mitigation measures.

I - Members of the International Seabed Authority

Australia



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;

Commented [AUS65]: Australia notes that this provision was included as a placeholder pending discussion at the workshop in Pretoria in May 2019. This draft regulation should be updated to reflect outcomes of the standards and guidelines recommendations by the LTC and further amendments to those recommendations agreed by the Council at the second part of its 26th session. Australia considers that all environmental protections should be contained in legally binding standards which should be concluded together with the Exploitation Regulations.

(b) **Environmental Management and** Monitoring procedures;

(c) **Environmental Risk Assessment and** Mitigation measures~~;~~

(d) Baseline data collection;

(e) Scope and content of environmental impact assessments and tatements;

(f) Application for a plan of work;

(g) Environmental management systems;

(h) Environmental performance guarantees.

Canada

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 for at least key contaminants of concern in the water column, sediment and tissue), including on toxicity, biodiversity status, plume density and extent, and sedimentation rates;

(b) Monitoring procedures and interpretation of results; and

(c) Mitigation and/or remedial measures.

Costa Rica

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

(a) Environmental quality objectives, including, but not limited, on biodiversity status, plume density and extent, and sedimentation rates;

(b) Monitoring procedures; and

(c) Mitigation measures.

RATIONALE: this should be an indicative list. There should be a detailed discussion of this regulation

France

Projet d'article 45 – Elaboration de normes environnementales : Nous notons que cet article doit être mis à jour à la lumière des conclusions de l'atelier de Pretoria de mai 2019.

Germany

- With regard to **Draft Regulation 45**, Germany suggests including a second paragraph in order to capture one crucial element of Council Decision ISBA/25/C/37.

Draft Regulation 45:
"1. Environmental Standards shall be developed in accordance with regulation 94 and shall include the following subject matters: (a) Environmental quality objectives and indicators, including on biodiversity status, plume density and extent, and sedimentation rates; […]. 2. The Authority shall not approve any exploitation activities unless the necessary environmental standards have been adopted."

Indonesia

Regulation 45
Development of Environmental Standards

Environmental Standards shall be developed in accordance with regulation 9 4 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
Mitigation measures.

Italy

Part No./ Section No./ Draft Reg. No.	Comment description	Proposal for Draft Regulation text editing (in red)	Rationale
DR45	Environmental Standards: consider what is contained in the rationale for guiding and assisting the Commission and the working group in the development of initial standards.		i) Collect data and comprehend metric of deepsea ecosystem and environmental components; ii) set objectives for the protection of the environment (ecosystem services - biodiversity, physicochemical conditions, socioeconomic components -); iii) assess the environmental risks and relevant protection strategies; iv) set reference norms and standards (e.g. ISO, EIA, and parametric concentrations of pollutants + target environmental concentrations); v) Set monitoring standards. Standards are the tool to support assessors and decisors to make their
DR45 (2)(a)	It is ineffective to attempt listing relevant environmental parameters before priority environmental standards are in place. The list must be revised once standards will be formulated. Consider including ecological health indexes. See also comment above (rationale).		

Jamaica

Regulation 45 Development of environmental Standards

DR 45 is described in the LTC Note, ISBA/25/C/18, as a "placeholder pending further discussion at the workshop to be held in Pretoria in May 2019." Jamaica looks forward to seeing the proposed text and will reserve its comments until such time.

Japan

Regulation 2: Fundamental policies and principles, Regulation 45: Development of Environmental Standards, Regulation 46: Environmental Management System: Regulation 47: Environmental Impact Statement, and Regulation 48: Environmental Management and Monitoring Plan

With regard to Environmental Standards, Environmental Management System, Environmental Impact Statement and Environmental Management and Monitoring Plan under regulations from 45 through 48, relationship between each respective issues is not clear at the present moment. Therefore, an entire picture including likely contents, outputs, workflow and primary implementing entity should be made clear before entering into a discussion of the respective Guidelines.

Mexico

Finalmente, para México es importante recalcar que las actividades de explotación deberán iniciar hasta y en la medida en que se tenga la reglamentación secundaria que la Comisión Jurídica y Técnica deberá elaborar como parte de sus facultades (**proyecto de artículos 45 y 47)**, en términos de lo establecido por el propio Código de Explotación y las decisiones del Consejo.

Micronesia

On Draft Regulation 45(a), the text should make clear that the listed examples of "environmental quality objectives" are non-exhaustive.

Morocco

Article 45 : Développement de normes environnementales	-Nécessité pour l'Autorité d'élaborer des normes juridiquement contraignantes pour une meilleure surveillance et évaluation des risques.

Russian Federation

Regulation 45, the first paragraph	Environmental Standards shall be developed in accordance with regulation 94 and shall include the following subject matters:	It is suggested to add words "*inter alia*" after the words "*shall include*", so that this provision reads as follows: "*Environmental Standards shall be developed in accordance with regulation 94 and shall include, inter alia, the following subject matters:*".	Amendment of this provision with the words "*inter alia*" is substantiated by the relevant changes to Regulation 94, as well as by the fact that at the moment it is impossible to specify a complete list of all necessary and relevant environmental standards (for example, the issue of the ocean noise is currently topical). Therefore, the list of issues that may be covered by environmental

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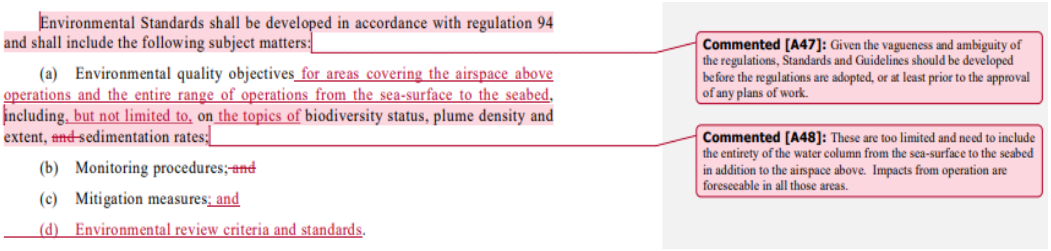
United States of America



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

(a) Environmental quality objectives for areas covering the airspace above operations and the entire range of operations from the sea-surface to the seabed, including, but not limited to, on the topics of biodiversity status, plume density and extent, ~~and~~ sedimentation rates;

(b) Monitoring procedures; ~~and~~

(c) Mitigation measures; and

(d) Environmental review criteria and standards.

Commented [A47]: Given the vagueness and ambiguity of the regulations, Standards and Guidelines should be developed before the regulations are adopted, or at least prior to the approval of any plans of work.

Commented [A48]: These are too limited and need to include the entirety of the water column from the sea-surface to the seabed in addition to the airspace above. Impacts from operation are foreseeable in all those areas.

Deep Ocean Stewardship Initiative

DR 45: Environmental Standards referring to DR94: such "Standards" will be important and legally powerful according to wording in DR 94 (legally binding to Contractors): have they been drafted? These should also be required for baseline studies. The environmental quality objectives shall be defined prior to the activity and cannot be limited to those stated. They also need to be achievable, and they need to be able to be monetized. See paper: https://doi.org/10.1016/j.marpol.2018.11.010.

DR 45: The subject matter of the Environmental Standards should not be limited to those listed. Perhaps the text should read "shall include, but are not limited to, the following subject matters". As exploitation activities occur, the need for different Environmental Standards may become apparent.

DR 45(a): Add the following: "(...) plume chemical composition, density and extent (...)".

Deep Sea Conservation Coalition

45	Development of Environmental Standards	The list of environmental standards is too narrow and the current list of environmental quality objectives, monitoring procedures and mitigation measures should (and will) be the subject of a workshop, and should be open ended.

Institute for Advanced Sustainability Studies

60. With respect to DR 45, we are of the view that the development of Environmental Standards are essential and should be adopted prior to the finalization of the Draft Regulations. Otherwise, there is a risk that this process may be compromised or undermined. Further, there needs to be clear wording to ensure that the list in DR 45 is not exhaustive. It should read: "[…] and shall include, inter alia, the following […]".

61. Further, DR 45(a) should clarify what is meant by 'biodiversity status', and make specific reference to 'ecosystem functioning'.

The Pew Charitable Trusts

~~Develop incentive structures~~**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 ~~market-based instruments that support and enhance the~~ on biodiversity status, plume density and extent, and sedimentation rates;

DR45(a)'s list of proposed environmental quality objectives would benefit from the preface: "*including **but not limited to***" as this is a somewhat *ad hoc* and brief list.

(b) Monitoring procedures; and

~~(b)~~(c) Mitigation measures.

More explanation as to the difference between 'Environmental Standards' and 'Standards' could be helpful.

This list may need to be reviewed following discussion (and the ISA's review of the May 2019 Pretoria workshop outcomes). For example, '*Mitigation measures*' may be better expressed as '*Mitigation of environmental harm*' as a Standard on mitigation may be outcome-focussed, rather than prescriptive as to 'measures'.

Regulation 46

Environmental management system

1. A Contractor shall implement and maintain an environmental management system, taking account of the relevant Guidelines.

2. An environmental management system shall:

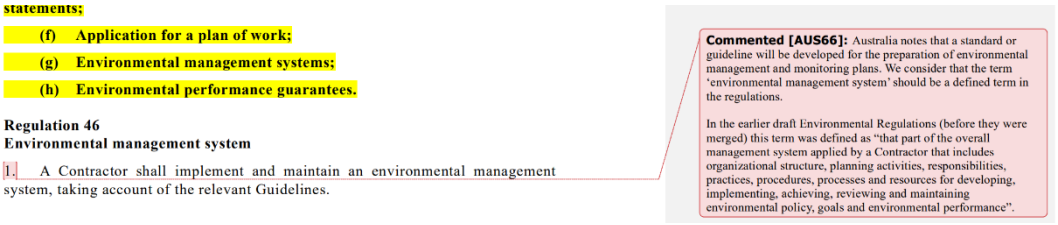
(a) Be capable of delivering site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;

(b) Be 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.

I - Members of the International Seabed Authority

Australia



statements;

(f) Application for a plan of work;

(g) Environmental management systems;

(h) Environmental performance guarantees.

Regulation 46
Environmental management system

1. A Contractor shall implement and maintain an environmental management system, taking account of the relevant Guidelines.

Commented [AUS66]: Australia notes that a standard or guideline will be developed for the preparation of environmental management and monitoring plans. We consider that the term 'environmental management system' should be a defined term in the regulations.

In the earlier draft Environmental Regulations (before they were merged) this term was defined as "that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance".

2. An environmental management system shall:

(a) Be capable of delivering site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;

(b) Be 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.

(d) Be in accordance with Good Industry Practice and internationally recognised standards.

Canada

(b) Be capable of cost-effective, independent auditing by recognized and accredited international or national organizations acceptable to the Authority; and

(c) Permit effective reporting to the Authority in connection with environmental performance.

China

16. Draft regulation 46

There are many ambiguities regarding the "environmental management system" stipulated in this regulation. It is necessary to further clarify who is to establish the environmental management system, what to be included in the system and who shall entrust the independent audit.

Costa Rica

1.The Authority will develop a document that will set the binding minimum Standards for an Environmental Management System.

1.bis A Contractor shall implement and maintain an environmental management system, in compliance with the Standards mentioned in paragraph 1 and taking account of the relevant Guidelines.

RATIONALE: Contractors should follow a standardized document setting the minimum requirements for the Environmental Management System,

2. An environmental management system shall:

(a) Deliver site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;

(b) Be audited by an independent recognized and accredited international or national organizations; and

(c) Permit effective reporting to the Authority in connection with environmental performance.

RATIONALE: The system shall deliver the environmental objectives and be audited. Not just "be capable of".

France

Projet d'article 46 – Système de management environnemental : Nous notons que les critères et principes correspondant à ce projet d'article feront l'objet d'une directive. En effet, en l'état, le projet d'article est confus et nécessite d'être clarifié. En particulier, les notions de « système de *management* environnemental » et de « plan de gestion de l'environnement et de suivi » mériteraient toutes deux d'être définies pour plus de clarté (pour l'heure, seule une proposition de définition du plan de gestion de l'environnement et de suivi a été envisagée).

De manière plus générale, la similarité entre les formules « système de management environnemental », « plan de gestion de l'environnement et de suivi », « plan régional de gestion de l'environnement », « notice d'impact environnemental », « étude d'impact sur l'environnement » peut prêter à confusion. Il serait utile de recourir à des expressions qui permettrait de les distinguer plus aisément les unes des autres.

Japan

Regulation 2: Fundamental policies and principles, Regulation 45: Development of Environmental Standards, Regulation 46: Environmental Management System: Regulation 47: Environmental Impact Statement, and Regulation 48: Environmental Management and Monitoring Plan

With regard to Environmental Standards, Environmental Management System, Environmental Impact Statement and Environmental Management and Monitoring Plan under regulations from 45 through 48, relationship between each respective issues is not clear at the present moment. Therefore, an entire picture including likely contents, outputs, workflow and primary implementing entity should be made clear before entering into a discussion of the respective Guidelines.

Micronesia

15. On Draft Regulation 46(2)(a), the FSM queries the definition of "environmental objectives" as well as the soundness of allowing a Contractor to identify such objectives on its own as part of the relevant environmental management system, as strongly implied by the text. As a corollary, there needs need to be clarity as to whether all Contractors should follow a particular template when it comes to developing an environmental management system—perhaps a template identified in Guidelines or Standards.

Morocco

Article 46 : Système de management environnemental	-Nécessité d'élaboration de directives à l'intention des entrepreneurs. -Clarification des concepts distincts de systèmes de management de l'environnement.

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

DR 46: The purpose of the Environmental Management System should be stated.

DR 46: The draft Regulations should specify (or refer to Standards that specify) global environmental goals and objectives for activities in the Area. DR 46 seems to imply that Contractors set their own project-specific objectives, without specifying any higher-order goals and objectives that can inform project-specific planning.

DR 46(1): There should be a reference to the Guidelines.

DR 46(2)(a): Add the following: "(...) site-specific and regional environmental (...)".

DR 46(2)(b): Pleased to see that the Environmental Management System is expected to include means for independent auditing.

Deep Sea Conservation Coalition

46	Environmental Management System	This should allow for alteration. The regulations should require the ISA to issue a Standard document setting out minimum requirements for an EMS, and should require compliance by contractors with that Standard.

Institute for Advanced Sustainability Studies

62. Similarly, the Guidelines mentioned in DR 46 are also essential and must be in place before the Draft Regulations are finalized. Further, we recommend that "Guidelines" here be replaced with "Standards".

The Pew Charitable Trusts

1. A Contractor shall implement and maintain an environmental management system taking account of the relevant Guidelines.

2. An environmental management system shall be:

(a) Capable of delivering site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;

(b) Capable of cost-effective, independent auditing by recognized and accredited international or national organizations; and

~~(a)~~(c) Permit effective reporting to the Authority in connection with environmental performance ~~of Contractors, including technology development and innovation.~~ .

Consideration could be given to amending DR 46(1) to refer to well-established existing international standards in this area. For example: "*A Contractor shall implement and maintain an environmental management system, **consistent with ISO 14001 or other similar internationally recognised standard**, and taking account of the relevant Guidelines*."

Is the reference to '***Standards** in the Environmental and Monitoring Plan*' [DR46(2)(a)] correct? According to Schedule 1 and DR94, Standards are legally binding instruments adopted by Council. It is unclear how these could be found in a Contractor's Plan.

'Environmental objectives' are referenced three times in the draft Regulations [DR 2(e)(i), DR46(2)(a) and Annex VII paragraph 2(a)]. The meaning of that term is not elaborated, but from the nature of those references, it appears they refer to and envisage every Contractor developing its own environmental objectives for each Plan of Work. Elaboration of when and how these objectives are set might be helpful. Consideration should also be given to the ISA's setting of its own strategic environmental objectives, and requiring that Plans of Work be evaluated against those objectives. A Contractor-led, project-specific approach to environmental objectives, without additional standard-setting by the ISA, could lead to different standards for environmental performance 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 here.

DR46(2)(b) may benefit from further consideration. The provision as worded does not incorporate a requirement that auditing must occur, and it is unclear why 'cost-effective' is included in this sub-paragraph. A reformation could be: "*Audited by an independent, recognised and accredited international or national organisation on a periodic basis, as agreed in the EMMP.*"

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 is to document and report the results of the environmental impact assessment. The environmental impact assessment:

(a) Identifies, predicts, evaluates and mitigates the biophysical, social and other relevant effects of the proposed mining operation;

(b) Includes at the outset a screening and scoping process, which identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment;

(c) Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

(d) Identifies measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

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) Inclusive of a prior environmental risk assessment;

(b) Based on the results of the environmental impact assessment;

(c) In accordance with the objectives and measures of the relevant regional environmental management plan; and

(d) Prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

I - Members of the International Seabed Authority

Australia

Regulation 47
Environmental Impact Statement

1. The purpose of the Environmental Impact Statement is to document and report the results of the environmental impact assessment. **~~The~~ An** environmental impact assessment **is mandatory.**

***Ibis*. The environmental impact assessment shall**:

(aa) Be informed by relevant baseline data that captures temporal and seasonal variation;

(a) Identify**[~~ies~~]**, predict**[s]**, evaluate**[s]** and mitigate**[s]** the biophysical, social and other relevant effects of the proposed mining operation;

(b) Include**[s]** at the outset a screening and scoping process, which identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment;

(c) Include**[s]** an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

(d) Identify**[~~ies~~]** **avoidance and mitigation** measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan

(e) Include evidence of consultation with relevant coastal States in close proximity to the proposed Mining Area

(f) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed.

Commented [AUS67]: Australia welcomes the increased detail in the March 2019 iteration of the draft regulations regarding Environmental Impact Statements (EIS). We also support the Commission's accompanying comment that the detailed requirements for the scoping stage, including the associated process of environmental impact assessments (EIA) should be detailed under the exploitation regime (ISBA/25/C/18).

Noting that the LTC recommends the priority development of guidelines and standards for EIAs and the preparation of an EIS, Australia proposes that the exploitation regulations and/or legally binding standards should, at a minimum:

a) clearly identify the stages of EIA in the regulations, particularly the screening stage, the assessment (or scoping) stage and the approval stage;
b) articulate the roles of the applicant or Contractor, the Authority and the Sponsoring State in the EIA preparation, assessment and approvals process;
c) provide for public consultation on draft EIAs as part of the approval process and for EIAs to be made publicly available once approved (rather than just rely on the public consultation of the EIS in draft regulation 11);
d) require consultation with relevant coastal states in the EIA process;
e) include an explicit provision enabling the LTC to require that certain conditions relating to mitigation of environmental impacts are included in EMMPs; and
f) specify the minimum requirements for baseline data, including collecting data over multiple years to capture temporal and seasonal variation.

Canada

Regulation 47
Environmental Impact ~~Statement~~Assessment

1. The purpose of the Environmental Impact Statement is to document and report the results of the environmental impact assessment. The environmental impact assessment:

(a) Identifies, predicts, evaluates and mitigates the ~~biophysical~~physical, chemical, biological, social and other relevant effects of the proposed mining operation;

(b) ~~Includes at the outset a screening and scoping process, which i~~Identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the ~~Environmental Impact Statement~~assessment on the key environmental issues. The environmental impact assessment ~~should~~ shall include public consultation in various key steps of the process~~an environmental risk assessment~~;

(c) Includes an impact analysis to describe and predict the nature and extent of the d~~E~~nvironmental ~~Effects~~ risks and impact of the mining operation; and

(d) Identifies measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

(e) Shall be conducted in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

2. Preparation of the environmental impact assessment shall include steps below:

(a) Screening to determine whether an environmental impact assessment is required for the proposed development;

(b) Scoping to identify key environmental and other relevant issues, including potential cumulative impact;

(c) Impact prediction and evaluation using best available scientific results from environmental risk assessments and information from the public consultation;

(d) Mitigation, prevention and management of potential adverse impacts to identify measures to prevent or mitigate significant adverse impacts of a proposed development;

(e) Preparation of Environmental Impact Statement to document and report the results of the assessment;

(f) Environmental Impact Assessment Decision.

~~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) Inclusive of a prior environmental risk assessment;

(b) Based on the results of the environmental impact assessment;

(c) In accordance with the objectives and measures of the relevant regional environmental management plan; and

~~(d) Prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.~~

Chile

Chile sugiere incluir, dentro de los propósitos de la declaración, comunicar además de los resultados, la **metodología de evaluación**.

Además de incluir el análisis de impacto, su **caracterización, situación base y diagnóstico,** en este punto **es necesario determinar y caracterizar el área de influencia, directa e indirecta**, de la zona a explotar. Asimismo, precisar ¿**Qué se entenderá y cómo se definirán los niveles aceptables**? El Reglamento debe especificar estos criterios.

Es necesario establecer, asimismo:

¿Cómo o de qué manera se considera la situación previa a la exploración?

¿Cuál es la situación base que se considera para la identificación y caracterización de los impactos?

En cuanto a los resultados de la evaluación del impacto ambiental, tal como se mencionó previamente, **se debe incluir la metodología empleada. Idealmente,** la **Autoridad debería proporcionar metodologías base para tener resultados comparables**.

El utilizar metodologías estandarizadas y a su vez explicarlas dentro de la declaración de impacto ambiental, permitirá disponer de **resultados comparables**.

Sobre el **literal d) del numeral 3) las buenas prácticas del sector, los mejores conocimientos científicos disponibles, y las mejores técnicas disponibles, debieran estar basados o respaldados en estándares vigentes a nivel internacional, y/o por metodologías estandarizadas.**

Es un tema que debe adecuarse también a lo que actualmente se está desarrollando en BBNJ.

China

It is suggested to modify subparagraph 3 (c) as "in accordance with the objectives and measures of the relevant existing regional environmental management plan". The reason for adding "existing" here is that although the regional environmental management plan can serve as a prerequisite for deep seabed exploitation, its absence should not hinder the application of a Plan of Work .

Costa Rica

(b) Includes at the outset a screening and scoping process, which identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant REMP.

RATIONALE: EIA and EIS shall be coherent and both shall include the provision of complying with the relevant REMP's objectives and measures.

(c) Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

(d) Identifies measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

1.bis The minimum mandatory stages for the development of an Environmental Impact Assessment are:

a. Screening: a process to determine which activities will be subject to an EIA.

b. Scoping: a process to identify the specific environmental issues or concerns to be included in the assessment, including the determination of the alternatives.

   i.Consideration of alternatives

   ii.Regulatory review

   iii.Baseline study review to ensure sufficiency of information to do the EIA

   iv.Risk assessment

   v.Mitigation , impact management and residual risk assessment

c. Preparation of draft EIA

d. Review of the draft EIA by experts

e. Review of EIA by stakeholders

f. EIA Report

g. Draft Environmental Management and Monitoring Plan

h. Decision Making

i. Permit to proceed

ii.Not permit to proceed

iii. Requiere applicant to re-do aspects of EIA or EMMP

i. Follow up measures including biennial monitoring of the impact during the process and every 5 years after it has been completed

RATIONALE: The regulations need to include more details on the EIA, at least the steps, who is responsible for each phase, etc. This needs further discussion but Costa Rica proposes at least the steps included supra. This shall be further detailed in an Annex, together with the binding Standards.

France

Projets d'articles 47, 48 et 55 : La formule actuellement employée des « données scientifiques les plus sûres » doit être remplacée par la formule habituellement consacrée des « **meilleures données scientifiques disponibles** » pour éviter toute confusion et divergence d'interprétation. Cela permettra également de remettre en cohérence les versions linguistiques française et anglaise et de coïncider avec les définitions proposées à la fin du projet de règlement.

Projet d'article 47 – Notice d'impact sur l'environnement : L'actuel projet d'article est susceptible de créer une confusion entre les notions d'évaluation environnementale et de notice d'impact (*environmental impact statement* en anglais). Des clarifications devraient être apportées au sujet de ces notions (champs géographique et thématique de chacune d'elles). Nous notons également qu'en l'état actuel du projet, l'étude d'impact sur l'environnement vise également à déterminer les conséquences sociales de l'activité d'exploitation proposée. Or l'étude d'impact sur l'environnement ne devrait être établie qu'à l'aune de critères strictement environnementaux, sous peine d'affaiblir la démarche environnementale.

Une distinction claire entre les études d'impact environnemental et les notices d'impacts sur l'environnement pourrait également être effectuée en consacrant à chacune de ces notions un projet d'article distinct.

Au projet d'**article 47, paragraphe 1er,** alinéa b, le terme « devrait » – *should* en anglais – doit par ailleurs être remplacé par « devra » – *shall* –, l'inclusion d'une évaluation des risques au sein de l'étude d'impact sur l'environnement n'étant pas facultative, conformément au paragraphe 3, alinéa a dudit article.

Germany

- In relation to **Draft Regulation 47**, Germany proposes the following changes.

Draft Regulation 47:
"1. The purpose of the Environmental Impact Statement (EIS) is to document and report the results of the environmental impact assessment process (EIA process). The EIA process: […] (b) Includes at the outset a screening and scoping process, which identifies and prioritises the main activities and impacts associated with the potential mining operation in order to focus the EIS on the key environmental issues. This should be based on the prior testing of equipment and operations in the mining area under application and include an environmental risk assessment; […]. 4. The EIS shall demonstrate that the activity is in accordance with all relevant environmental Standards and with the requirements of the applicable Regional Environmental Management Plan."

Italy

Part No./ Section No./ Draft Reg. No.	Comment description	Proposal for Draft Regulation text editing (in red)	Rationale
DR47	For the nature of the deep sea exploitation mining activities and the high degree of scientific uncertainties on the effects of such activities on the deep sea natural environment, we strongly believe that Environmental Impact Statement (EIS) is not the most appropriate tool to effectively manage the environmental issues and risks associated to the development of deep sea mining operations. Instead we consider the Environmental Impact Assessment (EIA) process as regulated under the *Directive 2014/52/EU of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment* a more appropriate decision making tool to ensure that an effective high level of protection of the environment and human health is maintained. Compared to EIS, EIA is a more comprehensive and participated assessment process compared to a document (EIS) describing the environmental residual effects after mitigations. In particular, EIA requires that public and private projects that are likely to have significant effects on the environment be made subject to an assessment prior to Development Consent being given. Development Consent means the decision by the Competent Authority or authorities that entitles the Developer to proceed with the Project. In terms of the effectiveness of the approval process, the Commission would also benefit a lot of the EIA approach since it will allow the Commission to closely and effectively follow all the process steps and to contribute to the assessment process in a proactive manner, while the EIS would charge the Commission	Amend DR 47 in order to replace EIS with the concept of EIA, as described, for istance in EU Directive 2014/52/EU. Implementation of revised Regulation 47 may affect also regulations of section 3 and 4 (DR 10 to 14) as well as DR 48 which should be amended accordingly, where required.	**Fundamental differences between Environmental Impact Statement (EIS) and Environmental Impact assessment (EIA) process are summarised hereafter.** The (Environmental Impact Statement) EIS is a report mandated by the US National Environmental Policy Act of 1969 (NEPA), to assess the potential impact of actions "significantly affecting the quality of the human environment." The NEPA mandate includes the assessment of impacts on the physical, cultural, and human environments. Nevertheless, this requirement under NEPA does not prohibit harm to the environment, but rather requires advanced identification and disclosure of harm. • EIS is meant to be a comprehensive decision-making tool for federal, state, and local policy makers, and to inform the public about proposed projects that could affect the environment. • EIS is a closed package document the proponent submits to the competent authority describing the effects for proposed activities on the environment. The EIS mandate includes the assessment of impacts on the biological, physical, cultural, and human environments, nevertheless, in the way how EIS is conceived this requirement does not prohibit harm to the environment, but rather requires advanced identification and disclosure of harm. In other words, EIS is a regulatory requirement which cannot influence the decision on the project. • EIS does not include a scoping phase participated with the key stakeholders • EIS includes results of public consultation with stakeholders conducted to inform the public about proposed projects that could affect the

Jamaica

Regulation 47 Environmental Impact Statement
DR 47 now includes reference to a scoping *process*. The LTC Note, ISBA/25/C/18, clarifies that requirements of the scoping stage should be detailed under the exploration regime. The exploration regulations (regulation 1(5)) refer to the adoption of supplemental rules, regulations and procedures especially with respect to the protection and preservation of the marine environment. We therefore understand that supplemental rules to the exploration regulations are contemplated and are being prepared.

Japan

<Regulation 47>

1. The purpose of the Environmental Impact Statement is to document and report the results of the environmental impact assessment. The environmental impact assessment:

(a)Identifies, predicts, evaluates and mitigates the biophysical, other relevant effects of the proposed mining operation;

(b)Includes at the outset a screening and scoping process, which identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment;

(c)Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

(d)Identifies measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

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) Inclusive of a prior environmental risk assessment;

(b) Based on the results of the environmental impact assessment;

(c)In accordance with the objectives and measures of the relevant regional environmental management plan; and

(d)Prepared in accordance with the applicable Regulations on Prospecting and Exploration and Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, based on the results of the consultation conducted in accordance with the relevant Guidelines.

Micronesia

On Draft Regulation 47, as a general matter, the FSM welcomes robust text on a process for conducting environmental impact assessments ("EIAs"). International law—including as reflected in UNCLOS—imposes clear obligations on States (including the entities under their jurisdiction or control) to conduct EIAs in connection with activities that cross a certain threshold of harm to the natural environment, including the Ocean. It is vital that the Draft Regulations as a whole contain appropriate language in this regard. In the FSM's view, the process for an EIA (including decision-making) should be legally binding and transparent to ensure predictability and public confidence; articulate roles for a Contractor, sponsoring State, and the ISA; provide for public consultation of draft EIAs as part of the approval process; require publication of EIAs once approved; have specific reference to consultations with relevant coastal States, including adjacent coastal States; allow for public review and comments; provide space for the use of independent experts to aid in the preparation and/or review of EIAs; and highlight efforts taken by a proponent Contractor to mitigate environmental harms identified in the EIA process.

Additionally, the FSM welcomes the reference to Best Environmental Practices in Draft Regulation 47(3)(d) as being part of the consideration when preparing an Environmental Impact Statement. As noted above, the traditional knowledge of IPLCs as well as the holders of such traditional knowledge should be viewed as part of such Best Environmental Practices. The FSM welcomes a standalone reference to such traditional knowledge in this text, but at a minimum, such traditional knowledge (as well as its holders) should be reflected as part of the definition of Best Environmental Practices.

Morocco

Article 47 : Notice d'impact sur l'environnement	-Veiller à ce que les déclarations d'impact sur l'environnement correspondent aux REMP existants.

Republic of Korea

2.4. Part IV Protection and preservation of the Marine Environment

- In Regulation 47 para 1 (b), screening and scoping process is reintroduced. We would like to ask for clarification of LTC whether the environmental impact assessment at the exploration phase cannot be seen as the process under Regulation 47 para 1 (b), and whether these procedures regarding environmental impact assessment are compatible with each other.

Russian Federation

29.	**Regulation 47(2)**	An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation.	It is suggested to amend this provision with the words "*based on the results of the environmental impact assessment*" before the words "*shall prepare*" and read it is follows: "*An applicant or Contractor, as the case may be, based on the results of the environmental impact assessment shall prepare an Environmental Impact Statement in accordance with this regulation*".	Amendment is suggested so that this provision better reflects the content of the Regulation 47.

Spain

CUARTA.- **ARTÍCULOS 47 Y 48**

Según se desprende del **párrafo 2 del artículo 47**, el solicitante o contratista preparará una "declaración de impacto ambiental". Sin embargo, no se menciona que la Autoridad hará la evaluación y posible concesión en base a esta declaración como si figura en el Anexo IV. En consecuencia, se sugiere una nueva redacción.

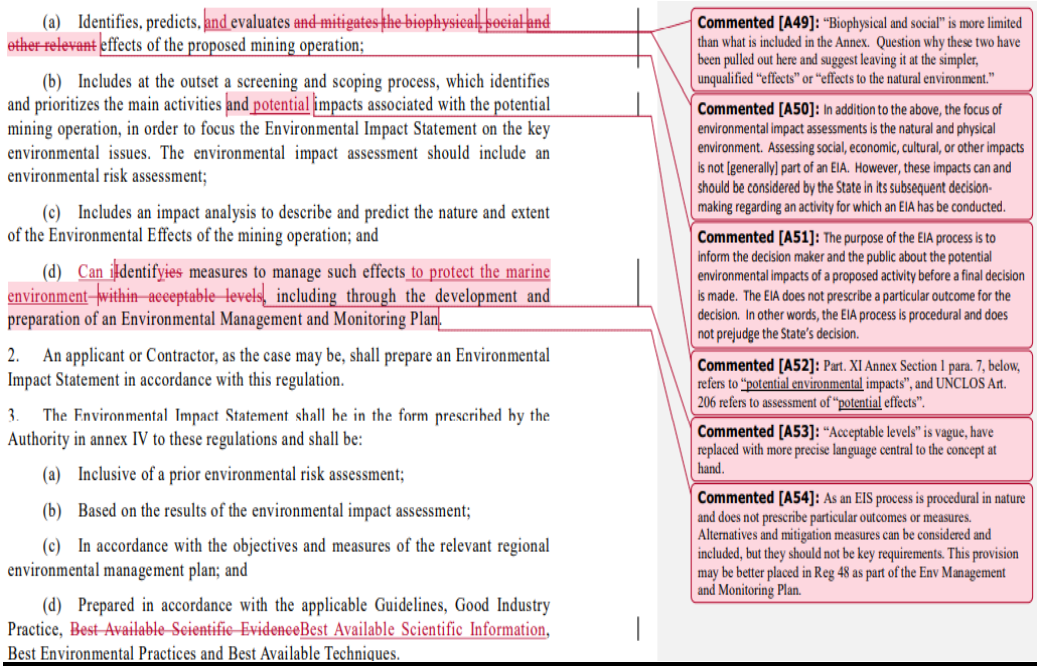
Los **artículos 47 (3) (c) y 48 (3) (b)** mencionan que la Declaración de impacto ambiental y el Plan de gestión y vigilancia ambiental deberán estar en consonancia con los Planes de gestión ambiental regional pertinentes. Sin embargo, en el proyecto de reglamento no se menciona expresamente que la existencia de los planes de gestión ambiental debe ser una condición necesaria para la aprobación de los contratos de explotación. Se sugiere una mención expresa al respecto.

United Kingdom

47. Environmental Impact Statement	(a) Identifies, predicts, evaluates and mitigates the biophysical, social and other relevant effects of the proposed mining operation;	(a) Identifies, predicts, evaluates and mitigates the ~~biophysical~~ physiochemical and biological, social and other relevant effects of the proposed mining operation;	Change to align with wording elsewhere in the Regulations and existing EIA Framework.
	(c) Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and	(c) Includes an impact analysis to describe and predict, among others, the spatial and temporal nature and extent of the Environmental Effects of	As above
		the mining operation, including cumulative impacts'; and	

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

Unites States of America



(a) Identifies, predicts, and evaluates ~~and mitigates the biophysical, social and other relevant~~ effects of the proposed mining operation;

(b) Includes at the outset a screening and scoping process, which identifies and prioritizes the main activities and potential impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment;

(c) Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

(d) Can identify~~ies~~ measures to manage such effects to protect the marine environment ~~within acceptable levels~~, including through the development and preparation of an Environmental Management and Monitoring Plan.

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) Inclusive of a prior environmental risk assessment;

(b) Based on the results of the environmental impact assessment;

(c) In accordance with the objectives and measures of the relevant regional environmental management plan; and

(d) Prepared in accordance with the applicable Guidelines, Good Industry Practice, ~~Best Available Scientific Evidence~~Best Available Scientific Information, Best Environmental Practices and Best Available Techniques.

Commented [A49]: "Biophysical and social" is more limited than what is included in the Annex. Question why these two have been pulled out here and suggest leaving it at the simpler, unqualified "effects" or "effects to the natural environment."

Commented [A50]: In addition to the above, the focus of environmental impact assessments is the natural and physical environment. Assessing social, economic, cultural, or other impacts is not [generally] part of an EIA. However, these impacts can and should be considered by the State in its subsequent decision-making regarding an activity for which an EIA has be conducted.

Commented [A51]: The purpose of the EIA process is to inform the decision maker and the public about the potential environmental impacts of a proposed activity before a final decision is made. The EIA does not prescribe a particular outcome for the decision. In other words, the EIA process is procedural and does not prejudge the State's decision.

Commented [A52]: Part. XI Annex Section 1 para. 7, below, refers to "potential environmental impacts", and UNCLOS Art. 206 refers to assessment of "potential effects".

Commented [A53]: "Acceptable levels" is vague, have replaced with more precise language central to the concept at hand.

Commented [A54]: As an EIS process is procedural in nature and does not prescribe particular outcomes or measures. Alternatives and mitigation measures can be considered and included, but they should not be key requirements. This provision may be better placed in Reg 48 as part of the Env Management and Monitoring Plan.

Secretariat of the Convention of Biological Diversity

37	47	Work under the CBD to facilitate the description of ecologically or biologically significant marine areas (EBSAs), can prove very useful in the development of the environmental impact statement, in particular with regards to providing a description of the existing biological environment (as referred to in section 5 of annex IV). In this regard, section 5 of annex IV may be revised as follows: "**5. Description of the existing biological environment** The description of the site should be divided by depth regime (surface, midwater and benthic, where appropriate), and provide a description of the various biological components and communities that are present in or utilize the area ***and the ecological and or biological significance of these components***. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment."
37	47	With regards to the development of Environmental Impact Statements, the CBD voluntary guidelines for the consideration of biodiversity in environmental impact assessments and strategic environmental assessments in marine and coastal areas (as contained in UNEP/CBD/COP/11/23) provides guidance on biodiversity considerations of each step of the EIA process. In particular, it highlights key questions and considerations to be addressed in each step of the EIA process with regards to potential impacts on biodiversity, including specific considerations in the open-ocean and deep-sea.

Deep Ocean Stewardship Initiative

DR 47(1)(a): "…mitigates the biophysical, social and other relevant effects of the proposed mining operation." The term "physical" often refers to physical oceanography, not the physical habitat itself. It would be more accurate to change "biophysical" to "biotic and abiotic", or "biological and abiotic".

DR 47(1)(b): The scoping process should include a review of the applicant's environmental baseline studies from the exploration phase.

DR 47(1)(c): Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation. Add: "including how climate change will affect those predictions".

DR 47(1): Add the following: (e) clearly identify where scientific knowledge gaps exist and define to what degree these may influence the overall impact analysis and impact assessment.

DR 47(2): "An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation." What timeframe is this expected to occur within?

DR 47(3)(d): "…Be prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence and Best Available Techniques." It is difficult to evaluate how effective this will be without having access to the Guidelines.

Deep Sea Conservation Coalition

47	EIS	While the EIA process has finally been introduced, there is no clarity even over who is responsible for overseeing the EIA process and who carries out the EIA, other than stating that the applicant or contractor prepares the EIS. The EIA is still a shell and needs to be completely rewritten. Scoping has finally been re-inserted, which is a good thing, but for instance, specific provision needs to be added for a standard on baselines, requirement for adequate baselines and review when baseline information is inadequate. This Regulation requires major review. There is no public review included. It cannot be left to the public review of the EIS in DR 11. A hearing process needs to be included, as does provision for independent scientific advice. More detail is needed on assessing the completeness of documents, expert/independent scientific review, revision of the environmental documents prior to the DR 11 review, hearings etc DR 47 should include alternative options including the no-action alternative and measures to avoid impacts where possible. DR 47 should also include a requirement that the EIA clearly demonstrates that a loss of biodiversity will be prevented. This draft assumes only one EIA: but it is highly likely the contractor has undertaken baseline studies for part of contract area - mining will likely occur at multiple stages and/or at various sites within one contract area. In DR 47(1) (d), there are no standards to assess 'acceptable' levels of effects.

63. We are confused and concerned by DR 47 in its entirety. DR 47 requires the Applicant to prepare an Environmental Impact Statement (EIS), but nowhere in the Draft Regulations is it stipulated that the Authority needs to get involved in order to complete the Environmental Impact Assessment (EIA) process. While we acknowledge that the LTC is required under DR 11 to review Environmental Plans (which include the EIS) and prepare a report for the Council, we consider this as grossly insufficient, particularly because this function falls way short of having a separate EIS approval mechanism. We are of the view that LTC, or even better the Environment and Scientific Committee or an independent external expert (see General Observations in Section A), must evaluate and either determine, based on an assessment of the EIS in accordance with a predetermined assessment framework, whether to endorse or refuse the EIS. In the case of an endorsement, the Authority shall put the EIS and its assessment report on the website for public consultation, in accordance with DR 11(1). In the case of a refusal, the applicant will have to resubmit another EIS in accordance with the feedback it has received from the Authority. This will be subjected again to the same assessment process. Accordingly, we recommend a new provision in the form of DR 47 bis, requiring the Authority to play an active role in assessing the EIS, i.e. to review the EIS in accordance with a predetermined assessment framework, and to make a determination as described earlier.

64. Further, there should be a new DR 47(1)(c bis), which states: "Identifies and evaluates the potential environmental impacts that could occur outside the contract area, in particular, the potential transboundary impacts that could be inflicted on adjacent coastal states

65. DR 47(d) refers to the words "acceptable levels", however, there is no indication of what this entails.

The Pew Charitable Trusts

Section ~~1 bis~~

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

~~Environmental Management and Monitoring Plan~~

~~Draft regulation 46 bis~~

Regulation 47

Environmental Impact Statement

1. The purpose of the Environmental Impact Statement (EIS) is to document and report the results of the environmental impact assessment process~~, which identifies~~ (EIA process). The EIA process:

(a) Identifies, predicts, evaluates and mitigates the biophysical, social and other relevant effects of the proposed mining operation~~. It is the result of several activities, which include an environmental risk assessment to determine the main issues and impacts, an impact analysis to predict the nature and extent of the Environmental Effects of the mining operation and the identification of measures to manage such effects within acceptable levels.~~;

(b) Includes at the outset a screening and scoping process, which identifies and prioritises the main activities and impacts associated with the potential mining operation in order to focus the EIS on the key environmental issues. This should include an environmental risk assessment;

(d) Be prepared in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

To avoid ambiguity, the Regulations should also expressly state that for the purposes of EIA/EIS, 'Best Environmental Practices' includes the collection of adequate quantity and quality baseline data. The ISA should issue Standards to provide further details as to the baseline data that are required from Contractors.

See Code Project Short Paper June 2019: Baselines

(c) Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

~~(b)~~(d) Identifies measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

This EIA / EIS section of the draft Regulations (DR47) benefits from helpful additional detail, including the re-introduction of a scoping phase. But questions remain regarding the EIA process across the Exploration and Exploitation phases, and details of how scoping will be carried out.

'Scoping' usually refers to an assessment of the adequacy of a planned EIA and baseline datasets before an EIA is undertaken. It is important as it enables early intervention to correct sub-standard EIA processes, and helps Contractors avoid expending resources on unnecessary or misguided research. Moreover, it provides comfort that a future EIS will not be rejected by the ISA for procedural flaws. As such, the scoping procedure should be further elaborated, setting out details of the scoping report requirements, mandatory stakeholder engagement and public consultation process, a process for gaining additional information, and where necessary, independent scientific advice, and an approval process (before the EIA progresses). In its note, the Commission suggested that "*requirements for such scoping stage, including associated processes, should be detailed under the exploration regime*." [ISBA/25/C/18] This makes sense where the necessary activities will in practice be carried out under an Exploration contract. The Commission does not indicate what instrument or organ of the ISA will do this.

'Screening' is not explained further in the Regulations, but in environmental law the term usually refers to the assessment of which types of activities trigger an EIA requirement (and which can be performed without an EIA). The screening function is currently covered to some extent by document ISBA/19/LTC/8 'Recommendations for the guidance of Contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area'. Priority should be given to supplementing this existing framework with a commitment that is (a) legally binding, and (b) applies to EIAs that are required for Exploitation applications, and/or EIAs that may take place during an Exploitation contract.

DR47 is silent as to who is responsible within the ISA for overseeing the EIA process (which should involve frequent regulator-proponent contact unlikely to be satisfied by the ISA's current structure of semi-annual meetings). Nor does DR47 contain any stipulations about who carries out the EIA, nor a requirement for public review and/or hearings.

See Code Project Short Paper June 2019: EIA

2. An applicant or Contractor, as the case may be, shall prepare an ~~Environmental Impact Statement~~EIS in accordance with this regulation.

3. ~~The Environmental Impact Statement~~The EIS 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;

(b) Based on the results of the ~~environmental impact assessment;~~EIA process;

(c) In accordance with the objectives and measures of the relevant regional environmental management plan~~, if any~~; and

See earlier commentary for DR2(e) regarding need for more explicit Regulations regarding REMPs.

III - Stakeholders

Ecologistas en acción

3. Evaluación del Impacto Ambiental

La sección 1 bis sobre la Evaluación de Impacto Ambiental (EIA) es simplemente una coraza, pues es necesario que se desarrolle ampliamente y que incluya evaluaciones científicas independientes y un proceso de audiencias públicas.

Con ello, se deberían tener en cuenta los criterios como los que figuran en el párrafo 47 de las Directrices Internacionales para la Ordenación de las Pesquerías de Aguas Profundas en Alta Mar, aprobadas reiteradamente por la Asamblea General de las Naciones Unidas, incluida la resolución 71/123 (párr. 180 b) aprobada en 2016.

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 meet the environmental quality objectives and standards for the mining operation. The plan will set out 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.

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 and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

I - Members of the International Seabed Authority

Canada

Regulation 48
Environmental Management and Monitoring Plan

1. The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that ~~c~~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 assessment decision and will set out 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.

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 and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

Chile

Estos planes deben evaluarse conjuntamente con la evaluación de impacto ambiental para abordar la forma de gestionar los impactos de manera integral.

Es necesario tener en consideración que, respecto al Plan de Gestión y Vigilancia Ambiental, el propósito de éste debiera incluir la gestión de impactos identificados y procedimientos frente a aquellos no previstos.

¿A qué objetivos se refiere al afirmar que los efectos ambientales van a cumplir objetivos?

Resulta necesario clarificar cuáles serían las **normas de calidad ambiental,** especialmente porque las **normas de calidad ambiental** suelen tener, en la mayoría de los casos, un ámbito de aplicación territorial específico. Las medidas a aplicar en este sentido son de mitigación, pero ¿**se considerarían otros tipos de medidas para enfrentar los impactos ambientales**?

En el mismo sentido, podría explicitarse ¿**Qué ocurre en caso de incumplimiento de lo estipulado**? Se podría agregar qué, **las medidas que sean propuestas en este punto, deberían considerar los costos asociados al momento de establecerlas, de manera tal que pueda asegurarse su real implementación.**

Asimismo, es importante tener en consideración que **el contratista debería incluir en sus informes todo aquello relacionado con los efectos e impactos no identificados oportunamente.**

Se podrían considerar otras medidas además de las de mitigación.

Se sugiere agregar **prácticas de monitoreo y vigilancia de los efectos ambientales** y también, **que se tomen las medidas respectivas en caso de evidenciarse incumplimiento de lo pactado.** Además, para mantener la idoneidad del plan actualizado, podría ser positivo incorporar **mecanismos de revisión y control,** orientados al mejoramiento continuo (lo cual se relaciona con **la necesidad propuesta previamente de adoptar un mecanismo de sistema de gestión ambiental**).

Chile propone agregar un punto que obligue al contratista a financiar todos los gastos asociados para dar cumplimiento al Art. 38.

China

18. Draft regulation 48

It is suggested to amend subparagraph 3 (b) as "in accordance with the objectives and measures of the relevant existing regional environmental management plan". The reason for adding "existing" here is that although the regional environmental management plan can serve as a prerequisite for deep seabed exploitation, its absence should not hinder the application of a Plan of Work .

France

Projet d'article 48 – Plan de gestion de l'environnement et de suivi : Nous réitérons notre demande de **suppression de la formule « le cas échéant »** au paragraphe 3, alinéa 4, qui n'apparait plus dans la version anglaise du projet de règlement. Nous soulignons à nouveau le risque de confusion entre « plan de gestion de l'environnement et de suivi » et « plan régional de gestion de l'environnement ».

Germany

- In relation to **Draft Regulation 48**, Germany proposes the following changes.

Draft Regulation 48:
"[…] 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: […] (c) Prepared in accordance with the applicable Standards and Guidelines, Good Industry Practice, Best Available Scientific Evidence 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 EMMP shall contain a monitoring programme for at least the first seven years of Exploitation, to be conducted by independent experts and in compliance with the applicable Standards."

Germany would like to suggest introducing a new **Draft Regulation [48bis]** on test mining to be conducted, in principle, before an application for exploitation is submitted. In the following draft it is suggested to include, in principle, a two-fold requirement for test mining to be conducted: Before the application for the approval of a Plan of Work and before commercial production. Paragraph 5 then clarifies that if between the two stages the equipment and methodology as well as the regional specificities have not substantially changed, no second test mining is needed. The same applies if a Contractor can refer to a successful test mining in the context of another Plan of Work conducted either by the Contractor itself or jointly with other Contractors, as long as the requirements of paragraph 5 are met.

Draft Regulation [48bis]:
"1. 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. 2. Before applying for an approval of a Plan of Work, a Contractor has to provide evidence to substantiate the required information in accordance with Regulation 7. A test mining study in accordance with Annex [IVter] shall be submitted with the application for the approval of a Plan of Work. 3. Before commercial production may commence in accordance with Regulation 25, a Contractor shall provide evidence demonstrating its ability to ensure effective protection of the marine environment, in particular, to show that no significant harm to the marine environment is likely to occur during the phase of commercial production. A test mining study in accordance with Annex [IVter] must be submitted to substantiate this. 4. Contractors should apply for the approval for test mining projects from the Authority in accordance with all relevant Standards and Guidelines. The potential effects of test mining projects shall be assessed in the form of an Environmental Impact Assessment. Potentially affected States, international organisations and relevant stakeholders shall be consulted in accordance with the relevant Standards and Guidelines. 5. A test mining study pursuant to Paragraph 3 does not have to be submitted if the evidence required pursuant to Paragraph 3 has been demonstrated in the test mining study pursuant to Paragraph 2 or in a test mining study in the context of another approved plan of work. The Contractor has to submit relevant information to the LTC. The Commission shall decide whether the submission of a test mining study pursuant to Paragraph 2 is required."

Japan

Regulation 48: Environmental Management and Monitoring Plan

According to regulations 49 and 50, a Contractor is required to take necessary measures in accordance with the Environmental Management and Monitoring Plan (EMMP), regulation 48 also needs to make reference likewise to pollution control and restriction on Mining Discharges under regulations 49 and 50.

<Regulation 48>

1.The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental Effects meet the environmental quality objectives and standards for the mining operation. The plan will set out commitments and procedures on 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 and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

Micronesia

. On Draft Regulation 48(3)(c), the FSM queries the omission of a reference to Best Environmental Practices in connection with the preparation of an Environmental Management and Monitoring Plan; Best Environmental Practices, as currently defined in the Draft Regulations, would appear to be relevant here. The FSM also reiterates its comments in this connection in Draft Regulation 47(3)(d), as noted above.

Spain

CUARTA.- **ARTÍCULOS 47 Y 48**

Según se desprende del **párrafo 2 del artículo 47**, el solicitante o contratista preparará una "declaración de impacto ambiental". Sin embargo, no se menciona que la Autoridad hará la evaluación y posible concesión en base a esta declaración como si figura en el Anexo IV. En consecuencia, se sugiere una nueva redacción.

Los **artículos 47 (3) (c) y 48 (3) (b)** mencionan que la Declaración de impacto ambiental y el Plan de gestión y vigilancia ambiental deberán estar en consonancia con los Planes de gestión ambiental regional pertinentes. Sin embargo, en el proyecto de reglamento no se menciona expresamente que la existencia de los planes de gestión ambiental debe ser una condición necesaria para la aprobación de los contratos de explotación. Se sugiere una mención expresa al respecto.

United Kingdom

		the mining operation, including cumulative impacts'; and	
48. Environmental Management and Monitoring Plan		4 (bis) The contractor shall monitor and assess compliance with the EMMP and publish the results of the assessment in the annual report.	Compliance with the EMMP should be included in the Annual Report.

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) ~~Based on~~ Take into account the environmental impact assessment and the Environmental Impact Statement;

(b) Be i~~I~~n accordance with the relevant regional environmental management plan; and

(c) Be p~~P~~repared in accordance with the applicable Guidelines, Good Industry Practice, ~~Best Available Scientific Evidence~~Best Available Scientific Information 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 Commission shall develop and implement procedures for determining, on the basis of the best available scientific and technical information, whether proposed exploitation activities in the Area would have serious harmful effects on vulnerable marine ecosystems, in particular those associated with seamounts and cold water corals, and ensure that, if it is determined that certain proposed exploration activities would have serious harmful effects on vulnerable marine ecosystems, those activities are managed to prevent such effects or not authorized to proceed.

Commented [A55]: This is explicit in the exploration regs and should be so here.

Secretariat of the Convention on Biological Diversity

47	Work under the CBD to facilitate the description of ecologically or biologically significant marine areas (EBSAs), can prove very useful in the development of the environmental impact statement, in particular with regards to providing a description of the existing biological environment (as referred to in section 5 of annex IV). In this regard, section 5 of annex IV may be revised as follows: "**5. Description of the existing biological environment** The description of the site should be divided by depth regime (surface, midwater and benthic, where appropriate), and provide a description of the various biological components and communities that are present in or utilize the area ***and the ecological and or biological significance of these components***. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment."
47	With regards to the development of Environmental Impact Statements, the CBD voluntary guidelines for the consideration of biodiversity in environmental impact assessments and strategic environmental assessments in marine and coastal areas (as contained in
	UNEP/CBD/COP/11/23) provides guidance on biodiversity considerations of each step of the EIA process. In particular, it highlights key questions and considerations to be addressed in each step of the EIA process with regards to potential impacts on biodiversity, including specific considerations in the open-ocean and deep-sea.

Deep Ocean Stewardship Initiative

DR 48: The EMMP cannot be submitted with the EIS but must be drawn up (preferably by an environmental company independent of that which carried out the EIS) and be dependent on both the REMP and the independently reviewed outcome of the EIS (as identified in the Annex, but not clear in this Regulation). (Most EMMPs are submitted, at the same time, by the same EAP as composed the EIA/EIS so are biased to not include the shortcomings of the EIS). An EMMP is effective only if it addresses risks and uncertainties that are either confirmed or further identified by independent expert opinion (refer to DR 52).

DR 48(1): Where will the environmental quality objectives and standards be defined? DR 92 mentions the recommendation of standards by the Commission, taking into account the views of experts, but it is not clear how these are going to be defined. In order to assess an EMMP, objectives and standards should be defined.

DR 48(3)(a-c): All of these should incorporate climate change considerations.

Deep Sea Conservation Coalition

48	EMMP	EMMPs must include specific plans for monitoring the environmental impacts of mining -not just the effectiveness of the mitigation measures The review of the EMMP should be carried out by the LTC

III - Stakeholders

Nauru Ocean Resources Inc.

Regulation 48
If the Contractor is complying with its Plan of Work as approved when it obtained its Exploitation Contract, then the Contractor should not then later be required to materially change its activities simply because a new "Guideline" may be developed by the Authority at a later time, unless the Contractor is adequately compensated for the cost of making such a change by the Authority.

Section 3
Pollution control and management of waste

Regulation 49
Pollution control

A Contractor shall take necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan and the applicable Standards and Guidelines.

I - Members of the International Seabed Authority

Australia

Regulation 49
Pollution control

A Contractor shall take **all** necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan and the applicable Standards and Guidelines.

Commented [AUS68]: Australia proposes that this should provision be amended to read '*all* necessary measures' (emphasis added) to be consistent with Article 194 UNCLOS.

Canada

A Contractor shall take necessary measures to protect and preserve the marine environment, including by preventing, reducinge and controlling pollution and other hazards ~~to the Marine Environment~~ from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan and the applicable Standards and Guidelines.

Germany

- Germany suggests including a reference to REMPs also in **Draft Regulation 49**.

Draft Regulation 49:
"A Contractor shall take necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan, the applicable Regional Environmental Management Plan and the applicable Standards and Guidelines."

Morocco

Article 49: Lutte contre la pollution	-Se référer à la convention de Londres et à son protocole de 1996.

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

Institute for Advanced Sustainability Studies

66. The Standards and Guidelines referred to in DR 49, alongside all references to Standards and Guidelines in Part IV, are of an essential nature and should be adopted prior to the finalization of the Draft Regulations.

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; 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 Serious Harm to the Marine Environment, and such disposal, dumping or discharge shall be reported forthwith to the Authority.

I - Members of the International Seabed Authority

Australia

2bis. **The disposal, dump 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 Appendix 1.**

Commented [AUS69]: Australia proposed that there should be further guidance and clarification on the definition of unauthorised discharge to avoid unnecessary disposal. Furthermore, any mining discharge in such circumstances should be considered an 'Unauthorised Mining Discharge' and constitute a Notifiable Event under Appendix 1 (and thus need to comply with the associated timeframes).

Costa Rica

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 any harm to the Marine Environment, and such disposal, dumping or discharge shall be reported forthwith to the Authority.

RATIONALE : The proposed wording stated that only serious harm must be minimized, when all environmental harm must be minimized in order to comply with the effective protection of the marine environment.

France

Projet d'article 50 – Limitation des rejets miniers : Afin d'éviter d'éventuels problèmes d'asymétrie des obligations des Etats membres de l'AIFM selon qu'ils sont parties, ou non, à la Convention et au Protocole de Londres sur la prévention de la pollution des mers résultant de l'immersion de déchets, des directives devraient régler la question afin d'assurer le meilleur niveau possible de protection de l'environnement marin.

Japan

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 Serious Harm to the Marine Environment, and such disposal, dumping or discharge shall be reported forthwith to the Authority. In case of such mining discharge occurred, the Contractor shall take necessary measures in accordance with regulation 34(2).

Micronesia

18. On Draft Regulation 50(2), the FSM is concerned that the threshold of avoidance of harm for permitted Mining Discharges is for avoidance of Serious Harm. The FSM recognizes the circumstances involved in this type of permitted Mining Discharge, but in the light of the potential of Mining Discharges to harm not just the Area but also the marine ecosystems of adjacent coastal States, there should be at a minimum a requirement for the carrying out of assessments, mitigation, monitoring, and similar measures after these Mining Discharges, for the sake of the ecosystems in the Area and high seas as well as in coastal States' marine environments.

Republic of Korea

- Regarding Draft regulation 50, the Republic of Korea is of the opinion that more scientific researches need to be carried out, before we proceed to making or revising regulations on mining discharges. In the present practice of deep seabed mining discharges of the Resources, polymetallic nodules and polymetallic sulphides should be treated differently. While polymetallic nodules cannot be dressed/processed, polymetallic sulphides tend to be

dressed/processed to increase the economic efficiency. Thus, only water and muds are discharged during polymetallic nodule processing, while the substances that are called "mine tailings" may be discharged in case of polymetallic sulphides processing. As far as we know, mining discharges from polymetallic sulphides have been processed on the ground and there are no cases of processing on the ship. Thus, we do not know the mine tailing effects on the marine environment yet. In this respect, we think it is necessary to consider characteristics of the Resources and their treatments when establishing the definition of mining discharges and standards of mining discharges. However, the draft regulation 48 does not allow the releasing of mining discharges to the ocean, except in exceptional circumstances such as to protect human life and does not reflect the difference of each Resource's processing. In addition, we are of the opinion that to minimize mining discharges and marine environmental harm, it is necessary to carry out additional studies regarding discharge areas. We believe that through these studies, a clearer scientific basis for the regulation would be attained.

Spain

QUINTA.- **ARTÍCULO 50**

En el **artículo 50**, dedicado a la restricción de los vertidos mineros, el Reino de España sugiere hacer una referencia al Convenio de Londres de 1972 y su Protocolo de 1996 sobre el vertimiento de desechos y otras materias, para dejar claro que se respetan los convenios internacionales vigentes. Por tanto, se propone la inclusión de un nuevo apartado 3 al respecto

Redacción propuesta:

"3. Nada de lo dispuesto en este Reglamento se interpretará en el sentido de que socava las obligaciones de las Partes Contratantes del Convenio de Londres sobre la prevención de la contaminación marina por vertido de desechos y otras materias y su Protocolo".

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

DR 50(2) (former DR 48(2)): Restriction on Mining Discharges: **We recommend that DR 50(2) be mostly replaced with the language, adjusted mutatis mutandis, from Article 8(1) of the 1996 Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (which closely follows Article V of the 1972 Convention covering the same topic (LC/LP)), as follows:*
[We did not read this language in plenary as it was too long; we recommended using language drawn from the LC/LP and said we would provide it to the Secretariat, which we did, as follows.]
Proposed Revised DR 50(2): However, the Contractor need not comply with the obligation in paragraph 1 above when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea if disposal, dumping or discharge into the Marine Environment of any Mining Discharge appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such disposal, dumping or discharge into the Marine Environment of any Mining Discharge will be less than would otherwise occur. Such disposal, dumping or discharge into the Marine Environment of any Mining Discharge shall be conducted so as to minimize the likelihood of damage or injury to human or marine life or Serious Harm to the Marine Environment and shall be reported forthwith to the Authority.

Deep Ocean Stewardship Initiative

DR 50(1)(a): The effectiveness of this provision will depend entirely on the "assessment framework for Mining Discharges as set out in the Guidelines." It is doubtful whether non-binding guidelines are sufficient, given that these will determine whether the operator can dump discharges into the Marine Environment. Legally-binding standards may be a more appropriate option.

DR 50(1)(b): Current wording suggests that the EMMP, prepared by an applicant, can permit the dumping of Mining Discharge. Suggest rewording.

DR 50(2): The property of a Contractor should not be considered more valuable than the Marine Environment of the Area, which is the common heritage of mankind.

Deep Sea Conservation Coalition

50	Restriction on Mining Discharges	It should be noted that mining discharges are permitted where allowed under the Environmental Management and Monitoring Plan (EMMP). This underlines the importance of development of an appropriate EMMP. The exception in paragraph 2 of "reasonable measures are taken to minimise the likelihood of Serious Harm to the Marine Environment" should not be restricted to serious harm but should be to minimise all environmental harm.

Institute for Advanced Sustainability Studies

67. With respect to DR 50(1)(a), we recommend that the word "Guidelines" be replaced with "Standards". Further, in relation to DR 50(1)(b), we pose the question if EMMPs should actually permit such disposal, dumping or discharges – we suggest to delete this paragraph in its entirety.

The Pew Charitable Trusts

2. ~~However, the Contractor need not comply with the obligation in paragraph~~Paragraph 1 above ~~where action~~shall not apply if such disposal, dumping or discharge into the Marine Environment is ~~necessary~~carried out for the safety of ~~life~~the vessel or Installation or the ~~preservation~~safety of ~~property from serious damage~~human life, provided that ~~any action shall be so conducted as~~all reasonable measures are taken to ~~minimize~~minimise the likelihood of ~~injury to life or~~ Serious Harm to the Marine Environment, and shall be reported forthwith to the Authority.

Further clarification was previously requested by several Member States on the thresholds proposed in this Regulation. DR50(2) sets a low threshold ("*all reasonable measures*" taken to minimise "*the likelihood of Serious Harm to the Marine Environment*") to permit dumping of otherwise non-compliant Mining Discharges for the purposes of safety of property or life. Where such dumping takes place, Contractors should rather be required to minimise all environmental harm (not only that which meets the Serious Harm threshold).

The draft Regulations contain no specific provisions for environmental assessment, mitigation or monitoring following accidental discharges.

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.

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 Contractor shall, via an independent reviewer selected by the Authority and 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

Commented [A56]: Environmental reviews should be performed by independent experts selected by the Authority based on a clear set of criteria or from an established list of options. The Contractor should be responsible for paying for the independent review, but should not be responsible for the review itself.

Deep Ocean Stewardship Initiative

DR 51: Given that climate change is likely to alter conditions during the period of an exploitation contract – all plans and practices including impact monitoring should take this into account and update accordingly.

DR 51(a): We suggest a time frame be added in which Environmental Effects are to be reported.

DR 51(c): The "relevant" Guidelines should be made available as soon as possible.

DR 51(c) or 52: This should specify that an EMMP needs to be updated when the relevant REMP is updated so as to ensure coherence between project-scale and regional-scale environmental management.

The Pew Charitable Trusts

(a) Monitor and report annually under regulation 38(2)(g) on the
(a) 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~~; and~~

~~(a)~~(b) 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 ~~Good Industry Practice~~Best Available Techniques and Best Environmental Practices and taking account of the relevant Guidelines.

Regulation 52
Performance assessments of the Environmental Management and Monitoring Plan

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

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

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 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 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.

I - Members of the International Seabed Authority

Australia

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**;

Commented [AUS70]: Australia considers it is more appropriate that regular, annual environmental performance review be mandated due to the high levels of uncertainty of the potential environmental impacts of exploitation in the Area.

Belgium

Performance assessments of the Environmental Management and Monitoring Plan

Commented [VS54]: Why don't we put a timing in here, e.g. on an annual basis?

6. Where 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

Commented [VS55]: In this case, we doubt whether the Contractor is able to manage satisfactorily the Contract.

Costa Rica

1. The Authority shall conduct performance assessments of the Environmental Management and Monitoring Plan to assess:

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan, which can never be less than every 2 years.

RATIONALE: it does not make sense for the contractor to evaluate itself. It should be the authority through a group of experts, or an independent group of experts. The original frequency included in the previous draft of every 2 years must be included again as an addition to Regulation 52.2

Germany

- In relation to **Draft Regulation 52**, we believe it is reasonable to also mention the applicable REMP.

Draft Regulation 52:
"1. A Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan 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 linked to this; and (c) The compliance of the plan with the applicable Regional Environmental Management Plan. […]"

Jamaica

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan which shall be no less than 24 months;

6. Where a Contractor has previously submitted two 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.

RATIONALE:

With regards to DR 52(2), Council has an interest in ensuring that assessments are undertaken regularly. Thus a maximum period should be stated in the Draft Regulations. We note that annual reports are required under DR 38(2)(g). To require a performance assessment to be undertaken at least every twenty-four (24) months would not appear to be unduly burdensome

With regards to DR 52(6), paragraph 3 of DR 52 imposes an obligation on a Contractor to compile and submit a performance assessment report. It is therefore presumed that all Contractors will be competent to do so and/or may choose to outsource this activity. Paragraph 6 refers to the LTC having "reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor". The proposed amendment addresses the basis on which reasonable grounds could be argued should other aggravating circumstances also be present.

Republic of Korea

- In draft regulation 52 paragraph 5, stipulates consequences of the Contractor where the performance assessment undertaken by the Contractor is considered unsatisfactory or unacceptable by the Commission. Whereas in paragraph 6, it is stipulated that performance assessment to be carried out by the Contractor may be deemed as unsatisfactory by the Commission under reasonable grounds even before submission of the performance assessment by a Contractor. For the latter paragraph, we are of the view that it would be necessary to spell out the instances of reasonable grounds for presuming that the performance assessment of the Contractor would be unsatisfactory to avoid any misunderstanding between the Contractors and the Commission, and additionally, how to objectify those measures.
- Regulation 52, para 6 states that "Where 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." In our view, paragraph 6 is not necessary in this regulation, and the purpose of this regulation can be sufficiently reached by the rest of the paragraphs (namely, para 1 to 5, 7 and 8). Rather, para 6 might cause dispute between the contractor and ISA by prejudging what has not actually occurred. Therefore, Korea is of the view that para 6 should be deleted.

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

DR 52(4 to 6): We welcome the inclusion of this Regulation, but a performance assessment should be done in collaboration or in the presence of independent experts. Add the following:

4. (...) meeting. If the commission does not possess sufficient expertise amongst its members it shall consult independent experts to review the performance assessment. The secretary (...)

5. (c) (...) person / group of persons (...)

6. (...) person / group of persons (...)

Deep Sea Conservation Coalition

52	Performance Assessment	The ISA, or independent third party, should carry out the compliance assessment, not the contractor. Currently the only requirement is that the report is to be made public. It should also require public comment. Also the 2 year frequency has been deleted. It should at least allow for yearly reviews: not be subject to the Environmental Management and Monitoring Plan (which may provide for inadequate periods, at least in hindsight).

The Pew Charitable Trusts

9. ~~**Draft regulation 51**~~The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 above by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration.

This is a helpful addition. Reporting requirements are generally important to ensure that the Council receives all monitoring and compliance information necessary for it to perform its regulatory role as the executive body of the ISA mandated to 'control activities in the Area' [Article 162, UNCLOS]

~~1.~~ The frequency of a performance assessment shall be~~:~~

~~(a) In~~ in accordance with the period specified in ~~its~~the approved Environmental Management and Monitoring Plan~~; or~~

~~(b) Every two years; or~~

~~(c) As agreed to in writing by the Commission,~~

~~taking into consideration the nature of the Resource category in question~~. […]

Several Member States in 2018 submissions expressed concern regarding the frequency of performance assessments, noting that regular assessments may be necessary in an environment with high levels of uncertainty. Assessment frequency has now been left to a schedule that will be proposed by the Contractor in the EMMP (for approval by the Council at application stage). No further guidance is given. If the frequency is set incorrectly at the application stage, a revision of the EMMP would be required. It would seem more sensible to include in DR52 a back-stop minimum duration between reviews, perhaps every two years. It may also be prudent to empower the ISA to request *ad hoc* performance assessments, such as after occurrence of an Incident or Notifiable Event, receipt of an unsatisfactory annual report, or issuance of a compliance notice.

Consideration should be given to the possibility of the ISA carrying out the compliance assessment, rather than the Contractor. Assessments should provide for public comment.

9. ~~**Draft regulation 51**~~The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 above by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration.

This is a helpful addition. Reporting requirements are generally important to ensure that the Council receives all monitoring and compliance information necessary for it to perform its regulatory role as the executive body of the ISA mandated to 'control activities in the Area' [Article 162, UNCLOS]

III - Stakeholders

Global Sea Mineral Resources NV

DR 52 (6)	An independent competent person is required to conduct the performance assessment when the Commission deems that Contractor cannot satisfactorily conduct it.	The independent competent person should be agreed by the ISA and the Contractor.

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 and Guidelines; 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.

I – Members of the International Seabed Authority

Australia

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 and Guidelines **and shall be tested at least annually**; and

Commented [AUS71]: Australia's view is that Emergency Response and Contingency Plans should be tested on a regular basis, annually at a minimum, to ensure adequacy and relevance of the contents.

Chile

Chile propone incorporar que, luego de una contingencia y/o emergencia, los contratistas entreguen un informe detallado sobre la forma en que se dio cumplimiento al plan pactado, incluyendo entre otros aspectos, gastos incurridos, responsabilidades y actualización del plan en caso de ser necesario.

Indonesia

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 and Guidelines; 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.	We hold position that [relevant adjacent] Coastal shall be included in the mechanism of consultation between Contractors authority and Sponsoring States.	In this regard, we propose DR 51 (2) to be reformulated as follows: 2. Contractors, the Authority and sponsoring States shall consult together with, [relevant adjacent] Coastal States, as well as 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.

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

Institute for Advanced Sustainability Studies

68. In DR 53(1)(a), we believe that "standards" should be spelt with a capital "S". Further, in DR 53(2), we suggest that the words "which appear to have an interest" be replaced with "as well as other persons with the relevant expertise or know-how".

Section 5
Environmental Compensation Fund

Regulation 54
Establishment of an Environmental Compensation Fund

1. The Authority hereby establishes the Environmental Compensation Fund ("the Fund").

2. The rules and procedures of the Fund will be established by the Council on the recommendation of the Finance Committee.

3. The Secretary-General shall, within 90 Days of the end of a Calendar Year, prepare an audited statement of the income and expenditure of the Fund for circulation to the members of the Authority.

I – Members of the International Seabed Authority

Chile

Chile sugiere que el Secretario General preparare, en su momento, un estado auditado de ingresos y gastos del fondo, con el apoyo del Comité de Finanzas, para brindar mayor certeza.

Italy

The rules and procedures of the Fund will be established by the Council on the recommendation of the Finance Committee, in accordance with article 140 (2) of the UNCLOS.

Jamaica

Regulation 54 Establishment of ~~an~~ Environmental ~~Compensation~~ Funds

1. The Authority hereby establishes the Environmental Compensation Fund ("the Fund") and the Environmental Research and Training Fund ("the ERTF").
2. The rules and procedures of the Fund and ERTF will be established by the Council on the recommendation of the Finance Committee.
3. The Secretary-General shall, within 90 Days of the end of a Calendar Year, prepare ~~an~~ audited statements of the income and expenditure of the Fund and the ERTF for circulation to the members of the Authority.

Mexico

Por lo que hace a este Fondo de Compensación[1], debe ser la Comisión Jurídica y Técnica quien establezca las reglas de conformación, operación, uso y manejo (origen y destino

de los recursos así como la naturaleza jurídica del fondo). A juicio de México, el Fondo debe de estar conformado por las aportaciones de los contratistas a las que hacemos mención en el esquema de pagos y reparto de utilidades que se explicó en párrafos anteriores y debe tener por objetivo la mitigación, remediación y rehabilitación de los ecosistemas marinos dañados, particularmente aquellos que afecten las zonas marinas de los Estados Ribereños.

En este sentido, el uso del Fondo para dar cumplimiento con las obligaciones de indemnización, remediación y reparación a los Estados Ribereños por las actividades de la Zona deben de quedar expresamente señaladas en el Código de Explotación, se sugiere dentro de los **incisos a), b) y d) del proyecto de artículo 55 y en el proyecto del artículo 56**.

Netherlands

Comment: In paragraph 2, the suggestion is to include a deadline for the establishment of the rules and procedures of the Fund. In view of the purpose of the Fund, (cf. Regulation 55) it is relevant to have the Fund up and running at the commencement of exploitation activities. This timeline would also help clarify to all stakeholders where the Authority stands on the issue of the Fund.

Republic of Korea

- In Regulation 54, The Republic of Korea concur with the idea of establishing the Environmental Liability Trust Fund to prevent the environmental damage caused by activities in the Area. However, we think there are some points that need to be addressed for practical operation of this matter. First, it is questionable how much financial resources can be secured for the purpose of the fund from the listed subjects. In addition, the expenses necessary for education and training programs may be covered by Contractors fulfilling their training duties. Second, the draft regulation 56 (a), the funding scheme, imposes a certain amount of fees for the fund from the fees paid to the Authority and since this may be considered as deviating from the principle of polluter pays rule, we suggest a study dealing with this matter. At this point, if necessary, we believe that one way to secure funding to fulfill the purpose of the Environmental Liability Trust Fund is to find ways to utilize funds allotted for environmental protection from the United Nations.
- Lastly, although we support the idea of preventing and remedying environmental damage by establishing an environmental compensation fund as stated in Section 5 of Part 4, we are not confident whether the sufficient fund can be secured by the methods listed under the regulations. Furthermore, according to regulation 56 (a), a certain amount of fees paid to the Authority can be used as the fund, but we need more review to see whether this is inconsistent with 'polluter pays principle'.

/END/

United Kingdom

54. Establishment of an Environmental Compensation Fund			The UK considers that there remain many questions about the working of an Environmental Compensation Fund – including who is responsible, who would administer, and how much is the 'prescribed percentage'? Once we have more agreed details then it will be clearer whether these should be included in the text of the Regulations, or covered in the rules and procedures of the Fund.

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

2. The rules and procedures of the Fund will be established by the Council on the recommendation of the Finance Committee.

3. The Secretary-General shall, within 90 Days of the end of a Calendar Year, prepare an audited statement of the income and expenditure of the Fund for circulation

Commented [A57]: These should be established and agreed to simultaneously with the agreement on the draft regs. This section should also include provisions on eligible entities and means of distribution.

Deep Sea Conservation Coalition

54	Environmental Compensation Fund	The Environmental Liability Trust Fund has been recast as an Environmental Compensation Fund, with functions including research, education and training programs and funding of research into restoration – all of which will deplete the fund, and all of which should be carried out by contractors from their own funds. This is completely at odds with what was recommended by the Seabed Disputes Chamber in the Advisory Opinion, being needed to cover a gap left when for instance a contractor is insolvent. To be very clear: there must be two funds: an Liability Fund and an Environmental Fund.

International Marine Minerals Society

Regulation 54	Who decides how money from the Environmental Compensation Fund is paid or distributed? On what basis?

The Pew Charitable Trusts

The name of the DR54 Fund has been amended to reflect its intended purpose of paying out compensation for harm that may be incurred as a result of Contractor activities. Curiously, the purposes of the fund (DR55) have not been amended to include compensation, nor to remove the other non-compensatory-related purposes contained in sub-paragraphs (b)-(e). These latter purposes may better be addressed via a separate fund.

The Commission acknowledges this section needs more discussion: "*The Commission has asked that the secretariat reflect on the discussions around this topic, with a view to advancing the rationale, purpose and funding of such fund, and how to ensure the adequacy of such fund through its funding*." [ISBA/25/C/18].

Key policy questions to be addressed might include:

(i) Whether a reversion to a previous draft's two separate funds may make sense: (1) to compensate for damages, as per the ITLOS Advisory Opinion liability gap; and (2) for other 'sustainability' type purposes (education, research, environmental purposes).

(ii) How the fund(s) are financed, how the money (and interest generated) will be managed and by whom, when disbursements, reimbursements or refunds can be made, what is the process for accessing the fund, what standard of proof is required, and what type of damages and purposes are eligible.

III - Stakeholders

Nauru Ocean Resources Inc.

Regulation 54
NORI questions whether an Environmental Compensation Fund is needed, given that an Environmental Performance Guarantee has already been required under Regulation 26. NORI strongly advises against duplicating such costs for Contractors.

Regulation 55
Purpose of the Fund

The main purposes of the Fund will include:

(a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be;

(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

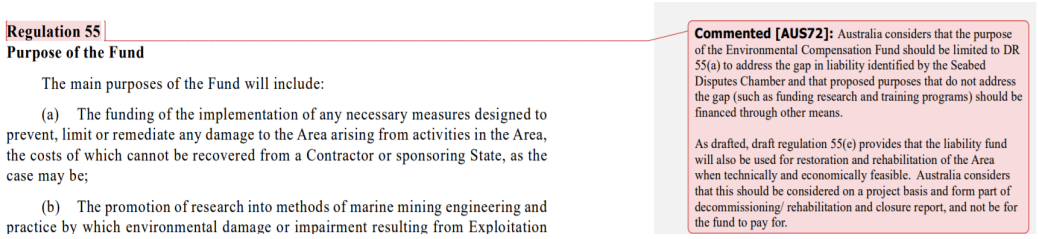
(c) Education and training programmes in relation to the protection of the Marine Environment;

(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and

(e) The restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence.

I - Members of the International Seabed Authority

Australia


Regulation 55
Purpose of the Fund

The main purposes of the Fund will include:

(a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be;

(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation

Commented [AUS72]: Australia considers that the purpose of the Environmental Compensation Fund should be limited to DR 55(a) to address the gap in liability identified by the Seabed Disputes Chamber and that proposed purposes that do not address the gap (such as funding research and training programs) should be financed through other means.

As drafted, draft regulation 55(e) provides that the liability fund will also be used for restoration and rehabilitation of the Area when technically and economically feasible. Australia considers that this should be considered on a project basis and form part of decommissioning/ rehabilitation and closure report, and not be for the fund to pay for.

Chile

Con respecto al **literal e)** sobre restauración y rehabilitación de la Zona, **Chile considera que este punto está estrechamente relacionado con los planes de cierre, por lo que ambas secciones podrían tener una referencia cruzada, justamente debido a la similitud de objetivos. Ello permitiría evitar una duplicidad innecesaria, de dos procesos que cumplen un objetivo similar.**

China

19. Draft regulation 55

The environmental liability trust fund should be remedial and complementary in nature, aiming to prevent, limit, or remedy any environmental damage from activities in the Area. "Education and training programmes in relation to the protection of the Marine Environment" as contained in subparagraph (c) is too broad and may dilute the core objective of the fund. Given that the training issue pertinent to the marine environmental protection could be covered by Contractors in discharging their relevant contract obligations or through other measures, it is suggested to delete the relevant content.

Costa Rica

Purpose of the Environmental Compensation Fund

(b) The restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence. (non-compensatory purposes were deleted to be addressed by another mechanism)

RATIONALE: The other "purposes" were non-compensatory purposes which have nothing to do with ITLOS advisory opinion on liability gap. Those other purposes must be addressed by a separate mechanism.

Regulation 55bis

Purpose of the Environmental Fund

The main purposes of the Fund will include:

(a) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

(b) Education and training programmes in relation to the protection of the Marine Environment;

(c) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area

RATIONALE: the purposes deleted from Regulation 55, are included in Regulation 55bis.

France

A la section 5, relative au « Fonds d'indemnisation environnementale », nous relevons une possible incohérence entre l'intitulé de ce fonds et son objet (« *environmental compensation fund* » en anglais). En effet, sur les cinq objets du fonds prévus à **l'article 55**, seul le premier poursuit un véritable objectif d'indemnisation. Nous suggérons donc de modifier l'intitulé comme suit : « Fonds de **compensation** environnementale », plus en ligne avec son objet.

Projet d'article 55, alinéa a : Suggestion de remplacer « [...] limiter ou réparer les dommages occasionnés *dans la Zone* » par « limiter ou réparer les dommages occasionnés **par les activités menées dans la Zone** » afin d'inclure les dommages causés à la colonne d'eau ou aux zones sous juridiction nationale.

Ce fonds pourrait également servir à financer des travaux de recherche sur les impacts cumulés des activité d'exploitation à l'échelle régionale, ainsi que le suivi des zones d'intérêt environnemental particulier (*Areas of Particular Environmental Interest)* dont la gestion ne relève pas des contractants.

Italy

DR55	The purpose of the Fund should also include a point addressing the logic that rectification of the harm deriving from seabed mining activities should be to ensure that the parties conducting the seabed mining activities (Contractors) address the injustice caused to those who undeservedly suffered it. Contractors should generally be understood as 'voluntary beneficiaries', since they know of the wrongdoing, could have avoided it without incurring unreasonable costs, but instead have sought and welcome it. As 'voluntary beneficiaries', contractors must rectify the harm done by supporting those affected by it. Identification of the recipient of such duty is highly problematic considering the complex nature of seabed mining. For instance, given the potentially global scope of the harm caused by seabed mining, it is virtually impossible to identify the rightful duty-recipient or a legitimate successor with certainty.	The Fund should include a financial mechanism for governing compensation for harm arising from seabed mining activities carried out beyond national jurisdiction. Contractors should replenish such mechanism through financial compensations proportional to the harm they brought about. The revenues (or proceeds) raised should be distributed to victims of harm deriving from mining activities proportionally to their social vulnerability to such harm. After point (b) you may add 'The promotion of the participation of vulnerable communities and relevant stakeholders in decisions about disbursment of funds'
DR55 [c]		Education and training programmes in relation to the protection of the Marine Environment , with particular regards to vulnerable communities and relevant stakeholders;

Jamaica

Regulation 55 Purpose of the Environmental Compensation Fund
The main purposes of the Fund iswill include:

(a) Tthe funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be, including;

(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

(c) Education and training programmes in relation to the protection of the Marine Environment;

(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and

(e) Tthe restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence.

Regulation 55 bis Purpose of the ERTF
The main purposes of the ERTF include:

(ab) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

(bc) Education and training programmes in relation to the protection of the Marine Environment; and

(cd) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area.;

RATIONALE:

The purposes of the Fund as stated in the Draft Regulations appear to be overly broad. This would likely diminish the utility of the Fund in achieving the stated objectives. A Compensation Fund should address the possible gap in liability, as identified by the Seabed Disputes Chamber, which may occur where a Contractor has caused damage and is unable to meet its liability in full and the sponsoring State has taken all necessary and appropriate measures, or has failed to meet its obligations but that failure is not causally linked to the damage. This extends in our view to the possible restoration and rehabilitation of the environment in cases where the Contractor and sponsoring State may not be held liable.

It is proposed that a separate fund be created to deal with environmental research, training and education programmes. This would supplement the resources that may be available under the Endowment Fund for Marine Scientific Research in the Area and other ISA and Contractor capacity development and training programmes.

Japan

<Regulation 55>

The ~~main~~ purpose~~s~~ of the Fund will be ~~include:~~

~~(a)~~ The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be.~~;~~

~~(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;~~

~~(c) Education and training programmes in relation to the protection of the Marine Environment;~~

~~(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and~~

~~(e) The restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence.~~

Micronesia

19. On Draft Regulation 55, it is the FSM's view that the main purpose of the Environmental Compensation Fund should be focused on the considerations identified in sub-paragraph (a) therein, with significant consideration also given to restoration and rehabilitation of the Area as contemplated in sub-paragraph (e) therein as well. The FSM also acknowledges the consonance between this Fund and Environmental Performance Guarantees; both instruments can reinforce each other, with the latter being funded by relevant Contractors and the former being funded more broadly.

United Kingdom

55. Purpose of the Fund	(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced; (c) Education and training programmes in relation to the protection of the Marine Environment; (d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and	~~(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;~~ ~~(c) Education and training programmes in relation to the protection of the Marine Environment;~~ ~~(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and~~	Further consideration is required about the purpose of the Environmental Compensation Fund. As items (b-d) are not examples of compensation, they should be deleted from this Regulation 55.

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

(e) The restoration and rehabilitation of the Area when technically and economically feasible and supported by ~~Best Available Scientific Evidence~~Best Available Scientific Information.

Deep Ocean Stewardship Initiative

DR 55 currently foresees the fund to be used to address environmental damage as well as research and training programmes in relation to environmental protection. We recommend dedicating the Environmental Compensation Fund to only address environmental damage in cases where the costs cannot be recovered from the Contractor or the sponsoring State, in line with the recommendations of the Seabed Disputes Chamber (*Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10, paragraph 205). Using the fund also for research and training programmes, risks (a) not having sufficient funds to cover liability gaps, and (b) having diminished resources for environmental research and training in the case when a liability gap occurs. Additionally, these will require scientific input, but it is not stated who will provide this input and assessment. Will there be a committee of expert scientists that will evaluate the proposals?

Deep Sea Conservation Coalition

55	Purpose of the Fund	The purposes need major revision. Training and research should be paid for by the Contractors, not the Fund. The only suitable provision is" (a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be", and this needs revision. "Mitigate' should be added, and it should be more open-ended.

Institute for Advanced Sustainability Studies

69. Concerning DR 55, while acknowledging the importance of funding research, education and training programmes, we recommend that the purpose of the Environmental Compensation Fund be confined solely to the matters stated in paragraphs (a) and (e) of DR 55.

The Pew Charitable Trusts

Regulation 55
Purpose of the Fund

The main purposes of the Fund will include:

(a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be;

(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

(c) Education and training programmes in relation to the protection of the Marine Environment;

(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and

(e) The restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence.

Regulation 56
Funding

The Fund will consist of the following monies: MISSING REGULATION

(a) The prescribed percentage or amount of fees paid to the Authority;

(b) The prescribed percentage of any penalties paid 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.

I - Members of the International Seabed Authority

Australia

(a) The prescribed percentage or amount of fees paid to the Authority **by sponsoring states and contractors**;

(b) The prescribed percentage of any penalties paid to the Authority;

Commented [AUS73]: Australia considers that funds for the Environmental Compensation Fund should come from Sponsoring States and contractors. ISA members not involved in activities in the Area should not be required to contribute. This should be reflected in the provisions.

Canada

The Fund will consist of the following monies paid by Contractors:

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

Deep Sea Conservation Coalition

DR 56: Funding of the Fund: MIT in the Financial Workshop in February recommended funding by contractors at a rate of 1% ad valorem value of ore extracted. But this would mean that the Fund is necessarily underfunded for decades until it reaches the recommended $500 million. Rather, the Fund should be directly funded by the Contractor of its own revenues, under the polluter pays principle. Secondly, the 1% is arbitrary. Research into the valuation of the deep sea environment, ecosystem services and potential damage is necessary, and this research must be taken into account in formulating this text.

The LTC acknowledges this needs more discussion: "The Commission has asked that the secretariat reflect on the discussions around this topic, with a view to advancing the rationale, purpose and funding of such fund, and how to ensure the adequacy of such fund through its funding."

56	Funding	This list should be open ended.

Part V
Review and modification of a Plan of Work

Regulation 57
Modification of a Plan of Work by a Contractor

1. A Contractor shall not modify the Plan of Work annexed to an exploitation contract, except in accordance with this regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.

3. Where the proposed modification under paragraph 2 above relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.

4. The Secretary-General may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission at its next meeting.

I - Members of the International Seabed Authority

Australia

4. The Secretary-General may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission at its next meeting.

Commented [AUS74]: Australia endorses the clarification in subparagraph 4 of what constitutes a non-material change that may be proposed by the Secretary-General, ie 'to correct minor omissions, errors, or other such defects' and note that further guidance on what constitutes a 'material change' will be provided in the Material Change Guidelines. We consider the disallowance mechanism provided for in draft regulation 95 is sufficient should the Council consider the Guidelines adopted are inconsistent with the intent or purpose of the rules of the Authority.

Belgium

3. Where the proposed modification under paragraph 2 above may have a potential impact on the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.

4. The Secretary-General may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such

Commented [VS56]: It is likely that some Material Changes don't relate in first instance to the Environmental Management and Monitoring Plan or Closure Plan, but may have a significant impact on the plans. In order to equally capture these Material Changes, this rewording is suggested by Belgium.

Canada

1. A Contractor ~~shall~~ may ~~not~~ modify the Plan of Work annexed to an exploitation contract without prior consent of the Commission, ~~except~~ in accordance with this regulation.

2. Major variations will be brought to the attention of the Commission through the annual reporting cycle outlined in regulation 38.

~~2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.~~

3. ~~Where~~ If the proposed modification ~~under paragraph 2 above~~ relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, ~~the such plans shall be dealt with in accordance~~ Contractor shall notify the Secretary-General. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission, before such Material Change is implemented by the Contractor. ~~with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.~~

4. The Secretary-General, based on the annual reporting process may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. ~~After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission at its next meeting.~~

Chile

Chile considera que:

El Secretario General debe ser apoyado por evaluadores externos independientes, en la tarea de determinar si una propuesta de cambio en el plan de trabajo es o no es sustancial.

Chile considera que falta establecer un procedimiento cuando:

El contratista propone un cambio al plan de trabajo y tal cambio es sustancial;
El contratista propone un cambio al plan de trabajo y tal cambio no es sustancial;
El Secretario General propone al contratista un cambio al plan de trabajo de carácter sustancial;
El Secretario General propone al contratista un cambio al plan de trabajo de carácter no sustancial.

Estos casos no están totalmente tratados en el proyecto de **artículo 57** del Reglamento.

La constitución de la Empresa, también podría ser un factor importante en esta materia, pero se requeriría una especificación clara acerca de su finalidad.

China

20. Draft regulation 57

This regulation implicates the issue whether modification of a Plan of Work by a Contractor constitutes a Material Change. Paragraph 2 provides "the Secretary-General shall consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines", which is inappropriate. Two revisions are proposed. First, "Guidelines" should be replaced by the binding "Standards". Second, Secretary-General shall not consider whether a proposed modification constitutes a Material Change. It is suggested to be modified as "if the Secretary-General considers that the proposed modification may constitute a Material Change, he or she shall submit such matter to the Commission for consideration. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, before such Material Change is implemented by the Contractor."

Costa Rica

Regulation 57
Modification of a Plan of Work by a Contractor

1. A Contractor shall not modify the Plan of Work annexed to an exploitation contract, except in accordance with this regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary General will inform the Council, which shall consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Standards If the Council considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of said Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor. The sponsoring State shall also be informed.

RATIONALE: There shall be Standards that will define and specify what is considered a Material Change. The Council should be the one making the decision and there must be a record of all the changes proposed and approved, even those which are not considered Material Changes

Germany

- Concerning the "modification of a plan of work", we believe it is necessary for the Commission and the Council to be involved in the decision as to whether there is "material change" (**Draft Regulation 57, para. 2; Draft Regulation 25, para. 1**). This aspect relates to the main issue "Delegation of Functions" we noted above.

Draft Regulation 57:
"[…] 2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor. If the Secretary-General considers that the proposed modification does not constitute a Material Change, the Secretary-General shall report the main reasons for this finding to the Commission. If the Commission disagrees with the determination of the Secretary-General, the Commission shall inform the Council and provide a recommendation to the Council to take the final decision. […] 4. The Secretary-General may propose to the Contractor a change to the Plan of Work which is not a Material Change to correct minor omissions, errors, or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall inform the Commission and the Council of this at ~~its~~ their next meetings."

Micronesia

20. On Draft Regulation 57, echoing certain comments above, it is the FSM's view that the determination of what constitutes a Material Change—in this case, for the purpose of modifying a Plan of Work—should be in accordance with legally binding Standards and involve the LTC in some significant manner, rather than give much discretion to the ISA Secretary-General to make this determination.

Russian Federation

30.	**Regulation 57(2)**	A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material	It is suggested to amend this provision with the following sentence: "*…Upon the Council's approval of a Material Change to the Plan of Work, the Secretary-General or duly authorized representative and the designated representative or the authority designated by the Contractor shall sign [the relevant changes to the Contract/written documents with the changes to the Contract]*", putting it as the last one.	Amendments to the text of this paragraph are aimed at eliminating the existing gap in regulation. In accordance with the Regulations, it is "*the Secretary-General or duly authorized representative and the designated representative or the authority designated by the Contractor*" that sign an exploitation contract. Accordingly, the same persons must sign the relevant changes to the Contract.

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

DR 57 (former DR 55): Modification of a Plan of Work by a Contractor: see above with discussion under DR 25.

Deep Ocean Stewardship Initiative

DR 57: Suggest requiring consultation with environmental experts regarding modification of the Plan of Work.

DR 57(2): Guidelines need to be developed that advise what constitutes / does not constitute a Material Change. In addition, the guidelines should outline how the Secretary-General documents their decision making. Whenever a change is made that is not considered a Material Change, the requested change and the justification for this decision should be documented and the document made publically available. See also the points made above concerning DR 25 and 26.

Deep Sea Conservation Coalition

57	Modification of a Plan of Work by a Contractor	This gives the Secretary-General a significant power of to approve a change in the contract by considering that the change may not be material.
		It is one-sided to allow a contractor to introduce a material change but not the ISA.

Institute for Advanced Sustainability Studies

70. In relation to DR 57(2), we reiterate our earlier concern that the Secretary-General should not be empowered to consider whether a proposed modification to the Plan of Work constitutes a "Material Change". We suggest that "Secretary-General" be replaced with "Commission", and repeat our comments with respect to DR25.

71. We fully agree that the Secretary-General can propose to correct minor omissions, errors and other defects in the Plan of Work, in accordance with DR 57(4), since this falls within the realm of an administrative function.

The Pew Charitable Trusts

~~Draft regulation 56~~ Regulation 57

Modification of a Plan of Work by a Contractor

1. A Contractor shall not modify the Plan of Work annexed to an exploitation contract, except in accordance with this regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change ~~in accordance with the Guidelines~~, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.

3. Where the proposed modification under paragraph 2 above relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.

4. The Secretary-General may propose to the Contractor a change to the Plan of Work which is not a Material Change to correct minor omissions, errors, or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission at its next meeting.

Several Member States in November 2018 submissions called for further clarity as to what constitutes a "Material Change", and voiced concerns over the role of the Secretary-General in making that determination. To avoid granting unnecessarily wide discretion to the Secretary-General, it may be sensible to introduce Standards into this DR57 (which under DR94 are legally binding and approved by Council), or a requirement to report to Council any approval or proposal issued by the Secretary-General under DR57. Member State submissions also recommended that the sponsoring State be informed of changes to a Plan of Work, that the Commission be involved in changes to a Plan of Work, and highlighted the need for increased transparency in the process. In addition, the ISA should be able to propose a change to the Plan of Work in the same way, not only a Contractor.

6. Requirement to seek Council approval for matters during Exploitation

There are requirements in the Regulations to obtain Council approval during Exploitation. For example, Regulations 22 and 23 require Council approval for the registration of a security interest or the transfer of rights.

Regulation 57 also requires Council approval for any change to the Plan of Work that is a Material Change.

NORI recommends that rather than the Council, the Secretary General should have the authority and power to deal with many of these matters given the limited number of times the Council meets, and the significant time delay between Council meetings.

If a Contractor is required to wait such lengthy periods of time to have these types of matters approved, this will likely add significant cost and uncertainty to the Contractor's project.

The delay caused by requiring Commission and or Council approval also puts projects in the Area at a significant disadvantage over land-based operations. In land-based jurisdictions decisions can be made by the mining authority established under the Mining Act. In those jurisdictions it is not a requirement that the operator seek approval by the Legislature (Parliament) for these types of matters.

For example, it may inhibit the Contractor from effectively dealing with its title to obtain additional finance during Exploitation, if each time the Contractor wishes to obtain such additional finance the financier must wait for the Council to approve the registration of their security interest. It may not be acceptable to many financiers to have to wait up to 8 months for the next Council meeting before they can be assured that their security interest will indeed be registered.

Similarly, there may be a pressing economic or technical reason to make a change to the Plan of Work, and it may be extremely costly to the Contractor to have to delay making such change until it is approved by Council.

In order to solve this matter, it is submitted that the Secretary General should have the power to approve many of these matters without having to wait for the next Council meeting.

Regulation 57 (1) and (2)

Regulation 57 appears too restrictive. A Contractor needs greater flexibility to make a change to its Plan of Work. The requirement to have to wait to obtain Commission and Council approval prior to making a change is simply too long and could result in unnecessary cost to the Contractor while it waits to implement a necessary change. It is important that a Contractor can change its Plan of Work to respond to changes for example in the external economic environment or as a response to technological changes. Provided such a change does not cause unlawful harm and remains within the parameters of the contract conditions, the Contractor should be free to make modifications to its Plan of Work as it deems necessary in order to achieve the required commercial and technical outcomes. Contractors must have this flexibility to respond to operating, technical and market forces which will come into play and impact operations from time to time. The mining industry, and in particular metal prices, change quickly, and it would not be appropriate for the Contractor to have to wait to seek approval from the Commission and Council prior to making such changes if it has genuine reasons to modify its Plan of Work. This is something the Secretary General should have power to authorize on a timely basis. We wholeheartedly agree with keeping the ISA informed of such changes, but we do not agree with the need to seek prior approval from the Commission and Council to make such a change, as the length of time required to obtain approval from those bodies is simply too long and as such costly.

Again, we note that the delay caused by requiring Commission and or Council approval puts projects in the Area at a significant disadvantage over land-based operations. In land-based jurisdictions decisions can be made by the mining authority established under the Mining Act. In those jurisdictions it is not a requirement that the operator seek approval by the Legislature (Parliament) for these types of matters.

NORI suggests that the threshold for what constitutes a “Material Change” needs to be high. NORI recommends that the term “Material Change” should be defined as a “significant change”.

Regulation 57(4)

This regulation gives the Secretary General the power to force the Contractor to make a change. This is understandable if the Contractor is breaching its obligations, however does not appear reasonable in most other circumstances, particularly if the Contractor is in compliance with its Plan of Work as contained in its approved application for Exploitation. Alternatively, if the Secretary-General requires the Contractor to make a change then the ISA should need to compensate the Contractor for any costs or losses that change imposes on the Contractor.

Regulation 58
Review of activities under a Plan of Work

1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance:

(a) A proposed Material Change in the implementation of the Plan of Work;

(b) Any Incident;

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

(d) A performance assessment which requires action under regulation 52 (8);

(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;

(f) Changes in Best Available Techniques;

(g) Changes in Best Available Scientific Evidence; or

(h) Operational management changes, including changes to subcontractors, the Secretary-General may review with the Contractor the Contractor's activities under the Plan of Work, and shall discuss whether any modifications to the Plan of Work are necessary or desirable.

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States to participate in the review of activities.

3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).

4. For the purpose of the review, the Contractor shall provide all information required by the Secretary-General in the manner and at the times the Secretary-General requests.

5. Nothing in this regulation shall preclude the Secretary-General or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, exploitation contract or the activities under the exploitation contract in cases other than those listed in paragraph 1 above.

6. The Secretary-General shall make publicly available the findings and recommendations resulting from a review of activities under this regulation.

I - Members of the International Seabed Authority

Australia

(aa) Identification of a new environmental risk, or a significant change to existing risk calculations;

(b) Any Incident;

(c) Recommendations for improvement in procedures or practices following

Commented [AUS75]: Australia recommends that identification of a new environmental risk, or significant change to existing risk calculations should be included in the changes of circumstance that trigger a review of activities under a Plan of Work.

Belgium

Regulation 58
Review of activities under a Plan of Work

1. At intervals not exceeding five years from the date of signature of the

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor shall invite the sponsoring State or States to participate in the review of activities.

Commented [VS57]: What if activities remain the same, but Plan is getting reviewed?

Commented [VS58]: Sponsoring State bears responsibility, so involving him ahead of the decision is needed.

Canada

1. ~~At intervals not exceeding five years from the date of signature of the exploitation contract, or w~~Where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance:

~~(a) A proposed Material Change in the implementation of the Plan of Work;~~

(b) Any Incident;

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

(d) A performance assessment which requires action under regulation 52 (8); or

~~(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;~~

~~(f) Changes in Best Available Techniques;~~

(g) Changes in Best Available Scientific Evidence.~~; or~~

(h) ~~Operational management changes, including changes to subcontractors,~~ tThe Secretary-General may review with the Contractor the Contractor's activities under the Plan of Work, and shall discuss whether any modifications to the Plan of Work are necessary or desirable.

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States to participate in the review of activities.

3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. ~~Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).~~

Costa Rica

1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, the Secretary-General determines, according to the specific Standards, there have occurred any of the following events or changes of circumstance:

   RATIONALE: Such an important decision should not be based in the "opinion" of the Secretary General, but rather in a determination taken on the basis of specific Standards.

a) A proposed Material Change in the implementation of the Plan of Work;

b) Any Incident;

c) New information relevant to the effective protection of the marine environment

d) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;

e) A performance assessment which requires action under regulation 52 (8);

f) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;

g) Changes in Best Available Techniques;

h) Changes in Best Available Scientific Evidence;

i) Operational management changes, including changes to subcontractors, the Secretary-General shall review with the Contractor the Contractor's activities under the Plan of Work, and shall decide whether any modifications to the Plan of Work are necessary or desirable.

RATIONALE: New environmental information must be included as a trigger.

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor shall invite the sponsoring State or States to participate in the review of activities.

   RATIONALE: sponsoring States must be informed for transparency.

3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, material changes need to be made to the Plan of Work, the Secretary General shall recommend said changes to the Commission and Council, and the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).

   RATIONALE: The Secretary General should be the one recommending the material changes. It should not be something that depends on the "wish" of the Contractor.

Germany

- In relation to the "review of activities under a plan of work", Germany considers it necessary that the Authority a priori provides guidance to the Secretary-General to allow him to exercise the functions entrusted to him in **Draft Regulation 58 para. 1 and para. 4**. This aspect relates to the main issue "Delegation of Functions" noted above. We furthermore propose a reference to thresholds and objectives under the applicable REMP.

Draft Regulation 58:
"1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, ~~there have occurred~~ any of the following events or changes of circumstance have occurred: […] (b bis) An indication that the cumulative impacts of the Exploitation activities exceed any environmental objectives or thresholds as established under the applicable Regional Environmental Management Plan; […]."

Indonesia

	Regulation 58 **Review of activities under a Plan of Work** 1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance: (a) A proposed Material Change in the implementation of the Plan of Work; (b) Any Incident;	see our comments on rights nd legitimate interest of a coastal state(s)	2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States and relevant [adjacent] coastal state or states to participate in the review of activities

New Zealand

58	**Review of activities under a Plan of Work** 1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of	There should be an ability to review activities under a Plan of Work where new information has come to light that was not available or is of a scale that was not anticipated when the Plan of Work was considered.

(i) Information has come to light that was not available when the Plan of Work was approved and shows that more appropriate conditions are necessary to deal with the effects of the activity;
(j) Adverse effects on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved.

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

(g) Changes in ~~Best Available Scientific Evidence~~Best Available Scientific Information; or

Advisory Committee on Protection of the Sea

DR 58 (former DR 56): Review of activities under a Plan of Work

DR 58(1): We reprise our comments on the previous version. See also comments made under **DR 13(1)(f), DR 25, DR 57 and DR 76** re issues relating to *ultra vires*/substantive legal competence with regard to the role and functions assigned to the Secretary-General under these DRs in this context.

Furthermore, it is not clear why the occurrence of the listed events/circumstances triggering a review are to be a matter of "opinion", and the opinion of only one individual at that. Why isn't the occurrence of these events/circumstances required to be a matter of demonstrable fact instead, to which any stakeholder is able to draw the attention of the Authority? Why is the initial avenue via "discussions" between the Secretary-General and the Contractor? Why is the decision on whether or not to conduct such a review to be taken at the sole discretion of the Secretary-General? How will this process ensure transparency and uniform and non-discriminatory treatment of Contractors? Why are any modifications limited to the Plan of Work? There may also be ramifications for "the exploitation contract or the activities under the exploitation contract" as set out in **DR 58(5)**, and requiring modification as well. As currently drafted, **DR 58(1)** and **DR 58(5)** are inconsistent with each other in this respect.

It would be much simpler and far less prone to legal complications to just require a review if one of the listed events/circumstances has occurred as a matter of demonstrable fact, and to enable the requisite modifications to be made to the Plan of Work, the exploitation contract or to the activities under the exploitation contract accordingly.

DR 58(1)(e): Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this part of the DR.

DR 58(5): We reprise our comments on the previous version. See comments made under **DR 13(1)(f), DR 25, DR 58 and DR 76** re issues relating to *ultra vires*/substantive legal competence with regard to the role and functions assigned to the Secretary-General under these draft Regulations in this context. See also comments made above under **DR 58(1)** re the transparency and uniform/non-discriminatory issues raised by the process set out herein. It is recommended that the LTC and the Sponsoring State be included in the list of those permitted to make such a request. "Discussions" as a process will require careful definition.

Deep Ocean Stewardship Initiative

DR 58: Reviews can only result in contractors amending their own Plan of Work. They should be able to result in the ISA amending them (with Council approval etc.

DR 58(3-5): Again, there is no mention of input required from external environmental experts. Additionally, the timeline should be clarified.

Deep Sea Conservation Coalition

58	Review	The review should include independent reviews, as were provided for in earlier drafts (before the 2018 draft), including independent scientific assessment. The review should provide for publication of the review and comments from stakeholders: making public the results of the review does not suffice. The list of triggers in DR 58(1) should also include new information relevant to the marine environment. The review should be able to result in changes being made: in the current draft, under DR 58(3), the only result is "Where as a result of a review the Contractor wishes to make any changes to a Plan of Work." This is grossly inadequate. The result needs to result in the Secretary-General recommending changes to the Plan of Work to the LTC and Council.

Institute for Advanced Sustainability Studies

72. With respect to the process of review under DR 58, we are of the view that this procedure should involve the participation of independent experts and conducted in a transparent manner.

III – Stakeholders

Ecologistas en Accion

- El proyecto del Reglamento del artículo 58 debería llevarse a cabo como una evaluación independiente, junto con los comentarios del público.

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;

(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, 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

(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 and the relevant Guidelines.

5. The Closure Plan shall be 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).

I – Members of the International Seabed Authority

Australia

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

(ff) 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 and the relevant Guidelines.

5. The Closure Plan shall be 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).

Commented [AUS76]: Australia considers that Closure Plans should include an obligation to remove all equipment and remediate the environment.

Commented [AUS77]: Australia suggests including a timeframe for notification of updates to Closure Plans.

Belgium

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

Commented [VS59]: Cover all aspects, not solely the 'main' aspects.

Canada

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).

Chile

Chile considera que los resultados de las evaluaciones de desempeño ambiental podrían constituir aportes para posibles actualizaciones.

France

Projet d'article 59 – Cessation des activités : Il pourrait être utile de définir ce que recouvrent les notions « d'effets résiduels sur l'environnement » et « d'effets naturels sur l'environnement ».

Germany

Draft Regulation 59 para. 4 should also include a reference to "best available scientific evidence".

Draft Regulation 59:
"[…] 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. […]"

Japan

Closure Plan is such a critical document as it addresses issues including any deliberate disposal at sea of wastes or other matters from vessels and Installations to be regulated by Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) and 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Protocol). The priority of the relevant Guideline on Closure Plan should be regarded as Phase 2, or "Guidelines to be developed prior to the receipt of the first application for a plan of work for exploitation. "

Myanmar

6. In the "Part VI: Closure plans" and "Part IX: Information-gathering and handling" some restriction and description of the draft regulation, in particular on environmental issues, should be more detail in guideline and standards rather than the current regulation. In addition, there should be stakeholder input and feedback into the development of that guideline and standards more detailed. In the "Plan of work schedule" project planning with time schedules for application approval, exploration, allowed duration for infrastructural facilitating and project deployment, exploitation, recovery action plan, should be considered and basic principle for consideration of time-frame to be allowed and agreed should be drawn.

United Kingdom

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	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	Removal of 'post-closure' as Closure Plan should involve both pre- and post-decommissioning works This sub-paragraph (1) contains language not used elsewhere in terms of environmental impact i.e. 'residual and natural Environmental Effects' – suggest the wording remains the same throughout the Regulations.
	temporary suspension of mining activities.	temporary suspension of mining activities.	

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

(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, including plans for further Mitigation or remediation where appropriate, and capacity to implement management responses is demonstrated;

Commented [A58]: To which requirements do these refer? Too vague.

Advisory Committee on Protection of the Sea

DR 59 (former DR 57): Closure Plan
Further to our comments on the previous version:
DR 59(1): if "residual environmental effects" are those effects that remain after all impact minimisation and mitigation strategies have been employed, this definition must be spelled out, and as must the difference between these effects and "natural Environmental Effects", which latter must also be defined.
DR 59(2)(e): what are "residual **negative** Environmental Effects"? [*Emphasis supplied.*] How are these different from "residual Environmental Effects?

Deep Ocean Stewardship Initiative

DR 59(2)(b): We recommend there be a minimum period prescribed for the management and monitoring plan to be in place. This may be resource specific, the type of environment and the scale of impact. The length of the period of monitoring can vary widely. What if the impact needs to be monitored for decades? Would the Contractor be responsible for monitoring irrespective of time frame? If so, will the ISA take over if the Contractor is non-compliant?

DR 59(5): We are pleased to see a review period for the Closure Plan and the requirement for Contractors to maintain the Closure Plan in accordance with Best Environmental Practices, Best Available Techniques (DR 59(4)) as this is an important component for adaptive management.

Deep Sea Conservation Coalition

59	Closure Plan	Paragraph (e) concerning any residual negative Environmental Effects should require management responses to be implemented, not just considered. Provision (g) requiring that The mining activities are closed or suspended efficiently and costeffectively may encourage contractors to cut corners; cost effectiveness should not block measures needed to protect the environment. This should also include the need to remove all non-natural equipment and material from the Area.

The Pew Charitable Trusts

~~Draft regulation 57~~Regulation 59

Closure Plan

[…]

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; […]

Best practice for closure plans includes scheduling relevant scientific studies to inform closure throughout the mine life. This requirement could be more explicitly reflected in DR59.

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

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 and the relevant Guidelines.

5. The Closure Plan shall be 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 finalised in accordance with regulation 60(1).

Regulation 60
Final Closure Plan: cessation of production

1. A Contractor shall, at least 12 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation requires a Material Change to the Closure Plan, taking into account the results of monitoring and data and information gathered during the exploitation phase.

2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

3. If the Commission determines that the final Closure Plan meets the requirements of regulation 59, it shall recommend approval of the final Closure Plan to the Council. ISBA/25/C/WP.1 19-04869 45/117

4. If the Commission determines that the final Closure Plan does not meet the requirements of regulation 59, the Commission shall require amendments to the final Closure Plan as a condition for approval of the plan.

5. The Commission shall give the Contractor written notice of its decision under paragraph 4 above and provide the Contractor with the opportunity to make representations or to submit a revised final Closure Plan for the Commission's consideration, within 90 Days of the date of notification to the Contractor.

6. At its next available meeting, the Commission shall consider any such representations made or revised final Closure Plan submitted by the Contractor when preparing its report and recommendation to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting.

7. The Commission shall review the amount of the Environmental Performance Guarantee provided under regulation 26. 8. The Council shall consider the report and recommendation of the Commission relating to the approval of the final Closure plan.

I – Members of the International Seabed Authority

Australia

6. At its next available meeting, the Commission shall consider any such representations made or revised final Closure Plan submitted by the Contractor when preparing its report and recommendation to the Council, provided that the representations have been circulated at least 30 Days in advance of ~~that~~ the Commission meeting.

7. The Commission shall review the amount of the Environmental Performance

Commented [AUS78]: This provision uses the "30 days in advance of the next meeting" timeframe which Australia does not consider is necessarily adequate time to consider new information ahead of meetings.

Clarification is also required in draft regulation 60(6) of which meeting the 30 day timeframe refers to – the Commission or the Council.

Costa Rica

1. A Contractor shall, at least 12 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, (text deleted here), taking into account the lts of monitoring and data and information gathered during the exploitation phase and the appropriate Regional Environmental Management Plan.

RATIONALE: A closure plan should always be required, not only " if such cessation requires a Material Change to the Closure Plan ". This one of the Regulations where a reference to REMPS is required.

2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting. If the Commission lacks sufficient technical expertise to evaluate the final Closure Plan it shall consult recognized independent experts to assist them in the evaluation process.

RATIONALE: The Commision must not be required to make decisions on technical matters in which they don't have enough expertise.

France

Projet d'articles 60, paragraphes 2 et 6 et 61, paragraphe 3 : Suggestion de remplacer « au moins 30 jours à l'avance » par « **au moins 30 jours avant l'ouverture de ladite séance** », plus précise et conforme à la version anglaise du projet de règlement.

Germany

- **Draft Regulation 60 para. 1** should in our view also be mindful of the fact that an applicable REMP could also establish obligations for the period subsequent to exploitation activities.

Draft Regulation 60:
"1. A Contractor shall, at least 12 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation requires a Material Change to the Closure Plan, determined in accordance with the procedures established in Regulation 57, taking into account the results of the monitoring and data and information which has been gathered during the exploitation phase and the applicable Regional Environmental Management Plan. […]"

Italy

DR60 (2)	Considering the sensitivity of the matter and the unlikely condition that the end of the commercial production, other than emergencial, is decided in short times, it is necessary that the final and updated Closure Plan is circulated more than 30 Days in advance of the next meeting of the Commission.	The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least 360 Days in advance of the meeting.	

United Kingdom

60. Final Closure Plan: cessation of production	1. A Contractor shall, at least 12 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation requires a Material Change to the Closure Plan, taking into account the results of monitoring and data and information gathered during the exploitation phase.	1. A Contractor shall, at least ~~12~~ 24 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation requires a Material Change to the Closure Plan, taking into account the results of monitoring and data and information gathered during the exploitation phase.	Extend the time period, to make clear that the process (including public consultation) may take considerable time.

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

DR 60 (former DR 58): Final Closure Plan: cessation or suspension of production
Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR.

Deep Ocean Stewardship Initiative

DR 60(1): The submission of a final Closure Plan 12 months prior to the planned end of Commercial Production should occur regardless of whether a Material Change is needed or not. This will allow time for the Closure Plan to be reviewed prior to the scale down of operations. Currently, it appears that the submission of a final Closure Plan is only required if a Material Change is required. Request clarification on the wording so that submission of a final Closure Plan is required under all circumstances.

DR 60(2): Add the following sentence to: (...) If the commission does not possess sufficient expertise amongst its members it shall consult independent experts to review the Closure Plan.

Institute for Advanced Sustainable Studies

73. We suggest deleting the words "if such cessation requires a Material Change to the Closure Plan" in DR 60(1). It should read: "[...] final Closure Plan, taking into account [...]". In this way, a final Closure Plan is clearly required under all circumstances.

The Pew Charitable Trusts

Final Closure Plan: cessation ~~or suspension~~ of production

1.A Contractor shall, at least 12 months prior to the planned end of Commercial Production ~~or any suspension of activities in the Mining Area under regulation 30~~, or as soon as is reasonably practicable in the case of any unexpected cessation ~~or suspension~~, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation ~~or suspension~~ requires a Material Change to the Closure Plan, taking into account the results of the monitoring and data and information which has been gathered during the exploitation phase.

2.The Commission shall ~~consider~~examine the final Closure Plan at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

~~1. The~~If the Commission ~~shall:~~

3.~~Approve~~determines that the final Closure Plan~~; or~~ meets the requirements under regulation 59 it shall recommend approval of the final Closure Plan to the Council.

4.~~Suggest~~If the Commission determines that the final Closure Plan does not meet the requirements under regulation 59, the Commission shall require amendments to the final Closure Plan as a condition for approval of the plan~~:~~.

~~4.~~5. The Commission shall give the Contractor written notice of its decision under paragraph 4 above and provide the Contractor opportunity to make representations, or to submit a revised final Closure Plan for the Commission's consideration, within 90 Days of the date of notification to the Contractor.

~~5.~~6. ~~Reject the final Closure Plan in the event that the amendments are not made by the Contractor.~~At its next available meeting, the Commission shall consider any such representations made or revised final Closure Plan submitted by the Contractor when preparing its report and recommendation to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting.

~~6.~~7. The Commission shall review the amount of the Environmental Performance Guarantee provided under regulation ~~27~~26.

8. ~~**Draft regulation 59**~~The Council shall consider the report and recommendation of the Commission relating to the approval of the final Closure plan.

Note: DR60 has been amended to reflect that the regulatory decision-making body of the ISA is the Council, not the Commission.

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, 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.

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.

I – Members of the International Seabed Authority

Chile

Chile considera que se debería establecer, a lo menos, un periodo mínimo basado en evidencia científica para la supervisión del medio marino, tras el cese de las actividades del **plan de cierre definitivo**. Esto, con la finalidad de conocer y evaluar la calidad ambiental de los ecosistemas.

Chile considera que el contratista debe entregar el informe final de evaluación del cumplimiento de los objetivos del plan de cierre definitivo. Al efecto, es necesario determinar el procedimiento a seguir en caso que el contratista no cumpla con el plan de cierre definitivo; o también, en caso de que la ejecución de las acciones contempladas en el plan de cierre definitivo no entregue los resultados deseados.

France

Projet d'articles 60, paragraphes 2 et 6 et 61, paragraphe 3 : Suggestion de remplacer « au moins 30 jours à l'avance » par « **au moins 30 jours avant l'ouverture de ladite séance** », plus précise et conforme à la version anglaise du projet de règlement.

Italy

DR61 (2)	There is a discretional component regarding the duration of the post-closure monitoring plan which is unacceptable.	The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities as is set out in the final Closure Plan for the duration provided by the relevant Guidelines.

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

The Pew Charitable Trusts

Post-closure monitoring

1. ~~Upon cessation or suspension of activities in the Mining Area, a~~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, 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 ~~or suspension~~ of activities as is set out in the final Closure Plan. […]

Adding a specified minimum time-period for post-closure monitoring to DR61 would improve certainty for all stakeholders, including Contractors (monitoring for 5-years vs. in perpetuity, for example, would have very different cost implications).

Part VII
Financial terms of an exploitation contract

Section 1
General

Regulation 62
Equality of treatment

The Council shall, based on the recommendations of the Commission, apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

I – Members of the International Seabed Authority

Costa Rica

Since an Ad Hoc Working Group was established to develop and negotiate the financial terms for an exploitation contract, Costa Rica will not make any comment in this submission, but rather continue participating actively in said AHWG.

India

It is therefore proposed to make the following additions in the Draft Regulations:

1. Waiver of Royalty payments for Indian contract area in particular and future contract areas in Indian Ocean in general.
This will essentially meet the spirit of Regulation 62 covering " Equally of Treatment ".
2. Providing incentives, including financial incentives to support the activities in the Indian contract areas. The nature and the extent of incentives could be determined based on the financial viability gap analysis.

This is also in line with the Regulation 63 covering Incentives.

Japan

Regulation 62: Equality of treatment, Regulation 63: Incentives, Regulation 64: Contractor shall pay royalty, Regulation 81: Review of system of payments, Regulation 82: Review of rates of payments and Appendix IV : Determination of a Royalty Liability

Paragraph 1(a), Section 8 of annex to the 1994 Agreement provides the principle that the system of payments to the Authority shall be fair both to the contractor and to the Authority. In light of this principle, Japan is of the view that a proper balance should be struck between the principles of the Common Heritage of Mankind and sound commercial principles.

Regarding the issue of royalty, in respect of sound commercial principles provided in the paragraph 1(a), Section 6 of annex to the Agreement, it is important that the financial regime should reflect the total costs of Contractors such as their investments for explorations which is essential for a long-term, commercially viable and safe deep-sea exploitations. Considering that commercial mining of deep seabed is unexplored area, the risks the pioneer investors of exploitation would face should be taken into consideration.

In setting up the financial regime, the all relevant elements such as the financial incentives provided in article 13 of annex III to the Convention, various fees and payments listed in the Appendix II to the Regulations, insurances that Contractors must purchase, and Environmental Compensation Fund, should be considered. As a method of the financial incentives, reduction or exemption of payment of royalty and annual fees for the First Period of Commercial Production, as defined in Appendix IV, would be effective.

An economic model developed by the Massachusetts Institute of Technology (MIT) is based on the assumptions including metal prices significantly increase in future. We should keep in mind that the consequences of using such model totally depends on the assumptions and it is not easy task to predict costs involved in the deep sea exploitation. The rates of payments under an existing system of payments should be reviewed in close

consultation with Contractors, in terms of the entire financial regime including financial incentives, various fees and payments, insurance, Environmental Compensation Fund and so forth, with due consideration of an annual fixed fee provided in the paragraph 1(d), Section 8 of annex to the Agreement.

The starting point of the proposal submitted from African Group is that the rates of payment under the Authority payment regime should be similar to rates of payment to the government that has the jurisdiction over the area where land-based mining occurs. However, it should be remembered that activities undertaken by the Contractor in the Area involves technical difficulty and huge risks. If proposed progressive ad valorem system is to be introduced, in light of the principle provided in Section 8 (1)(a) of the annex to the Agreement (the system of payments to the Authority shall be fair both to the contractor and to the Authority), necessary measures to mitigate burden of the Contractors in case metal prices decrease should be similarly introduced as a single package.

Considering deep sea exploitation is a long-term project over thirty years and a scale of investment is so large, it is ncessary to avoid the situation where the system of payments including the rates of payments change as a result of review, which would greatly ruin the economic viability of the project. Due consideration should be given to commercial viability in reviewing system of payments.

Provisions in Part VII (Financial terms of an exploitation contract) is financial matters where the Finance Committee must be involved in the process of consideration.

<Regulation 62>
The Council shall, based on the recommendations of the Commission and the Finance Committee, apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

Mexico

Por lo que respecta a la **parte VII, los Apéndices II y IV y el anexo X, cláusula 5** del Proyecto de Código de Explotación relativa las cuestiones financieras de los contratos de explotación en los que se incluyen el reparto y la participación de los beneficios, México recuerda que las formas en las que se traduce este reparto pueden ser desde una perspectiva monetaria o no monetaria.

En relación a los repartos monetarios y atendiendo a los objetivos duales entre propiciar la actividad de explotación minera a través de la atracción de inversionistas con la de pugnar por un reparto equitativo de los beneficios que de ella se deriven, se sugiere traer al análisis un mecanismo de contraprestación similar al que se ha implementado en diversas legislaciones nacionales para los esquemas de exploración y explotación de hidrocarburos.

Es aconsejable explorar la idea de un sistema de reparto de riesgos, participación y contraprestaciones que estén distribuidos entre los contratistas y el Estado patrocinador tomando en cuenta factores como la comercialización, la recuperación de costos, utilidades operativas y regalías. Este sistema, mismo que se implementó en México, consiste en:

La participación en la actividad productiva de exploración y explotación del subsuelo se realiza a través de cuatro sistemas de contratación, a saber; Contratos de licencias, Contratos de Utilidad Compartida, Contratos de Producción Compartida y los Contratos de Servicios.

En el Contrato de Licencia, todos los derechos de exploración y explotación así como el título sobre la producción son en favor del contratista. En consecuencia, las contraprestaciones generadas por la comercialización de la producción que éste obtenga son en su propio beneficio.

Republic of Korea

1.1. Financial terms

Korea is of the view that the important thing in determining the financial terms of an exploitation contract is the provision of a reasonable financial burden to the developer for commercialization of the deep-sea mineral resources. Given that the deep-sea mineral resource development is very risky compared to land mining, it would not be proper to overburden the risks to the developers.

One of the key variables in economic evaluation of deep sea mining is the price of minerals. Therefore, the highest concern in calculating the royalties of deep-sea mineral resources would be determining the criteria for setting the mineral prices so that the risks from price fluctuations can be avoided. The Republic of Korea believes that the criteria for setting of these three types of minerals should be established and considered somehow in royalty calculation.

We also think that not only the royalty imposed by the international seabed authority but also the charges imposed by the national laws of the individual countries (for instance, taxes) and fees for the exploitation regulations should all be taken into account appropriately.

Implementation agreement provides the following financial terms and conditions for the contract: First, the payments system should be fair to both contractors and the Authority, secondly, the payments rates should be set within the scope of the ratios widely applied to land-based mining of the same or similar mineral, the third payment system should not be complicated, not impose major administrative costs on the Authority or on a contractor, and finally, consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. With this in mind, the Republic of Korea believes that it is more appropriate to impose an initial fixed cost first, and adopt the closing price system that is linked to the mineral resource market price after the contractors have made some profits. In addition, additional provisions for profit sharing will be required in the development of the payment system. We also recommend providing incentives for contractors to reduce environmental impact and to develop eco-friendly technologies.

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

Noting that the LTC is awaiting further information on this Part, we reprise our comments on the previous version.

DR 62 (former DR 60): Equality of treatment: A definition of "comparable" in this context is needed.

Institute for Advanced Sustainability Studies

Part VII: Financial terms of an exploitation contract

74. As this matter is currently being considered by the 'Open-ended informal working group of the Council in respect of the development and negotiation of the financial terms of a contract' (OEWG), we will not provide any specific comments on this Part. We reiterate our view that the Draft Regulations should not be finalized until an outcome is reached through the OEWG process.

The Pew Charitable Trusts

Part VII Financial terms of an exploitation contract

Note: The Commission indicates that, save for minor amendments to the regulatory text (as shown below), the latest draft Regulations have not been amended to reflect matters relating to the development of an economic model and associated financial terms for future Exploitation contracts, pending further discussion on that topic.

Regulation 63
Incentives

1. The Council may, taking into account the recommendations of the Commission, provide for incentives, including financial incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention.

2. Furthermore, the Council may provide incentives, including financial incentives, to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

I – Members of the International Seabed Authority

Australia

Part VII
Financial terms of an exploitation contract

Section 1
General

Regulation 62
Equality of treatment

The Council shall, based on the recommendations of the Commission, apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

Regulation 63
Incentives

1. The Council may, taking into account the recommendations of the Commission, provide for incentives, including financial incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention.

2. Furthermore, the Council may provide incentives, including financial incentives, to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

Commented [AUS79]: Australia notes that the royalty regime needs to be developed and agreed as this will have direct bearing on the financial elements of the regulations. Australia considers that a fixed rate ad valorem model can best operationalise the overarching policy objectives set out in the Convention and the Implementing Agreement which require that a system of payments:
(a) shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor;
(b) shall be within the range of rates prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;
(c) should not be complicated and not impose major administrative costs on the Authority or on a contractor;
(d) shall require payment of an annual fixed fee, determined by the Council, from the date of commencement of commercial production – may be credited against other payments due under the payment system;
(e) may be revised periodically in the light of changing circumstances, with changes applied in non-discriminatory manner, and applying to existing contracts only at the election of the contractor;
(f) shall be subject to dispute settlement procedures set out in the Convention.

Commented [AUS80]: This draft regulation provides that the Council may provide financial incentives to those Contractors entering into joint arrangements with the Enterprise under article 11 of Annex III to the Convention, and developing states or their nationals, to stimulate the transfer or technology thereto and to train the personnel of the Authority and of developing states. We would welcome clarity as to what this will consist of and what would be the obligations on other states such as Australia.

China

21. Draft regulation 63

It is suggested that the specific content of "financial incentives" in paragraph 1 be demonstrated, such as whether to set a minimum royalty rate for the first stage of commercial development so as to reduce risks and recover investment earlier, or to reduce the costs of the first group of the Contractors.

Germany

- With regard to **Parts VII and VIII of the Draft Regulations**, Germany refers to the ongoing discussions in the Ad Hoc Working Group on the Financial Terms. We see the need to resume discussion on the proposed draft text after a final result has been presented by the Working Group and a decision on a way forward has been taken by the Council.
- Any incentives for Contractors should only be established if fully in line with the policies and principles mentioned in Draft Regulation 2 (**Draft Regulation 63**).

Draft Regulation 63:
"[…] 4. Any incentives shall be fully compatible with the policies and principles under Regulation 2."

India

It is therefore proposed to make the following additions in the Draft Regulations:

1. Waiver of Royalty payments for Indian contract area in particular and future contract areas in Indian Ocean in general.
This will essentially meet the spirit of Regulation 62 covering " Equally of Treatment ".
2. Providing incentives, including financial incentives to support the activities in the Indian contract areas. The nature and the extent of incentives could be determined based on the financial viability gap analysis.

This is also in line with the Regulation 63 covering Incentives.

Italy

DR63	This regulation does not provide any further guidance in respect to what is already contained in the Convention.

Japan

<Regulation 63>

1.The Council may, taking into account the recommendations of the Commission and the Finance Committee, provide for incentives, including financial incentives, on a uniform and non discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention based on the principles provided in paragraph 1(a) of section 6 and paragraph 1(a) of section 8 of the annex to the Agreement.

2.Furthermore, the Council may provide incentives, including financial incentives, to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3.The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

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

Regulation 63
Incentives

1. The Council may, taking into account ~~the~~ any recommendations of the Commission, provide for incentives ~~, including financial incentives,~~ on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention.

2. Furthermore, the Council may provide incentives, including financial incentives on a uniform and non-discriminatory basis, ~~for~~to those Contractors ~~entering into~~to undertake joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

~~3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.~~

Section 2
Liability for and determination of royalty

Commented [A59]: To align more closely with Art 13.14.

Commented [A60]: These are a combination of provisions from Articles 11 and 13 of Annex III, and includes new combinations of language such as "incentives, including financial incentives." It's unclear what the intention of these paragraphs are beyond what is already laid out in the out in the Convention. Suggest striking or simply listing the relevant articles or Annex of the Convention rather than paraphrasing.

Commented [A61]: This is set out in 13.1 per paragraph 1, above, and is not needed.

Section 2
Liability for and determination of royalty

Regulation 64
Contractor shall pay royalty

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations.

I – Members of the International Seabed Authority

Japan

<Regulation 64>

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations pursuant to Paragraph 1 of section 8 of the annex to the Agreement.

Regulation 65
Secretary-General may issue Guidelines

1. The Secretary-General may, from time to time, issue Guidelines in accordance with regulation 95 in respect of the administration and management of royalties prescribed in this Part.

2. The Secretary-General shall consider all requests for the clarification of any Guidelines issued under paragraph 1 above, or on any other matter connected with the administration and management of a royalty and its payment.

I – Members of the International Seabed Authority

China

22. Draft regulation 65

The wording of "in respect of the administration and management" is ambiguous and needs to be clarified.

Netherlands

➢ Regulation 65
Secretary-General may issue Guidelines

Comment: Considering the fact that no definitive decision has been taken on the financial terms of an exploitation contract and considering the perceived omission of the role of the Finance Committee (as noted under General Comments above), the task given to the Secretary-General under this draft regulation requires further consideration.

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

Regulation 65
~~Secretary-General~~Council **may issue Guidelines**

1. The ~~Secretary-General~~Council may, from time to time, issue Guidelines in accordance with regulation 95 in respect of the administration and management of royalties prescribed in this Part.

2. The ~~Secretary-General~~Council shall consider all requests for the clarification of any Guidelines issued under paragraph 1 above, or on any other matter connected with the administration and management of a royalty and its payment.

Commented [A62]: The Secretary-General should not be given such unilateral power over such an important issue as distinguishing between purely administrative and management and what is not may be too difficult.

The Pew Charitable Trusts

Section 2 Liability for and determination of royalty

Regulation 65

Secretary-General may issue Guidelines

1. The Secretary-General may, from time to time, issue Guidelines in accordance with regulation ~~93~~95 in respect of the ~~calculation~~administration and ~~payment~~management of royalties prescribed in this Part.

2. The Secretary-General shall consider all requests for the clarification of any Guidelines issued under paragraph 1 above, or on any other matter connected with the ~~determination~~administration and management of a royalty and its payment.

Section 3
Royalty returns and payment of royalty

Regulation 66
Form of royalty returns

A royalty return lodged with the Secretary-General shall be in the form prescribed by the Guidelines and signed by the Contractor's designated official.

Regulation 67
Royalty return period

A royalty return period for the purposes of this Part is a half-year return period, from:

(a) 1 January to 30 June; and

(b) 1 July to 31 December.

Regulation 68
Lodging of royalty returns

1. A Contractor shall lodge with the Secretary-General a royalty return for each Mining Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the exploitation contract.

2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted by the joint venture or consortium.

3. A royalty return may be lodged electronically.

Regulation 69
Error or mistake in royalty return

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

Regulation 70
Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged.

2. Payments to the Authority may be made in United States dollars or other foreign currency which is freely convertible.

3. All payments made to the Authority shall be made gross and shall be free of any deductions, transmission fees, levies or other charges.

4. The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment.

I – Members of the International Seabed Authority

Canada

Regulation 70
Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged.

2. Payments to the Authority ~~may~~ shall be made in United States dollars or other foreign currency which is freely convertible.

China

23. Draft regulation 70

Paragraph 3 provides that all payments to the Authority shall be made gross. From the context, it seems more appropriate that the payments are made net. Further clarification is suggested in this regulation.

With respect to paragraph 4, it is proposed to make clear what constitute such "special circumstances" as could allow payment by instalment. In this way, it's easy for the qualified Contractors to make a choice.

Russian Federation

Regulation 70(4)	The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment.	It is suggested to read this provision as follows: "*The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment, taking account of rules, regulations and procedures of the Authority that provide for incentives, on a uniform and non-discriminatory basis, to contractors*".	The adjustment of this provision is necessary in order to bring it in line with the provision of Article 13(14) of Annex III of the UNCLOS, based on the fact that the Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules, regulations and procedures that provide for incentives, **on a uniform and non-discriminatory basis**, to contractors.

United Kingdom

70. Payment of royalty shown by royalty return	4. The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment.	4. The Council may approve the payment of any royalty due by way of instalment where sSpecial eCircumstances exist that justify payment by instalment.	Include definition of these Special Circumstances in Schedule on Use of Terms below.

III – Stakeholders

Global Sea Mineral Resources

DR 70 (4)	The Council may approve the payment of any royalty due by way of instalment where special circumstances exist justifying payment by instalment.	These special circumstances must be specified in the regulations, objectively and easily ascertainable by contractors. Payment of royalty by way of instalments should be applicable and available to any Contractor who can objectively justify invoking those circumstances with regard to itself, in order to avoid distorting competition.

Regulation 71
Information to be submitted

1. A royalty return shall include the following information for each royalty return period:

(a) The quantity in wet metric tons of mineral-bearing ore recovered from each Mining Area;

(b) The quantity and value by Mineral in wet metric tons of the mineral-bearing ore shipped from the Mining Area;

(c) The value and the basis of the valuation of the mineral-bearing ore sold or removed without sale from the Mining Area, as verified by a suitably qualified person and supported by a representative chemical analysis of the ore by a certified laboratory;

(d) Details of all contracts and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area; and

(e) A calculation of the royalty payable in accordance with section 3, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.

2. In respect of a final royalty return period ending on the date of expiry, surrender or termination of the exploitation contract, the Contractor shall provide:

(a) A final calculation of the royalty payable;

(b) Details of any refund or overpayment of royalty claimed; and

(c) The quantity and value of all closing stocks of the mineral-bearing ore.

3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:

(a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and

(b) Complies with these regulations and is accurate and correct.

I – Members of the International Seabed Authority

China

24. Draft regulation 71

The quantity of mineral-bearing ore recovered and transported from the Mining Area under paragraph 1 (a) and (b) is measured in wet metric tons, whereas the total quantity of mineral-bearing ore involved in the calculation of royalty payable contained in Appendix IV of the Draft Regulations is measured in metric tons. In view of the big difference between the "wet metric ton" and "dry metric ton" weights of mineral-bearing ores, the relevant statistical methods should be consistent. It is suggested that the problem of mineral-bearing ore measurement units be further dealt with in the Draft Regulations.

The "value by Mineral" stipulated in subparagraph (b) is difficult to calculate. Given that subparagraph (c) contains specific provisions on value assessment, it is suggested that the word "value" in subparagraph (b) be deleted.

It should be clearly indicated in subparagraph (c) who will appoint "a suitably qualified person" and how to determine the specific qualifications.

Russian Federation

Regulation 71(1)(a), (1)(b)	1. A royalty return shall include the following information for each royalty return period: (a) The quantity in wet metric tons of mineral-bearing ore recovered from each Mining Area; (b) The quantity and value by Mineral in wet metric tons of the mineral bearing ore shipped from the Mining Area	It is necessary to align the draft Regulations and provisions of the Economic Model in terms of presentation of the volume of ore for the calculation of royalty. In accordance with international practice, it is proposed to carry out royalty calculations based on the weight of dry nodules.	Regulation 71 of the draft Regulations provides for the calculation of royalty for the volume of mineral-bearing ore, estimated in wet metric tons. The presented Economic Models take into account the dry weight of mined nodules. Thus, there is no correspondence between the Draft Regulation and the Economic Model, which leads to distortions of the obtained results and calls into question the presented calculations.

United Kingdom

71. Information to be submitted	1(a) The quantity in wet metric tons of mineral-bearing ore recovered from each Mining Area		The UK considers that it is important to clarify the link between this reference to 'wet metric tons' and the process of 'determination of royalty liability' covered in Appendix IV – which just uses the phrase 'gross value per metric ton'. It may be more appropriate to use the same terminology in both places.

Regulation 72
Authority may request additional information

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, information to support the matters stated in the royalty return.

Regulation 73
Overpayment of royalty

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment.

2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part.

3. Any request to reduce a royalty-related amount payable by a Contractor must be made within five years after the Day the relevant royalty return was lodged with the Authority.

4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

I – Members of the International Seabed Authority

Russian Federation

Regulation 73(4)	Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.	It is suggested to modify the text of the first sentence by defining the terms in which the Secretary-General shall refund the Contractor provided that such refund is properly due. "*Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount in [...days] provided he or she determines that such refund is properly due*".	The suggested modification is intended to protect the property interests of a Contractor and to balance the interests of a Contractor and the Authority.

Section 4
Records, inspection and audit

Regulation 74
Proper books and records to be kept

1. A Contractor shall keep and maintain, at a place agreed by the Contractor and the Secretary-General, complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles that verify, in connection with each Mining Area, inter alia:

(a) Details of the quantity and grade of the Minerals recovered from each Mining Area;

(b) Details of sales, shipments, transfers, exchanges and other disposals of the Minerals from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;

(c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability incurred in each Mining Area; and

(d) Details of all revenues and operating costs.

3. A Contractor shall supply and file such records at such times as may be required by the Authority under these regulations and within 60 Days of the receipt of any such request from the Secretary-General.

4. A Contractor shall maintain all records and make such records available for inspection and audit under regulation 75.

I – Members of the International Seabed Authority

Canada

(d) Details of all revenues and operating costs associated with activities in the Mining Area.

China

25. Draft regulation 74

It is suggested that paragraph 4 specify the period for which the books and records should be kept, and whether they should be kept after the closure.

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

Section 4
Records, inspection and audit

Regulation 74
Proper books and records to be kept

Commented [A63]: Sections 4 and 5 may be improved by providing for Council to approve the SG's recommendations or to ratify the SG's actions on report of the SG. While it is anticipated the SG would so inform Council, these slight additions would close a possible gap.

Regulation 75
Audit and inspection by the Authority

1. The Secretary-General may audit the Contractor's records.

2. Any such audit shall be undertaken at the Authority's sole cost and shall be performed by an Inspector in accordance with Part XI of these regulations.

3. An Inspector may, in connection with a liability for a royalty payment:

(a) Inspect the mining and on-board processing facility with a view to verifying the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area;

(b) Inspect, audit and examine any documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;

(c) Require any duly authorized representative of the Contractor to answer any questions in connection with the inspection; and

(d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection and provide a Contractor with a list of such copies or extracts.

4. The Contractor shall make available to an Inspector such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.

5. Members of the Authority, in particular a sponsoring State or States, shall, to the best of their abilities, cooperate with and assist the Secretary-General and any Inspector in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an Inspector and assist in the exchange of information relevant to a Contractor's obligations under this Part.

I – Members of the International Seabed Authority

China

26. Draft regulation 75

In accordance with Article 153 (5) of the Convention, the Authority's right to inspect is restricted within the scope of "all installations in the Area used in connection with activities in the Area". The provision of "inspect, audit and examine any documents, papers, records and data available at the Contractor's offices" contained in paragraph 3(b) apparently falls outside the scope provided in the Convention. It is proposed to delete relevant content.

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

DR 75 (former DR 73: Audit and inspection by the Authority: Provision must be made for the exemption of documents subject to attorney-client privilege.

The Pew Charitable Trusts

Regulation 75

Audit and inspection by the Authority

1. The ~~Authority~~Secretary-General may audit the Contractor's records. […]

The Secretary-General would need to retain auditor competence in order to implement DR75.

Regulation 76
Assessment by the Authority

1. Where the Secretary-General determines, following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4.

6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of 6 years from the date on which the relevant royalty return is lodged.

I – Members of the International Seabed Authority

Germany

- In relation to the "assessment by the Authority", Germany considers it necessary that the Authority a priori provides guidance to the Secretary-General to allow him to make the determination as established in **Draft Regulation 76 para. 1**. This aspect relates to the main issue "Delegation of Functions" noted above.

Draft Regulation 76:
"1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor. […]"

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

DR 76 (former DR 74): Assessment by the Authority [*Emphasis supplied.*]
General comment on the imprecise use of "the Authority": this is a pervasive problem with these draft Regulations. It is often unclear as to what specific body or organ is intended to actually undertake the task(s) set out. This lack of clarity is also at the root of the many *ultra vires*/legal competence issues raised in these comments, and especially with regard to the role and functions of the Secretary-General. See also comments made under **DR 13(1)(f), DR 25 and DR 57**. Under the LOSC, the Secretary-General performs administrative functions. It will be necessary to define what "administrative" means, because in these draft Regulations, the tasks assigned often appear to be substantive and within the specific purview of the LTC.

DR 76(1) (former DR 74(1)): "Where the Secretary-General determines …" "…the Secretary-General **may**,…" "that the Secretary-General **considers reasonable in the circumstances**…"
DR 76(3) (former DR 74(3)): "The Secretary-General **may**, …" and **after giving due consideration** …" "that the Secretary-General **considers ought to be**…" **[*Emphasis supplied.*]**

Problems with this DR 76 are legion. For example, it is not clear to us that:
a) the Secretary-General is legally empowered to undertake these tasks under the LOSC
b) even if such a power is found in the LOSC, these tasks can be undertaken entirely at the sole discretion of the Secretary-General (for example, what about the Finance Committee?)
c) the **bolded** terms are precise enough to facilitate predictability, implementation and enforcement
d) this does not incur the same transparency and uniform/non-discriminatory issues raised by the process as set out herein and discussed in, e.g., **DR 58(1).**

Furthermore, provision must also be made for the exemption of documents subject to attorney-client privilege.

Regulation 76

Assessment by the Authority

1. Where the Secretary-General determines, following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed by paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

~~3.~~5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4.

~~4.~~6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of ~~10~~6 years from the date on which the relevant royalty return is lodged.

Section 5
Anti-avoidance measures

Regulation 77
General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;

(b) Have not been carried out for bona fide commercial purposes; or

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty; then the Secretary-General shall determine the liability for a royalty as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount.

3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

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

DR 77 (former DR 75): General anti-avoidance rule
DR 78 (former DR 76): Arm's-length adjustments

The same comments made under, e.g., **DR 76** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context and the transparency and uniform/non-discriminatory issues raised by the process set out herein apply here as well.

The Pew Charitable Trusts

Regulation 77

General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;

(b) Have not been carried out for bona fide commercial purposes; ~~and~~or

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty,

then the Secretary-General shall determine the liability for a royalty as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. ~~**Draft regulation 76**~~The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount.

3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

Regulation 78
Arm's-length adjustments

1. For the purposes of this regulation:

(a) "Arm's length", in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and

(b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree is fair under the circumstances.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General may adjust the value of such costs, prices and revenues to reflect an arm's-length value in accordance with internationally accepted principles.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice.

I – Members of the International Seabed Authority

China

27. Draft regulation 78

Paragraph 2 of this regulation provides that "the Secretary-General may adjust the value of such costs, prices and revenues to reflect an arm's-length value". Given that the adjustment of related costs, in spite of its importance, is not an urgent matter, it should be dealt with by the Commission or the Finance Committee. The suggested language is as the following: "the Secretary-General may make recommendations to the Commission or the Finance Committee on the adjustment of the value of such costs, prices and revenues."

Germany

- With regard to **Draft Regulation 78 para. 2**, Germany wonders whether the Secretariat is equipped and qualified to appropriately support and assist the Secretary-General in the fulfillment of his task to "adjust the value of such costs, prices and revenues to reflect an arm's length value in accordance with internationally accepted principles". Germany therefore suggests including the Finance Committee in this particular determination process.

Draft Regulation 78:
"[…] 2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General, on the basis of a recommendation by the Finance Committee, may adjust the value of such costs, prices and revenues to reflect an arm's-length value in accordance with internationally accepted principles. […]"

Japan

Regulation 78: Arm's-length adjustments

Regulation 76 (2) provides the Secretary-General with a responsibility to adjust the value of such costs, prices, and revenues to reflect an arm's-length value in accordance with internationally accepted principles. As such responsibility is considered as important, the involvement of the Council, the Commission, and Finance Committee should be ensured in the decision-making process. Given regulation 73(3) provides "the Secretary-General shall provide the Contractor with written notice of any "proposed adjustment" under paragraph 2 above" and "the Contractor may make written representation to the Secretary-General," the Secretary-General have limited authority to coordinate with the Contractor. In light of this, in order to ensure consistency a phrase "may adjust the value …" under regulation 73(2) can be modified as "may propose to adjust the value." Finally, procedures to be followed after submission of representations by the Contractor should be developed.

<Regulation 78>

1. For the purposes of this regulation:

(a) "Arm's length", in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and

(b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree is fair under the circumstances.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's -length basis, pursuant to a contract or transaction between a Contractor and a related party, the Council ~~the Secretary-General~~ may propose to adjust the value of such costs, prices and revenues to reflect an arm's-length value , taking into account the recommendations of the Commission and Finance Committee, in accordance with internationally accepted principles.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice.

4. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with Finance Committee. The Council shall decide the value of relevant costs, prices and revenues based on the recommendation. The Contractor may take necessary measures in accordance with regulation 106 in case it is not satisfied with the decision of the Council.

Poland

Reg. 78 (2) The term "internationally accepted principles" needs further explanation as it is unclear what principles are referred to here. UNCLOS speaks of "generally accepted international rules and standards".

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

DR 77 (former DR 75): General anti-avoidance rule
DR 78 (former DR 76): Arm's-length adjustments

The same comments made under, e.g., **DR 76** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context and the transparency and uniform/non-discriminatory issues raised by the process set out herein apply here as well.

Section 6
Interest and penalties

Regulation 79
Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

I – Members of the International Seabed Authority

Australia

Regulation 79
Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

Commented [AUS81]: Australia suggests that both monetary penalties and cancellation of exploitation contract be possible consequences of failure to pay royalties. Text proposal in regulation 80.

Japan

Regulation 79: Interest on unpaid royalty

It is appropriate to shift the provisions relating to interest rate on the amount outstanding to Appendix IV, where a royalty rate is prescribed.

< Regulation 79>

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated in accordance with Appendix IV ~~by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable~~.

Regulation 80
Monetary penalties

Subject to regulation 103 (6), the Council may impose a monetary penalty in respect of a violation under this Part.

I – Members of the International Seabed Authority

Australia

Regulation 80
Monetary penalties and suspension or termination of exploitation contract

Subject to regulation 103 [~~(6)~~], **and depending on the seriousness of the breach,** the Council may impose a monetary penalty**, or suspend or terminate the exploitation contract** in respect of a violation under this Part.

Japan

Regulation 80: Monetary penalties

Article 18 (2) of annex III of the Convention provides "in the case of any violation of the contract not covered by paragraph 1(a), or in lieu of suspension or termination under paragraph 1(a), the Authority may impose upon the contractor monetary penalties..." In order to ensure consistency with the provision above, "in respect of a violation under this Part" can be modified as "in respect of a violation of the contract."

<Regulation 80>

Subject to regulation 103 (6), the Council may impose a monetary penalty in respect of a violation ~~of the contract under this Part~~.

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

The Pew Charitable Trusts

Regulation 80

Monetary penalties

Subject to regulation ~~101~~103 (6), the ~~Secretary-General~~Council may impose a monetary penalty in ~~the amount specified in appendix III to these Regulations in~~ respect of a violation under this Part~~, as specified in appendix III~~.

Note: DR80 has been amended to reflect that the regulatory decision-making body of the ISA is the Council, not the Secretary-General.

Section 7
Review of payment mechanism

Regulation 81
Review of system of payments

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, save that any revision shall only apply to existing exploitation contracts by agreement between the Authority and the Contractor.

I – Members of the International Seabed Authority

Australia

Regulation 81
Review of system of payments

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission, and in

Commented [AUS82]: Australia considers that the review of the system of payments by the Council should be at regular intervals (eg 5 years) rather than based on other events. It should be clear what the Council is to review, including whether the financial model is achieving the purpose it is intended for, including the objectives set out in the Convention and Implementing Agreement.

Canada

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement, consistent with Articles 154, 160(2) and 162(2)(o) of the Convention, and unless otherwise decided by the Council, shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.

Japan

<Regulation 81 (2)>

2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, taking into account of the economic viability of the project save that any revision shall only apply to existing exploitation contracts by agreement between 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

United States of America

2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, save that

Commented [A64]: Is there a role for the Finance Committee to play here?

Advisory Committee on Protection of the Sea

DR 81 (former DR 79): Review of system of payments
DR 82 (former DR 80): Review of rates of payments

DR 81(1) and DR 82(1): "…taking into account the **level of maturity and development of Exploitation activities** in the Area." **[*Emphasis supplied.*]**

What does the **bolded** language mean? This language is not in the LOSC. Problems with it include: even if it can be defined, how is this going to be applied in practice? Will it be applied to all the different types of mineral resources for the whole Area?

III – Stakeholders

Nauru Ocean Resources Inc.

Regulation 81(2)

NORI agrees that it is of fundamental importance that, as detailed in this Regulation, any revision to the system of payments shall only apply to existing exploitation contracts by agreement between the Authority and the Contractor. Indeed, this protection needs to be included in the Exploitation Contract itself so as this becomes a right of the Contractor, otherwise it is possible that the Authority could make a change to this Regulation to take this protection away from the Contractor.

Regulation 82
Review of rates of payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations.

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty.

I – Members of the International Seabed Authority

Japan

<Regulation 82 (2)>

2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, taking into account of the economic viability of the project save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations.

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

DR 81 (former DR 79): Review of system of payments
DR 82 (former DR 80): Review of rates of payments

DR 81(1) and DR 82(1): "…taking into account the **level of maturity and development of Exploitation activities** in the Area." **[*Emphasis supplied.*]**

What does the **bolded** language mean? This language is not in the LOSC. Problems with it include: even if it can be defined, how is this going to be applied in practice? Will it be applied to all the different types of mineral resources for the whole Area?

III – Stakeholders

Global Sea Mineral Resources

DR 82(2)	The Council may only apply the adjustment to the rates of payments to existing exploitation contracts from the end of the Second Period of Commercial Production.	The First Period of Commercial Production should be 5 years, while the Second Period of Commercial Production should be a minimum of 15 years. A total of 20 years generates sufficient certainty and stability for the contractor.

Nauru Ocean Resources Inc.

Regulation 82(2)

This regulation states that the rates can be changed "from the end of the Second Period of Commercial Production reflected at Appendix IV to these Regulations." It is therefore recommended that the Second Period of Commercial Production should not occur until at least 20 years after the date of the Exploitation Contract, particularly given it could be greater than 5 years from the date of signing the Contract before commercial production begins given the time it will likely take to carry out the Feasibility Study, make any changes necessary to the Plan of Work (including potentially resubmitting the EMMP), construct and commission the vessel and equipment, as well as ramp up to full scale production.

Section 8
Payments to the Authority

Regulation 83
Recording in Seabed Mining Register

1. All payments made by the Contractor to the Authority under this Part are non-confidential.

2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.

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

DR 83 (former DR 81): Recording in Seabed Mining Register Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on this DR.

Part VIII
Annual, administrative and other applicable fees

Section 1
Annual fees

Regulation 84
Annual reporting fee

1. A Contractor shall pay to the Authority, from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof, an annual reporting fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee.

2. The annual reporting fee is due and payable to the Authority at the time of submission of the Contractor's annual report under regulation 38.

3. Where the effective date is part way through a Calendar Year, the first payment shall be prorated and made within 30 Days after the effective date of an exploitation contract.

I - Members of the International Seabed Authority

France

PARTIE VIII – DROITS ANNUELS, DROITS ADMINISTRATIFS ET AUTRES DROITS APPLICABLES

L'intitulé de la section 2 « Droits non annuels » pourrait être revu. « Autres droits applicables » semble plus adapté.

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

The Pew Charitable Trusts

Regulation 84

Annual reporting fee

1.A Contractor shall pay to the Authority, from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof, an annual reporting fee as determined by a decision of the Council from time to time-, based on the recommendation of the Finance Committee. […]

This addition to DR84 better reflects the role of the Finance Committee (1994 Agreement, Annex, Section 3(7): "*decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.*")

Regulation 85
Annual fixed fee

1. A Contractor shall pay an annual fixed fee from the date of commencement of Commercial Production in a Contract Area. The amount of the fee shall be established by the Council as required under paragraph (1) (d) of section 8 of the annex to the Agreement.

2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year at the rate prescribed by the Council under paragraph 2 above. Where an annual fixed fee remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

3. Where the date of commencement of Commercial Production occurs part way through a Calendar Year, a prorated annual fixed fee shall become due and payable to the Authority within 30 Days of such commencement date.

4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations.

I - Members of the International Seabed Authority

China

28. Draft regulation 85

Since the date of the commencement of commercial production is the date from which the payment of the annual fixed fee will be paid, it is suggested that paragraph 1 clarify the definition and criteria of "Commercial Production", such as the proportion of an anticipated production, or an standard for the amounts of output.

The content "at the rate prescribed by the Council under paragraph 2 above " contained in paragraph 2 is a leftover from the previous version of the Draft Regulations. As there is no further reference to "rate" in this regulation, it is suggested that the above-mentioned content be deleted.

At the same time, considering that this regulation is still unclear on how to calculate the annual fixed fee, it is suggested that further clarification be made.

Japan

8 PART VIII: ANNUAL, ADMINISTRATIVE AND OTHER APPLICABLE FEES

Regulation 85: Annual fixed fee

An issue relating to the annual fixed fee is being considered by the Commission according to the note by the Commission on draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/18). It is appropriate to clarify purpose and use of each annual and administrative fee listed in Appendix II after consideration by the Commission.

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

The Pew Charitable Trusts

Regulation 85

Annual fixed fee

A Contractor shall pay an annual fixed fee from the date of commencement of Commercial Production in a Contract Area.

1. ~~The annual fixed fee shall be computed by multiplying the total size of the Contract Area in square kilometres, as identified in an exploitation contract, by an annual rate per square kilometre denominated in United States dollars. The Council shall establish such annual rate for each Calendar Year.~~ The amount of the fee shall be established by the Council as required by section 8(1)(d) of the Agreement. […]

This text may require further amendment, noting that the Commission *"considers that this matter would benefit from continued discussion in July 2019."* [ISBA/25/C/18]

Section 2
Fees other than annual fees

Regulation 86
Application fee for approval of a Plan of Work

1. An applicant for the approval of a Plan of Work shall pay an application fee in the amount specified in appendix II.

2. If the administrative costs incurred by the Authority in processing an application are less than the fixed amount in appendix II, the Authority shall refund the difference to the applicant. If the administrative costs incurred by the Authority in processing an application are more than the fixed amount, the applicant or Contractor shall pay the difference to the Authority, provided that any additional amount to be paid by the applicant or Contractor shall not exceed 10 per cent of the fixed fee specified in appendix II.

3. Taking into account any criteria established for this purpose by the Finance Committee, the Secretary-General shall determine the amount of such differences as indicated in paragraph 2 above, and notify the applicant or Contractor of its amount. The notification shall include a statement of the expenditure incurred by the Authority. The amount due must be paid by the applicant or reimbursed by the Authority within 90 Days of the effective date of the exploitation contract.

Regulation 87
Other applicable fees

A Contractor shall pay other prescribed fees in respect of any matter specified in appendix II, and in accordance with the applicable regulation.

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

Institute for Advanced Sustainability Studies

75. Concerning DR 87, we recommend that this provision clearly states that the items in appendix II are non-exhaustive and may be amended to include more items if the Council deems that this is necessary from time to time.

Section 3
Miscellaneous

Regulation 88
Review and payment

1. The Council shall review and determine on a regular basis the amount of each of the annual, processing and other applicable administrative fees specified in appendix II in order to ensure that they cover the Authority's expected administrative costs for the service provided.

2. Except as provided for in this Part, fees will be a fixed amount expressed in United States dollars or its equivalent in a freely convertible currency, and are to be paid in full at the time of the submission of the relevant application, request, document or other event as specified in appendix II.

3. The Secretary-General shall not process any application until the applicable fee under appendix II has been paid.

4. Fees paid under this Part are not refundable upon the withdrawal, rejection or refusal of an application.

I - Members of the International Seabed Authority

Canada

2. Except as provided for in this Part, fees will be a fixed amount expressed in United States dollars ~~or its equivalent in a freely convertible currency, and~~ are to be paid in full at the time of the submission of the relevant application, request, document or other event as specified in appendix II.

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

Institute for Advanced Sustainability Studies

76. We also suggest to include a new paragraph in DR 88 to explicitly require the Contractor to undertake any further administrative costs that is reasonably necessary, and that the Contractor undertakes to reimburse the Authority for any costs that it has incurred in order to administer the said Contractor's Plan of Work.

Part IX
Information-gathering and handling

Regulation 89
Confidentiality of information

1. There shall be a presumption that any data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract are public, other than Confidential Information.

2. "Confidential Information" means:

(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the Secretary-General on the basis that there would be substantial risk of serious or unfair economic prejudice if the data and information were to be released;

3. "Confidential Information" does not mean or include data and information that:

(a) Are generally known or publicly available from other sources;

(b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;

(c) Are already in the possession of the Authority with no obligation concerning its confidentiality;

(d) Are required to be disclosed under the Rules of the Authority to protect the Marine Environment or human health and safety;

(e) Are necessary for the formulation by the Authority of rules, regulations and procedures concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;

(f) Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release; or

(g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);

or where:

(h) The Contractor to which the data and information relates has given prior written consent to its disclosure; or

(i) The area to which the data and information relates is no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the Secretary-General, and save any data and information relating to personnel matters under paragraph 2 (b) above.

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with in accordance with Part XII of these regulations.

6. Nothing in these regulations shall affect the rights of a holder of intellectual property.

I - Members of the International Seabed Authority

Australia

2. "Confidential Information" means:

(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;

Commented [AUS83]: Australia endorses the addition of the new category of confidential information following stakeholder support, namely the category of 'data and information which have been categorised as Confidential Information by the Council'. We note that the process to develop the list and the timing is yet to be addressed.

China

29. Draft regulation 89

Paragraph 3(i) of the regulation stipulates that Confidential Information shall no longer be deemed to be confidential after it is passed to the Secretary-General for a period of 10 years. However, according to the existing provisions of the Draft Regulations, the term of an exploitation contract could be 30 years. Inconsistency occurs between the term of a contract and that of confidentiality. The Confidentiality should be kept throughout the duration of a contract unless the Contractor indicates otherwise. It is suggested to revise this regulation accordingly.

Costa Rica

Regulation 89
Confidentiality of information

3. "Confidential Information" does not mean or include data and information that:

(f) Relate to the protection and preservation of the Marine Environment, unless the Secretary-General agrees that such information is regarded as Confidential Information for a reasonable period, which shall under no circumstances exceed a period of 2 years, where there are bona fide academic reasons for delaying its release; or

RATIONALE: Costa Rica believes that there is no reason for environmental information to be kept from the public for academic reasons, so a maximum period of 2 years is suggested

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt through the administrative procedure described in Annex X

RATIONALE: It does not make sense that a dispute regarding the confidentiality of information be taken to ITLOS or other courts. An administrative procedure needs to be adopted. Costa Rica suggests it is included as an Annex.

France

Projet d'article 89 – Confidentialité des informations : Nous réitérons notre demande de suppression de la liste des informations non confidentielles (paragraphe 3, alinéas f à m).
En outre, des clarifications sont nécessaires au **projet d'article 89, paragraphe 4**, qui semble signifier que le contractant ne peut refuser la communication d'informations confidentielles à des tiers sans « motif raisonnable ». En pratique, une telle disposition limiterait de façon importante la possibilité de protéger des données confidentielles, sauf à considérer que le caractère confidentiel de l'information constitue en lui-même un motif raisonnable…

Germany

- Concerning the confidentiality of information we regard it necessary to establish unambiguous definitions on which information has to be considered confidential or public. Regarding the suggested designation procedures, utmost transparency has to be ensured. In cases where information is designated "confidential", it should be possible to trace which entity is in possession of the information concerned to enable access to it following an authorisation at a later stage (**Draft Regulation 89**). In relation to Draft Regulation 89 para. 5, Germany considers it necessary that the Authority a priori provides guidance to the Secretary-General to allow him to decide whether or not to object. This aspect relates to the main issue "Delegation of Functions" noted above. Furthermore, Draft Regulation 89 para. 3(f) needs to be modified as it was contradictory.

Draft Regulation 89:
"[…] 3. "Confidential Information" does not mean or include data and information that: […] (f) Relate to the marine environment, ~~provided that~~unless the Secretary-General agrees that such information is regarded as confidential information for a reasonable period where there are bona fide academic reasons for delaying its release; or […]."

Jamaica

Regulation 89 Confidentiality of information

3. "Confidential Information" does not mean or include data and information that:

(f) Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may designate~~agree that~~ such information ~~is regarded~~ as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council; or ...

(i) The area to which the data and information relates is no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the Secretary-General in accordance with the relevant Guidelines, and save any data and information relating to personnel matters under paragraph 2 (b) above

RATIONALE:

As regards DR 89(3)(f), in light of the academic qualifications and experience in diverse disciplines, the members of the LTC should be involved in the decision to treat information as confidential for academic reasons and may determine whether conditions should be imposed on delaying the release of the information.

In relation to DR 89(3)(i), the treatment of confidential information should be applied uniformly and this is promoted by establishing clear criteria that are applied objectively and in a transparent fashion.

Micronesia

21. On Draft Regulation 89(3), the FSM stresses that the listing of data and information that are not considered "Confidential Information" should not be an exhaustive one. Instead, the relevant ISA entity (e.g., the Council) should have the discretion to expand/amend the listing, as necessary, particularly data and information pertaining to the protection and preservation of the Marine Environment.

    Additionally, the FSM expresses concern that the designation of Confidential Information in Draft Regulation 89(2) relies on too much discretion on the parts of the Contractor and the ISA Secretary-General. Guidelines or Standards should be adopted to guide/regulate such a designation, along with periodic review of such a process to minimize abuse (e.g., "Sponsor State shopping").

United Kingdom

89. Confidentiality of information	1. There shall be a presumption that any data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract are public, other than Confidential Information.	1. ~~There shall be a presumption that any~~ All data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract shall be ~~are~~ public, other than Confidential Information.	The creation of a presumption in drafting terms here is confusing; this drafting amendment is to clarify what this means in practice.

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

DR 89 (former DR 87): Confidentiality of information: DR 87(2): Provision must be made in the list for the exemption from disclosure of documents subject to attorney-client privilege - and/or their specific inclusion confirming their confidential status.

DR 89(2)(d): The same comments made under, e.g., **DR 76** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context and the transparency and uniform/non-discriminatory issues raised by the process set out herein apply here as well.

Noting that the LTC implemented our comments submitted in September 2018 on the use of "and" rather than "or" in DR 89(2)(d), we have no further comments on DR 89(2)(d).

Deep Ocean Stewardship Initiative

Part IX - Information-gathering and handling

DR 89(2): Consider recommending that a log be kept of all individuals who access the Confidential Information, and the reason for doing so.

DR 89(3)(f): Our scientists agree that no environmental data should be withheld from public scrutiny for any time period. Such practice of withholding environmental data amounts to the privatization of information obtained from an area that belongs to all humankind. We recommend the data collected as part of the Contractor's fulfillment of the requirements of EMMPs should not be considered data that follow practices of delays in publication for academic reasons. Should academics be collecting data, these would be auxiliary to the Contractor obligations and clarified as such.

Deep Sea Conservation Coalition

89	Confidential Information	The process in DR 89.4 should allow objection by the Secretary-General at any time. 30 days may be far too short: an issue may arise weeks or months later. Moreover, there should be a procedure for stakeholders to object to the designation of information as confidential. The academic exemption in DR 89.2(f) should be deleted: environmental information should not be withheld from the public or stakeholders for academic reasons. There should be an accessible and simplified dispute procedure; not recourse to courts and ITLOS which is inappropriate to determine individual matters relating to confidential information: an administrative procedure is necessary. DR 89(3) gives the Secretary-General discretion to agree with a Contractor that data may remain confidential beyond 10 years following its submission to the ISA. This at the very least needs a review procedure.

77. With respect to DR 89, while we are happy to see that environmental-related information are not treated as confidential information in DR 89(3)(e) and (f), we are not certain as to how this will be executed in practice. As such, we propose that an indicative list be created that plainly describes which types of information are considered as environmental-related and must be disclosed on the one hand, and which information that, although closely connected to environmental-related matters, will be covered under the cloak of confidentiality and not be disclosed on the other hand.

78. Further, with reference to DR 89(3)(f), we recommend that such information should not be withheld "for a reasonable period where there are bona fide academic reasons for delaying its release". This practice amounts to the privatization of information obtained from a global commons that belongs to all of mankind. We reiterate our view that all environmental data should be immediately made publically available on the Authority's website and database. Thus, concerning DR 89(3)(f), we suggest the following terminology: "[...] regarded as Confidential Information for a limited period, which under no circumstance shall extend for more than a period of four years, where there are bona fide academic reasons for delaying its release".

79. More crucially, we are concerned over the function of the Secretary-General under DR 89, in particular the function of determining and designating certain information as confidential (see e.g. DR 89(2)(a) and(d), as well as 89(5)). We are of the view that this function is not of an administrative nature and should not be left to the Secretary-General. In lieu of the Secretary-General performing this function, we propose the establishment of a Data Committee, mandated specifically for the tasks of information gathering and information handling. This Data Committee can perform two key functions, among others, namely: to oversee the work of the Secretariat in knowledge management and maintaining the new database (DeepData), and to determe and designate the confidentiality of information, and. The Data Committee can comprise of a small number of individuals with the relevant qualifications (thereby being cost-effective). Some of the members of the Data Committee can be directly appointed by the Council through member State nominations, while others can comprise of several members of the LTC and the Secretariat. While we acknowledge that the role of the Secretariat in building and maintaining the database is an important one, we are of the view that the management of the database, in particular the determination of what and how much information (based on reasons of confidentiality) should be fed into the database, should not be left to the sole discretion of the Secretariat.

The Pew Charitable Trusts

~~Draft regulation 87~~Regulation 89

Confidentiality of information

[…]

3. ~~Other data and information deemed to be~~ "Confidential Information ~~under the law of the sponsoring State.~~ " does not mean or include data and information that: […]

provided that following the expiration of a period of 10 years after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor ~~that submitted it can demonstrate to the satisfaction of~~and the Secretary-General ~~that it continues to satisfy the definition of Confidential Information~~, and save any data and information relating to personnel matters under ~~this~~ paragraph 2(b) above.

DR89(3) gives the Secretary-General discretion to agree with a Contractor that data may remain confidential beyond ten years following its submission to the ISA (where otherwise there is a presumption towards disclosure). This discretionary power (and the SG's power to make or uphold confidentiality designation more generally) could be circumscribed or supported by safeguards. These could include Standards or Guidelines that assist the Secretary-General's decision-making; a requirement to report to the Council, in general and non-prejudicial terms, any information withheld as a result of the Secretary-General's agreement under DR89; and a process (for stakeholders) for challenging that decision, such as an accessible and simplified administrative dispute procedure.

The process in DR 89(4) could be amended also to allow objection by the Secretary-General at any time. Thirty days may be too short: the documents may be read, or an issue may arise, weeks or months after their submission.

[…]

III – Stakeholders

Nauru Ocean Resources Inc

Regulation 89

Currently the threshold is too high to classify information as confidential. The term "substantial risk of serious and unfair economic prejudice" should be changed to "risk of harm", particularly given the harm may not just be limited to economic prejudice. It should be noted that the Contractor has expended significant effort and capital in generating this data and should be afforded the rights to privacy afforded to any person.

Regulation 90
Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information and shall not, except with the prior written consent of a Contractor, release such information to any person external to the Authority. To ensure the confidentiality of such information, the Secretary-General shall establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information by members of the Secretariat, members of the Commission and any other person participating in any activity or programme of the Authority. Such procedures shall include:

(a) The maintenance of Confidential Information in secure facilities and the development of security procedures to prevent unauthorized access to or removal of such information; and

(b) The development and maintenance of a classification, log and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition.

2. A person who is authorized pursuant to these regulations to access Confidential Information shall not disclose such information except as permitted under the Convention and these regulations. The Secretary-General shall require any person who is authorized to access Confidential Information to make a written declaration witnessed by the Secretary-General or duly authorized representative to the effect that the person so authorized:

(a) Acknowledges his or her legal obligation under the Convention and these regulations with respect to the non-disclosure of Confidential Information; and

(b) Agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such information.

3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these regulations or a contract issued under these regulations. In accordance with the provisions of article 163 (8), of the Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose or use, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their employment with the Authority.

5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who is in breach of the obligations relating to confidentiality contained the Rules of the Authority.

I - Members of the International Seabed Authority

Russian Federation

Regulation 90	Procedures to ensure confidentiality 1. The Secretary-General	It is proposed to detail the provisions about non-disclosure procedure regarding the members of the Council.	In addition to the general provision about non-disclosure obligation for the persons who have access to confidential information, this Regulation separately govern non-disclosure
Regulation	**Text of the Regulation**	**Comments / Remarks**	**Explanation**
	shall be responsible for maintaining the confidentiality of all Confidential Information and shall not, except with the prior written consent of a		procedures for members of the LTC and the Secretariat. Meanwhile, there are no similar detailed provisions for members of the Council, although they will face confidential information during their work also.

United Kingdom

90. Procedures to ensure confidentiality	5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who is in breach of the obligations relating to confidentiality contained the Rules of the Authority.	5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who ~~is in~~ breaches any of the obligations relating to confidentiality contained in the Rules of the Authority. In the case of a breach of the obligations relating to confidentiality, the Authority shall notify the relevant Contractor and Sponsoring State.	Slight amendments here to clarify the language on breaches of obligations. In the case of a breach of confidentiality obligations, the Authority should also notify the Contractor and the Sponsoring State to ensure they are aware of the breach.

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

DR 90 (former DR 88): Procedures to ensure confidentiality

Who is the Authority here? See also general comment re use of "the Authority" under **DR 76** above.

The Pew Charitable Trusts

~~Draft regulation 88~~Regulation 90

Procedures to ensure confidentiality

3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these Regulations or a contract issued under these Regulations. In accordance with the provisions of article 163 (8), of the Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose or use, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their employment with the Authority.

[…]

Regulation 91
Information to be submitted upon expiration of an exploitation contract

1. The Contractor shall transfer to the Authority all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and the Guidelines.

2. Upon termination of an exploitation contract, the Contractor and the Secretary-General shall consult together and, taking into account the Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority.

I - Members of the International Seabed Authority

Australia

Regulation 91
Information to be submitted upon expiration of an exploitation contract

1. **Upon expiration of an exploitation contract, t**The Contractor shall transfer to the Authority **within 90 days** all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and the Guidelines.

2. Upon termination of an exploitation contract, the Contractor and the Secretary-General shall consult together and, taking into account the Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority **within 90 days**.

Commented [AUS84]: Australia considers that this draft regulation should provide a specified timeframe for submission upon termination.

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

DR 91 (former DR 89): Information to be submitted upon expiration of an exploitation contract
DR 91(2): "…the Contractor and the Secretary-General shall consult together…"
See also comments made under, e.g., **DR 13(1)(f), DR 76** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context. See also comments made above under, e.g., **DR 58(1), DR 76** re the transparency and uniform/non-discriminatory issues raised by the process set out herein.

Regulation 92
Seabed Mining Register

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and Guidelines. Such register shall contain:

(a) The names of the Contractors and the names and addresses of their designated representatives;

(b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7;

(c) The terms of the various exploitation contracts in accordance with regulation 17;

(d) The geographical extent of Contract Areas and Mining Areas to which each relate;

(e) The category of Mineral Resources to which each relate;

(f) All payments made by Contractors to the Authority under these regulations;

(g) Any encumbrances regarding the exploitation contract made in accordance with regulation 22;

(h) Any instruments of transfer; and

(i) Any other details which the Secretary-General considers appropriate (save Confidential Information).

2. The Seabed Mining Register shall be publicly available on the Authority's website.

I - Members of the International Seabed Authority

Costa Rica

Regulation 92
Seabed Mining Register

b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7, including any revisions as well as the result of every monitoring process.

RATIONALE: revisions and the results of all the monitoring processes need to be included in the Register to have updated information.

Germany

- We suggest including specific sets of additional information to be contained in the Seabed Mining Register (**Draft Regulation 92**).

Draft Regulation 92:
"1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and Guidelines. Such register shall contain: […] (b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7, including any revisions, as well as any non-confidential parts of annual reports and the results of monitoring and test mining projects; […]."

Italy

DR92	The Seabed Mining Register should contain also the information of the approved Environmental Plans or a link to the Authority's website where this information will remain accessible for the entire duration of the exploitation contract and updated accordingly to any material changes applied to the Plans.

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

DR 92 (former DR 90): Seabed Mining Register
DR 92(1)(i): "The Secretary-General shall establish a Seabed Mining Register in which shall be published: … (i) Any other details which the Secretary-General considers appropriate (save Confidential Information)."
See also comments made under, e.g., **DR 13(1)(f), DR 76** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context. See also comments made above under, e.g., **DR 58(1), DR 76** re the transparency and uniform/non-discriminatory issues raised by the process set out herein.

The Pew Charitable Trusts

~~Draft regulation 90~~Regulation 92

Seabed Mining Register

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in ~~which~~accordance with the Standards and Guidelines. Such register shall ~~be published~~contain:

(a) The names of the Contractors and the names and addresses of their designated representatives;

(b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7;

~~(a)~~ The terms of the various exploitation contracts in accordance with

(c) regulation ~~18~~17;

(d) The geographical extent of Contract Areas and Mining Areas to which each relate;

(e) The category of Mineral Resources to which each relate;

(f) All payments made by Contractors to the Authority under these Regulations;

(g) Any encumbrances regarding the exploitation contract made in accordance with regulation ~~23~~22;

(h) Any instruments of transfer; and

(i) Any other details which the Secretary-General considers appropriate (save Confidential Information).

DR38(3)'s requirement for annual reports to be published on the Seabed Mining Register should be reflected in DR92. Other items of public interest could also be included in the register, such as:

- copies of equivalent documents pertaining to *exploration* contracts,
- details of amounts mined,
- incident and notifiable event notices and reports,
- compliance notices,
- details of other ISA compliance related interventions,
- inspection reports.

2. The Seabed Mining Register shall be publicly available on the Authority's website.

As noted by 2018 Stakeholder submissions, additional text could be included in the Regulations to promote accessibility of the Register and other public information. Additions could include specification as to the format(s) and language(s) in which the information will be made available, and stipulation that access to the information on the Register will be open to all, and free of charge.

Part X
General procedures, Standards and Guidelines

Regulation 93
Notice and general procedures

1. For the purpose of this regulation:

(a) "Communication" means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these regulations; and

(b) "Designated representative" means the person so named on behalf of a Contractor on the Seabed Mining Register.

2. Any communication shall be made by the Secretary-General or by the designated representative of the applicant or Contractor, as the case may be, in writing.

3. Service of any communication must be made:

(a) By hand, fax, registered mail or email containing an authorized electronic signature; and

(b) To the Secretary-General at the headquarters of the Authority or to the designated representative at the address stated on the Seabed Mining Register, as the case may be.

4. The requirement to provide any information in writing under these regulations is satisfied by the provision of the information in an electronic document containing a digital signature.

5. Delivery by hand is deemed to be effective when made. Delivery by fax is deemed to be effective when the "transmit confirmation report" confirming the transmission to the recipient's published fax number is received by the transmitter. Delivery by registered airmail is deemed to be effective 21 Days after posting. Delivery by email is deemed to be effective when the email enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and is capable of being retrieved and processed by the addressee.

6. Notice to the designated representative of the applicant or Contractor constitutes effective notice to the applicant or Contractor for all purposes under these regulations, and the designated representative is the agent of the applicant or Contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

7. Notice to the Secretary-General constitutes effective notice to the Authority for all purposes under these regulations, and the Secretary-General is the Authority's agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

I - Members of the International Seabed Authority

Chile

Proyecto de artículo 93
Notificación y procedimientos generales

En cuanto a los aspectos orgánicos, procedimentales y sustantivos del desarrollo de normas y directrices, de los que tratan los proyectos de **artículos 92 y 93**, Chile hace presente que se trata de una materia crucial.

En términos generales, resulta clave la importancia de la cooperación con otros órganos internacionales competentes en el desarrollo normativo que se propone. Por ejemplo, con la Organización Marítima Internacional (OMI) y otras entidades.

France

Projet d'article 93 – Avis et procédures de caractère général : Il convient de corriger les coquilles aux paragraphes 3, alinéa a et au paragraphe 5. En effet, la version française du projet de règlement prévoit actuellement que les « communications sont signifiées : a) A personne, par télécopie [...] » et que « la signification à personne prend effet [...] ». Eu égard à la version anglaise du projet, les paragraphes devraient se lire comme suit : « les communications sont signifiées : a) En personne, par télécopie, sous pli recommandé [...] » et, pour le paragraphe 5 : « la signification en personne prend effet [...]. Nous notons également que cette possibilité de remettre des communications en main propre devrait être précisée en ce qui concerne la **preuve d'un tel dépôt**.

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

DR 93 (former DR 91): Notice and general procedures
DR 93(5): "Delivery by hand is deemed to be effective when made."
More detail is needed here in terms of actual proof of delivery by hand. There must be some form of publicly available written or otherwise recorded registration by the Secretariat and preferably as well a recorded transmission to the sender by the Secretariat of a written acknowledgement of receipt.

Regulation 94
Adoption of Standards

1. The Commission shall, taking into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to:

(a) Operational safety;

(b) The conservation of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

2. The Council shall consider and approve, upon the recommendation of the Commission, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, process or technology required to implement the Standards.

4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology.

I - Members of the International Seabed Authority

Australia

4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology.

Commented [AUS85]: Draft regulation 94(4) provides that standards shall be legally binding on Contractors. We suggest that these obligations should also be reflected in Contracts.

Canada

1.5 The Council shall ensure that requirements and legally-binding obligations associated with relevant and/or applicable international treaties and agreements are adopted/integrated into the ISA's standards and guidelines.

2. The Council shall consider and approve, upon the recommendation of the Commission, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, process or technology required to implement the Standards.

4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and ~~may~~ should be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology.

China

30. Draft regulation 94

The Convention does not confer on experts with special status in the formulation of relevant standards in the Area, and it is not appropriate to only emphasize recognized experts. It is suggested that the phrase "recognized experts" be removed.

In terms of procedure, we support the suggestion made by the Commission that the standards shall be approved by the Council and adopted by the Assembly. It is suggested that the relevant content of paragraph 4 of this regulation be adjusted as "Standards adopted by the Council and the Assembly".

Costa Rica

1. The Commission shall, taking into account the views of recognized experts, (deletion of text) Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to:

RATIONALE: Costa Rica proposes the deletion of the adjective "relevant". The term stakeholders already considers the relevance of the interested persons or organizations.

(a) Operational safety;

(b) The conservation of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

1bis. Standards shall be adopted before the adoption of the Regulations , and given its binding character, no exploitation proposal may be considered before the finalization of the Standards.

2. The Council shall consider and approve, upon the recommendation of the Commission, and giving due consideration to submission by Stakeholders in the framework of the Public Consultations, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, process or technology required to implement the Standards.

4. Standards adopted by the Council shall be legally binding on Contractors, sponsoring States and the Authority and shall be revised and eventually amended at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology, or in view of unforeseeable events or environmental considerations.

France

Projet d'article 94, paragraphe 3 – Adoption de normes : Il convient d'aligner la version anglaise sur la version française, qui semble plus adaptée, en remplaçant la mention « *process or technology required to implement the Standards* » par « *process**es and** technology required to implement the Standards* » (en français « les procédures et les techniques nécessaires »).

Germany

- In relation to **Draft Regulation 94**, Germany proposes the following changes.

Draft Regulation 94:
"[…] 2. The Council shall consider and approve, upon the recommendation of the Commission and taking into account statements submitted by stakeholders during a public consultation, the Standards, provided that such Standards are consistent with the intent and purpose of the rules of the Authority and developed on the basis of Best Available Scientific Evidence. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. […] 3bis. Standards shall be methodological, procedural, technical and environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, as referred to in Regulation 45. Standards are legally binding on Contractors and the Authority, and shall be revised every 5 years in the light of new knowledge, e.g. resulting from environmental impact assessments and monitoring. […]"

Italy

DR94 (4)	Review of standards before the 5 years period shall also be considered for environmental reasons based on e.g. new monitoring evidence, as corrective actions to remove/mitigate unpredicted effects resulting from monitoring of the activities.		Reasons for reviewing the adopted standard should include environmental reasons in addition to 5 years period of time and improvements in knowledge and technology. Review of standards before the 5 years period shall also be considered for environmental reasons based on e.g. on monitoring evidences an/or as corrective actions to remove/mitigate unforeseen effects resulting from monitoring evidences

Jamaica

Regulation 94 Adoption of Standards

1. The Commission shall, taking into account the views of recognized experts identified in accordance with annex X*, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to: …

*Annex X would provide for the Secretary-General to establish a roster on a similar basis as UNCLOS annex VIII. This would include a list of experts drawn up by relevant UN Specialized Agencies and experts nominated by States Parties. The ISA is one of the sponsoring organizations of the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection. It is proposed that the annex would expressly include the Joint Group of Experts.
Annex X would also address the basic principles and procedures governing the use of the roster with a view to minimizing conflicts of interests, ensuring an appropriate geographical balance, etcetera.

2. The Council shall consider and approve, upon the recommendation of the Commission, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority [and] [including] the regulations and/or subsequently in light of matters that may have arisen. The decisions of Council and those of the Assembly are not expressly included in the definition of "Rules of the Authority". The Schedule to the Draft Regulations provides that "'Rules of the Authority' means the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time." It is useful in our view to expressly include reference to decisions of the Council an Assembly.

As regards DR 94(4), the report of the LTC, ISBA/25/C/19/Add.1, recommends (in paragraph 21) that DR 94 be amended to reflect that Standards should be approved by the Assembly. Jamaica supports this recommendation.

With regard to DR 94(2), the LTC report, ISBA/25/C/19/Add.1, recommends a phased outcome-based approach should be used in the development of standards and guidelines. This compromise approach will not enable a full appreciation of the extent to which the proposed regulatory regime for the exploitation of minerals adequately addresses the effective protection of the marine environment when the regulations are placed before the Council for adoption. Council may wish to provide guidance to the LTC on the development of the outstanding Standards and Guidelines when adopting the

Japan

9 PART X: GENERAL PROCEDURES, STANDARDS AND GUIDELINES

Regulation 94: Adoption of Standards and 95: Issue of Guidelines

As stated in the note by the Commission on draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/18), standards approved by the Council are mandatory whereas guidelines provide clarification and should be recommendatory in nature. Japan welcomes proposed revised text in regulations 94 and 95 to take on differentiated processes based on the nature of each document and to apply process uniformly to each category of documents. Japan expects that standards and guidelines will be developed with the guidance of the Commission.

Active participation of relevant stakeholders including Contractors is key to making these standards and guidelines really practical and effective and in this respect Japan welcomes incorporation of this element into the revised text.

Japan is of the view that the Guideline on restriction on mining discharges needs to be completed before the adoption of the Regulations as it is extremely important in terms of environment and implementation of the project. Relevant Guidelines on Environmental Performance Guarantee and Closure Plan, both of which are necessary for Contractors in developing application for a Plan of Work for exploitation, should be developed prior to the receipt of the first application for a Plan of Work.

With regard to regulation 94 (1) (b), the scope of standards should be both "conservation" and "exploitation" of the Resources. The former term, which is deleted in the revised text, should be revived.

<Regulation 94 (1)>

1. The Commission shall, taking into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of standards relating to Exploitation activities in the Area, including but not limited to standards relating to:

(a) Operational safety;

(b) The conservation and exploitation of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, and referred to in regulation 45.

Micronesia

22. On Draft Regulation 94, the FSM welcomes language clarifying that Standards will be legally binding. This raises the issue of how to assess/adjudicate non-compliance with Standards, including non-compliance by ISA member States and organs of the ISA. Additionally, the modifier "relevant" for Stakeholders in Draft Regulation 94(1) should be deleted. All stakeholders, by definition, are relevant. In this connection, the FSM stresses that IPLCs who hold relevant traditional knowledge (as discussed above) are Stakeholders for purposes of the Draft Regulations unless specific allowance is made for representatives of IPLCs to formally and directly participate in the work of the ISA, including as observers. These comments apply to other uses of the phrase "relevant Stakeholders" in the overall Draft Regulations.

Norway

Part X - General procedures, Standards and Guidelines

Regulations 94 and 95 deals with Adoption of Standards and Issue of Guidelines, respectively.

Norway welcomes the Legal and Technical Commission's recommendations related to the development of the large number of standards and guidelines to be included in the regulatory framework as presented in the Annex of the report of the Chair of the Commission (ISBA/25/C/19/Add.1). It is noted that the report of the Chair also submits that the Commission recommends that Regulation 94 should be amended to comply with the Convention. The amendment will imply that standards of the Authority are to be recommended by the Commission, adopted by the Council and approved by the Assembly.

It is important that there is a common understanding of the definitions of standards. In its recommendations to the Council (ISBA/25/C/3), the Commission distinguishes between process standards and performance standards. In addition, there is the concept of thresholds that may be standards on their own or are part of the aforementioned standards. The ISA standards should be based on the same principles as those referred to in the assessment of contractors set out in Draft Regulation 13: Good Industry Practice, Best Available Techniques, and Best Environmental Practices.

Norway agrees with the Commission (ISBA/25/C/3) that it is important that such standards be developed in close contact with the industry.

Norway agrees with the list of priority and three-phase approach to development of standards and guidelines as recommended by the Commission.

Russian Federation

35.	**Regulation 94**	1. The Commission shall, taking into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and	It is suggested to modify this Regulation so that it reads as follows: "*1. Standards and amendments thereto are binding on all persons operating in the Area.* *2. Standards are prepared by the Commission, which shall take into account the views of recognized*	The proposed wording of this Regulation is based on the provisions of Article 160(2)(f)(ii) of the UNCLOS establishing the powers and functions of the Assembly, on the provisions of Article 145 of the UNCLOS establishing the principle of protection of the marine environment and its content with respect to activities in the Area, and on the provisions of Article 165(2)(f) of the UNCLOS establishing

	Regulation	Text of the Regulation	Comments / Remarks	Explanation
		revision of Standards relating to Exploitation activities in the Area, including standards relating to: (a) Operational safety; (b) The conservation of the Resources; and (c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45. 2. The Council shall consider and approve, upon the recommendation of the Commission, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for	*experts, relevant Stakeholders, and relevant existing international standards, and make recommendations to the Council on the adoption and revision of Standards. The Council shall consider and approve the Standards upon the recommendation of the Commission. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. The Standards may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology. The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.* *3. Standards may be adopted in relation to:* *(a) health, safety and labor matters;* *(b) the protection and conservation of the natural resources of the Area and*	the legal framework for the activities of the Legal and Technical Commission.

	Regulation	Text of the Regulation	Comments / Remarks	Explanation
		reconsideration in the light of the views expressed by the Council. 3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, process or technology required to implement the Standards. 4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology.	*the prevention of damage to the flora and fauna of the marine environment;* *(c) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities; and* *(d) other matters.* *4. Standards may include both qualitative and quantitative norms, as well as the methods, processes and technologies necessary to comply with the standards.*	

United Kingdom

94. Adoption of standards	4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology	4. Standards adopted by the Council shall be legally binding on Contractors and the Authority and ~~may be revised~~ the Commission shall review these Standards at least every five years from the date of their adoption or revision and advise the Council, ~~and~~ in the light of improved knowledge or technology, as to whether any revision is required.	The review of Standards adopted by the ISA should be mandatory and not optional.

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

Regulation 94
Adoption of Standards

1. The Commission shall, taking into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to:

(a) Operational safety;

Commented [A65]: Article 162(2)(o)(ii) of the Convention requires that the Council recommend to the Assembly any standards or guidelines under regulations 94 and 95 that would constitute rules, regulations and procedures for purposes of that provision, and any standards or uidelines issued outside of such a process would be ineffective.

Advisory Committee on Protection of the Sea

DR 94 (former DR 92): Adoption of Standards

DR 94(3): "The Standards contemplated by paragraph 1 above may include both qualitative and quantitative standards and include the methods, process **or** technology required to implement the Standards." **[*Emphasis supplied.*]**

The word "must" is to be inserted between "and" and "include", otherwise, because of the use of the optional verb "may" after "above", setting out the methods, etc. also remains optional, which cannot be what was intended. As implementation of the Standards are highly likely to require more than one "process", this word is recommended to be changed to "processes". This is an inappropriate and confusing use of 'or'. In order to make clear that *all* methods, processes and technology required to implement the Standards are included in the Standards,

The sentence should read [**bolded** changes] as follows:

The Standards … and **must** include **all** the methods, processes **and** technology required to implement the Standards.

Deep Ocean Stewardship Initiative

DR 94: See general comments above. It would be important to know when Standards and/or Guidelines will be developed.

DR 94: Given that the Standards are "legally binding" (DR 94(4)), the Standards should be most reliable and updated appropriately. It is unclear how the Commission will take "into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards" (DR 94(1)) and whether they have the capacity to examine and adopt the methods based on best available science. Regardless of the Commission's taking-into-account methods e.g., ISA's official Workshops, literature reviews or others, the adoption process of Standards should be transparent and equitable.

DR 94: Technologically high Standards could generate inequity in access to mining opportunities among ISA members and Contractors, and might need to examine the statement for technology transfer (i.e., DR (2)(b)(iv)).

DR 94(1): Add / replace the following in bold to: (...) on the adoption, revision and lack of standards (...)**.** This DR needs to be revisited once the Standards and requirements have been finalized. Right now, under DR 94(1)(c), reference is made to DR 45 for the Protection of the Marine Environment; however, this is circular because DR 45 refers to DR 94 for specifics.

DR 94(3): We support that Standards "should be legally binding on the Contractors and the Authority" and that they should be reviewed at least every five years.

Deep Sea Conservation Coalition

DR 94: It is now provided that Standards are legally binding. This has been a strong DSCC recommendation.

However, DR 94, 95, 107, and Annex IV have introduced a new term "relevant stakeholders". This is a new restriction on stakeholders and should be replaced with 'stakeholders'.

94, 95, 107, Annex IV	'Relevant stakeholders'	This new term is a restriction on public participation and should be amended to 'stakeholders'.

80. With respect to DR 94 and DR 95, we reiterate our General Observations in stating that the necessary 'Standards' and 'Guidelines' should be determined beforehand and adopted before the Draft Regulations are finalized. In particular, no exploitation activities should be approved prior to the adoption of a first set of all necessary Standards and Guidelines, especially those mentioned in Part IV of the Regulations. Standards and Guidelines are subject to be reviewed and adapted to new scientific knowledge and experience periodically every 5 years.

81. Further, although both DR 94 and DR 95 refer to the Council has either being the approving body or endorsing body, there should also be mention that the Assembly as the supreme organ of the Authority may, upon the request of any member State, consider the consistency of such 'Standards' or 'Guidelines' with the Rules of the Authority, and if necessary, instruct the Council to consider its opinion on the matter.

82. Both DR 94 and DR 95 refer to 'relevant Stakeholders'. However, no information is provided as to why the word 'relevant' is used here and who is this referring to. In the absence of any rational explanation, we suggest the deletion of the word 'relevant'. Further, we are of the view that the draft of such 'Standards' and 'Guidelines' should be placed on the Authority's website for public comments before these are finalized.

83. In relation to DR94(4), we suggest including that Standards "[…] shall be legally binding on Contractors, sponsoring States, and the Authority […]". We also suggest to replace the word "may be revised" with the words "should be subjected to revision or updating".

The Pew Charitable Trusts

Regulation 94

Adoption of Standards

The Commission shall, taking into account the views of recognized experts, relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including but not limited to standards relating to:

(a) Operational safety;

(b) The conservation ~~and Exploitation~~ of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, and referred to in regulation 45.

"Relevant Stakeholders' is not a term that was used in previous drafts of the Regulations, but is now found in DR94 [Standards], DR95 [Guidelines] and DR107 [Review of Regulations]. It implies a narrower category than 'Stakeholders', which is defined as '*persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information or expertise*'. As all "Stakeholders" have an interest in or are affected by exploitation activities, the "relevant" qualifier is likely unnecessary and could be deleted to avoid confusion.

2. The Council shall consider and approve, upon the recommendation of the Commission, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated by paragraph 1 above may include both qualitative ~~or~~and quantitative standards and include the methods, process or technology required to implement the Standards.

~~**Draft regulation 93**~~Standards adopted by the Council shall be legally binding on Contractors and the Authority and may be revised at least every 5 years from the date of their adoption or revision, and in the light of improved knowledge or technology.

It is helpful to have clarity in the Regulations that Standards will be legally binding [DR94(3)]. Further explanation as to the meaning of 'legally binding' in this context may be useful however. Who will determine compliance and is there any appeal to such a determination? What are the repercussions or sanctions available where a Contractor is found to be in non-compliance with Standards? What if the non-compliant party is an ISA organ or member State?

III - Stakeholders

Nauru Ocean Resources Inc.

Regulation 94(4)

NORI disagrees with the concept of new "Standards" becoming legally mandatory obligations after a Contractor has been granted an Exploitation Contract. Alternatively, if new Standards are mandatory, then the Contractor should be compensated if such changes cause the Contractor to incur a material economic loss or cost.

NORI also submits that Contractors should have flexibility to carry out their activities in a different manner to what is prescribed in the Standards if the Contractor has reasonable grounds for demonstrating that a different course of action is also responsible and/or appropriate in the circumstance. As currently drafted the new "Standards" are effectively the same as new "Regulations". Given this, the process for adopting Standards should go through a rigorous review process in which Contractors are heavily involved to ensure that the Standards are indeed commercially viable and practicably achievable.

As detailed in other comments, there should be an overarching principle that if the Authority brings in new rules, regulations, Standards, Guidelines etc. that cause an existing Contractor to incur a material cost or loss, then the Contractor either needs to be exempt from such change or compensated by the Authority.

Regulation 95
Issue of Guidelines

1. The Commission or the Secretary-General shall, from time to time, issue Guidelines of a technical or administrative nature, taking into account the views of relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

2. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn.

3. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information.

I - Members of the International Seabed Authority

Australia

Regulation 95
Issue of Guidelines

1. The Commission**,** or **where there is no conflict of interest,** the Secretary-General **[shall] may**, from time to time, issue Guidelines of a technical or administrative nature, taking into account the views of relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

Commented [AUS86]: We suggest it is not appropriate for the Secretary-General to be able to issue guidelines, especially where s/he is then responsible for providing advice on the implementation of them (such as the Material Change guidelines under draft regulation 55) and there is a delay between the issue of the guidelines and the reporting of those guidelines to the Council.

China

31. Draft regulation 95

The Convention does not authorize the Commission or the Secretary-General to formulate legally binding rules. Guidelines issued by the Commission or the Secretary-General should be considered recommendatory in nature and for guidance, without any binding force. In order to avoid improperly imposing legal liability on Contractors resulting from the guidelines, it is proposed that regulation 95 of the Draft Regulations clearly stipulates that "the guidelines are only of a recommendatory nature and does not affect the Contractor's performance of the exploitation contract by means other than the guidelines".

Costa Rica

Regulation 95
Issue of Guidelines

1. The Commission or the Secretary-General shall, as the case may require, issue from time to time Guidelines of a technical or administrative nature, taking into account the views of (text deleted) Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

2. The full text of such Guidelines shall be recommended to the Council for their adoption. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn.

3. The Commission, in the case of technical Guidelines, or the Secretary-General , in the case of administrative Guideliness, shall keep under review such Guidelines in the light of improved knowledge or information.

France

Projet d'article 95, paragraphe 1 – Elaboration de directives : « La Commission ou le Secrétaire général publient *de temps à autre*, en prenant l'avis des parties prenantes concernées, des directives de caractère technique ou administratif qui aideront à appliquer le présent règlement de ces points de vue ». Tel qu'il est actuellement rédigé, le paragraphe 1 est vague et mériterait d'être précisé et reformulé. Il pourrait commencer par « La Commission et le Secrétaire général publient respectivement, lorsque nécessaire et en prenant l'avis des parties prenantes concernées, des directives de caractère technique et administratif […] ». La forme que prendront ces consultations devrait également être développée (éventuellement dans un 2ème paragraphe).

Germany

- We strongly advocate at least the Council having an opt-in possibility to stimulate and impact the scope, development and/or issuance of guidance documents (**Draft Regulation 95**). Furthermore, Germany considers it misleading that, according to Draft Regulation 95 para. 1, the obligation to develop guidelines currently is addressed to the Commission "or" the Secretary-General. It is Germany's view that this provision should clearly target the body/actor responsible for such task. And it should also be taken into account that the Commission is an organ of the Authority which subordinate to the Council (and, for this reason, it is not a body equivalent to the Secretariat). It seems therefore at least to some extent misleading that guidelines of a technical or administrative nature are mixed here. On the basis of

the current version, it furthermore is not clear when these guidelines enter into force. On the basis of the institutional setup of the Authority, these guidelines would actually need to be adopted by either the Council or the Assembly. However, the wording of Draft Regulation 95 para. 2 implies otherwise for the simple reason that guidelines which have not yet entered into force do not need to be actually "withdrawn".

Draft Regulation 95:
"1. The Commission ~~or the Secretary-General~~ shall, from time to time, ~~issue~~ develop Guidelines of a technical ~~or administrative~~ nature, for the guidance of Contractors in order to assist in the implementation of these Regulations, taking into account the views of relevant stakeholders. ~~Guidelines will support the implementation of these regulations from an administrative and technical perspective.~~ 1bis. The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, taking into account the views of the Commission as well as other relevant stakeholders. 1ter. Guidelines will support the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. 2. The full text of such Guidelines shall be ~~reported~~ recommended to the Council for adoption. In the case of Guidelines which are not of a predominantly administrative nature, the Council shall take into account statements submitted by stakeholders during a public consultation. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified ~~or withdrawn~~. 3. The Commission or and the Secretary-General shall review the Guidelines in the light of improved knowledge or information and submit their recommendations to the Council for further consideration and, possibly, adoption."

Italy

DR95	It is unclear if this regulation applies to administrative matters only and to what extent relates to technical aspects. Are for example environmental matters considered as issues of technical nature? It would be preferable to make a distinction between matters of administrative nature that have to be addressed preferentially by the Secretary-General, from matters of technical nature that are prerogative of the Commission.

Jamaica

Regulation 95 Issue of Guidelines

1. The Commission or the Secretary-General shall, from time to time, prepare~~issue~~ Guidelines of a technical or administrative nature, taking into account the views of the Council and relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.
2. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn. Where no such request is made the Council shall approve the Guidelines.

2bis. Where the Council approves the Guidelines, the Commission or the Secretary-General, as appropriate, shall issue the Guidelines.

3. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information.

RATIONALE:

Guidelines should be developed through transparent processes that provide States Parties and other stakeholders an opportunity to proffer expert views and the Council an opportunity to discuss the Guidelines and provide guidance on their further development, as necessary, before the Guidelines are officially issued. The Council's role should not be limited merely ex post factum in requiring the withdrawal or modification of a Guideline. A similarly transparent process should also apply to any revisions made to the Guidelines.

Micronesia

23. On Draft Regulation 95, the FSM expresses concern that there is no clarity as to the degree to which Contractors and other actors involved in activities in the Area should take Guidelines into consideration. If Guidelines are not legally binding (as opposed to Standards), then there should at least be some textual clarity requiring Contractors (among others) to take all necessary steps to comply with relevant Guidelines. Whether this should be a due diligence obligation on the part of Contractors or something stronger (without explicitly labeling Guidelines as legal obligations *per se*) requires further consideration.

Russian Federation

36.	**Regulation 95**	1. The Commission or the Secretary-General shall, from time to time, issue Guidelines of a technical or administrative nature, taking	It is suggested to modify this Regulation so that it reads as follows: *"1. Guidelines and amendments thereto issued by the Commission or by the Secretary-General shall be*	The suggested text of the Regulation 95 brings the clarity to the logic of this provision and is aimed at distinguishing "Guidelines" from "Standards". It is also formulated with the view to the amended version of Regulation 94.
	Regulation	**Text of the Regulation**	**Comments / Remarks**	**Explanation**
		into account the views of relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective. 2. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn. 3. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information.	*Advisory in nature and shall be intended to support the implementation of these Regulations.* *2. Guidelines are prepared by the Commission, which shall take into account the views of recognized experts and relevant Stakeholders.* *3. Guidelines are prepared in relation to matters of a technical or administrative nature.* *4. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purposes of the Authority, it may request that the guideline be modified or withdrawn.* *5. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information from Stakeholders".*	

United Kingdom

95. Issue of Guidelines	3. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information.	3. The Commission or the Secretary-General shall keep under review such Guidelines which shall be reconsidered, and revised as needed, at least every five years from the date of their adoption or revision, and in the light of improved knowledge or information.	Including more detail on the provision for review of the Guidelines.

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

Regulation 95
Issue of Guidelines

1. The Commission or the Secretary-General shall, from time to time, issue Guidelines of a technical or administrative nature, taking into account the views of relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

Commented [A66]: Since regulation 94 confirms that standards are legally binding, it will help to clarify in regulation 95 that guidelines are recommendatory in nature although guidelines shall be taken into account when applicable.

Advisory Committee on Protection of the Sea

DR 95 (former DR 93): Issue of guidance documents
DR 95(1): "The Commission **or** the Secretary-General shall, from time to time, issue guidance documents (Guidelines) of a technical or administrative nature …. "
DR 95(3): "The Commission **or** the Secretary-General shall keep under review **such** Guidelines in the light of new knowledge or information." **[*Emphasis supplied.*]**

This is an inappropriate and confusing use of 'or'. The sentences should read [**bolded** changes] as follows:

Proposed revised DR 95(1): "The Commission **and** the Secretary-General, **respectively,** shall ... issue guidance documents (Guidelines) of a technical (the Commission) or administrative (the Secretary-General) nature …"

Proposed revised DR 95(3): "The Commission **and** the Secretary-General shall keep under review their respective Guidelines …"

Deep Sea Conservation Coalition

DR 95(1): Define "relevant Stakeholders". The use of the new term "relevant stakeholder" implies a narrower group than the previous term "stakeholder". Suggest returning to the previous wording to live up to the ISA's transparency aims set out in its Strategic Plan 2019-2023 (ISBA/24/A/10). "Taking into account views" sounds vague. More clarity is needed in terms of the definition, purpose, process and implementation of Guidelines.

95	Guidelines	There must be an approval process for Guidelines, including by Council. These are important, and can have important implications: for instance, insurance terms and quantum are a matter for the Guidelines. Guidelines are part of the Rules, Regulations and Procedures, which need to be adopted by Council under Article 162 and approved by the Assembly under Article 160. (Article 160(2)(ii)), Article 162(2)(o), and Article 165(2)(f))

Institute for Advanced Sustainability Studies

84. As concerns DR 95, we suggest that a clear distinction be made between the LTC and the Secretary-General. The LTC shall have the power to issue Guidelines of a technical or administrative nature, whereas the Secretary-General shall only have the power to issue Guidelines of an administrative nature. Thus, DR 95(1) should be amended to spell this out clearly, while DR 95(3) should provide that: "The Commission or the Secretary-General, as the case may be, shall keep under review [...]".

The Pew Charitable Trusts

Regulation 95
Issue of ~~guidance documents~~Guidelines

1.The Commission or the Secretary-General shall, from time to time, issue ~~guidance documents (~~Guidelines~~)~~ of a technical or administrative nature ~~for the guidance of Contractors in order to assist in~~, taking into account the views of relevant Stakeholders. Guidelines will support the implementation of these Regulations from an administrative and technical perspective.

Might other organs of the ISA also be empowered to issue Guidelines? For example, the Economic Planning Commission (in relation to compensation or other measures of economic adjustment assistance for developing States whose economies are adversely affected by mining in the Area).

2.The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn.

3. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information.

The Regulations do not indicate the status or import of Guidelines. There is no general wording requiring Contractors to apprise themselves of Guidelines, or to take account of them in their conduct. Text has been deleted from the Standard Contract Terms requiring Contractors to "*observe, as far as reasonably practicable, any guidelines which may be issued by the Commission or the Secretary-General from time to time*" (section 3(c), Annex X). Yet many important aspects of the regime appear to have been relegated to Guidelines, for example (in the first three sections of the Regulations alone):

- the content of the training plan (DR7(g)),
- the process for stakeholder consultation on proposed Environmental Plans (DR11(1)(a)),
- Commission's assessment of applicant's financial and technical capabilities (DR13(2) and (3)),
- documents required in an application for contract renewal (DR20),
- the required content of a feasibility study (DR25),
- determining the required form and amount of the Environmental Performance Guarantee (DR26),
- required aspects of a Contractor's safety management system (DR30(6))

The ISA could require Contractors to demonstrate compliance with the Guidelines except on a showing of good cause for the departure. Or the ISA could use Guidelines as a means of compliance assurance, i.e. adherence to a Guideline, while not mandatory, provides a measure of comfort guarantee that the relevant outcome will meet ISA rules.

As noted above, terminology is important. If guidelines are part of the ISA's "rules, regulations and procedures" this needs to be made clear. If so, they will need to be recommended by the Commission adopted provisionally by Council and approved by Assembly [UNCLOS Articles 160(2)(ii), 62(2)(o), and 165(2)(f)]

See Code Project Short Paper June 2019: Standards and Guidelines

Part XI
Inspection, compliance and enforcement

Section 1
Inspections

Regulation 96
Inspections: general

1. The Council shall establish appropriate mechanisms for inspection, as provided for in article 162 (2) (z) of the Convention.

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned, in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification.

4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.

5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;

(b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to this regulation;

(c) Provide access to all relevant areas, items and personnel in offices or on vessels and Installations at all reasonable times;

(d) Provide access to monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent to verify the expenditures referred to in the Plan of Work or necessary to determine compliance with the financial payments due under the exploitation contract and these regulations;

(e) Answer fully and truthfully any questions put to them;

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, where required by the Secretary-General, and

facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties.

6. Inspectors shall:

(a) Follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor, the captain of the vessel or other relevant safety officers aboard vessels and Installations; and

(b) To the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

I - Members of the International Seabed Authority

Australia

Regulation 96
Inspections: general

1. The Council shall establish appropriate mechanisms for ~~[inspection]~~ **directing and supervising a staff of inspectors**, as provided for in article 162 (2) (z) of the Convention.

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned~~[, in accordance with article 165 (3) of the Convention,]~~ aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification.

4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.

5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;

(b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to this regulation;

(c) Provide access to all relevant areas, items and personnel in offices or on vessels and Installations at all reasonable times;

(d) Provide access to monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent to verify the

Commented [AUS87]: Australia acknowledges the note by the Commission (ISBA/25/C/18) that, owing to time constraints, the Commission did not have an opportunity to consider the matter of inspections in detail (and in light of document ISBA/25/C/5) and will do so at its subsequent meetings. We support further consideration of these provisions by the Commission.

As a general comment on these provisions, consideration should be given as to whether there should be responsibility on the sponsoring states to also inspect and manage for compliance, given their obligations and liabilities.

Australia would like to reiterate the comment from its earlier submission regarding the following issues: (1) we recommend the Authority draw on similar schemes ie from oil and gas industries, regional fisheries management organisations, (2) it might be helpful to set out a risk assessment process to provide guidance on how the authority would determine which activities are to be inspected; (3) suggest exploring whether sponsoring states can provide their own observers; and (4) explicitly addressing the role of flag state consent for the inspection of vessels.

The power to undertake inspections should extend to the offices of subcontractors and other providers who are mentioned in the plan of work or supporting document, such as third parties who may be contracted to provide emergency services, emergency performance guarantees etc.

Australia considers this provision should set out the trigger points for inspections or a regular inspection schedule.

Commented [AUS88]: Australia notes the insertion of new subparagraph (1) making reference to Article 162(2)(z) of the Convention. We suggest using the exact wording from the Convention, namely 'the Council shall establish appropriate mechanisms for *directing and supervising a staff of inspectors*' (emphasis added) rather than 'for inspection'.

Australia emphasises the need to ensure the independence of the Inspectorate. We also suggest a roster of vetted and trained inspectors could be a useful mechanism to avoid the costs associated with maintaining a fulltime, standing staff of inspectors.

Commented [AUS89]: Australia endorses the new requirement in subparagraph (2) for the Contractor to permit the Inspector to be accompanied by a representative of its State or other party concerned. However, as Article 165(3) only refers to accompanying members of the Commission 'when carrying out their function of supervision and inspection", we suggest deleting the reference to Article 165(3).

Canada

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of ~~its~~ the Contractor's sponsoring State or other party concerned, in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where ~~practicable~~deemed necessary, exercise the right to conduct an inspection without prior notification.

China

32. Draft regulation 96

Paragraph 2, which allows inspectors to be sent "aboard vessels and installations, whether offshore or onshore" and "offices wherever situated", clearly goes beyond the provisions of the Convention. The scope of inspector 's inspection shall be confined to vessels or installations in the Area used in connection with activities in the Area. Therefore, it is suggested that the above-mentioned content be deleted.

Paragraph 3 provides that "save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification." According to the Convention, it is the Council, not the Secretary-General, that serves as the organ that exercises the power of inspection. The provision of this paragraph not only expands the authority of the Secretary-General, but also deprive sponsoring States of the opportunity to participate in inspection. It is suggested to further clarify "the matter to be so urgent that notice cannot be given". Otherwise, the above-mentioned content should be deleted.

Paragraph 4 provides that inspectors may inspect "any vessel or installation", which exceeds the authorization under the Convention. It is suggested this phrase be revised as "vessels or installation used in the Area in connection with activities in the Area".

In Paragraph 5 (c), the content "access in offices" goes beyond the provisions of the Convention and is proposed to be deleted. Paragraph 5 (f) stipulates that the Contractor "accept the deployment of remote real-time monitoring and surveillance equipment, where required by the Secretary-General". However, in accordance with the Convention, relevant requirement shall be made by the Council rather than the Secretary-General. It should be amended accordingly.

The exception clause "unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract" in Paragraph 6 (b) unduly expands the powers of the inspectors, who might thereby improperly interfere with the legal operations of the Contractor. If the inspectors do "have reasonable grounds for believing that the Contractor's work violates his obligations under the mining contract", they should report to the Authority immediately rather than take actions without authorization.

Costa Rica

1. The Council shall establish a Compliance Committee for inspection, compliance and enforcement as provided for in article 162 (2) (z) of the Convention. Members of the Council will conform the Compliance Committee, which will take into account equitable geographical and gender balance.

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

France

Projet d'article 96 – Inspections : généralités : Ainsi que nous l'avons déjà indiqué, l'article 96, paragraphe 2 en particulier (ainsi que l'article 75, paragraphe 3, alinéa b), qui autorise les inspecteurs à entrer dans les bureaux du contractant « où qu'ils se trouvent », ne semble pas conforme à l'article 153, paragraphe 5 de la CNUDM. Ce dernier limite en effet les pouvoirs d'inspection de l'AIFM aux « installations qui sont utilisées pour des activités menées dans la Zone et qui sont situées dans celle-ci », ce qui exclut les mesures d'inspection sur le territoire d'un Etat, et a fortiori dans le siège des entreprises contractantes.

Projet d'article 96 – Inspections : généralités : Le **paragraphe 2** prévoit que « le contractant autorise l'Autorité à envoyer ses inspecteurs » : s'agit-il d'une autorisation par défaut ? Correspond-elle à une obligation du contractant de donner accès aux inspecteurs ?
Nous notons également que le paragraphe 2 dispose seulement que les inspecteurs « *peuvent* se faire accompagner d'un représentant de son Etat ou de toute autre partie concernée », alors que l'article 165, paragraphe 3 de la CNUDM prévoit que « les membres de la Commission *se font* accompagner d'un représentant […] lorsqu'ils exercent leurs fonctions de surveillance et d'inspection ». Le langage devrait être réajusté en conséquence.

Indonesia

	Regulation 96 **Inspections: general** 1. The Council shall establish appropriate mechanisms for inspection as provided for in article 162 (2) (z) of the Convention. 2. The Contractor shall permit the Authority to send its Inspectors who may be accompanied by a representative of its State or other party concerned in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter	In the light of our comments regarding provisions on the rights of coastal state, we suggested additional text to be added in R	Proposed text changes for 96 (2) 2. The Contractor shall permit the Authority to send its Inspectors who may be accompanied by a representative of its State or other party concerned, in particular affected coastal states in accordance with article 142 and 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring
	its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.		State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

Japan

Regulation 96: Inspections: general and Regulation 97: Inspectors: general

Provisions under regulations 96 and 97 needs to be consistent with regulation 4 (5), which provides the Secretary-General shall direct an inspection in case where the Commission considers there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur or has occurs, and it is attributable to the breach of the Contractor of the terms and conditions of the exploitation contract.

Japan suggests creating lists of professionals, from various fields such as marine geology, marine minerals, mining, environment, marine biology, accounting, leagal affaris, marine environment and so forh, who are considered by the Secretariat to be qualifed. When inspection is requied, the Secretariat, sponsoring states and other state parties concerned select an inspector out of the lists through consultation. As article 165 of the Convention assumes members of the Commission carry out the function of supervision and inspection, members of the Commission may be registered on the list likewise.

<Regulation 96 (3)>

3.The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General may without prior notification direct an inspection of the Contractor's activities in accordance with regulation 4(5) ~~where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification~~.

Norway

Part XI - Inspection, compliance and enforcement

Norway considers that the following UNCLOS provisions on inspections are particularly relevant in relation to structuring and implementing an inspection mechanism (emphases added):

Article 153 (5):

The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract.

*The ISA shall have the **right to inspect** all installations in the Area used in connection with activities in the Area*

Article 162 (2)(z):

*The Council shall … establish appropriate mechanisms for **directing and supervising a staff of inspectors** who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.*

Article 165 (2)(m):

*The Commission shall … make recommendations to the Council regarding the **direction and supervision** of a **staff of inspectors** who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.*

In general, Norway is of the view that the development of a system of inspection should consider the experience which has come out of the well-established system of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

The Authority lacks a description of its future inspectorate and how such a body or function should be at arm's length from any economic interests of the Authority. Norway is of the view that such an inspectorate must be established before the onset of any exploitation activity.

It is crucial that the inspection mechanism be robust, transparent and independent of all Member States and other stakeholders. Procedures for the designation of inspectors are still to be identified and must be elaborated with this in mind.

At the same time, the inspection system needs to be effective and able to respond to situations that require swift action, if necessary pre-emptively to protect the marine environment. Taking into account that the Commission and the Council only meet twice a year, we agree with delegating authority to the Secretary-General when timely action is of critical importance, on the condition that appropriate accountability and good governance are ensured. We therefore support the Secretary-General having decision-making authority in draft regulation 103 to issue a compliance notice and to identify what remedial action is required. In our view, the power to suspend or terminate the exploitation contract (DR 103(5)) and to impose monetary penalties (DR 103(6) should also be extended or delegated to the Secretary-General. It may be necessary for the Secretary-General to take immediate action outside of Council meetings to prevent unanticipated damage or loss, and the regulations should provide for this ability.

- Draft regulations 96 and 103 make reference to "reasonable grounds" which in our view should be specified by adding some criteria.

Russian Federation

Regulation 96(1)	The Council shall establish appropriate mechanisms for inspection, as provided for in article 162 (2) (z) of the Convention.	It is suggested that this provision should be read as follows: "*The Council shall establish appropriate mechanisms for directing and supervising a staff of inspectors, as provided for in article 162(2)(z) of the Convention*".	Suggestion is justified by the need to bring this provision in line with Article 162(2)(z) of the UNCLOS, which states that: "*2. In addition, the Council shall: … z) establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with*".

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

Section 1
Inspections

Regulation 96
Inspections: general

1. The Council shall establish appropriate mechanisms for inspection, as provided for in article 162 (2) (z) of the Convention.

Commented [A67]: The inspection regime insofar as it anticipates boarding a ship and directing action should be written to be consistent with the exclusive jurisdiction of the flag State over its vessels on the high seas. While contractors may have the right to agree to allow inspectors on board their vessel pursuant to the regulations, this action by the contractor does not necessarily extinguish or override that exclusive jurisdiction nor the role of the flag state.

Advisory Committee on Protection of the Sea

DR 96 (former DR 94) Inspections: general
Noting that the LTC implemented our comments submitted in September 2018 re DR 96(3), we have no further comments on DR **96(3).**

DR 96(4): Inspectors may inspect **any relevant documents** …" [***Emphasis supplied.***]
DR 96(5): The Contractor and **its agents and employees …" [*Emphasis supplied.*]**
Provision must be made for the exemption from disclosure of documents and communications subject to attorney-client privilege.

Deep Ocean Stewardship Initiative

DR 96-98: The draft Regulations should specify more detail about the inspection regime, such as what is to be inspected and what constitutes a conflict of interest of an inspector.

Part XI: Inspection, compliance and enforcement

85. We recommend the establishment of a dedicated compliance arm of the Authority. As suggested in Section A above, this Compliance Committee shall exercise oversight over the Inspectorate, to receive reports and disseminate information under DR 100, to address any complaints pursuant to DR 101, as well as being responsible for the issuance of compliance notices under DR 103 (as opposed to the Secretary-General exercising these powers). The Secretary-General should instead remain within its remit as an administrative and secretarial body.

86. Thus, Part XI of the Draft Regulations should be amended accordingly to accommodate this suggestion of setting up this Compliance Committee, comprising of members appointed by Council. Likewise, the establishment of an inspection mechanism and the appointment of inspectors (i.e. the Inspectorate), answerable to the Compliance Committee at first instance, should also be undertaken by the Council (on the recommendation of the LTC) prior to the adoption of the Draft Regulations.

87. We also recommend that this Part incorporates an express provision requiring the Council to bring instances of non-compliance to the attention of the Assembly, pursuant to Article 162(2)(a) of the Convention.

The Pew Charitable Trusts

Section 1 Inspections

Regulation 96

Inspections: general

1. The Council shall establish appropriate mechanisms for inspection as provided for in article 162 (2) (z) of the Convention.

The Regulations could detail more precisely what aspects of Contractor conduct or outcomes are to be inspected, pursuant to this Part XI, Section 1 of the Regulations. The Commission notes that "*due to time constraints, the Commission did not have opportunity to consider* [the implementation of an inspection mechanism in the Area] *in detail and will do so at its subsequent meetings, following which it will present recommendations to the Council*." A workshop aimed to stimulate discussions about ISA inspections will be held on 20 July 2019 in Kingston, sponsored by the Pew Charitable Trusts.

2. The Contractor shall permit the Authority to send its Inspectors who may be accompanied by a representative of its State or other party concerned in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

[…]

6. Inspectors shall ~~follow~~:

a. Follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor, the captain of the vessel or other relevant safety officers aboard vessels and Installations; and ~~shall avoid~~

~~a.~~b. To the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

~~The Secretary-General shall report acts of violence, intimidation, abuse against or the wilful obstruction~~

Regulation 97
Inspectors: general

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part.

2. The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96 (1).

3. The Secretary-General shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

I - Members of the International Seabed Authority

Australia

Regulation 97
Inspectors: general

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part.

Commented [AUS90]: Australia emphasises the need to avoid conflicts of interest, or political interference among inspectors. Further, Australia considers that the qualification of an applicant should take precedence over geographical diversity when recruiting inspectors.

Japan

<Regulation 97>

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part save in situations where the Secretary-General shall direct an inspection of the Contractor's activities in accordance with regulation 4(5). Based on the specified qualifications and experiences, a roaster of candidates for Inspectors, including the members of the Commission as provided in article 165 (3) of the Convention, shall be made by the Secretariat

Micronesia

24. On Draft Regulation 97, it is the FSM's view that Inspectors as a whole (e.g., an inspectorate or similar roster of Inspectors) should have the broadest range of expertise possible to allow them to conduct the necessary inspections in an effective manner, including expertise on socio-cultural considerations impacted by and/or incorporated in activities in the Area.

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

The Pew Charitable Trusts

Regulation 97

Inspectors: general

The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part.

1.The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, including an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96(1).

2.The Secretary-General shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

To meet its duty under DR97(1), the Regulations could stipulate that the Commission must include within its membership persons with expertise in relation to inspections (or appointment and oversight of inspectors), or that the Commission refers to such external expertise where relevant. Standards detailing requirements for inspector selection and management would also seem sensible, to assist the Commission, Council and Secretariat undertake the respective roles required of them by DR97.

Regulation 98
Inspectors' powers

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant document, whether in electronic form or in hard copy, including a plan, book or record, to produce that document to the Inspector immediately or at any other time and place that the Inspector requires;

(c) Require from any person referred to in subparagraph (b) above an explanation of any entry or non-entry in any document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities, unless such inspection or testing will unreasonably interfere with the Contractor's operations;

(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;

(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector, unless such procedures will unreasonably interfere with the Contractor's operations; and

(i) Upon written authorization from the Council, perform any other prescribed function of the Authority as its representative.

2. An Inspector may instruct any Contractor, its employees or any other person who performs an activity in connection with an exploitation contract to appear before the Inspector to be questioned on any matter to which the Rules of the Authority relate.

3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.

4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.

5. An Inspector may document any site visit or inspection activity using any reasonable means including video, audio, photograph or other form of recording.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall

conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

I - Members of the International Seabed Authority

Australia

Regulation 98
Inspectors' powers

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities[~~, unless such inspection or testing will unreasonably interfere with the Contractor's operations~~];

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector[~~, unless such procedures will unreasonably interfere with the Contractor's operations~~]; and

Commented [AUS91]: Australia notes the watering down of the Inspectors' powers to inspect or test machinery or equipment under draft regulation 98(1)(e) and requiring the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities in draft regulation 98(1)(h). Given the requirement in draft regulation 96(6)(b) that Inspectors shall "to the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contract and of vessels and of Installations", we suggest these amendments are not necessary.

Canada

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities, unless such inspection or testing will unreasonably interfere with the Contractor's operations, create a safety hazard and or endanger the environment;

China

33. Draft regulation 98

In accordance with Article 162 (2) (z) of the Convention, the function of an inspector is to determine whether the provisions of the Convention, the rules, regulations and procedures of the Authority and the terms and conditions of any contract with the Authority are being complied with by Contractors. The provisions of paragraph 1 (f) and (g), and paragraph 3 and 4 of this regulation, empower the inspectors such powers to seize documents and remove samples, which are clearly beyond the scope of authorization by Convention. It is suggested that the powers and responsibilities of the inspectors be further clarified and the relevant provisions authorizing "law enforcement powers" be deleted.

France

Projet d'article 98, paragraphe 1, alinéas e et h – Pouvoir des inspecteurs : les formules « susceptible d'entraver indûment le déroulement des activités » mériteraient d'être précisées pour qualifier le type d'activités dont il est question (les activités d'exploitation ? les activités du contractant de façon générale ?). Suggestion de les qualifier de façon plus précise ces références comme suit : « [...] susceptible d'entraver indûment le déroulement **de ses activités dans la Zone** ».

Norway

- Draft regulation 98(6) makes reference to the code of conduct for Inspectors and inspections. We would like to see more detail on how this code of conduct will be drawn up.

Spain

SEXTA.- **ARTÍCULO 98**

Según el **artículo 98** con el fin de vigilar o hacer cumplir lo dispuesto en la normativa de la Autoridad y en el contrato de explotación, los inspectores tienen una serie de facultades enumeradas en el apartado 1. Sin embargo, no se menciona que los inspectores puedan hacer "comprobaciones sobre las leyes de las menas extraídas" fundamental para controlar la composición del mineral extraído. El Reino de España considera que debería establecerse algún sistema, como cuarteo de muestras, manteniendo una parte bajo custodia para poder efectuar sobre ella análisis de comprobación, bien por los inspectores de la Autoridad, bien por un tercero independiente.

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

The Pew Charitable Trusts

Regulation 98
Inspectors' powers

An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract: […]

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities~~;~~, unless such inspection or testing will unreasonably interfere with the Contractor's operations;

(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;

(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector~~;~~ ~~and~~, unless such procedures will unreasonably interfere with the Contractor's operations; and […]

The list of inspector powers should include obtaining access to real-time monitoring data.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

DR 98(6) could benefit from elaboration to clarify who has responsibility for identifying conflicts, by what process, and how such conflicts will be managed.

Regulation 99
Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has evidence that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector may give any instruction he or she considers reasonably necessary to remedy the situation, including:

(a) A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;

(b) A written instruction placing conditions on the continuation of mining activities to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances;

(c) A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; and

(d) A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.

2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued.

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103.

I - Members of the International Seabed Authority

Australia

(c) A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; ~~and~~

(ca) A written instruction prohibiting the Contractor from continuing or undertaking certain activities; and

(d) A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.

2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued.

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103.

Commented [AUS92]: This draft regulation sets out the Inspectors' power to issue instructions, including the ability to issue written instructions to suspend mining activities. We consider this provision should also explicitly include the ability to issue instructions to prohibit certain activities.

Commented [AUS93]: The provision currently only allows the instructions to last for 7 days, after which it lapses. In our view, this is insufficient, especially if it is an instruction to suspend activities, which would imply that a serious breach has occurred. Seven days is not sufficient time for it to be rectified or for the Authority to consider and take appropriate action. We would suggest the timeframe should be outlined in the instruction.

Canada

1. If, as a result of an inspection, an Inspector has evidence that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat ~~of Serious Harm~~ to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector may give any instruction he or she considers reasonably necessary to remedy the situation, including:

China

34. Draft regulation 99

Paragraph 1 gives inspectors the power to issue instructions in cases of "emergency" and "breach of the terms of exploitation contracts", including requiring a suspension in mining activities and the placing of conditions for the continuation of mining activities, which clearly exceed the authorization by the Convention. Such powers should be enjoyed by the Council. In accordance with the Convention and the Exploration Regulations adopted by the Authority, "in case of emergency", the Council shall issue an emergency order or the

Secretary-General may take temporary measures "pending any action by the Council". Therefore, the inspector should report to the Authority immediately in case of emergency. Pending any action by the Council, the Secretary-General may take temporary measures as authorized by the Council, which should have a certain duration.

The provision of "or is otherwise in breach of the terms of its exploitation contract" in this paragraph is too broad and not "emergent" in nature. According to the Convention, the Authority may issue written warnings to Contractors in case of breach of contract, and the inspectors are not in a position to issue instructions. It is suggested that relevant content be further clarified and revised.

France

Projet d'article 99, paragraphe 1 – Pouvoir des inspecteurs de donner des instructions : Suggestion de remplacer la formule « pour remédier à cet état de choses », inhabituelle, par « pour remédier à **cette situation** ».

Norway

- Draft regulation 99 sets out the Inspector's powers to issue instructions. We consider that this provision should also explicitly include the ability to prohibit certain activities.

Russian Federation

Regulation 99(1)(d), (3)	Inspectors' power to issue instructions 1. <….> the Inspector may give any instruction he or she considers reasonably necessary to remedy the situation, including: <…> d) A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring. 3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses.	It is proposed to adjust these provisions taking into account the actual time spending on specific tests or monitoring.	It is unclear, how it is possible to fulfill the requirement to undertake specific tests or monitoring and report to the Authority on the results of such tests or monitoring in seven days.

Spain

SÉPTIMA.- **ARTÍCULO 99**

En virtud del **artículo 99**, los inspectores podrán "formular las instrucciones que consideren razonables" para proteger la salud y la seguridad de cualquier persona o el medio marino, pero no sobre la validez de los análisis relativos a la composición de las menas obtenidas de los fondos marinos. Se sugiere una referencia al respecto.

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

DR 99(3): If instruction (and response) are not followed within a period of seven days, it is unclear what the recourse is. This must be repeated until instructions are followed?

Regulation 100
Inspectors to report

1. At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspector shall send the report to the Secretary-General, and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

2. The Secretary-General shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract.

3. The Secretary-General shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96 to the sponsoring State or States and the flag State of any vessel or Installation concerned for consideration of the institution of proceedings under national law.

I - Members of the International Seabed Authority

China

35. Draft regulation 100

Upon receipt of the inspection report, the Secretary-General shall notify the Contractor and its sponsoring State, as well as the flag State of the vessel under inspection, and shall give the relevant Contractors and States the opportunity to comment or make statements.

According to the Convention, upon the request of the Council, the Commission may also perform the function of inspection. In view of this, it is suggested that the Secretary-General should submit the inspection report, together with the comments or statements of the Contractor and its sponsoring State or flag State, to the Commission for further consideration, who should report the inspection result and make possible recommendations to the Council.

Costa Rica

Regulation 100
Inspectors to report

1. At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspector shall send the report the Compliance Committee. The Compliance Committee will present the results to the Council and the Secretary-General . A copy shall be sent to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

Cuba

4	Pág. 66, Art. 100	1. Al concluir una inspección, el inspector preparará un informe en que se expongan, entre otras cosas, sus conclusiones generales y las recomendaciones que tenga para que el contratista introduzca mejoras en los procedimientos o prácticas. El inspector enviará el informe al Secretario General y el Secretario General transmitirá una copia del informe al contratista y al Estado o Estados patrocinantes y, en su caso, al Estado o Estados ribereños correspondientes y al Estado del pabellón.	Sería conveniente disponer: • El término de que dispone el inspector para enviar el informe de la Inspección al Secretario General. • La realización de una reunión entre el inspector y el representante del contratista al concluir la inspección donde se expongan los resultados de la inspección y las instrucciones dispuestas, si corresponde.

Jamaica

Regulation 100 Inspectors to report

3. The Secretary-General shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96 to the sponsoring State or States, ~~and~~ the flag State of any vessel or Installation concerned, and the State of nationality of any person, if known, for consideration of the institution of proceedings under national law.

RATIONALE:

We recommend that additional reference should be made in DR 100(3) to the State of nationality of any alleged offender. There are instances where the State of nationality is best placed to assert jurisdiction in personam. It may be noted, for example, that UNCLOS reserves to the flag State and the State of nationality penal jurisdiction in matters of collision and any other incident of navigation.

Also, as several States may have concurrent jurisdiction over an alleged offender it would seem useful to have process guidelines to facilitate cooperation between States and the Authority on the exercise of jurisdiction. The assumption of jurisdiction by one State may in certain instances impede prosecution in another State.

Norway

- In draft regulation 100 (1) on the requirement of inspectors to report on inspections, we support the inclusion of the relevant coastal State or States among the recipients of the report when appropriate.

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

DR 100: The timing of regulatory action response is unclear if only annual reporting, and DR 101 "consider complaint as soon as practicable". Monitoring that detects "serious harm" should have an immediate response.

DR 100(1): We recommend the report also be posted publicly on the ISA website for transparency. However, this should only be after the Contractor has notified the Secretary-General that they will not send a rebuttal, or after any complaint has been dealt with.

The Pew Charitable Trusts

Regulation 100
Inspectors to report

1.At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspector shall send the report to the Secretary-General, and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the ~~flag~~relevant coastal State or States and the flag State.

~~1.~~2. The Secretary-General shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these Regulations and an exploitation contract.

~~2.~~3. The Secretary-General shall report acts of violence, intimidation, abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with this regulation to the sponsoring State or States and the flag State of any vessel or Installation concerned for consideration of the institution of proceedings under national law.

The Regulations could reserve the ISA the power to take regulatory action if its inspectors are intimidated etc. by Contractors, rather than deferring exclusively to the relevant State [DR100(3)].

Regulation 101
Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the Secretary-General, who shall consider the complaint as soon as practicable.

2. The Secretary-General may take such reasonable action as is necessary in response to the complaint.

I - Members of the International Seabed Authority

Chile

Proyecto de artículo 101
Quejas

Chile considera necesario analizar el sistema de inspecciones, incluyendo los criterios para determinar su procedencia, dirección y la supervisión del cuerpo de inspectores, según lo dispuesto en los **Art. 153, 162 y 165** de la CONVEMAR. En particular, la interacción de las actuaciones de la Autoridad, Estado patrocinador, Estado del pabellón, Estado ribereño y Estado rector del puerto, teniendo presente **que la propia Comisión identificó este tópico como uno que requiere mayor examen.**

Chile considera que es esencial la conformación del equipo de inspectores, garantizar su competencia e independencia y determinar el código de conducta que los regirá.

Costa Rica

Regulation 101
Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the Compliance Committee, who shall consider the complaint as soon as practicable and send a report to the Secretary General.

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

France

Projet d'article 101, paragraphe 2 – Plaintes : Ce paragraphe est vague en l'état et mériterait d'être précisé. Suggestion en outre de compléter le paragraphe 2 en précisant que « Le Secrétaire général peut prendre les mesures raisonnables nécessaires pour donner suite à la plainte **et en réfère au Conseil** ».

Germany

- In relation to the handling of "complaints", Germany considers it necessary that the Authority a priori provides guidance to the Secretary-General to actually allow him to determine the "reasonable action as is necessary in response to the complaint", in accordance with **Draft Regulation 101 para. 2**. This aspect relates to the main issue "Delegation of Functions" noted above.

Norway

- Draft regulations 96 and 103 make reference to "reasonable grounds" which in our view should be specified by adding some criteria.

- Similarly, in draft regulation 101 (2), consideration on what constitutes "reasonable action" may be required.

Spain

OCTAVA.- **ARTÍCULO 101**

El **artículo 101** prevé un sistema de quejas ante el Secretario General. Sin embargo, si tomamos como referencia la *Directiva Offshore (relativa a la seguridad de las operaciones relacionadas con hidrocarburos en medio marino*[1]) vemos que contempla que las autoridades competentes habiliten un mecanismo para la comunicación confidencial de situaciones que afecten a la seguridad y al medio ambiente. Sería interesante que la Autoridad prevea un mecanismo similar que contemple la comunicación de incumplimientos en cualquier ámbito: seguridad, regalías, fraudes, malas prácticas, etc., en general, no las debidas a la actuación de la inspección, sin perjuicio de que su investigación se canalice a través del cuerpo de inspectores. Asimismo, los operadores tienen la obligación de comunicar a los trabajadores la existencia de este canal y publicitarlo activamente.

En este sentido, se incluye el correspondiente artículo que figura en la norma española por si se considera oportuno incluir un párrafo/apartado en ese sentido

> **Real Decreto 1339/2018, de 29 de octubre, por el que se desarrolla el Real Decreto-ley 16/2017, de 17 de noviembre, por el que se establecen disposiciones de seguridad en la investigación y explotación de hidrocarburos en el medio marino**. *(https://www.boe.es/buscar/act.php?id=BOE-A-2018-14804)*
>
> Artículo 21. Comunicación confidencial de problemas de seguridad.
>
> La ACSOM habilitará en su sede electrónica un mecanismo para la comunicación confidencial de situaciones que afecten a la seguridad y al medio ambiente en relación con operaciones de investigación y explotación de hidrocarburos en el medio marino, cualquiera que sea su origen. Asimismo, determinará un procedimiento para investigar estas comunicaciones conservando el anonimato de las personas que hubiesen denunciado tales situaciones.

[1] Directiva 2013/30/UE del Parlamento Europeo y del Consejo, de 12 de junio de 2013, sobre la seguridad de las operaciones relativas al petróleo y al gas mar adentro, y que modifica la Directiva 2004/35/CE (*DOUE núm. 178, de 28 de junio de 2013*, páginas 66 a 106)

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

DR 101 (former DR 99): Complaints
DR 101(2): "The Secretary-General **may take such reasonable action as is necessary** in response to the complaint .." [***Emphasis supplied.***]
See comments made under **DR 13(1)(f)** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context. See comments made above under, e.g., **DR 58(1)** re the transparency and uniform/non-discriminatory issues raised by the process set out herein. The **bolded** language in **DR 101(2)** is also too vague.

Deep Ocean Stewardship Initiative

DR 101(1): We recommend a time frame be indicated for when a complaint can be made by the Contractor, and when it will be dealt with by the Secretary-General.

DR 101(2): It is not clear what "reasonable action" entails. More information about this response could be provided. Additionally, more information should be provided regarding the consequences for the Contractor and/or ISA should the Contractor's complaint be upheld or rejected.

Section 2
Remote monitoring

Regulation 102
Electronic monitoring system

1. A Contractor shall restrict its mining operations to the Mining Area.

2. All mining vessels and mining collectors shall be fitted with an electronic monitoring system. Such system shall record, inter alia, the date, time and position of all mining activities. The detail and frequency of reporting shall be in accordance with the Guidelines.

3. The Secretary-General shall issue a compliance notice under regulation 103, where he or she determines from the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.

4. All data transmitted to the Authority under this regulation shall be transmitted to the sponsoring State or States.

I - Members of the International Seabed Authority

Chile

Chile considera necesario desarrollar oportunamente las directrices relativas al nivel de detalle y frecuencia de los informes, equipos de extracción a los que sería aplicable y mantención de la data recolectada.

En cuanto a lo señalado en el **numeral 4**, se requiere incorporar a los **Estados ribereños adyacentes** como destinatarios de tal comunicación.

France

Projet d'article 102 – Système de surveillance électronique : Au paragraphe 3, suggestion de remplacer « il décerne la mise en demeure prévue à l'article 103 » par « il **décide de** la mise en demeure ».

Jamaica

Section 2 Remote monitoring

Regulation 102 Electronic monitoring system

3. The Secretary-General shall issue a compliance notice under regulation 103, where there is reasonable evidence to suggest based on ~~he or she determines from~~ the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.

RATIONALE:

The use of the word "determination" suggests that the Secretary-General has made a ruling on the facts and law. This would not appear to be appropriate, neither is it required for the Secretary-General to take action under DR 103.

Reference is made to the LTC Report, ISBA/25/C/18, where it is noted (at paragraph 36) that the secretariat will conduct a study on remote monitoring technology, including proposals on how the use of such technology will be reflected in the Draft Regulations and relevant guidelines. Jamaica looks forward to the circulation of this study which should assist Council in its deliberations on Section 2 of Part XI of the Draft Regulations.

Norway

- Logistical challenges need to be considered in relation to on-site inspections given the remoteness of the sites and the water depths of the operations. With respect to draft regulation 102 regarding electronic monitoring system, it would be useful if this could also provide environmental data.

Russian Federation

Regulation 102(2)	All mining vessels and mining collectors shall be fitted with an electronic monitoring system. Such system shall record, inter alia, the date, time and position of all mining activities. The detail and frequency of reporting shall be in accordance with the Guidelines.	It is suggested to amend this provision with the words "*installations involved in exploitation activities*" so that it reads as follows: "*All mining vessels, installations involved in exploitation activities, and mining collectors shall be fitted with an electronic monitoring system. Such system shall record, inter alia, the date, time and position of all mining activities. The detail and frequency of reporting shall be in accordance with the Guidelines*".	

Section 3
Enforcement and penalties

Regulation 103
Compliance notice and termination of exploitation contract

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

2. A compliance notice shall:

(a) Describe the alleged breach and the factual basis for it; and

(b) Require the Contractor to take remedial action or other such steps as the Secretary-General considers appropriate to ensure compliance within a specified time period.

3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity to make representations in writing to the Secretary-General concerning any aspect of the compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of warnings by the Authority, fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

6. In the case of any violation of an exploitation contract, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation.

7. Save for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

I - Members of the International Seabed Authority

Australia

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, **or if requested by the Council to do so,** the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

Commented [AUS94]: Australia considers there should be a role for the Council in issuing compliance notices.

Canada

1. At any time, ~~if it appears to the Secretary-General~~ based on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

Chile

Si bien se asigna un rol general a los Estados patrocinadores en el proyecto de **artículo 103**, en relación con la adopción de todas las medidas necesarias y apropiadas para que el contratista patrocinado cumpla sus obligaciones, Chile estima conveniente desarrollar mayormente la proyección de esta norma en relación con el rol que correspondería en materias específicas, y vincularla con el régimen de responsabilidad.

Costa Rica

Regulation 103
Compliance notice and termination of exploitation contract

1. At any time, if the Compliance Committee reports to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

7bis. The Council will bring to the attention of the Assembly instances of not compliance, as established in article 162 (2)(a) of the Convention.

RATIONALE: As self explained, to comply with the Convention.

France

Projet d'article 103 – Mise en demeure et résiliation du contrat d'exploitation :

Dans le premier paragraphe, suggestion de remplacer l'expression « contrat d'extraction » par « **contrat d'exploitation** ».

Au **paragraphe 5**, le caractère cumulatif des infractions « grave, réitérées et délibérées » actuellement prévu pour permettre au Conseil de suspendre ou de résilier un contrat d'exploitation semble trop restrictif. Le caractère simplement délibéré ou réitéré de l'infraction grave devrait suffire, eu égard, en particulier, à la latitude dont dispose le Conseil pour apprécier le type de sanction qui s'impose en cas de défaillance du contractant (« le Conseil **peut** suspendre ou résilier le contrat »). Nous suggérons, en conséquence, de modifier le paragraphe 5 comme suit : « des infractions graves, réitérées **ou** délibérées ».

Germany

- In relation to **Draft Regulation 103**, Germany proposes the following changes.

  This aspect also relates to the main issue "Delegation of Functions" noted above.

Draft Regulation 103:
"1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice. The Secretary-General shall inform the Council of any violations by a Contractor. […]"

Italy

DR103 (4)	Indicate a timeline, a reasonable opportunity to reply must non exceed a reasonable time.	The Contractor shall be given a reasonable opportunity , not exceeding 30 Days, to make representations […]
DR103 (5)	This paragraph leaves uncertainty on how many warnings a Contractor can receive before action is taken.	If a Contractor, in spite of a warning~~s~~ raised by the Authority, fails to implement the measures as set out in a compliance notice […]
DR103 (7)	Suspension measures should be used as a precautionary approach. In general, the code lacks a specific regulation dealing with emergency response from the point of view of the Authority and its powers and command chain. In DR 4 (4), the Commission shall recommend that the Council issue an emergency order [article 162, paragraph 2(w) of the Covention] pursuant to article 165(2)(k) of the Convention, in the case has reasonable grounds to believe that serious harm is occurring to the environment. The clear ground is not specified and this dispositive may be very slow in responding to emergency situations. The only regulation dealing with emergency situations is DR 33, in which is upon the sole Contractor's judgment to implement the Emergency Response and Contingency Plan. In the case of emergencies, the capacity of the Authority to react	

Japan

Japan welcomes the revised text, which reflects a case for suspending or terminating a contractor's rights provided under article 18 (1) (a) of annex III of the Convention, has become consistent with the Convention as the provision relating to suspension and termination of the contract is so critical.

Norway

- In draft regulation 103, we would suggest to add "and suspension" to the title of the provision to better reflect its content ("Compliance notice **and suspension** and termination of exploitation contract"). In general, we welcome the changes made to 103(5) to make it in line with the wording of Article 18(1)(a) of annex III to the Convention. However, we wonder whether a paragraph 5bis should be added to also reflect Article 18(1)(b) of annex III to the Convention, regarding termination as a result of failure to comply with a final binding decision of the applicable dispute settlement body. Furthermore, bearing in mind the severity of issuing a compliance notice, we are of the view that this should be reported to the Council.

United Kingdom

103. Compliance notice and termination of exploitation contract	1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice. 2. A compliance notice shall: (a) Describe the alleged breach and the factual basis for it; and (b) Require the Contractor to take remedial action or other such steps as the Secretary-General considers appropriate to ensure compliance within a specified time period. 3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority. 4. The Contractor shall be given a reasonable opportunity to make representations in writing to the Secretary-General concerning any aspect of the compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice. 5. If a Contractor, in spite of warnings by the Authority, fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council may	(2 bis) A copy of the compliance notice shall be sent to the Sponsoring State.	Additional clarification about how the compliance notice process will work, including the role of the Secretary-General.
	suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract. 6. In the case of any violation of an exploitation contract, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation. 7. Save for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.	(5 bis) The Secretary-General shall provide an annual report to the Council in respect of any compliance notices issued. (7 bis) The Secretary-General shall notify the Council as soon as reasonably practicable of any matter requiring the Council to issue an emergency order under article 162(2)(w) of the Convention.	

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

DR 103 (former DR 101): Compliance notice and termination of exploitation contract
DR 103(4): "The Contractor shall be given a reasonable opportunity to make representations in writing to the Secretary-General concerning any aspect of the compliance notice. Having considered the representations, the **Secretary-General** may confirm, modify or withdraw the compliance notice." [***Emphasis supplied.***]
See comments made under **DR 13(1)(f)** above re issues relating to *ultra vires*/substantive legal competence issues raised with regard to the functions and role of the Secretary-General in this context. See comments made above under, e.g., **DR 58(1)** re the transparency and uniform/non-discriminatory issues raised by the process set out herein.

Deep Ocean Stewardship Initiative

DR 103: Overall, draft Regulations do not seek any special committees focused on the review of non-compliance issues except for the Commission*. Especially in the enforcement process stated in DR 103, the decision-making process does not require the Commission's recommendations: the Secretary-General issues a compliance notice and the Council decides on the termination and suspension of non-compliant Contractor's activities. *DR articulates the Commission's roles in reviews regarding Plans of Work (DR 11) and Environmental Assessment Performance (DR 52).

DR 103(5): The Council "may" suspend or terminate the exploitation contract if the Contractor disregards notice by the ISA and continues activities in a way that results in harm. "May" should be "will".

The Pew Charitable Trusts

~~Draft regulation 101~~Regulation 103

Compliance notice and termination of exploitation contract

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

2. A compliance notice shall:

(a) Describe the alleged breach and the factual basis for it; and

~~(a)~~ Require the Contractor to take remedial action or other such steps as the ~~Authority~~Secretary-General considers appropriate to ensure compliance within a specified time period~~; and~~

(b) ~~In respect of a violation specified in appendix III to these Regulations, impose the applicable monetary penalty~~. […]

5. If a Contractor, in spite of warnings by the Authority, fails to implement the measures as set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

6. In the case of any violation of an exploitation contract ~~not specified in appendix III to these Regulations~~, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation ~~in accordance with the Guidelines.~~ […]

The Regulations could require all compliance notices and subsequent warnings to be reported to Council and published on the Seabed Mining Register.

It is not clear why the reference to Guidelines (in relation to the Council's imposition of monetary penalties for contractual violations) has been deleted here.

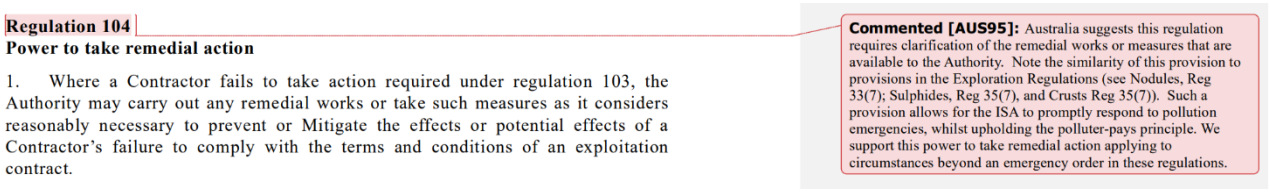
Regulation 104
Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.

2. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.

I - Members of the International Seabed Authority

Australia



France

Projet d'article 104 – Pouvoir de prendre des mesures correctives : le paragraphe 2 autorise l'Autorité à récupérer les frais qu'elle a engagés par prélèvement de la caution environnementale, ce qui souligne à nouveau la nécessité de clarifier l'objet de cette caution. Si le mécanisme prévu au paragraphe 2 était adopté, il faudrait également préciser que le remboursement ainsi effectué éteint la dette du contractant et met fin au litige.

Germany

- **Draft Regulation 104** entitles the Authority to "carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract". While the wording of Draft Regulation 104 is similar to the wording of Draft Regulation 101 para. 2, it strikes us that the former provision addresses the Authority as such, while the latter is aimed at the Secretary-General. Provided that the Secretary-General receives proper abstract guidance from the Council, Germany would prefer a version of Draft Regulation 104 which also entitles the Secretary-General to take appropriate measures. After all, this aspect relates to the main issue "Delegation of Functions" noted above.

Draft Regulation 104:
"1. Where a Contractor fails to take action required under regulation 103, the ~~Authority~~ Secretary-General may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract. 2. If the ~~Authority~~ Secretary-General takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor."

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

DR 104 (former DR 102): Power to take remedial action

Who is "the Authority" here? See also general comment re use of "the Authority" under **DR 76** above.

III – Stakeholders

Global Sea Mineral Resources NV

Part XI - Inspections, Compliance and Enforcement		
DR 104 (2)	If the Authority takes remedial action or measures under paragraph 1, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.	The Guarantee should cover for duly proven costs and expenses, and not "reasonable" costs.

Regulation 105
Sponsoring States

Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors shall, in particular, take all necessary and appropriate measures to secure effective compliance by Contractors whom they have sponsored in accordance with Part XI of the Convention, the Agreement, the rules, regulations and procedures of the Authority and the terms and conditions of the exploitation contract.

I - Members of the International Seabed Authority

Jamaica

Regulation 105 Sponsoring States

Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors have the responsibility to ensure~~shall~~, in particular, that activities in the Area carried out~~take all necessary and appropriate measures to secure effective compliance~~ by Contractors whom they have sponsored are conducted in conformity~~in accordance~~ with Part XI of the Convention, the Agreement, the rules, regulations and procedures of the Authority and the terms and conditions of the exploitation contract.

RATIONALE:

DR 105 does not mirror the language of UNCLOS article 139(1) which was addressed in the advisory opinion of the International Tribunal of the Law of the Sea (ITLOS) (Advisory Opinion on "Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area"). ITLOS identified articles 139(1) and 153(4) of UNCLOS and article 4(4) of annex III of UNCLOS as the key provisions concerning the obligations of sponsoring States.[1] The revisions to the text of the Draft Regulations have generally attempted to remain as faithful as possible to the text of the UNCLOS. We believe that this is particularly advisable in this instance as the application for an Advisory Opinion was with a view to obtaining a desirable degree of clarity and certainty as regards the scope of the obligations and liability that may be imposed on sponsoring States. The Draft Regulations should build on and not in any way undermine the value of the Advisory Opinion requested by the Council.

Part XII
Settlement of disputes

Regulation 106
Settlement of disputes

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI of the Convention.

2. In accordance with article 21 (2) of annex III to the Convention, any final decision rendered by a court or tribunal having jurisdiction under the Convention relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention affected thereby.

I - Members of the International Seabed Authority

Canada

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of ~~its~~ the Contractor's sponsoring State or other party concerned, in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where ~~practicable~~deemed necessary, exercise the right to conduct an inspection without prior notification.

Chile

PARTE XII
Solución de controversias

Proyecto de artículo 106
Solución de controversias

Chile no tiene inconveniente sobre este artículo, por cuanto el proyecto se remite a la sección 5 de la Parte XI de la CONVEMAR, que establece el procedimiento de solución de controversias en cuestiones relativas a la Zona. No obstante, sugiere proseguir el debate.

Numeral 2

Hace referencia al **artículo 21 2) del anexo III** de la CONVEMAR, reproduciendo el texto. Señala que las decisiones definitivas de una corte o tribunal que tenga competencia en virtud de la Convención respecto de los derechos y obligaciones de la Autoridad y del contratista serán exigibles en el territorio de cada uno de los Estados partes en la Convención.

Chile no tiene inconveniente sobre este texto, que reproduce lo dispuesto en la CONVEMAR. No obstante, sugiere proseguir el debate para una mayor claridad.

En caso de existir una sentencia que deba ejecutarse en Chile, se aplicarían las normas generales del exequátur.

Chile considera que es importante determinar si la Autoridad o los Estados consideran necesario suscribir un acuerdo que tenga por objeto garantizar la ejecución de las sentencias dentro de un Estado parte, y no sólo dejarlo a las normas generales internas nacionales, pues estas son distintas en cada jurisdicción, con requisitos diversos de exigibilidad de la resolución para hacerla aplicable.

Jamaica

Regulation 106 Settlement of disputes

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI of the Convention and the rules of procedure adopted by the International Tribunal for the Law of the Sea for the conduct of expedited hearings concerning the Rules of the Authority.

2. [In accordance with article 21 (2) of annex III to the Convention,] any final decision rendered by a court or tribunal having jurisdiction under the [Convention] [Rules of the Authority] relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention affected thereby.

RATIONALE:

Jamaica has previously outlined its concerns with regard to ensuring the timely resolution of disputes. In the absence of a consensus to provide for an optional alternative system of administrative review, Jamaica recommended that the ISA explore the possibility of ITLOS establishing special rules of procedure that would accommodate expedited hearings on a subset of disputes that may arise under the exploitation regulations similar to those applicable to the prompt release of vessels and crews.

Jamaica further recommended that discussions with ITLOS could be pursued with a view to accommodating enhanced transparency and possibly greater participation by third parties in certain dispute settlement proceedings under the Draft Regulations.

Jamaica addressed these matters at length in our previous submissions and therefore will not repeat the argumentation here.

As regards DR 106(2), it is noted that the judgment of a national court in relation to proceedings taken in context of DR 100(3) relating to acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector, may require recognition and enforcement in other jurisdictions. The reference to "a court or tribunal having jurisdiction under the Convention relating to the rights and obligations of the Authority and of the Contractor" may be seen as limiting. It would cover the flag State and sponsoring State generally, though only the flag State and State of nationality where penal jurisdiction is asserted in matters of collision and any other incident of navigation (UNCLOS, article 97). The Council may consider referring to jurisdiction under the Rules of the Authority, which includes the Convention, the Agreement, the regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time. Were this approach to be adopted, as the reference to Rules of the Authority is broader than the Convention, the reference to annex III, article 21(2) would be deleted.

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

Deep Sea Conservation Coalition

106	Dispute Settlement	Part XII and DR 106 on dispute settlement are inadequate. There should be accessible, cost effective access to dispute settlement procedures. An accessible and cost-effective administrative review mechanism (as discussed in the previous Draft Regulations) should be provided for. A process accessible to stakeholders and the Authority, as well as Contractors, to resolve disputes short of a formal dispute resolution mechanism, would be a useful mechanism to improve governance and compliance. Whether it is binding depends on the process and its application. From the point of view of efficiency, as a principle, decisions should be binding, and if necessary reviewable, at last resort, by the Seabed Disputes Chamber. But there may be also be scope for Aarhus or Espoo-type non-binding compliance mechanisms, whereby disputes and compliance matters can be resolve by a compliance committee in a non-binding way designed to enhance compliance. There is also scope for expert panels to determine factual issues. All dispute resolution mechanisms must be transparent. Arbitration is commonly closed and confidential, and this would be entirely inappropriate in the area which is the common heritage of mankind. While this is provided for in Article 187, it is now clear that disputes over the interpretation of a contract are a matter of public interest, and that transparency requires that they be determined in public, with access by stakeholders, none of which is available with commercial arbitrations, which are typically closed. Section V of Part XI dispute resolution should be used only as a last resort.

Institute for Advanced Sustainability Studies

Part XII: Settlement of disputes

88. We recommend that before providing for the settlement of disputes, DR 106 should be amended to include a new paragraph (1) which first require disputing parties to enter into bona fide negotiations with a view to resolving any dispute or prospective dispute, and provide mechanisms for conciliation and/or mediation. Only if such attempts have been genuinely pursued and yet the dispute remains unresolved, should DR 106 proceed to state the matters that are currently stated therein.

Part XIII
Review of these regulations

Regulation 107
Review of these regulations

1. Five years following the approval of these regulations by the Assembly, or at any time thereafter, the Council shall undertake a review of the manner in which the regulations have operated in practice.

2. If, in the light of improved knowledge or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission or any Contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these regulations.

3. The Council shall establish a process that gives relevant Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

4. In the light of that review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these regulations, taking into account the recommendations of the Commission or other subordinate organs.

I - Members of the International Seabed Authority

Canada

1. Five years following the approval of these regulations by the Assembly, or at any time thereafter, the Council shall undertake a full review of the manner in which the regulations have operated in practice.

2. If, in the light of improved knowledge, implementation experience, identification of regulatory gaps, or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission or any Contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these regulations.

Costa Rica

3. The Council shall establish a process that gives(text delete here) Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

RATIONALE: Costa Rica proposes the deletion of "relevant" . Who is to determine who is relevant and who isn't, when the term stakeholders imply their importance in relation with the issue being discussed?

Jamaica

Regulation 107 Review of these regulations

2. If, in the light of improved knowledge or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission or any Contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these regulations and the matter shall be included in the provisional agenda of the Council for that session.

RATIONALE:

The rules of the Council provide that the provisional agenda of a regular session shall include items proposed by the Assembly, Council, a member of the Council and the Secretary-General, and reports etcetera of the Enterprise, Economic Planning Commission, LTC and Finance Committee. A matter which is raised by a State Party which is not a member of the Council would not automatically be included as an item on the Council's agenda. The inserted text is designed to address this.

Japan

Regulation 107: Review of these regulations

Considering deep sea exploitation is a long-term project over thirty years and a scale of investment is so large, it is ncessary to avoid the chage of rules in the middile of implementing the project otherwise it may ruin the economic viability of the project. In light of this, in principle, any amendments to the Regulations, especially those which have significant negative impact on the viability, shall not be applied retroactively to the detriment of the Contractors that have already signed an exploitation contract with the Authority.

<Regulation 107 (4)>

4. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an exploitation contract with the Authority.

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

Part XIII - Review of these regulations

DR 107(2): Contractors are provided the opportunity (through the sponsoring State) to request the Council to consider revisions of the Regulations if it becomes apparent that the Regulations are not adequate. We acknowledge that a request to the Council should be made through a State party but the opportunity to raise concerns that the Regulations are not adequate should also be granted to other Stakeholders, not just the Contractors.

DR 107(3): What constitutes an amendment that "has no more than minor an effect" is vague and arbitrary and may provide a loophole to make changes without obtaining input from Stakeholders. This should be clarified or removed.

Deep Sea Conservation Coalition

107	Reg Review	It must be clear that amendments to regulations apply to existing contracts.
		All stakeholder, not just 'relevant' stakeholders, should be involved.

Part XIII: Review of these regulations

89. With respect to DR 107(2), we recommend that Observer members of the Authority also be permitted to request the Council to consider revisions to the Regulations. Unlike Contractors who typically have the support of their sponsoring States, Observer members may not necessarily be subscribed to any member State. As such, it is critical to allow Observer members to raise their concerns about the need for a review of these Regulations.

90. In relation to DR 107(3), we once again recommend the removal of the word 'relevant'. We further suggest that any proposed changes be published on the Authority's website for public comments.

The Pew Charitable Trusts

~~Draft regulation 105~~Regulation 107

Review of these Regulations

1.Five years following the approval of these Regulations by the Assembly, or at any time thereafter, the Council shall undertake a review of the manner in which the Regulations have operated in practice.

~~1.~~If, in the light of improved knowledge or technology, it becomes apparent that these Regulations are not adequate, any State party, the Commission or any
2.Contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations.

3.The Council shall establish a process that gives relevant Stakeholders adequate time and opportunity to comment on the proposed revisions to these Regulations, save for the making of an amendment to these Regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

The Commission notes that DR107(3) has been added to make "*provision for the involvement of relevant stakeholders in any future amendments to the regulations.*" And that "*the process for such participation will need to be outlined in guidelines*." However, Guidelines are not referenced in the inserted text.

As commented earlier under DR94, the word 'relevant' (before 'Stakeholders') should be deleted.

4.In the light of that review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these Regulations, taking into account the recommendations of the Commission or other subordinate organs ~~concerned~~.

III – Stakeholders

Nauru Ocean Resources Inc

Regulation 107

As it currently stands the Authority has the ability to change any and all Regulations which in turn removes the certainty and stability required by Contractors. As such, NORI believes there should be an overarching principle that if the ISA makes any changes to key regulations, and such a change causes the Contractor to incur material loss or cost, then either:

(i) the Contractor should be exempt from the change; or
(ii) the Contractor should be compensated by the Authority.

Annex I

Application for approval of a Plan of Work to obtain an exploitation contract

Section I
Information concerning the applicant

1. Name of applicant.
2. Street address of applicant.
3. Postal address (if different from above).
4. Telephone number.
5. Fax number.
6. Email address.
7. Name of applicant's designated representative.
8. Street address of applicant's designated representative (if different from above).
9. Postal address (if different from above).
10. Telephone number.
11. Fax number.
12. Email address.
13. If the applicant is a juridical person:
    (a) Identify applicant's place of registration;
    (b) Identify applicant's principal place of business/domicile; and
    (c) Attach a copy of applicant's certificate of registration.
14. Identify the sponsoring State or States.
15. In respect of each sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.
16. Attach a certificate of sponsorship issued by the sponsoring State.

Section II
Information relating to the area under application

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the World Geodetic System 84).

Section III
Technical information

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.

19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards.

20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities.

Section IV
Financial information

21. Attach such information, in accordance with the Guidelines, to enable the Council to determine whether the applicant has or will have access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:

(a) If the application is made by the Enterprise, attach certification by its competent authority that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed Plan of Work;

(b) If the application is made by a State or a State enterprise, attach a statement by the State or the sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed Plan of Work; and

(c) If the application is made by an entity, attach copies of the applicant's audited financial statements, including balance sheets and income statements and cash flow statements for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, noting that:

(i) If the applicant is a newly organized entity and a certified balance sheet is not available, attach a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) If the applicant is a subsidiary of another entity, attach copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the Plan of Work; and

(iii) If the applicant is controlled by a State or a State enterprise, attach a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the Plan of Work.

22. If, subject to regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing.

23. Provide details of any Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with regulation 26.

Section V
Undertakings

24. Attach a written undertaking that the applicant will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;

(b) Accept control by the Authority of activities in the Area as authorized by the Convention; and

(c) Provide the Authority with a written assurance that its obligations under the exploitation contract will be fulfilled in good faith.

Section VI
Previous contracts with the Authority

25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:

(a) The date of the previous contract or contracts;

(b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contracts; and

(c) The date of termination of the contract or contracts, if applicable.

Section VII
Attachments

26. List all the attachments and annexes to this application (all data and information should be submitted in hard copy and in a digital format specified by the Authority).

I - Members of the International Seabed Authority

Australia

20*bis*. Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines.

Canada

23. Provide details of ~~any~~ the Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with regulation 26.

Chile

Información relativa al área a la que se refiere la solicitud

Numeral 17

Chile sugiere requerir además, un mapa referencial y un "archivo georreferenciado" con el área solicitada y sus límites.

Sugiere que, además de la lista de coordenadas geográficas, la solicitud incluya un mapa con los límites del área solicitada, tomando en consideración todos los instrumentos y organismos internacionales que hayan desarrollado trabajos sobre la materia y que la actividad se desarrolle en colaboración con los Estados.

Chile entiende que el Reglamento se aplicará a la Zona, sin afectar los derechos de los Estados ribereños en su plataforma continental extendida. Cuando el borde externo se encuentre pendiente de revisión por parte de la Comisión de Límites de la Plataforma Continental, o bien, que por existir una disputa vigente no se ha podido solucionar, entonces el Reglamento no debería aplicarse allí.

¿Cuál es la necesidad o utilidad de presentar los documentos en forma impresa?

China

36. Annex I

Paragraph 21 (a) also concerns the competent authority of the Enterprise. If the competent authority is the Authority, it will lead to the situation where the Authority submits the certification to itself. It is suggested that the content that "attach certification by its competent authority" be deleted, and replaced by a provision where relevant certificate is issued and attached by the Enterprise or its internal bodies (such as the Governing Board).

Germany

With regard to **Annex I**, we have the following suggestions:

Annex I:
"[…] 21. Attach such information, in accordance with the Standards and Guidelines, as applicable, to enable the Council to determine whether the applicant has or will have access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows: […].
25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach: […] (d) The final report on the results of exploration and baseline investigations, including results of testing equipment and operations in the exploration area."

Mexico

Por otro lado y en aras de asegurar una adecuada autorización y designación de los contratos de explotación y el cumplimiento de las obligaciones que de ellos se deriven, se sugiere establecer como requisito de solicitud de aprobación de los planes de trabajo **(Anexo 1 del Código de Explotación y proyectos de artículos 12, 13)** la evidencia de que los contratistas no cuentan con denuncias o incidentes ambientales o sociales de importancia en; i) los países en donde realizan actividades de minería, de exploración y/o explotación costa afuera, submarina; ii) en los países con quien tienen patrocinio y; iii) en los países que con calidad de Estados Ribereños respecto de la zona en donde se llevarán a cabo las actividades de explotación.

Russian Federation

40.	**Annex I, Section I, 16**	Attach a certificate of sponsorship issued by the sponsoring State.	It is suggested to amend this provision with the words "*or States*" so that it reads as follows: "*Attach a certificate of sponsorship issued by the sponsoring State or States*".	Such amendment aims to clarify and ensure uniformity of the wording used in the Regulations.

United Kingdom

Annex I - 17 Annex II (b)	[…] coordinates in accordance with the World Geodetic System […]	[…] coordinates in accordance with the ~~World Geodetic System~~ most recent applicable international standards used by the Authority […]	Replace this reference with language already used in Regulation 8(1), in order to future-proof this reference.

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

(Section IV), there is only very short mentioning of the "technical capability….to Mitigate Environmental Effects". There is no mentioning of the technical capability to monitor environmental effects.

- 26. We recommend to specify what attachments and annexes are needed, providing clarity for the applicant.

Institute for Advanced Sustainability Studies

93. Annex I, paragraph 21, should be slightly amended. The words "to enable the Council to determine" should be deleted. In its place, the words "to assist the Authority in determining" should be inserted.

Annex II

Mining Workplan

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

(a) A comprehensive statement of the Mineral Resource delineated in the relevant Mining Area(s), including details, or estimates thereof, of all known Mineral reserves reported in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves (see ISBA/21/LTC/15, annex V), together with a comprehensive report of a suitably qualified and experienced person that includes details of and validation of the grade and quality of the possible, proven and probable ore reserves, as supported by a pre-feasibility study or a Feasibility Study, as the case may be;

(b) A chart of the boundaries of the proposed Mining Area(s) (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the World Geodetic System 84);

(c) A proposed programme of mining operations and sequential mining plans, including applicable time frames, schedules of the various implementation phases of the Exploitation activities and expected recovery rates;

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of tests conducted and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, together with details of any certification from a conformity assessment body;

(e) A technically and economically justified estimate of the period required for the Exploitation of the Resource category to which the application relates;

(f) A detailed production plan, showing, in respect of each Mining Area, an anticipated production schedule that includes the estimated maximum amounts of Minerals that would be produced each year under the Plan of Work;

(g) An economic evaluation and financial analysis of the project;

(h) The estimated date of commencement of Commercial Production; and

(i) Details of subcontractors to be used for Exploitation activities.

I - Members of the International Seabed Authority

United Kingdom

Annex I - 17 Annex II (b)	[…] coordinates in accordance with the World Geodetic System […]	[…] coordinates in accordance with the ~~World Geodetic System~~ most recent applicable international standards used by the Authority […]	Replace this reference with language already used in Regulation 8(1), in order to future-proof this reference.

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

Annex II - Mining Workplan

- "A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2. of the standard clauses for Exploration contracts)". Please provide a clear reference to the document elaborating on "section 11.2."
- (b) Does the chart of boundaries of the proposed Mining Area(s) include the areas of projected plume dispersion?

Institute for Advanced Sustainability Studies

94. Annex II should include a new paragraph as follows: "Details on how many vessels will be involved in the mining operations, including how and to where the collected ores will be transported from the mining site to shore for processing, as well as details relating to onshore processing". Although some of the matters here are arguably beyond the regulatory mandate of the Authority, such information is necessary for the Authority to consider the commercial, technical and environmental viability of the mining operation, to acknowledge the carbon footprint that is associated with the mining operation, and to finally determine whether it has any realistic prospects of resulting in any 'benefit to mankind as a whole'. We positively note that Annex IV includes reference to these matters in paragraph 3 of the Template thereto. In this regard, the Authority might wish to consider incentivizing the use of renewable energy or low carbon technology in order to reduce greenhouse gas emissions during the operational, transportation and processing phases of the mining operation.

95. In addition, we recommend that Annex II also includes a new paragraph requiring an estimated quantification of the carbon footprint that the Mining Workplan entails. This is also relevant information which the Authority should take note of in determining the viability of a mining operation. Details such as estimated energy consumption that is associated with the mining operation are a component of the mining operation, and from what source (renewable or non-renewable) such energy is obtained, and should also be quantified and disclosed to the Authority.

Annex III

Financing Plan

A Financing Plan should include:

(a) Details and costing of the mining technique, technology and production rates applicable to the proposed mining activities;

(b) Details and costing of the technological process applicable to the extraction and on-board processing of the Mineral ore;

(c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed mining activities;

(d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;

(e) Details regarding other relevant costing, including capital expenditure requirements;

(f) Details of expected revenue applicable to the proposed mining activities;

(g) A detailed cash-flow forecast and valuation, excluding financing of the proposed mining activities, clearly indicating applicable regulatory costs; and

(h) Details of the applicant's resources or proposed mechanisms to finance the proposed mining activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast.

I - Members of the International Seabed Authority

Chile

ANEXO III
Plan de financiación

Literal d)

Chile estima que se deberían incluir los costos vinculados a la implementación del mecanismo de gestión ambiental y la implementación de todos los planes ambientales previstos en el Reglamento.

Germany

As suggested in our 2018 submission, the financial plan should entail a cost-benefit analysis in order to document that the plan of work will allow for a net benefit, also taking into account costs to mitigate any impacts on the marine environment (**Annex III**). We propose that an initial discussion on potential approaches be held in the Finance Committee.

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

Institute for Advanced Sustainability Studies

92. All Annexes are to be amended accordingly, taking into account the above. Further, a new Annex III bis that is dedicated to the topic of test mining, and a new Annex III ter pertaining to the standardization of REMPs, shall be prepared.

96. It might be useful to add another item to Annex III, requiring Contractors to detail out how an Emergency Response and Contingency Plan would be financed, in the event an Incident takes place which warrants the implementation of the said plan. As provided under DR 53(1)(b), Contractors are required to "maintain such resources and procedures as are necessary for the prompt execution and implementation of the ERCP and any Emergency Order issued by the Authority".

Annex IV

Environmental Impact Statement

1. Preparation of an Environmental Impact Statement

The Environmental Impact Statement prepared under these regulations and the present annex shall:

(a) Be prepared in plain language and in an official language of the Authority together with an official English-language version, where applicable;

(b) Provide information, in accordance with the relevant regulations, Standards and Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely Environmental Effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant considers an effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted; and

(c) Include a non-technical summary of the main conclusions and information provided to facilitate understanding of the nature of the activity by Stakeholders.

2. Template for Environmental Impact Statement

The recommended format for an Environmental Impact Statement is outlined below. It is intended to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects on which the Authority can base its assessment, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

The document is a template only, and is not intended to be prescriptive but rather to guide the format and general content of an Environmental Impact Statement. It does not provide details of methodology or thresholds that may be resource- and site-specific. These methodologies and thresholds may be developed as Standards and Guidelines to support the regulations.

I – Members of the International Seabed Authority

Chile

Chile sugiere que sería importante establecer un entendimiento consensuado sobre el término "**Declaración de Impacto Ambiental**".

¿Qué se entiende por este concepto?

Se trata de generar un procedimiento para obtener mayores antecedentes como:

Ejecución de líneas bases ambientales;
Definición y dimensionamiento de impactos;
Incorporación de medidas de mitigación, reparación y compensación según los impactos y Plan de Seguimiento Ambiental de las variables impactadas y de las medidas de mitigación y reparación.

Esta evaluación de impacto ambiental debe concebirse sobre la base del principio precautorio.

1. **Preparación de una declaración de impacto ambiental**

Literal b)

Una mejor evaluación del impacto ambiental debería considerar **escala, magnitud, intensidad, extensión, duración, probabilidad de ocurrencia, reversibilidad y significado, entre otros.**

Podría emplearse como base una metodología para identificar y valorizar los impactos, como la utilizada por la FAO siguiendo la metodología de ***Criterios Relevantes Integrados*** (Buroz, 1994).

Por su parte, es necesario que la Autoridad desarrolle ciertos criterios respecto de la importancia de los efectos ambientales, de manera que se puedan evaluar aquellos efectos que los proponentes consideran o no consideran importantes y aceptar o rechazar sus justificaciones.

2. **Plantilla de declaración de impacto ambiental**

Para que la información presentada no tenga ambigüedades, Chile sugiere incorporar la metodología de evaluación utilizada.

Párrafo 2

Chile sugiere reemplazar la frase "***podría dar lugar a la elaboración d***e" por "***por lo mismo se requieren***" y reemplazar la frase "***como apoyo del proyecto de***" por "***complementarias al***".

China

The items listed in Environmental Impact Statement in this part are too complex to operate effectively. Firstly, some of the items involve the frontier issues of basic science, such as connectivity, ecosystem function and life-history, which are obviously beyond Contactors' scientific research capacity and beyond their obligations under the contract. Secondly, the assessment of certain items may not be necessary. According to the Exploration Regulations, the applicant should ensure that relevant installations "are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity." Therefore, neither the exploration area nor the exploitation area would be located within fishing areas or overlapped with sea lanes. Thus it may not be necessary to assess the impact upon fisheries and marine traffic for exploitation. It is proposed therefore that the Environment Impact Statement should delete the unnecessary assessment items. It is also suggested the Environment Impact Statement should differentiate "activities not requiring environmental impact assessment" from "activities requiring environmental impact assessment" in light of the Recommendations for the Guidance of Contractors for the Assessment of the Possible Environmental Impacts Arising from Exploration for Marine Minerals in the Area (ISBA/25/LTC/6) issued by Commission.

Germany

Annex IV:
"1. Preparation of an Environmental Impact Statement The Environmental Impact Statement prepared under these regulations and the present annex shall: […] (b) Provide information based on data from, as a general rule, 15 years of monitoring, and in accordance with the relevant regulations, Standards and Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely environmental effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant considers an effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted;

Italy

Annex IV Executive Summary 4.5		Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the ~~general geological landscape and topographic features~~ geological, petrographical and geomorphological setting of the site, including high resolution bathymetric maps.
Annex IV Executive Summary 4.8	We suggest to include a paragraph on the mineralogical/petrographical/physical characteristics of the ore, which determines the mining strategies, together with the geological/geomorphological setting, and therefore the types of impacts to be expected.	
Annex IV Executive Summary 7.4		Provide a description of impacts the mining operation may have on the ~~topography~~ geomorphology of the site or its ~~geological/geophysical composition~~ sedimentary and geological characteristics

Mexico

México considera que los planes y evaluaciones del impacto ecológico y ambiental de las actividades de explotación minera en mares profundos a los que se hace referencia en los **Anexos IV y VII** del Código de Explotación, deben de considerar:

- Asesorías de profesionales expertos en las diversas áreas relacionadas con las actividades de explotación y las zonas marinas y sus ecosistemas, desde una perspectiva multidisciplinaria.
- Evaluaciones de los impactos, reacciones y demás afectaciones a corto, mediano y largo plazo, que tengan en cuenta que las afectaciones en los fondos marinos. Estas evaluaciones dependerán del tipo de recurso mineral, de la duración de las actividades de extracción y de las condiciones geobiológicas y fisicoquímicas del área en donde éstas se desarrollen. Asimismo, deben de considerar muestreos de múltiples sitios, estadísticamente representativos en calidad y cantidad de datos, para evitar sesgos y ser comparadas con las condiciones originales del sitio al que estarán relacionadas.
- Pugnar por una estandarización de las metodologías de investigación, evaluación y uso y manejo de los datos que permitan su comprensión, comparación y confirmación, como un ejercicio de transparencia.
- Una evaluación que considere el impacto antes, durante y después de las actividades mineras, así como una propuesta no sólo de mitigación o remediación sino de reparación en caso de daños graves.

New Zealand

	Annex IV – Environmental Impact Statement **1. Preparation of an Environmental Impact Statement** The Environmental Impact Statement prepared under these regulations and the present annex shall: (a) Be prepared in plain language and in an official language of the Authority together with an official English-language version, where applicable; (b) Provide information, in accordance with the relevant regulations, Standards and Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely Environmental Effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant considers an effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted; and (c) Include a non-technical summary of the main conclusions and information provided to facilitate understanding of the nature of the	Regulation 47(3) provides that: "The EIS *shall* be in the form prescribed by the Authority in annex IV to these Regulations" (emphasis added) whereas annex IV itself states that the template for the EIS is recommendatory only. To ensure consistency with regulation 47(3), the language of annex IV should be strengthened to reflect that an EIS must be prepared in accordance with the template.

activity by Stakeholders.

2. Template for Environmental Impact Statement

The ~~recommended~~ format for an Environmental Impact Statement is outlined below. Environmental Impact Statements must be prepared in accordance with this template. It is intended to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects on which the Authority can base its assessment, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

~~The document is a template only, and is not intended to be prescriptive but rather to guide the format and general content of an Environmental Impact Statement. It does not provide details of methodology or thresholds that may be resource- and site-specific. These m~~Methodologies and thresholds which may be resource-specific and site-specific will ~~may~~ be developed as Standards and Guidelines to support the regulations.

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

Regulation 47.3 provides that the Environmental Impact Statement shall be in the form prescribed by the Authority in Annex IV to these regulations.

The [recommended] format for an Environmental Impact Statement is outlined below. It is intended to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects based on the Best Available Scientific Information and Best Available Technologies on which the Authority can base its ~~assessment~~decision, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

[The document is a template only, and is not intended to be prescriptive but rather to guide the format and general content of an Environmental Impact Statement. It does not provide details of methodology or thresholds that may be resource- and site-specific. These methodologies and thresholds may be developed as Standards and Guidelines to support the regulations.]

Commented [A68]: Assessment of what? Would help to specify here, unless it simply means on which the Authority can base its decision.

Deep Ocean Stewardship Initiative

- Overall, this template is quite comprehensive, however we are unsure how the Contractor will obtain the information on impacts, particularly since there has been no discussion of what constitutes an impact and the conditions under which what form of mitigation would be required. There are currently no goals, objectives or targets that the Contractor and the ISA can use as a guide to evaluate the EIS. Under this section, it is suggested that the EMMP is listed as a separate document, but that it can be used as an opportunity to highlight some of the key issues from the EIS to be addressed in the EMMP. The EIS and EMMP need to be tightly linked. The EIS should identify the parameters and activities that must be monitored and provide the metrics for both impact and mitigation; the EMMP needs to outline the implementation of a plan that will allow the obtaining of these metrics. The EMMP should directly refer to the EIS rather than to only key issues arising from it.
- Several sections list the need for defining mitigation measures, but there is no mention of testing mitigation measures or initial studies showing that certain measures are appropriate or effective.
- Within the EIS, each element requiring regional overview (e.g.,, Section 4.2, 5.2) and an assessment of cumulative impacts of the mining activity (e.g., 7.13, 8.7) should include specific reference to the REMP and assessing cumulative impacts at this scale.
- The EIA shall consider climate change as a source of uncertainty and shall be incorporated as: quantification of projected changes, inclusion in risk assessment, inclusion in mitigation planning, and quantification of mine project contributions to climate change.
    1. Preparation of an Environmental Impact Statement (p.74)
       The Environmental Impact Statement for an individual Contractor should also take into consideration the region as a whole and the relevant REMP. Just as the Closure Plan (Annex VIII) is said to "be prepared and implemented in accordance with the Guidelines and the relevant regional environmental management plan,", the EIS should be prepared in accordance with the relevant REMP. This could be addressed in 1(b) and would link to DR 47(3)(c) that calls for the EIS to be in accordance with the objectives and measures of the relevant REMP.
    2. Template for Environmental Impact Statement (p.74)

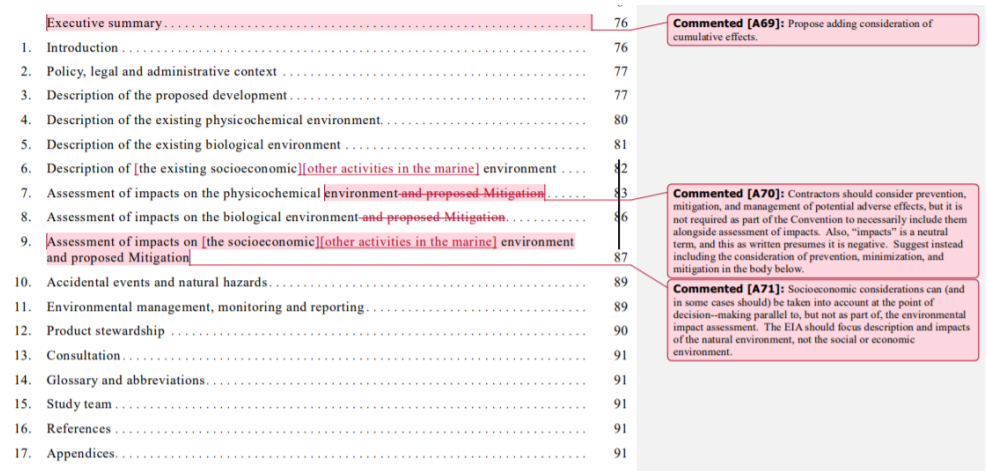
States that "this is a template only and is not prescriptive but rather a guide to format and populate the content of EIS". Guidance is not legally binding. The template should set standards that are implemented by Contractors.

States that "methodologies and thresholds may be developed as Standards and/or Guidelines to support the regulations." The 'Standards and Guidelines' are essential in the operationalization. DR 1.5 says that "these regulations are supplemented by Standards and Guidelines", but to date no such supplementary documents exist. It is not possible to understand the full contracting procedures and obligations without these documents.

Contents

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



Commented [A69]: Propose adding consideration of cumulative effects.

Commented [A70]: Contractors should consider prevention, mitigation, and management of potential adverse effects, but it is not required as part of the Convention to necessarily include them alongside assessment of impacts. Also, "impacts" is a neutral term, and this as written presumes it is negative. Suggest instead including the consideration of prevention, minimization, and mitigation in the body below.

Commented [A71]: Socioeconomic considerations can (and in some cases should) be taken into account at the point of decision--making parallel to, but not as part of, the environmental impact assessment. The EIA should focus description and impacts of the natural environment, not the social or economic environment.

Executive summary

One of the main objectives of the executive summary is to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers. Information provided in the executive summary should include:

(a) A description of the proposed development and its objectives;

(b) Economic, financial and other benefits to be derived from the project;

(c) Anticipated impacts of the activity (physicochemical, biological, socioeconomic);

(d) Mitigation measures to minimize environmental impacts;

(e) Linkages with the development of the Environmental Monitoring and Management Plan; and

(f) Consultation undertaken with other parties.

I – Members of the International Seabed Authority

Germany

Executive Summary:
One of the main objectives of the executive summary is to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers. Information provided in the executive summary should include:
[…]
(e) Linkages with ISA global environmental policy and strategy, the applicable regional environmental management plan and the development of the Environmental Monitoring and Management Plan; and

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

- (c) "anticipated impacts of the activity (physicochemical, biological, socioeconomic)". Add: "including expected recovery rates of the system to its original state". Recovery rates differ between systems and should be clearly stated and acknowledged.
- (d) We recommend to include a brief evaluation of the effectiveness of mitigation measures, as well as highlight any residual impacts that may occur despite mitigation. The Executive Summary should outline both the potential benefits and costs of a project.

1. Introduction

1.1 Background

Summarize briefly the project being proposed, including all main activities and locations.

1.2 Project viability

Provide information on the viability of the proposed development, its economic context and why the project is needed, and include a description of the benefits to mankind.

1.3 Project history

Summarize briefly the work undertaken up to the date the Environmental Impact Statement was finalized and ready to be submitted to the International Seabed Authority. This should include a brief description of the resource discovery, the exploration undertaken and any component testing conducted to date. For the component testing, provide a brief description of activities here. If applicable, include any report(s) related to component testing in an appendix.

1.4 Project proponent

Summarize the credentials of the proponent, including major shareholders, other contracts or licences held (including in other jurisdictions), previous and existing contracts with the Authority and the proponent's environmental record, etc. The proponent's technological and environmental expertise, capacity and financial resources should be outlined.

1.5 This report

1.5.1 Scope

Provide detail as to what is and is not included, based on earlier assessments or work. Link to other supporting information. A key item that should be included is a previous risk assessment that evaluates activities classified as low risk (and therefore should receive less emphasis), compared with high-risk activities, which should be the focus of this Environmental Impact Statement.

1.5.2 Report structure

Where the Environmental Impact Statement spans multiple volumes, this section should provide additional details not listed in the table of contents.

I – Members of the International Seabed Authority

Germany

(1.3) Project history: Summarize briefly the work undertaken up to the date the Environmental Impact Statement was finalized and ready to be submitted to the International Seabed Authority. This should include a brief description of the resource discovery, the exploration undertaken and any component testing conducted to date. For the component testing, provide a brief description of activities here. If applicable, include any report(s) related to component testing, including any monitoring and assessment of the environmental impacts, in an appendix.
[…]

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

1.5.1 Scope

- The scope should include the geographic scope of the EIS i.e. the mine area or project area or beyond Contractor area as needed. Identifying the spatial scope of the EIS is different from identifying the spatial extent of the project (Section 3.3.1).

2. Policy, legal and administrative context

Provide information on the relevant policies, legislation, agreements, standards and guidelines that are applicable to the proposed mining operation.

2.1 Applicable mining and environmental legislation, policy and agreements

Outline the national and international legislation, regulation or guidelines that apply to the management or regulation of Exploitation in the Area, including how the proposed operation will comply with them.

2.2 Other applicable legislation, policies and regulations

Outline any other legislation, policies or regulations that do not necessarily apply specifically to seabed mining or the environment, but may be relevant to the proposal (e.g., shipping regulations, maritime declarations, marine scientific research, climate change policies, Sustainable Development Goals). This section should also refer to national regulations and laws that relate to the effects of Exploitation activities on coastal States, or other places where components of Exploitation (e.g., processing) could occur.

2.3 Applicable international and regional agreements

List the international agreements applicable to the operation, such as the United Nations Convention on the Law of the Sea and the International

Maritime Organization suite of environmental and safety conventions, which includes the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), and applicable regional agreements.

2.4 Other applicable standards, principles and guidelines

Discuss applicable standards and guidelines that will be adhered to or aligned with throughout the operation, such as the Standards and Guidelines of the International Seabed Authority, the Equator Principles, the Environmental Management Standards of the International Organization for Standardization, the Code for Environmental Management of Marine Mining of the International Marine Minerals Society, the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation and the standards of the Extractive Industries Transparency Initiative.

I – Members of the International Seabed Authority

Germany

(2.1) Applicable mining and environmental legislation, policy and agreements: Outline the national and international legislation, regulation or guidelines, as well as the Regional Environmental Management Plan that apply to the management or regulation of Exploitation in the Area, including how the proposed operation will comply with 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

2.2 Other [applicable][relevant] legislation, policies and regulations

Outline any other legislation, policies or regulations that do not necessarily apply specifically to seabed mining or the environment, but may be relevant to the proposal (e.g., shipping regulations, maritime declarations, marine scientific research, climate change policies, Sustainable Development Goals). This section should also refer to national regulations and laws that relate to the effects of Exploitation activities on coastal States, or other places where components of Exploitation (e.g., processing) could occur.

2.3 Applicable international and regional agreements

List the international agreements applicable to the operation, such as the United Nations Convention on the Law of the Sea and the International Maritime Organization suite of environmental and safety conventions, which includes the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other

Commented [A72]: Recommend deleting. As noted previously, a binding international agreement is applicable to states parties to the agreement and not as such to nationals or others under the jurisdiction of a state party. The agreement may be relevant when applied by domestic law or regulation of a state party to its nationals and others under its jurisdiction. In this regard, the information in 2.3 will already be addressed in 2.1 and 2.2.

Advisory Committee on Protection of the Sea

Our observations on this Annex are limited to its section 2: "Policy, Legal and Administrative Context" as set out in ISBA/24/LTC/WP.1/Add.1. This section presents three major issues, briefly summarized here and addressed in detail below.

1)The purpose and relevance of this section 2 are wholly unclear. Why is this section relevant to stating/ascertaining/assessing the **environmental consequences** of an activity, which is the purpose of an EIS/A?

2) Furthermore, this section 2 as currently structured and drafted is incompatible with the LOSC/IA and with their status in international law.

3) Finally, given that the purpose of a Regulator is to regulate, where in the LOSC/IA is it permitted for the Regulator to abdicate responsibility for specifying the applicable law and its requirements and leave this up to the entities it is legally obliged to regulate with regard to deep-sea mining?

Our reasons for these concerns are as follows.

First, the structure of section 2 reveals a profound and disturbing misunderstanding of the legal regime applicable to activities in the Area. The LOSC is not only placed in the third category of elements to be addressed (item 2.3), but it is there also incorrectly placed on a legal par with the other instruments listed, as well as being placed in a position of legal authority inferior to that of the instruments of less, if any, status in international law listed in items 2.1 and 2.2.

This is completely at variance and incompatible with the actual legal context in which activities in the Area **must in law** be conducted and evaluated. The LOSC is the governing international legally binding instrument for oceans in general and the Area in particular, and for the latter the IA is added.

The LOSC already addresses the types of and relationships with legally binding international treaties and conventions, including multilateral trade agreements, and rules of international law, in accordance with which, as relevant and appropriate, activities in the Area are to be carried out under the auspices of the International Seabed Authority.

Furthermore, the body of international law within which the LOSC operates, and the operation of the LOSC itself, are exceedingly complex. The nature and mechanisms of their application to the Area and to the activities of the Area, including with regard to the marine environment, cannot be considered as being so clear and settled that a request by the regulator for their description and analysis by an applicant to conduct an activity in the Area can reasonably be made. Nor is it at all clear what purpose such an analysis would serve in the context of an EIA/S. Indeed it is likely that such a request would be inconsistent with the requirements set out by the LOSC itself with regard to how the activities in the Area are to be organized, carried and controlled by the ISA, if only because there must be a level playing field among contractors, at least insofar as regulation by the ISA is concerned.

Other questions raised by this Section 2 include:

Why is this section relevant at all to a statement/assessment of environmental impacts?

Why is the applicant being required to describe the applicable legal regime? Does the regulator not consider itself to be cognizant of and familiar with the legal basis pursuant to which the assessment is being conducted? And if not, why not, and then if not, what is the purpose of the regulator?

But if for some reason (that totally escapes us) this is indeed the case, why is the applicant, clearly an interested party - which is not to be considered in any way as a negative attribute - the appropriate source for legal advice to the regulator on the applicable law? Where is the required level playing field here?

In the same vein, why is the applicant being required to assess its own compliance with the law? Is the regulator not capable of doing this? If not, why not, and then if not, what is the purpose of the regulator? Where is the required level playing field here?

With regard to "policies" (items 2.1 and 2.2), their establishment for activities in the Area is within the sole purview of the ISA, and specifically the Assembly (Art. 160(1)). Policies promulgated by other international bodies, especially if they are not legally binding, may or may not be taken into account by the ISA. Whether and if so how to do so is entirely at the ISA's discretion. Unless and until the Assembly

has formally done so, it is incompatible with the LOSC to require an applicant to take them into account. The same issues raised above re requiring the applicant to list them also apply here.

With regard to item 2.4, why is the applicant being required to describe non-legally-binding instruments? On what legal basis are these instruments considered to be relevant at all?

The only non-legally-binding guidelines, standards, principles, etc. (collectively referred to as "guidelines" in this comment), which any entity applying to conduct an activity in the Area **must** take into account, pursuant to the LOSC, are those formally issued or endorsed by the ISA.

For both policies and "guidelines," this sole formal source in this context is necessary, *inter alia*, to ensure that a level playing field of requirements for conducting activities in the Area is maintained among all contractors.

The examples of other "guidelines" set out in item 2.4 apparently considered to be potentially relevant by the drafters of this section have not been so endorsed by the ISA.

It must also be noted that these non-ISA examples have not been universally accepted or adopted by their own constituents either and remain subjects of debate. Even were this not the case, the legal basis against their consideration in this context remains unchanged.

This item 2.4 furthermore and again erroneously places the ISA's own guidelines on a legal par with these others, which is incompatible with the governance hierarchy of instruments applicable to activities in the Area set out in the LOSC. That hierarchy does not include guidelines from other sources that have not been formally endorsed by the ISA.

In any event, whether or not a given contractor has chosen to abide by any or all or none of these non-binding "guidelines" and non-ISA policies is irrelevant both in law and in fact, as that choice is not pertinent to stating/ascertaining the environmental consequences of the activity being examined, which is the objective of this document.

In conclusion: this entire item 2 as currently structured and drafted is incompatible with the LOSC/IA and with their status in international law, and it fails to satisfy the obligations of the regulator to set out and define the applicable law with which the Contractors must comply insofar as this is necessary for the evaluation of an EIA/S.

In our original submission, we recommended removal of this section 2 from the EIA template. Because of the inaccuracy in characterizing the legal status of all the instruments set out in this draft Section 2 and the inadequacy in the exercise of the legally required role of the regulator in this context - which role is to regulate; it is not to invite Contractors to submit essays opining on their assessment of applicable legally binding and non-binding instruments - here we urge a fundamental review of this Section 2 in light of the objections raised above. In particular we stress the legal requirement to place the full and unqualified and sole responsibility on the regulator to specify clearly which, if any, non-LOSC/IA binding and non-binding instruments it requires the Contractors to follow, and to specify clearly how the Contractors are to demonstrate that they are following these instruments in their EIA/S, and on the legal requirement that the Regulator must exercise this responsibility.

2. Policy, legal and administrative context

- Section 2.1 requires the Contractor to outline "how the proposed operation will comply" with mining and environmental legislation, policies and agreements. Section 2.2, 2.3 and 2.4 require the Contractor to outline other applicable legislation, policies, regulations, international and regional agreements, as well as standards, principles and guidelines. However, Section 2.2, 2.3 and 2.4 do not require the Contractor to outline how the operation will comply with these policies. We recommend, for those relevant to the proposal in Section 2.2, 2.3 and 2.4, the Contractor also outlines how the proposed operation will comply.

3. Description of the proposed development

Provide details of the proposed development activity, including relevant diagrams and drawings. It is understood that most projects will likely involve the recovery of minerals from the Area, with the concentrating process(es) occurring on land within a national jurisdiction (outside the jurisdiction of the Authority). While it is expected that this section would provide a brief description of the entire project, including offshore and land-based components, the Environmental Impact Statement should focus on those activities occurring within the Authority's jurisdiction (e.g., activities related to the recovery of the minerals from the Area up to the point of transhipment).

Details to be provided under this section should include the headings listed below.

3.1 Project area definition

3.1.1 Location

Include coordinates of the project area, detailed location maps (drawn to scale), a layout of the site and the locations of impact reference zones and preservation reference zones.

3.1.2 Associated activities

Describe the supporting activities and infrastructure required (e.g., transportation corridors) that are outside the direct mining site.

3.2 Mineral resource

Provide details of the type of resource proposed for extraction (e.g. sea floor massive sulphides, polymetallic nodules, ferromanganese crusts), the type of commodity and its grade and volume. Estimates of the inferred and indicated resource should be provided, along with visual models of the resource.

3.3 Project components

Provide background information on the proposal and the technologies and equipment to be employed, and include the subsections set out below.

3.3.1 Project scale

Provide an overview of the spatial and temporal scales of the mining operation, including volumes of material to be recovered, processed and deposited or discharged into the water column or back to the seabed. This should include an account of the area to be physically mined, as well as the likely extent of any secondary impacts (e.g., sediment plumes), which will be discussed in greater detail later.

3.3.2 Mining

Provide details of the technologies to be employed, including relevant diagrams and drawings, that address: the Mining Workplan, timelines and the general mining sequence, the technologies to be employed to recover the resource from the seabed, the depth of penetration into the seabed and other details of the mining activities.

3.3.3 Transport/materials handling

Provide a description of all methods to be used to transport the mineral-bearing ore, including from the sea floor to the surface, and any methods related to the transhipment of the mineral-bearing ore, including transfers at sea.

3.3.4 On-site processing

Provide a description of the processing of the mineralized material that will occur within or above the Area, including shipboard processing. Include a description of any methods to be used on the sea floor to separate the mineralized material from surrounding sediment and/or rock, as well as any dewatering of the mineralized material at the surface. This section should also cover any disposal of seawater/fines.

Include a description of the disposal and discharge of sediment, wastes or other effluents into the Marine Environment and the disposal of waste from general ship operations. The handling and management of hazardous materials should also be described, together with a description of the nature of such material and its transportation, storage and disposal.

3.3.5 Support equipment

Describe any equipment expected for mining and support operations (e.g., mining vessels/platforms, supply vessels, barges). Describe the anticipated frequency of vessel movements for these activities.

3.4 Commissioning

Describe the pre-production activities that will take place with regard to the establishment and set-up of the site for mining operations. The management of this process (such as the establishment of safety zones around vessels) should also be described.

3.5 Construction and operating standards

Outline the design codes to which the equipment will be or has been built, as well as the operating standards that will be applied to mining operations. This section should include subsections such as those set out below.

3.5.1 Design codes

3.5.2 Health and safety

3.5.3 Workforce description

This section should also outline capacity-building objectives and commitments.

3.6 Decommissioning and closure

Describe the steps that will occur when the mining operation is completed, including the decommissioning of offshore infrastructure, under a Closure Plan.

3.7 Other alternatives considered

Provide an account of alternative options that were considered and rejected in favour of the current proposal. Aspects should include the selection of the mine site, mine production scenarios, transport and materials handling and shipboard processing.

3.8 Development timetable (detailed schedule)

Provide a description of the overall timetable, from the implementation of the mining programme to the decommissioning and closure of operations. The description should include the major phases of the operation as well as the milestone dates on which relevant tasks are expected to be completed. Information on the development timetable provided under this section should clearly communicate the different phases in the development proposal. For reasons of clarity, a flow chart or a Gantt or PERT (Programme Evaluation and Review Technique) chart should be used where appropriate. Information provided in this section should include the following:

(a) The funding arrangement for the proposed activity, or whether the availability of funds is subject to this or other approvals being granted;
(b) Pre-construction activities;
(c) A construction schedule and staging timetable;
(d) An infrastructure development schedule;
(e) A monitoring schedule (during and after operations); and
(f) A closure schedule.

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Chile

3. Descripción de las actividades propuestas

Chile considera que, para asegurar una gestión racional y un concreto cuidado ambiental correspondiente en toda la cadena productiva, aquellas actividades que se basen en tierra deberían realizarse en territorios que posean ***Sistemas de Evaluación de Impacto Ambiental*** establecidos e institucionalidad ambiental adecuada.

En este sentido, los contratistas deberían explicar que normativa se les aplica fuera de BBNJ y como abordarán el procedimiento de obtención de permisos y autorizaciones correspondientes.

Chile sugiere incorporar el concepto de Área de Influencia del proyecto, para levantar información sobre los diferentes componentes ambientales de la columna de agua, sedimento y comunidades biológicas en toda el área de afectación del proyecto; esto es, el sector donde se realizará la exploración o explotación y aquellas áreas que serán afectadas por la pluma de dispersión generada de la misma actividad.

No se debería entregar un contrato de explotación que incluya etapas en tierra, sin contar con las respectivas autorizaciones.

3.3.1 Escala del proyecto

Con respecto a los posibles efectos secundarios, además de su magnitud, los contratistas deberían entregar otros parámetros de valorización de impactos, como extensión, duración, probabilidad de ocurrencia, reversibilidad, etc.

France

Paragraphe 3.4 – Mise en service : Suggestion de remplacer le terme actuellement employé de « ménagement » par celui de « création », plus conforme à la signification recherchée (« *establishement* » en anglais).

Germany

(3.8) Development timetable (detailed schedule):
Provide a description of the overall timetable, from the implementation of the mining programme to the decommissioning and closure of operations. The description should include the major phases of the operation as well as the milestone dates on which relevant tasks are expected to be completed. Information on the development timetable provided under this section should clearly communicate the different phases in the development proposal. For reasons of clarity, a flow chart or a Gantt or PERT (Programme Evaluation and Review Technique) chart should be used where appropriate. Information provided in this section should include, but not be limited to, the following:
[…]
(b) Pre-construction activities; including the development and testing of mining equipment, operations and systems in situ (if applicable);
[…]

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United States of America

3.8 Description of any reasonable measures for avoiding, preventing, minimizing, and mitigating adverse impacts.

Commented [A73]: Per the above comment, a description of reasonable measures considered could be included here.

Deep Ocean Stewardship Initiative

3. Description of the proposed development

3.1.1 Location

- A broader scale location map should also be produced so that the location of the project area is understood in relation to adjacent claims and boundaries of national jurisdiction (i.e., Exclusive Economic Zones and Extended Continental Shelf Claims).
- In addition to defining the project area (recommend a clear definition), and the control reference zones, suggest a map of the expected impact area (including secondary plume and contaminant impacts) be provided.

3.3.1 Project scale

- If discharged into the water column, a target depth range should be given for the discharged material. Additionally, justification for this choice should be given.

3.3.5 Support equipment

- Description should include the anticipated routes of vessels so that any potential impacts of additional ship traffic can be evaluated with other marine activities.

3.7 Other alternatives considered

- The reasons for the selection and rejection of alternatives are important; recommend they be presented, ideally accompanied by a formalised decision-making process that takes into account key environmental considerations. Thus, if one option is shown to have better environmental or socioeconomic outcomes, the Contractor's reasoning for rejection would be clear.
- We recommend the alternatives considered explicitly include the alternatives for the mitigation of impacts with the benefit and cost of these mitigation options be detailed.
- How will the no-mining option be addressed?

Institute of Advanced Sustainability Studies

97. Annex IV, item 3.1.1 of the EIS Template should be extended to include information on any other known spatial measures and other uses of the marine environment in the vicinity. Thus, it should read "Include coordinates of [...] and preservation reference zones, as well as information on any other known conservation or spatial measures and other uses of the marine environment (e.g. submarine cables and pipelines, long-standing scientific research sites and established fishing areas) in the vicinity of the project area."

4. Description of the existing physicochemical environment

Give a detailed account of knowledge of the environmental conditions at the mine site, which should include information from a thorough literature review as well as from on-site studies. The account will provide the baseline description of the geological and oceanographic conditions against which impacts will be measured and assessed. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment

4.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

4.2 Regional overview

Describe the general environmental conditions of the site, including the geological and oceanographic setting within a broader regional context. This should be brief section that includes a map. A more detailed site-specific description will be provided in accordance with the sections below.

4.3 Studies completed

Describe any prior research/Exploration that could provide relevant information for this Environmental Impact Statement and future activities. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement

4.4 Meteorology and air quality

Provide a general overview of climatology (e.g., wind directions and speeds, seasonal patterns). This section may be most relevant to surface operations.

4.5 Geological setting

Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the general geological landscape and topographic features of the site, including bathymetric maps.

4.6 Physical oceanographic setting

Provide a description of oceanographic aspects such as currents, sedimentation rates and waves. Seasonal variability is an important element. Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field)

4.7 Chemical oceanographic setting

Provide a description of water mass characteristics at the site and at various depths of the water column, in particular near the sea floor, that includes nutrients, particle loads, temperature and dissolved gas profiles, vent-fluid characteristics if applicable, turbidity and geochemistry, etc.

4.8 Seabed substrate characteristics

Provide a description of substrate composition, including physical and chemical properties (e.g., sediment composition, pore-water profiles, grain size, sediment mechanics)

4.9 Natural hazards

Provide a description of applicable potential natural hazards for the site, including volcanism, seismic activity, cyclone/hurricane trends, tsunamis, etc.

4.10 Noise and light

Provide a description of ambient noise and light, and the influence of existing Exploration and maritime activity.

4.11 Greenhouse gas emissions and climate change

Provide a description of the level of gas and chemical emissions from both natural and anthropogenic activities in the Area, as well as those affecting sea floor and water-column chemistry.

4.12 Summary of the existing physicochemical environment

Summarize key findings and include notes on special considerations for hydrothermal vents, seeps, seamounts and oceanographic fronts or eddies. It is anticipated that this summary will be up to one page, and be more extensive than the key messages section.

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Australia

4.3 Studies completed

Describe any prior research/Exploration **(including methods used for completing the studies based on Best Available Techniques)** that could provide relevant information for this Environmental Impact Statement and future activities. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.

4.4 Meteorology and air quality

Provide a general overview of climatology (e.g., wind directions and speeds, seasonal patterns). This section may be most relevant to surface operations.

Commented [AUS96]: Australia considers that it is critical to establish sufficient baseline data to understand fully what impacts the proposed mining will have on the site, and how these impacts can be minimized and managed. Consideration is required as to whether the baseline data collected for the Authority, as per the requirements in the Exploration Regulations, is sufficient to achieve this purpose.

In the "Studies completed" paragraphs for physicochemical (4.3) and biological (5.3), we recommend that a description of the methods used for completing the studies be included and that those methods reflect best practice. For example: Describe prior research/Exploration (including methods reflecting best scientific practice) that could provide relevant information for this Environmental Impact Statement and future activity.

Chile

4. Descripción del entorno fisicoquímico existente

Se requiere pactar que los estudios sobre el terreno deben ser adecuadamente representativos, incluyendo campañas estacionales y muestreos bien diseñados. Aplicable también al **numeral 5. Descripción del entorno biológico existente.**

En lo relativo a la evaluación previa de los riesgos ambientales (en este y otros numerales), faltaría aclarar y estipular cuando se realizará, qué metodología se empleará, quién lo validará y aprobará los resultados, entre otros aspectos.

Germany

(4) Description of the existing physicochemical environment: Give a detailed account of knowledge of the environmental conditions at the mine site, which should include information from a thorough literature review as well as from on-site studies. The Standard on baseline investigations shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline description. The account will provide the baseline description of the

geological and oceanographic conditions against which impacts will be measured and assessed. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.
[…]

(4.2) Regional overview: Describe the general environmental conditions of the site, including the geological and oceanographic setting within a broader regional context and refer to the applicable Regional Environmental Management Plan. This should be brief section that includes a map. A more detailed site-specific description will be provided in accordance with the sections below.
[…]

(4.5) Geological setting: Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the general geological landscape and topographic features of the site, including bathymetric maps and sedimentation rates, and refer to special features such as hydrothermal vents, seeps and seamounts.

(4.6) Physical oceanographic setting: Provide a description of oceanographic aspects such as currents, oceanographic fronts, eddies, particle flux ~~sedimentation rates~~ and waves. Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field).

(4.7) Chemical oceanographic setting: Provide a description of water mass characteristics at the site and at various depths of the water column, including the structure and development of the oxygen minimum zone, and in particular ~~detail~~ near the sea floor (up to 200 m above bottom), that includes nutrients, particle loads, temperature and dissolved gas profiles, vent-fluid characteristics if applicable, turbidity and geochemistry, etc.

Italy

Part No./ Section No./ Draft Reg. No.	Comment description	Proposal for Draft Regulation text editing (in red)
Annex IV Executive Summary 4.5		Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the general geological landscape and topographic features geological, petrographical and geomorphological setting of the site, including high resolution bathymetric maps.
Annex IV Executive Summary 4.8	We suggest to include a paragraph on the mineralogical/petrographical/physical characteristics of the ore, which determines the mining strategies, together with the geological/geomorphological setting, and therefore the types of impacts to be expected.	

Russian Federation

42.	**Environmental Impact Statement (Annex IV), paragraphs 4.3 and 5.3**	<….> and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.	It is proposed to exclude this provision as inappropriate.	Taking into account the likely large volumes of such baseline data and the fact that all of them will be submitted to the Authority for inclusion in the database by the time of submission of Application for exploitation, the question arises whether they should be re-submitted.
43.	**Environmental Impact Statement (Annex IV), paragraphs 4.6, 7.5.**	Para. 4.6: Physical oceanographic setting Provide a description of oceanographic aspects such as currents, sedimentation rates and waves. <…> Para. 7.5: Physical oceanographic setting Provide a description of the effects on the current speed/direction and sedimentation rates, etc. <..>	It is proposed to delete the words "sedimentation rates" from this paragraph.	The sedimentation rate is geological (lithological) parameter, and not oceanographic one.
44.	**Environmental Impact Statement (Annex IV), paragraphs 4.5, 7.4**	Para. 4.5: Geological setting Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the general geological landscape and topographic features of the site, including bathymetric maps. Para 7.4: Geological setting Provide a description of impacts the mining operation may have on the topography of the site or its geological/geophysical composition.	It is proposed to reflect in the text of these paragraphs the need to study the sedimentation rate.	The sedimentation rate is geological (lithological) parameter, and not oceanographic one.
45.	**Environmental Impact Statement (Annex IV), paragraph 4.7**	Chemical oceanographic setting Provide a description of water mass characteristics at the site and at various depths of the water column, in particular near the sea floor, that includes <…> geochemistry, etc.	It is proposed to delete the words "geochemistry" from this paragraph.	One can speak about geochemical characteristics as applied to geological objects (sediments, hard-rock substrates, ores, etc.), and not to water masses.

46.	**Environmental Impact Statement (Annex IV), paragraphs 4.5, 4.8, 7.4, 7.7**	Para. 4.5: Geological setting Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the general geological landscape and topographic features of the site, including bathymetric maps. Para. 4.8: Seabed substrate characteristics Provide a description of substrate composition, including physical and chemical properties (e.g., sediment composition, pore-water profiles, grain size, sediment mechanics). Para. 7.4: Geological setting Provide a description of impacts the mining operation may have on the topography of the site or its geological/geophysical	It is proposed to reflect in the text of these paragraphs (4.5 and 7.4, or 4.8 and 7.7, or in all four) the need to study geochemistry.	One can speak about geochemical characteristics as applied to geological objects (sediments, hard-rock substrates, ores, etc.), and not to water masses.

		composition. Para. 7.7: Seabed substrate characteristics For example: changes in the sediment composition, grain size, density and pore-water profiles.		
47.	**Environmental Impact Statement (Annex IV), paragraphs 4.7, 7.6; 4.6, 7.5**	Para. 4.7: Chemical oceanographic setting Provide a description of water mass characteristics at the site and at various depths of the water column, in particular near the sea floor, that includes <…> temperature <…>, turbidity <…>. Para. 7.6: Chemical oceanographic setting Provide a description of the effects such as <…> the clarity of water <…> water temperature, <…> in all relevant levels of the water column. <…> Para. 4.6: Physical oceanographic setting Provide a description of oceanographic aspects such as currents, sedimentation rates and waves. Seasonal variability is an important element. Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field) Para. 7.5: Physical oceanographic setting Provide a description of the effects on the current speed/direction and sedimentation rates, etc. A regional oceanographic model will be relevant to this section.	It is proposed to edit the content of these paragraphs, taking into account the fact that the temperature of the water, its turbidity and clarity are the physical and not chemical characteristics of the water column. It is also needed to harmonize terminology (turbidity and clarity are different characteristics of the water column, although related to each other). It is proposed to add the list of the physical characteristics of the water column with salinity.	The water temperature, turbidity and clarity are the physical and not chemical characteristics of the water column. Salinity is very important because of its affect the vital functions of organisms. Besides that, it determines the stability of the stratification of the water column (together with water temperature).

48.	**Environmental Impact Statement (Annex IV), paragraph 4.6**	Physical oceanographic setting <….> Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field)	It is proposed to clarify what is meant by “near-field” and “far-field”	To ensure that the content of the document is clear and unambiguous.
49.	**Environmental Impact Statement (Annex IV), paragraph 4.7**	Chemical oceanographic setting Provide a description of water mass characteristics at the site and at various depths of the water column, in particular near the sea floor <…>	It is proposed to change phrase “Provide a description of water mass characteristics at the site and at various depths of the water column, in particular near the sea floor” to “Provide a description of water mass characteristics above the site at various depths of the water column, in particular near the sea floor”.	If the site is a part of the seabed, then all water column (both at all depths and near the seabed) will be “at the site”.
50.	**Environmental Impact Statement (Annex IV), paragraph 4.12**	Summary of the existing physicochemical environment Summarize key findings and include notes on special	It is proposed to refer to the need to study oceanic fronts and eddies in the preceding paragraphs of the Environmental Impact Statement.	Paragraph 4.12 refers to key findings and special considerations regarding oceanic fronts and eddies, while above (in the preceding paragraphs) nothing is said about their study.

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Deep Ocean Stewardship Initiative

- As written, this gives the option of addressing in bullet points either the main aspects covered or the main findings. The "Key messages" sections in 4.1 (and 5.1, 6.1, 7.1, 8.1) should provide information about the main findings concerning environmental impacts, not an outline or overview of the report contents (aspects covered).
- Providing an overview of key content is useful but the Contractor should not be restricted to six bullet points if there are more findings that need to be summarized.

4.5 Geological setting

- We recommend including discussion of tectonic and geophysical stability.
- Seasonal oceanographic variability should be demonstrated, supported by at least three years of monitored data, as this will incorporate interannual variability. As such, recommend rewording the second sentence to "Seasonal and interannual variability are important elements."
- Climate change projections should be included.
- We recommend spelling out the elements included in geochemistry (O_2, pH, H_2S, CH_4, trace metals), etc. Also recommend including fluxes and rates relevant to mining impacts. This should also include all major climate variables (e.g. temperature, oxygen, salinity, pH, carbonate (calcite/aragonite) saturation), as well as projections of how and where they are likely to change over the next 50 years or time period of relevant to contract and subsequent post mining recovery.
    - Changing climate conditions should also be mentioned. Natural hazards should include metrics of climate hazard and cumulative climate hazard (climate change/variability) in the contract area.
- We recommend changing "gas and chemical emissions" to "gas and fluid emissions" as chemicals are contents of both.
- Effects of mining on ocean climate mitigation functions and services should be described (alteration of CO_2 uptake and sequestration and seafloor burial by the ocean; changes in nutrient cycling effects on wetland carbon uptake (shore-based operations).
- If special considerations are to be given to hydrothermal vents, seeps, seamounts, and fronts or eddies, these should have a separate section and not only be addressed in a one-page summary. The presence and location of these features should be identified. Their proximity to mining activity should be stated and depicted in a map. This summary should include particulate fluxes and organic carbon accumulation and burial rates, relevant to understanding the regulating services provided by the targeted environments.

The International Marine Minerals Society

Reference	Comment
Annex IV EIS, 4.5 Geological Setting	Should "topographic" be "bathymetric" OR "seafloor topography"? Some concerns were raised about the term "bedrock". Suggestion is to change wording to "Describe the geological setting, the nature and extent of the mineral resource and its host-rock or substrate. Provide a description of the regional geology, local geomorphological elements and bathymetric features of the site, including bathymetric maps"
Annex IV EIS, 4.8 Sediment substrate characteristics	This is geology. Consider including in Section 4.5 on host-rock or substrate

5. Description of the existing biological environment

The description of the site should be divided by depth regime (surface, midwater and benthic, where appropriate), and provide a description of the various biological components and communities that are present in or utilize the area. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

5.1 Key messages

Provide an overview of the key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

5.2 Regional overview

Provide general regional context, and include site-specific issues and characteristics, existing areas of particular environmental interest and national areas of adjacent countries, if any. References to relevant technical data and previous studies should also be included. This section should be brief, but provide broader context for the more detailed site-specific description below.

5.3 Studies completed

Describe any prior research/Exploration that could provide relevant information for this Environmental Impact Statement and future activity. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.

5.4 Biological environment

Address diversity, abundance, biomass, community-level analyses, connectivity, trophic relationships, resilience, ecosystem function and temporal variability. Any work on ecosystem models and appropriate ecosystem indicators, etc., should also be presented here. This section should span the size range from megafauna to microbial communities.

The description of the fauna is structured by depth range, as this enables a direct linkage to the source and location of an impact. For each depth zone, there should be a description of the main taxonomic/ecological groups (e.g., plankton, fish, marine mammals, benthic invertebrates, demersal scavengers), using the Authority's Guidelines.

5.4.1 Surface

Describe the biological environment from the surface to a depth of 200 metres, including plankton (phytoplankton and zooplankton), surface/near-surface fish such as tuna, and seabirds and marine mammals.

5.4.2 Midwater

Describe the biological environment in the open water from a depth of 200 metres down to 50 metres above the sea floor, and include zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals.

5.4.3 Benthic

Describe the benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor. This should include considerations of species richness, biodiversity, faunal densities, community structures and connectivity, etc. Bioturbation should also be covered in this section.

5.4.4 Ecosystem/community-level description

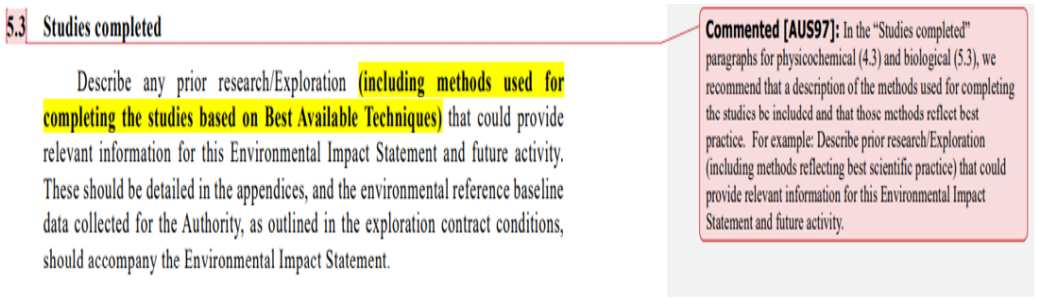
Summarize existing community or ecosystem studies that integrate elements of the above sections. The summary should consider early life-history stages, recruitment and behavioural information.

5.5 Summary of the existing biological environment

Summarize the key findings with respect to the biological environment, including regional distributions, special faunal characteristics, etc. It is envisaged that this summary will be up to one page in length.

I – Members of the International Seabed Authority

Australia



5.3 Studies completed

Describe any prior research/Exploration **(including methods used for completing the studies based on Best Available Techniques)** that could provide relevant information for this Environmental Impact Statement and future activity. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.

Commented [AUS97]: In the "Studies completed" paragraphs for physicochemical (4.3) and biological (5.3), we recommend that a description of the methods used for completing the studies be included and that those methods reflect best practice. For example: Describe prior research/Exploration (including methods reflecting best scientific practice) that could provide relevant information for this Environmental Impact Statement and future activity.

Chile

5. **Descripción del entorno biológico existente**

Chile considera que las especies biológicas deben asociase a sus correspondientes categorías de conservación. Considerando que hay una gran variedad de especies marinas aun no identificadas, se debería establecer un procedimiento frente a dichas situaciones.

Germany

(5.4) Biological environment: Address diversity, abundance, biomass, community-level analyses, connectivity, trophic relationships, resilience, ecosystem function and temporal variability. Any work on ecosystem models and appropriate ecosystem indicators, etc., should also be presented here. This section should span the size range from megafauna to microbial communities.

The description of the fauna is structured by depth range, as this enables a direct linkage to the source and location of an impact. For each depth zone, there should be a description of the main taxonomic/ecological groups (e.g., plankton, fish, marine mammals, benthic invertebrates, demersal scavengers), using the Authority's Guidelines.

The description here needs to detail the animal communities in the water column down to the mining area and beyond, their relationship to the natural habitat, including the mineral resource, and the functional ecological relationships across groups to assess the scale of impacts to be expected if mining occurs.

(5.4.1) Surface: Describe the biological environment from the surface to a depth of 200 metres, including plankton (phytoplankton and zooplankton), surface/near-surface fish such as tuna, and seabirds and marine mammals. The description should also evaluate the temporal and spatial variability in distribution and composition.

(5.4.2) Midwater: Describe the pelagic fauna and their habitat ~~biological environment~~ in the open water from a depth of 200 metres down to 50 metres above the sea floor, including zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals. The description should also evaluate the temporal and spatial variability in distribution and composition.

[…]

Russian Federation

	Regulation	Text of the Regulation	Comments / Remarks	Explanation
42.	**Environmental Impact Statement (Annex IV), paragraphs 4.3 and 5.3**	<....> and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.	It is proposed to exclude this provision as inappropriate.	Taking into account the likely large volumes of such baseline data and the fact that all of them will be submitted to the Authority for inclusion in the database by the time of submission of Application for exploitation, the question arises whether they should be re-submitted.

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United States of America

5.4.3 Benthic

Describe the benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor. This should include considerations of species richness, uniqueness, biodiversity, faunal densities, community structures and connectivity, etc. Bioturbation should also be covered in this section.

Commented [A74]: Uniqueness should also be included here and is included in other similar lists in other international fora.

Secretariat on the Convention on Biological Diversity

Work under the CBD to facilitate the description of ecologically or biologically significant marine areas (EBSAs), can prove very useful in the development of the environmental impact statement, in particular with regards to providing a description of the existing biological environment (as referred to in section 5 of annex IV).

In this regard, section 5 of annex IV may be revised as follows:

"**5. Description of the existing biological environment**
The description of the site should be divided by depth regime (surface, midwater and benthic, where appropriate), and provide a description of the various biological components and communities that are present in or utilize the area ***and the ecological and or biological significance of these components***. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment."

Deep Ocean Stewardship Initiative

5. Description of the existing biological environment

- "Biological environment" is not clear terminology. To most biologists, this would refer to the environment experienced by life in the ocean, not to the life itself. We recommend clearer terminology such as "Description of the Communities and Ecosystem Functions".
- Instead of using the terms "Surface, midwater and benthic" more specific wording may be used such as surface seawater, epipelagic zone (< 200 meters), mesopelagic zone (200 - 1000 meters), bathypelagic zone (1000 - 4000 meters), abyssopelagic zone (4000 - 6000 meters), hadalpelagic zone (> 6000 meters), demersal zone (part of the water column near to and significantly affected by the seabed), and benthic zone. Additionally, all of these depths need to be included so consider removing 'where appropriate'.

5.1 Key messages

- Same comments as in 4.1 above.

5.2 Regional overview

- We recommend specifying how the biological environment compares to regional biodiversity.
- We recommend including a requirement to note any special-interest areas identified by other regulatory or international bodies (including EBSAs, VMEs, PSSAs, MPAs, migration routes of endangered species, etc.).

5.4 Biological environment

- The first paragraph might reference the Standards and/or Guidelines so that the most up-to-date ecosystem indicators and best-scientific practices are used.

- What does community-level analyses refer to? If this is community composition (species-level taxonomy), please clarify. This is important because diversity, biomass, trophic relationships, etc., can also be community-level analyses.
- We recommend clarifying whether depth and depth zone in this section refers to water depth (as opposed to depth within sediments, etc.).
- Add the following: "(...) ecosystem function and services (...).'
- Climate change projections should be included. This could include changes in species distributions and habitat suitability for key or indicator species, changes in connectivity (due to circulation change), etc.

5.4.1 Surface

- We recommend including "microbes" in the statement "including microbes and plankton (phytoplankton and zooplankton)."

5.4.2 Midwater

- We recommend including "microbes" in the statement "and include microbes, zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals."

5.4.3 Benthic

- We recommend including "microbes" in the statement "Describe the benthic microbial, invertebrate and fish communities"
- We recommend including an assessment of those organisms that may temporarily interact with the seabed for feeding and reproduction. There are many demersal invertebrates (that reside within the 50 metres above the bottom so recommend changing "demersal fish" to "demersal fish and invertebrates". In addition to bioturbation, other biological properties that influence ecosystem services (solute fluxes, POC fluxes, carbon burial) or influence resilience and recovery (life histories), should be included.

5.4.4 Ecosystem/community-level description

- This section is a focus on levels above the species – communities and ecosystems. We recommend this section discuss emergent properties that arise when considering all species together, e.g. productivity, habitat heterogeneity, food-web complexity, carbon and nutrient cycling, bentho-pelagic coupling, biodiversity, succession, stability, etc.

5.5 Summary of the existing biological environment

- Again, use of the term "biological environment" is unclear. We recommend clearer terminology such as "Summary of the Communities and Ecosystem Functions".

6.Description of the existing socioeconomic environment

This section should describe the socioeconomic aspects of the project.

6.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

6.2 Existing uses

6.2.1 Fisheries

If the project area occurs within an area used by fisheries, then this needs to be described here. This should include description of areas of significance for fish stocks, such as spawning grounds, nursery areas or feeding sites.

6.2.2 Marine traffic

This section describes the non-project-related marine traffic occurring within the project area.

6.2.3 Tourism

Describe areas used by cruise liners and for game fishing, sightseeing, marine mammal watching and other relevant tourism activities.

6.2.4 Marine scientific research

Outline the current scientific research programmes taking place in the area.

6.2.5 Area-based management tools

Describe any relevant area-based management established under subregional, regional or global processes and the scope, geographical coverage and objectives of such tools. Also describe any relevant area-based management in adjacent areas under national jurisdiction.

6.2.6 Other

List other uses of the project area that are not related to the above (e.g., submarine cables, other mineral exploration, exploitation projects).

6.3 Sites of an archaeological or historical nature

List any sites of archaeological or historical significance that are known to occur within the potential area of impact.

6.4 Summary of existing sociocultural environment

Summarize key findings regarding the sociocultural environment. It is envisaged that this section will be up to a page in length, and more extensive than the key messages.

I – Members of the International Seabed Authority

China

6.2.1 "Fisheries" be deleted.

Since an exploitation contract area recommended by the Commission for approval will not include an area used as recognized sea lanes essential to international navigation, it is suggested that paragraph 6.2.3 "Tourism" be deleted.

France

Dans le cadre de **la 6ème section relative à la description de l'environnement socioéconomique**, il serait plus adapté de consacrer un sous-paragraphe à la question des câbles plutôt que de la traiter sous l'intitulé générique de « Divers » (6.2.6). Suggestion de prévoir un 6.2.6 intitulé « câbles sous-marins » et un 6.2.7 consacré aux autres utilisations du secteur couvert par le projet, notamment les autres projets d'exploration ou d'exploitation. Ce sous-paragraphe étant intégré au sous-ensemble 6.2 intitulé « utilisations actuelles », nous pourrions également envisager l'introduction d'un sous-ensemble 6.2 bis qui serait consacré aux « utilisations planifiées » et qui prendrait notamment en compte les projets de pose de câbles sous-marins ou les projets d'aires marines protégées.

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United States of America

Description of [the existing socioeconomic][other activities in the marine] environment

This section should describe the socioeconomic aspects of the project.

Deep Ocean Stewardship Initiative

- As in 4.1 above.
- While the discussion of fisheries (catch, value, fishing locations, etc.) is appropriate here, the discussion of fish abundance, spawning grounds, nursery areas and feeding sites should be included in the previous section (5.4).
- What is missing from the entire EIS is characterization of the global-scale regulating and supporting ecosystem services (carbon burial and sequestration, nutrient cycling). This is certainly an 'other use', but needs to be included in its own section as these are some of the services that will be disrupted in the mining footprint and it is critical that they be quantified. Similarly, the genetic resources present in the project area are not mentioned but merit attention in the EIS.
- This section should also consider other international agreements and whether any sites relating to cultural property or cultural heritage are known to occur within the potential area of impact. Additionally, please broaden to include findings of a paleontological nature.

7. Assessment of impacts on the physicochemical environment and proposed Mitigation

Provide a detailed description and evaluation of potential impacts of the operation to components of the physical environment identified in section 4. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

It is important that these sections make clear the expected longevity of unavoidable effects. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

7.1 Key messages

Provide an overview of the key content covered in section 7.

7.2 Description of potential impact categories

Provide an overview and description of the categories of general impacts caused by the mining operation. This should introduce the major types of effect, such as habitat removal, the creation of sediment plumes, noise and light, etc.

Key elements that need to be included are:

(a) Descriptions of impact studies carried out during exploration (e.g., component testing);

(b) Descriptions of the results of any environmental risk assessments, which should be included as separate reports or appendices where appropriate; and

(c) Descriptions of the methods applied to describe and quantify impact categories and assessment.

7.3 Meteorology and air quality

Provide a description of potential effects on air quality from the surface or subsurface operations.

7.3.1 Potential impacts and issues to be addressed

7.3.2 Environmental management measures to mitigate impacts

7.3.3 Residual impacts

7.4 Geological setting

Provide a description of impacts the mining operation may have on the topography of the site or its geological/geophysical composition.

7.4.1 Potential impacts and issues to be addressed

7.4.2 Environmental management measures to mitigate impacts

7.4.3 Residual impacts

7.5 Physical oceanographic setting

Provide a description of the effects on the current speed/direction and sedimentation rates, etc. A regional oceanographic model will be relevant to this section.

7.5.1 Potential impacts and issues to be addressed

7.5.2 Environmental management measures to mitigate impacts

7.5.3 Residual impacts

7.6 Chemical oceanographic setting

Provide a description of the effects such as sediment plume generation (frequency, spatial extent, composition and concentration) and the clarity of water, particulate loading, water temperature, dissolved gas and nutrient levels etc., in all relevant levels of the water column. A regional oceanographic model will be relevant to this section. For a sea floor massive sulphide project, the modification of vent-fluid discharges, if present, should be addressed.

7.7 Seabed substrate characteristics

For example: changes in the sediment composition, grain size, density and pore-water profiles.

7.8 Natural hazards

Discuss any impacts of the operation on natural hazards and plans to deal with these hazards.

7.9 Noise and light

Noise and light above existing levels.

7.10 Greenhouse gas emissions and climate change

Assessment of gas and chemical emissions from both natural and anthropogenic activities, as well as those affecting sea floor and water-column chemistry. Subsections should include estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate.

7.11 Maritime safety and interactions with shipping

Include project safety and interactions with other vessels.

7.12 Waste management

Vessel waste management, with reference to compliance with relevant conventions, legislation and principles, and methods of cleaner production and energy balance.

7.13 Cumulative impacts

The nature and extent of any interactions between various impacts, where they may have cumulative effects, must be considered on both spatial and temporal scales over the lifetime of the mining operation.

7.13.1 Proposed operations impacts

Cumulative within the scope of the mining proposed herein.

7.13.2 Regional operation impacts

Cumulative between activities, where known in the region.

7.14 Other issues

Outline here other, more general issues, as applicable.

7.15 Summary of residual effects

A table may be a useful summary format to pull together the above elements in a simple visual mode.

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Australia

7. Assessment of impacts on the physicochemical environment and proposed Mitigation

Commented [AUS98]: We recommend that the assessment of impacts sections (sections 7, 8 & 9) also require a description of the methods used for determining impacts, in particular the assumptions used for impact modelling.

(aa) The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

Chile

7. Evaluación del impacto sobre el entorno fisicoquímico y propuestas de mitigación

Antes de este numeral debería incluirse otro respecto a la **Metodología de Evaluación** empleada.

Frente al término "*mitigación*" del título se sugiere reemplazarlo por "*medidas de gestión frente a los impactos identificados*", toda vez que las medidas de mitigación no son las únicas aplicables (igualmente, para otros numerales como **7.4.2, 8, 8.3.2, 11.3.1**, etc.)

Literal a) además de los efectos acumulativos deben incorporarse y abordarse los sinérgicos (igualmente para los numerales **7.13** y similares).

Germany

(7) Assessment of impacts on the physicochemical environment and proposed mitigation: Provide a detailed description and evaluation of potential impacts of the operation to components of the physical environment identified in section 4. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The source (action, temporal and spatial duration) and nature of the disturbance;

(b) The nature and extent of any actual or potential impact, including cumulative impacts (in the mining area of the operation over the duration of the mining contract, in the contract area and the wider region from all known pressures together);

[...]

(7.2) Description of potential impact categories: Provide an overview and description of the categories of general impacts caused by the mining operation. This should introduce the major types of effect, such as habitat removal, the creation of sediment plumes, noise and light, etc. Key elements that need to be included are:

(a) Descriptions of impact studies carried out during exploration (e.g., component testing and the resulting observations);

Italy

Annex IV Executive Summary 7.4	Provide a description of impacts the mining operation may have on the ~~topography~~ geomorphology of the site or its ~~geological/geophysical composition~~ sedimentary and geological characteristics

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United States of America

Provide a detailed description and evaluation of potential impacts of the operation to components of the physical environment identified in section 4 based on the Best Available Scientific Information and Best Available Technologies. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

Deep Ocean Stewardship Initiative

- The language of 7(b) should mirror the mitigation hierarchy, i.e., "measures that will be taken to avoid, minimize and remediate such impacts" and the language included in Section 8, which states that "it is important that these sections make clear the expected longevity of unavoidable (residual) impacts and whether or not the biological environment is expected to recover, and in what time frame, following disturbance".
- It would be useful to indicate explicitly the spatial and temporal scope of modelling. This is particularly important as many impacts may be long-lasting and cover broad areas. The spatial extent may need to be greater than that of the project (as stated in Section 3.3.1).
- This section should address the likelihood that mining impacts may exacerbate climate-induced changes to the physicochemical environment and ecosystems, and vice versa. Climate change is a cumulative impact.

7.5 Physical oceanographic setting

- Climate change should be incorporated into modelling.

7.6 Chemical oceanographic setting

- Add "(...) loading, particulate and dissolved toxic chemicals, (...)".

7.7 Seabed substrate characteristics

- Add "(...) to the expected excavation depth (...)."

7.6 to 7.12

- We recommend each of these sections also include the subsections 7.3, 7.4 and 7.5 (i.e., 1) potential impacts and issues to be addressed; 2) environmental management measures to mitigate impacts; 3) residual impacts).

7.13 Cumulative impacts

- While the inclusion of cumulative impacts is welcomed, we recommend specifying whether the applicant should account for the cumulative impact of a) several mining operations, b) activities other than mining, or c) both. In any event, the question is whether and how an applicant will get access to the relevant information.
- Cumulative effects should be understood for longer than the duration of the mining operation.

- It would be helpful here to provide examples of cumulative-effects categories and the space and timescales of interest.
- The ISA should consider conducting (or commissioning) an assessment of cumulative impacts at regional level at the planning stage.

7.14 Other issues

- Impacts on ecosystem services should be addressed here or in its own section.

The International Marine Minerals Society

Reference	Comment
Annex IV, 7.4 Geological Setting	Consider changing the term "topography" to "bathymetry" or "seafloor geomorphology" or "bathymetric features"
Annex IV, 7.7, Seabed Substrate Characteristics	Should this be part of Section 7.4?

8. Assessment of impacts on the biological environment and proposed Mitigation

Provide a detailed description and evaluation of potential impacts of the operation to the biological environment components identified in section 5. This may need to consider effects that could happen during the construction/development (precommissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

It is important that these sections make clear the expected longevity of unavoidable (residual) impacts and whether or not the biological environment is expected to recover, and in what time frame, following disturbance. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

8.1 Key messages

This section should provide an overview of the key content covered in section 8.

8.2 Description of potential impact categories

This section is an overview and description of the categories of general impacts caused by the mining operation. This is not expected to be detailed, but rather to introduce the major types of effects, such as habitat removal, the crushing of animals, the creation of sediment plumes, noise and light, etc. A description should be included of any lessons learned from activities during the exploratory phase of the programme (e.g., mining system component tests).

8.3 Surface

Description of potential effects on the biological environment from the surface down to a depth of 200 metres, including any impacts on plankton (phytoplankton and zooplankton), nekton, surface/near-surface fish such as tuna, and seabirds and marine mammals.

8.3.1 Potential impacts and issues to be addressed

8.3.2 Environmental management measures to mitigate impacts

8.3.3 Residual impacts

8.4 Midwater

Description of the potential effects on the biological environment from a depth of 200 metres down to 50 metres above the sea floor, including zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals.

8.4.1 Potential impacts and issues to be addressed

8.4.2 Environmental management measures to mitigate impacts

8.4.3 Residual impacts

8.5 Benthic

Description of the potential effect on benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor.

8.5.1 Potential impacts and issues to be addressed

8.5.2 Environmental management measures to mitigate impacts

8.5.3 Residual impacts

8.6 Ecosystem/community level

Describe estimated effects on the ecosystem or where linkages between the various components above are known.

8.6.1 Potential impacts and issues to be addressed

8.6.2 Environmental management measures to mitigate impacts

8.6.3 Residual impacts

8.7 Cumulative impacts

The nature and extent of any interactions between various impacts where they may have cumulative effects must be considered. This should include an evaluation of the spatial and temporal intensity of mining and its effects on other impacts.

8.7.1 Proposed operations impacts

Cumulative within the scope of the mining proposed herein.

8.7.2 Regional operation impacts

Cumulative between activities, where known in the region.

8.8 Summary of residual effects

A table may be a useful summary format.

I – Members of the International Seabed Authority

Australia

(aa) The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

Germany

(8) Assessment of impacts on the biological environment and proposed mitigation: Provide a detailed description and evaluation of potential impacts of the operation to the biological environment components identified in section 5. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:
(a) The source (action, temporal and spatial duration) and nature of the disturbance;

(b) The nature and extent of any actual or potential impact, including cumulative impacts (in the mining area of the operation over the duration of the mining contract, in the contract area and the wider region from all known pressures together);
(b bis) The applicable environmental goals and objectives, indicators and threshold values as identified in the applicable Regional Environmental Management Plan;
[…]

(8.1bis) Description of the key sources of environmental impacts
[…]
(11) Environmental management, monitoring and reporting: Provide sufficient information to enable the Authority to anticipate possible environmental management, monitoring and reporting requirements for an environmental approval. Information listed include a description of the proponent's environmental management system and should reflect the proponent's environmental

policy and the translation of that policy to meet the requirements under this section and previous sections during different stages of the project life (i.e., from construction to decommissioning and closure). […]
[…]

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United States of America

Provide a detailed description and evaluation of potential impacts of the operation to the biological environment components identified in section 5 based on the Best Available Scientific Information and Best Available Technologies. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

8. Assessment of impacts on the biological environment and proposed Mitigation

- Who will define the evaluation criteria as this will determine the need for mitigation? Currently, whether mitigation is needed or not is open to the Contractor's opinion and interpretation of impact.
- The language of 8(b) should mirror the mitigation hierarchy i.e., "measures that will be taken to avoid, minimize and remediate such impacts."
- This section should address the likelihood that mining impacts may exacerbate climate-induced changes to the physicochemical environment and ecosystems, and vice versa. Climate is a cumulative impact.

8.1 Key messages

- The "Key messages" section should provide an overview of the impacts and their mitigation, not the content covered.

8.3 Surface

- We recommend including "microbes" in the statement "including any impacts on microbes, plankton (phytoplankton and zooplankton)..."

8.4 Midwater

- We recommend including "microbes" in the statement "above the sea floor, including microbes, zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals."
- We recommend changing terminology from "biological environment" to "biology" or "biological communities".

8.5 Benthic

- Marine mammals should also be included here.
- We recommend including "microbes" in the statement "of the potential effect on benthic microbial, invertebrate and fish communities."

8.6 Ecosystem/community-level

- An important example of linkages would be the potential toxicity effects of plumes and bioavailability of toxins. We recommend including this example to give clarification.
- This section should focus on levels above the species – communities and ecosystems. Information about species-specific life history and behavior should be included in the sections above. Functions and linkages that arise when considering all the species together, e.g. primary productivity, habitat heterogeneity, food-web complexity, carbon and nutrient cycling, bentho-pelagic coupling, succession, stability, etc., should also be considered.

8.7 Cumulative impacts

- The impacts on the biological communities and ecosystem functions that may occur during the construction/development, operational and decommission phases may not be cumulative, but are more likely to interact together, which, based on multiple stressors studies, are very likely to be synergistic.
- The interacting impacts from the different factors of deep-sea mining also need to be considered among other stressors, such as climate change, which can influence responses and tolerance levels to the mining operations. Focusing only on mining impacts will not provide a reasonable estimate of impact responses and losses.
- These synergistic effects must also be considered at spatial and temporal scales for all mining operations.

9. Assessment of impacts on the socioeconomic environment and proposed Mitigation

As in the preceding sections, provide a detailed description and evaluation of potential impacts of the operation to the socioeconomic components identified in section 6. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational (including maintenance) and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;
(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and
(c) The unavoidable (residual) impacts that will remain.

9.1 Key messages

This section should provide an overview of the key content covered in section 9.

9.2 Impact identification

9.2.1 Existing uses

9.2.1.1 Fisheries

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.1.1 Potential impacts and issues to be addressed

9.2.1.1.2 Environmental management measures to mitigate impacts

9.2.1.1.3 Residual impacts

9.2.1.2 Marine traffic

A description of potential impacts on non-project-related marine traffic occurring within the project area, along with proposed management measures and a description of residual impacts.

9.2.1.3 Tourism

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.4 Marine scientific research

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.5 Area-based management tools

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.6 Other

List other potential impacts that are not related to the above (e.g., submarine cables, other mineral Exploration or Exploitation projects).

9.3 Sites of an archaeological or historical nature

Describe, as applicable, potential impacts to sites of archaeological or historical significance that are known to occur within the potential area of impact, along with proposed management measures and a description of residual impacts.

9.4 Socioeconomic and sociocultural issues

This section will provide a description of economic benefits or impacts, including any applicable social initiatives.

9.5 Summary of existing sociocultural environment

A table may be a useful summary format. Potential cumulative effects should also be included.

I – Members of the International Seabed Authority

Australia

(aa) The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

France

Cette proposition est également à retranscrire à la Section 9 relative à l'évaluation des effets de l'activité d'exploitation sur l'environnement socioéconomique et les mesures d'atténuation proposées.

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

Assessment of impacts on the [socioeconomic][other activities in the marine] environment and proposed Mitigation

Deep Ocean Stewardship Initiative

- The language of 9(b) should mirror the mitigation hierarchy i.e., "measures that will be taken to avoid, minimize and remediate such impacts."
- The "Key messages" section should provide an overview of the socioeconomic impacts and their mitigation, not the content covered.
- This section could also consider whether any sites relating to cultural property or cultural heritage, as well as exploration for genetic resources, are known to occur within the potential area of impact.
- Human remains and objects of an archaeological or historic nature may not be known at the time of an EIS but may be uncovered during exploitation operations. Here, the Contractor should also address what management measures will be implemented if a site of archaeological or historical nature is discovered during operations.

10. Accidental events and natural hazards

Environmentally hazardous discharges resulting from accidental and extreme natural events are fundamentally different from normal operational discharges of wastes and wastewaters. This section should outline the possibility/probability of accidental events occurring, the impact they may have, the measures taken to prevent or respond to such an event and the residual impact should an event occur.

For each component include:

(a) The nature and extent of any impact;

(b) Measures that will be taken to avoid, mitigate or minimize such impact; and

(c) Residual impacts

10.1 Extreme weather

For example: hurricanes/cyclones.

10.2 Natural hazards

For example: volcanic eruptions, seismic events.

10.3 Accidental events

For example: leakage or spillage of hazardous material, fires and explosions, and collisions, including potential loss of equipment.

I – Members of the International Seabed Authority

Russian Federation

Environmental Impact Statement (Annex IV), paragraph 10	Accidental events and natural hazard <….> This section should outline the possibility/probability of accidental events occurring, the impact they may have, the measures taken to prevent or respond to such an event and the residual impact should an event occur. For each component include: (a) The nature and extent of any impact; <….>.	It is proposed to adjust the content of this paragraph taking into account adequately assess the possibility of providing information on the nature and extent of the impact and the residual impact of the alleged accidental event before it occurs.	The question arises about the possibility of providing information on the nature and extent of the impact and the residual impact of the alleged accidental event before it occurs.

11. Environmental management, monitoring and reporting

Provide sufficient information to enable the Authority to anticipate possible environmental management, monitoring and reporting requirements for an environmental approval. Information listed should reflect the proponent's environmental policy and the translation of that policy to meet the requirements of this section and previous sections during different stages of the project life (i.e., from construction to decommissioning and closure).
The Environmental Management and Monitoring Plan is a separate report from the Environmental Impact Statement, but this could be a useful opportunity to highlight some of the key issues from the Statement that will be addressed in the full Environmental Management and Monitoring Plan. Information detailed in this section should include the headings set out below.

11.1 Organizational structure and responsibilities

This section should show how the Contractor's environmental team fits into its overall organizational structure. Responsibilities of key personnel should be outlined.

11.2 Environmental management system

Although a full environmental management system may not exist at the time the Environmental Impact Statement is submitted, outline the standards that will be considered and/or aligned with when developing the system for the project.

11.3 Environmental Management and Monitoring Plan

An Environmental Management and Monitoring Plan will be submitted as a separate document for the Authority's approval prior to the commencement of mining operations. This section should provide an overview of what the Plan would entail. This section should include, at a minimum, the headings set out below.

11.3.1 Mitigation and management

Summarize the actions and commitments that have arisen from the impact minimization and mitigation strategies.

11.3.2 Monitoring plan

Summarize the monitoring plan approach and programme.

11.3.2.1 Approach

11.3.2.2 Programme

Provide an overview of the envisaged monitoring programme (further detail will be provided in the Environmental Management and Monitoring Plan).

11.3.3 Closure Plan

A Closure Plan will be submitted as a separate document for the Authority's approval. However, this section should provide an overview of what the Closure Plan will entail, including decommissioning, continued monitoring and rehabilitation measures, if applicable.

11.4 Reporting

11.4.1 Monitoring

Outline how the results of monitoring studies will be reported to the Authority.

11.4.2 Incident reporting

Outline how Incidents will be reported and managed.

I – Members of the International Seabed Authority

Australia

11.2 Environmental management system

Although a full environmental management system may not exist at the time the Environmental Impact Statement is submitted, outline the standards that will be considered and/or aligned with when developing the system for the project.

11.3 Environmental Management and Monitoring Plan

An Environmental Management and Monitoring Plan will be submitted as a separate document for the Authority's approval prior to the commencement of mining operations. This section should provide an overview of what the Plan would entail. This section should include, at a minimum, the headings set out below.

Commented [AUS99]: Australia recommends reinserting the definition of 'environmental management system'. This term is currently undefined in this version of the regulations. However, we note that the previous version of the draft Environmental Regulations (before they were merged) included a definition of the term and a draft regulation (Regulation 28) which outlined the requirements for an Environmental Management System.

The environmental management system was defined as, "that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance'

Chile

11. **Gestión ambiental, vigilancia y presentación de informes**

Al hacer referencia a la política ambiental de los contratistas, es fundamental que los mismos implementen y sigan un sistema de gestión ambiental. De lo contrario, dicha política será solo una declaración de intereses, sin contar con una aplicabilidad real y efectiva.

Si bien el Plan de Gestión y Vigilancia Ambiental constituye en sí un informe separado, es importante destacar que su elaboración se basa en la declaración de impacto ambiental. La gestión y vigilancia está directamente relacionada con los impactos ambientales identificados.

11.2 **Sistema de gestión ambiental**

Debiera ser un requisito. Al no haberse implementado a cabalidad al momento de presentarse la declaración de impacto ambiental, si se requiere la planificación de su adopción e implementación.

Por tratarse de la explotación de recursos naturales no renovables que corresponden al **Patrimonio Común de la Humanidad**, lo esperable es que se realice considerando los **mejores estándares ambientales** posibles. Una de las mejores formas de propiciar esto es exigiendo la aplicación de la mejora continua mediante un sistema de gestión ambiental.

Germany

(11) Environmental management, monitoring and reporting: Provide sufficient information to enable the Authority to anticipate possible environmental management, monitoring and reporting requirements for an environmental approval. Information listed include a description of the proponent's environmental management system and should reflect the proponent's environmental policy and the translation of that policy to meet the requirements under this section and previous sections during different stages of the project life (i.e., from construction to decommissioning and closure). […]

[…]

(11.2) Environmental management system: ~~Although a~~A full environmental management system ~~may~~ shall ~~not~~ exist at the time the Environmental Impact Statement is submitted. The proponent has to demonstrate that it will be capable of managing all relevant environmental questions.

[…]

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

- In addition to reflecting the proponent's environmental policy, this section should demonstrate compatibility with the Authority's strategic overarching environmental goals and objectives for the Area and with the environmental goals and objectives of the REMP.
- The role of independent assessment in the monitoring process itself, not just the Plan, is also important. We encourage the Authority to consider the transparency of this process in environments so remote from human interactions. Such an approach would support the integrity of the organization.

12. Product stewardship

Provide a brief description of the intended use of the mineral-bearing ore once it leaves the Area. The description should also address the meeting of standards for environmental management. The intention is not to provide a full and highly detailed account, but, where information is known about environmental impacts, these impacts should be described briefly here.

13. Consultation

Describe the nature and extent of consultation(s) that have taken place with parties identified who have existing interests in the proposed project area and with other relevant stakeholders.

13.1 Consultation methods

Describe the mechanism(s) used to consult with different groups and how this aligns with any relevant consultation obligations.

13.2 Stakeholders

List any relevant stakeholders that have been consulted and explain the process by which stakeholders were identified.

13.3 Public consultation and disclosure

Provide a description of the goals and consultation workshops/meetings that occurred prior to the preparation of the report. Include a description of key concerns and comments identified by stakeholders and whether or not the applicant intends to address these concerns, and, if not, describe the reasons for that decision.

13.4 Continuing consultation and disclosure

Outline any further consultation with stakeholders that has been deemed necessary and is being planned.

I – Members of the International Seabed Authority

Australia

13.2 Stakeholders

List any relevant stakeholders that have been consulted, ~~and~~ explain the process by which stakeholders were identified **and summarise any matters raised by stakeholders and how these will be addressed**.

Commented [AUS100]: Australia recommends amendments to this provision to increase transparency in relation to stakeholder consultation.

France

Enfin, dans la Section 13 relative à la procédure de consultations (Annexe IV), toute consultation entreprise avec un opérateur de câbles devrait faire l'objet d'un rapport sur la façon dont les préoccupations respectives du contractant et de l'opérateur qui dispose d'un câble ou planifie d'en poser un dans le secteur visé par la plan de travail ont été prises en compte/résolues.

Germany

(13) Consultation: Describe the nature and extent of consultation(s) that have taken place with parties identified who have existing interests or future interests in the proposed project area and with other relevant stakeholders based on the applicable guidelines.
[…]"

- In relation to a new **Annex [IVbis] on "Regional Environmental Management Plans"**, please see the explanations in the section "main issues".
- In relation to a new **Annex [IVter] on "Test Mining"**, please see the explanations in the section "main issues".

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

13. Consultation

- Are any Standards and/or Guidelines provided as to how a Contractor should conduct a Stakeholder consultation?

13.3 Public consultation and disclosure

- Comment coding for consultations is highly subjective, thus we recommend consideration be given to the independent nature of consultation and identifying the

"key concerns". To allow for transparency, comments given by Stakeholders should be available as data to download publicly.

14. Glossary and abbreviations

Explain the relevant terms used in the Environmental Impact Statement (e.g., terms under different legislation, technical terms) and provide a list of acronyms and their definitions.

15. Study team

Outline the people involved in carrying out the environmental impact assessment studies and in writing the Environmental Impact Statement. If independent scientists or other experts were involved in any of the work, they should be listed. The names, occupational qualifications and their role in the generation of the Environmental Impact Statement of such people should also be included.

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

For preparers of the EIS, it will be important to clearly identify their activities that could reflect potential conflicts of interest.

16. References

Provide details of reference materials used in sourcing information or data used in the Environmental Impact Statement.

17. Appendices

The appendices should include all the technical reports carried out for parts of the environmental impact assessment and the Environmental Impact Statement.

Annex V

Emergency Response and Contingency Plan

An Emergency Response and Contingency Plan must:

(a) Be prepared in accordance with Good Industry Practice and the relevant regulations, Standards and Guidelines;

(b) Provide an effective plan of action for the applicant's efficient response to Incidents and events, including processes by which the applicant will work in close cooperation with the Authority, coastal States, other competent international organizations and, where applicable, emergency response organizations; and

(c) Include:

(i) The overall aims and objectives and arrangements for controlling the risk of Incidents;

(ii) Relevant codes, standards and protocols;

(iii) Organizational structure and personnel roles and responsibilities;

(iv) Details of individuals authorized to initiate response mechanism(s);

(v) Details of control mechanisms in place during the course of normal operations;

(vi) Details of the emergency response equipment;

(vii) Details of the safety management system;

(viii) Details of the environmental management system;

(ix) A description of the mining operations and equipment, including emergency response equipment;

(x) A description of all foreseeable Incidents, an assessment of their likelihood and consequences and associated control measures;

(xi) The number of persons that can be present on the mining vessel(s) at any time;

(xii) A description of the arrangements to protect persons on the mining vessel(s), and to ensure their safe escape, evacuation and rescue;

(xiii) Details of arrangements for the maintenance of control systems to monitor the Marine Environment in the event of an Incident;

(xiv) Details of the emergency response plan;

(xv) Details of the known natural marine environmental conditions that may influence the efficiency of response equipment or the effectiveness of a response effort;

(xvi) Information and measures relating to the prevention of Incidents which could result in Serious Harm to the Marine Environment;

(xvii) An assessment of pollution hazards and the measures to prevent or reduce such hazards;

(xviii) An assessment of Mining Discharges and measures to control such discharges;

(xix) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning;

(xx) Details of arrangements for coordinating any emergency response;

(xxi) Details of training programmes for personnel;

(xxii) A description of the monitoring of performance under the plan;

(xxiii) Details of audit and review processes;

(xxiv) Details of the presence of other hazards/harmful substances; and

(xxv) An assessment of the likelihood of oil spills, leaks, etc., due to the normal operation of the mining vessel.

Note: This plan is to be developed further under these regulations and in conjunction with other international organizations, flag States, coastal States and sponsoring States and other entities that have relevant jurisdictional competence with regard to specific components of the plan.

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

Concerns that the ISA's Guidelines are referred to in the EIS (e.g., Section 2.4, 5.4), the Emergency Response and Contingency Plan (Annex V) and the Closure Plan (Annex VIII) but their timeline for completion is uncertain. Without the Guidelines, some aspects of the EIS, the Emergency Response and Contingency Plan and the Closure Plan will be open for interpretation by Contractors.

Annex V - Emergency Response and Contingency Plan

- In Section xvii and xviii, there are assessments of pollution hazards and Mining Discharges. There should be a parallel section that includes assessments of environmental impacts (surface, midwater, benthic) created by the emergency, as well as measures to prevent or reduce such hazards. These would encompass harmful effects and serious harm.
- An additional section should be included addressing "Accountability and Liability" for environmental damage (harmful effects, serious harm) resulting from the Emergency.

Institute for Advanced Sustainability Studies

98. With respect to Annex V, we suggest a slight amended to paragraph (b) as follows: "[…] other competent international organizations, as well as other persons with the relevant expertise or know-how, and, where applicable […]".

99. There seems to be a repetition with respect to paragraph (c)(vi) and (ix).

100. Also with respect to Annex V, with reference to paragraph (c)(iv), (xi) and (xiv), we wish to point out that Annex V should specify that a certain (minimal) number of individuals authorized to initiate response mechanism(s) should be present at the mining vessels at each given time. As mentioned, DR 53(1)(b), requires Contractors to "maintain such resources and procedures as are necessary for the prompt execution and implementation of the ERCP and any Emergency Order issued by the Authority". This should be detailed out in Annex V.

Annex VI

Health and Safety Plan and Maritime Security Plan

[To be populated following discussion with the International Maritime Organization secretariat, members of the Authority and Stakeholders]

I - Members of the International Seabed Authority

Australia

Annex VI

Health and Safety Plan and Maritime Security Plan

Commented [AUS101]: We re-iterate our previous comments that we consider health and safety should be addressed in a separate plan from maritime security.

Russian Federation

52.	**Annex VI Health and Safety Plan and Maritime Security Plan**	[To be populated following discussion with the International Maritime Organization secretariat, members of the Authority		In addition to reference to the IMO, it is suggested to add consultations with the International Labour Organization, which, among other issues, deals with the regulation of labor relations, including health and safety,

Annex VII

Environmental Management and Monitoring Plan

1. The Environmental Management and Monitoring Plan prepared under these regulations and this annex VII shall be:

(a) Prepared in plain language and in an official language of the Authority, together with, where applicable, an official English-language version; and

(b) Verified by the report of independent competent persons.

2. An Environmental Management and Monitoring Plan shall contain:

(a) A non-technical summary of the main conclusions and information provided to facilitate understanding by members of the Authority and Stakeholders;

(b) A description of the area likely to be affected by the proposed activities;

(c) The environmental objectives and standards to be met;

(d) Details of the Environmental Management System and the applicant's environmental policy;

(e) An assessment of the potential Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result;

(f) An assessment of the significance of the potential Environmental Effects, and proposed mitigation measures and management control procedures and responses to minimize the harm from Environmental Effects consistent with the environmental impact assessment and the Environmental Impact Statement;

(g) A description of the planned monitoring programme and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Management and Monitoring Plan, including the necessary risk assessment and management techniques, including adaptive management techniques (process, procedure, response), if appropriate, needed to achieve the desired outcomes;

(h) Details of the proposed monitoring stations across the project area, including the frequency of monitoring and data collection, the spatial and temporal arrangements for such monitoring and the justification for such arrangements;

(i) The location and planned monitoring and management of preservation reference zones and impact reference zones, or other spatial management planning tools;

(j) A description of relevant environmental performance Standards and indicators (trigger and threshold points), including decision rules based on the results of the monitoring of these indicators;

(k) A description of a system for ensuring that the plan shall adhere to Good Industry Practice, Best Available Techniques and Best Available Scientific

Evidence, and a description of how such practices are reflected in the proposed Exploitation activities;

(l) Details of the quality control and management standards, including the frequency of the review of the performance of the Environmental Management and Monitoring Plan;

(m) A description of the technology to be deployed, in accordance with Good Industry Practice and Best Available Techniques;

(n) Details of the training programme for all persons engaged or to be engaged in activities in the project area;

(o) Details of Mining Discharges, including a waste assessment and prevention audit;

(p) Details of ongoing consultation with other users of the Marine Environment;

(q) Details of any practicable restoration of the project area;

(r) A plan for further research and studies; and

(s) Details of reporting requirements and timing.

I – Members of the International Seabed Authority

Australia

(e) An assessment of the potential Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result;

(f) An assessment of the significance of the potential Environmental Effects, and proposed mitigation measures and management control procedures and responses to minimize the harm from Environmental Effects consistent with the environmental impact assessment and the Environmental Impact Statement;

(g) A description of the planned monitoring programme and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Management and Monitoring Plan, including the necessary risk assessment and management techniques, including adaptive management techniques (process, procedure, response), if appropriate, needed to achieve the desired outcomes;

(o) Details of Mining Discharges, including a waste assessment and prevention audit;

(p) Details of ongoing consultation with other users of the Marine Environment;

Commented [AUS102]: This provision provides that the Environmental Management and Monitoring Plan shall contain an assessment of the potential Environmental effects of the proposed activities on the Marine Environment and any significant changes likely to result. We consider there needs to be better linkages between these elements, for example setting out what are the impacts and risks, and what are the proposed control and mitigation measures, how will this reduce the risk to the environment, and whether the residual risk is acceptable.

A prerequisite to determine the potential environmental effects of the proposed Exploitation activities on the marine environment is the establishment of an environmental baseline against which to assess the impacts of mining on the marine environment. Consideration should be given as to whether this requirement has been met in the draft regulations.

Commented [AUS103]: This provision states that the plan will contain details of Mining Discharges, including a waste assessment and prevention audit. Further information is required on how these discharges will be managed to an acceptable level, and what incentives the contractor will have to continually improve these.

Canada

(c) The environmental objectives based on baseline environmental data and standards to be met;

Chile

ANEXO VII
Plan de gestión y vigilancia ambiental

Párrafo 2

El plan debe también incluir los parámetros y variables específicas a monitorear, separándolos según matriz ambiental, como también el presupuesto y financiamiento de las actividades propuestas.

Numeral 2 letra o)

Es preciso especificar con mayor detalle aspectos a considerar en la evaluación de los desechos que se pretenden verter. Para lo anterior se deberían emplear las guías del **Anexo 2 del Protocolo del Convenio de Londres** o similares.

Chile considera que es necesario incluir mecanismos de revisión, control, actualización y mejoramiento del plan.

China

38. Annex VII

Paragraph 1 (b) stipulates that environmental management and monitoring plans shall be verified by the report of independent competent persons. The appointment of "independent competent persons" and the effect of their verification and report are not clear and should be further clarified.

France

Au **paragraphe 2, les alinéas h, j et l** soulèvent la question de l'entité responsable de définir la fréquence du suivi et les normes et indicateurs de performance environnementale. S'agit-il du contractant ? Ou cela fait-il partie des normes environnementales adoptées par le Conseil (articles 45 et 94) ? Cet aspect doit être spécifié.

Germany

- With regard to **Annex VII**, we have the following suggestions:

Annex VII: Environmental Management and Monitoring Plan
"(1) The Environmental Management and Monitoring Plan prepared under these Regulations and this annex VII shall be: (a) Prepared in accordance with the relevant Regulations and Standards, taking into account applicable ~~and~~ Guidelines, on the basis of Best Environmental Practice, Best Available Scientific Evidence, and Best Available Information; (b) Prepared in ~~plain~~ clear language and in an official language of the Authority […]. […].
(2) An Environmental Management and Monitoring Plan shall contain: […] (i bis) The location and boundaries of planned or established long-term protected areas as determined in the applicable Regional Environment Management Plan; […]."

Italy

Annex VII 1 (n)	Compensatory measures are not addressed elsewhere in the document.	Details of any ~~compensatory~~ measures agreed or proposed to achieve the agreed closure objectives; and

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 Environmental Management and Monitoring Plan prepared under these regulations and this annex VII shall be:

(a) Prepared in plain language and in an official language of the Authority, together with, where applicable, an official English-language version; ~~and~~

(b) Verified by the report of independent competent persons; and~~.~~

(c) Based on the Best Available Scientific Information

2. An Environmental Management and Monitoring Plan shall contain:

(a) A non-technical summary of the main conclusions and information provided to facilitate understanding by members of the Authority and Stakeholders;

(b) A description of the area likely to be affected by the proposed activities;

(c) A description of the biophysical environmental baseline data, including a characterization of the area proposed to be mined, adjacent areas that could be affected by mining, rare and endangered species present, and areas that will be avoided due to their environmental value.

Commented [A75]: Baseline data is needed to properly assess any potential environmental effects and will be critical to assess any significant change as a result of mining activities. While this could come out of the EIS in some cases, it should be restated here.

(c) The environmental objectives and standards to be met;

(d) Details of the Environmental Management System and the applicant's environmental policy;

(k) A description of a system for ensuring that the plan shall adhere to Good Industry Practice, Best Available Techniques and ~~Best Available Scientific Evidence~~Best Available Scientific Information, and a description of how such practices are reflected in the proposed Exploitation activities;

Annex VII - Environmental Management and Monitoring Plan

- It would help reviewers to understand the full process around the Authority's plans for developing the environmental objectives, targets and metrics, as well as expected standards. We are hopeful that a process with full Stakeholder engagement will define aspects such as significant changes, harmful effects, etc. Similarly, standards for performance and indicators (triggers and thresholds) do not currently exist.

1b: "verified by the report of independent competent persons". A reference should be provided to a document elaborating on the definition of "competent persons" and a document on such a report structure.

2c: "The environmental goals, and targets to be met,"; We recommend to explain the terms "environmental goal" and "environmental target" in "Use of Terms and Scope". In addition, we recommend rewording to "The environmental goals, and targets to be met, consistent with the regional environmental management plan" We note that such goals, objectives and targets are not yet defined.

2d: The roles and responsibilities of personnel should be outlined in the EMMP. This section could outline a chain of command and include the roles and responsibilities of personnel in relation to implementation, management, and review to accomplish the following:

- Provide names, positions, and contact information of personnel involved with ensuring the proper implementation of the EMMP (note if positions unassigned).
- Discuss the roles and responsibilities of the proponent, Contractors, and Subcontractors identified and the interrelationships between these entities. Particularly important in this is to demonstrate that environmental considerations are included in decision making at all levels within the company.
- Provide organizational flowcharts or other diagrams of key personnel.

2d and 2e: We recommend stringent review by independent experts. The Contractor must demonstrate capacity in place for monitoring the required parameters.

2d or 2k: It is common in EMMPs to include an environmental commitments section for the proponent to outline their specific environmental commitments (which become a key management tool during implementation of the project). This could include:

- Adherence to all outcomes and obligations of the EMMP
- Proposed mitigation measures and monitoring activities against all residual impacts, unexpected releases, and anything that compromises worker safety
- The nature of the work to be undertaken
- The objectives to be met
- Who is responsible for the environmental commitments?
- Who will undertake the operation?
- Who is responsible for monitoring and recording that the EMMP environmental commitments are properly fulfilled?
- Who is responsible for reporting that the EMMP environmental commitments are met?

2e: We recommend including an assessment of the potential longevity of environmental effects.

2f: Suggest that this should reflect the mitigation hierarchy so that the mitigation measures to avoid, minimize and remediate the harm from environmental effects are clear. Also emphasize the importance of clarifying any potential residual impacts.

2j: Refer to the Authority's Guidelines so that the Standards and indicators (trigger and threshold points) used reflect those within the Guidelines.

2g: Suggest including the financial implications, and adding: "…adaptive management techniques (process, procedure, timing, monitoring of response)…"

2g: This should instruct, in detail, on how Contractors should measure their periodic performance for the Plan (DR 50). The performance assessment is required to contain the assessment of three compliance obligations (1. monitoring environmental effects, 2. implementing measures, 3. good industrial practices; DR 49, 50). None of these aspects is explained in this clause (2g).

2g: It may be useful to include a reference to the Emergency Response and Contingency Plan. Specifically listing the actions that are covered under "normal operations" (i.e. under the EMMP) and "emergency actions" (i.e. under the Emergency and Response Contingency Plan). This may include the requirement for a contingency plan under the EMMP.

2g: The DRs 49 and 50 and this Annex (VII(2g)) do not clarify whether the ISA seeks for compliance-oriented performance (standards- or process-focused) or environmental effects-oriented performance (result-focused). It would be helpful for Contractors (and independent competent persons to verify the assessments) that suggests the ISA's priority for the performance assessments. This will relate to the review (DR 56) of the performance assessments or Environmental Performance Guarantee (DR 27).

2l: The review should establish procedures for the periodic review of the EMMP to ensure that the plan's contents are correct and that it is being properly implemented. It may be important to include the opportunity for independent review of how the Contractor is meeting its obligations. These reviews will ensure that—should conditions arise that alter the plan's contents or requirements—the EMMP remains updated to reflect these changes. The information provided in this section should, at a minimum, accomplish the following:

- Demonstrate how the proponent intends to maintain the EMMP as a "live" document, capable of modification during the project's life cycle and as circumstances dictate.
- Indicate who will regularly review, update, and develop the EMMP as the mining project progresses.
- Outline procedures for the periodic review of the EMMP to ensure that its contents are correct and that it is being properly implemented.

2l: A new section is required that details how the Environmental Performance of the proponent will be audited. This may require details on who will audit, how frequently, and how corrective actions will be implemented and actions for non-compliance. This is distinct from the point above and the current text (which refers to assessment by the proponent) in being carried out by an independent third party.

Institute for Advanced Sustainable Studies

101. We recommend a new insertion in Annex VII, namely paragraph 1(a bis), which states: "Prepared in conformity with the application regional environmental management plan". Similarly, paragraph 2(c) should be expanded as follows: "The environmental objectives and standards to be met, with particular attention being paid towards conforming to the applicable regional environmental management plan".

III – Stakeholders

Nauru Ocean Resources Inc.

Annex VII 2(e) and 2(f)

NORI notes that typically an Environmental Management and Monitoring Plan would not include an 'assessment' of the potential environmental effects or their significance. An assessment involves significant work which has already been completed as part of the EIA and is documented in the EIS. We suggest that it would be more appropriate for the EMMP to include a 'summary' of potential Environmental Effects and their significance. As such, NORI recommends that the following changes are made to Annex VII 2(e) and 2(f):

2(e) ~~An assessment~~ A summary of the potential Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result;

2(f) ~~An assessment~~ A summary of the significance of the potential Environmental Effects, and proposed mitigation measures and management control procedures and responses to minimize the harm from Environmental Effects consistent with the environmental impact assessment and the Environmental Impact Statement;

Annex VIII

Closure Plan

1. The Closure Plan shall be prepared and implemented in accordance with the Guidelines and the relevant regional environmental management plan and shall include the following information:

(a) A description of the closure objectives and how these relate to the mining activity and its environmental and social setting;

(b) The period during which the plan will be required, which shall be determined by reference to a specified duration, achievement of a specified event or target indicator or compliance with specified terms agreed with the Authority;

(c) A plan with coordinates showing the area(s) subject to the closure objectives;

(d) A summary of the relevant regulatory requirements, including conditions previously documented;

(e) Details of the closure implementation and timetable, including descriptions of the arrangements for the temporary suspension of mining activities or for permanent closure decommissioning arrangements for vessels, Installations, plant and equipment (where applicable);

(f) Data and information relating to baseline conditions for monitoring measures;

(g) An updated environmental impact assessment for the activities that will be undertaken during closure, if any, together with details of the identifiable residual Environmental Effects, including any relevant technical documents or reports;

(h) Details of monitoring to be undertaken during and after closure that specify the sampling design (spatial and temporal sampling), the methods to be used and the duration of the post-closure activities;

(i) Details of the management measures to Mitigate the residual Environmental Effects;

(j) Details of any restoration objectives and activities, where applicable;

(k) Information on reporting and management of data and information post-closure;

(l) Details of the persons or entity (subcontractor, consultant(s)) that will carry out the monitoring and management measures under the Closure Plan, including their qualification(s) and experience, together with details of the budget, project management plan and the protocols for reporting to the Authority under the Closure Plan;

(m) Details of the amount of the Environmental Performance Guarantee provided under these regulations;

(n) Details of any compensatory measures agreed or proposed to achieve the agreed closure objectives; and

(o) Details of consultations with Stakeholders in respect of the plan.

2. The level of detail in the Closure Plan is expected to differ between cases involving a temporary suspension of mining operations and cases involving final mine closure. The content of the Closure Plan is to be commensurate with the nature, extent and duration of activities associated with the level of closure and maturity of the project.

I – Members of the International Seabed Authority

Australia

(e) Details of the closure implementation and timetable, including descriptions of the arrangements for the temporary suspension of mining activities or for permanent closure decommissioning arrangements for vessels, Installations, plant and **removal of all** equipment (where applicable);

Commented [AUS104]: This provision states that the Closure Plan shall include, amongst other things, details of the closure implementation and timetable, including descriptions of the decommissioning arrangements for vessels, plants and equipment. We consider the obligation for contractors to remove all equipment and remediate the environment should be explicitly included here.

(j) Details of [~~any~~] **the** restoration **and remediation** objectives and activities, [~~where applicable~~];

Chile

Literal a)

Los objetivos generales de los planes de cierre deberían ser estandarizados por la Autoridad. No debe quedar a criterio de cada contratista lo que se espera lograr con el plan de cierre.

Ambientalmente deben apuntar a dejar el lugar en las condiciones más similares posibles a las existentes antes de la explotación, aplicando para ello medidas de restauración, reparación y rehabilitación.

Literal j)

La restauración debe hacerse siempre, ya que en todo escenario proceden dichas medidas.

Es necesario vincular, según corresponda, los planes de cierre con el fondo fiduciario de responsabilidad ambiental, especialmente el **literal e)** del **artículo 53**.

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

1g: In addition to details on residual Environmental Effects within an updated environmental impact assessment, the data relating to residual environmental impacts should be publically

1i and 1j: Details on any anticipated residual impacts even after restoration activities/mitigation measures need to be provided. A timetable for how long the mitigation measures and restoration activities are anticipated to take would also be useful to understand the practicalities of mitigating residual environmental effects.

1k: Information should be given on how data will be archived and made available post-closure.

1o: We are pleased to see that Stakeholders are expected to be consulted in respect to the Closure Plan. This will be an important consultation component to ensure any residual impacts are adequately compensated for and that impacts post-exploitation are adequately monitored. We acknowledge that the level of detail in a Closure Plan will differ between a temporary suspension and final mine closure, but some Guidance should be developed to set expectations for Stakeholder Consultations. This Guidance should then be referred to within Annex VIII(1)(o).

Annex IX

Exploitation contract and schedules

THIS CONTRACT made the ... day of ... between the INTERNATIONAL SEABED AUTHORITY represented by its SECRETARY-GENERAL (hereinafter referred to as "the Authority") and ... represented by ... (hereinafter referred to as "the Contractor") WITNESSETH as follows:

A. Incorporation of clauses

The standard clauses set out in annex X to the regulations on exploitation of mineral resources in the Area shall be incorporated herein and shall have effect as if herein set out at length.

B. Contract Area

For the purposes of this Contract, the "Contract Area" means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

C. Grant of rights

In consideration of (a) their mutual interest in the conduct of Exploitation in the Contract Area pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the Convention, (b) the rights and responsibility of the Authority to organize and control activities in the Area, particularly with a view to administering the resources of the Area, in accordance with the legal regime established in Part XI of the Convention and the Agreement and Part XII of the Convention, respectively, and (c) the interest and financial commitment of the Contractor in conducting activities in the Contract Area and the mutual covenants made herein, the Authority hereby grants to the Contractor the exclusive right to Explore for and Exploit [specified Resource category] in the Contract Area in accordance with the terms and conditions of this contract.

D. Entry into force and Contract term

This Contract shall enter into force on signature by both parties and, subject to the standard clauses, shall remain in force for an initial period of [x] years thereafter unless the Contract is sooner terminated, provided that this Contract may be renewed in accordance with the regulations.

E. Entire agreement

This Contract expresses the entire agreement between the parties, and no oral understanding or prior writing shall modify the terms hereof.

F. Languages

This Contract will be provided and executed in the [… and] English language[s] [and both texts are valid].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed this Contract at …, this … day of ….

The Schedules

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

Schedule 2
The Mining Workplan.

Schedule 3
The Financing Plan.

Schedule 4
The Emergency Response and Contingency Plan.

Schedule 5
The Health and Safety Plan and the Maritime Security Plan.

Schedule 6
The Environmental Management and Monitoring Plan.

Schedule 7
The Closure Plan.

Schedule 8
The Training Plan.

Schedule 9
Conditions, amendments and modifications agreed between the Commission and the Contractor, and approved by the Council, during the application approval process.

Schedule 10
Where applicable under regulation 26, the form of any Environmental Performance Guarantee, and its related terms and conditions.

Schedule 11
Details of insurance policies taken out or to be taken out under regulation 36.

Schedule 12
Agreed review dates for individual plans, together with any specific terms attaching to a review, where applicable.

Schedule 13
To the extent that any documentation is not available at the point of signing the Contract, and a time frame for submission has been agreed with the Commission, this should be reflected here, together with, where applicable, deadline dates.

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

Institute for Advanced Sustainability Studies

102. With respect to Annex IX, the certificate of sponsorship should also be included in the Schedule to the contract, i.e. as a new Schedule 1 bis.

Standard clauses for exploitation contract

Section 1
Definitions

In the following clauses:

(a) "Regulations" means the regulations on exploitation of mineral resources in the Area, adopted by the Authority; and

(b) "Contract Area" means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

Section 2
Interpretation

2.1 Terms and phrases defined in the regulations have the same meaning in these standard clauses.

2.2 In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Contract and references in this Contract to the Convention are to be interpreted and applied accordingly.

Section 3
Undertakings

3.1 The Authority undertakes to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention.

3.2 The Contractor shall implement this contract in good faith and shall in particular implement the Plan of Work in accordance with Good Industry Practice. For the avoidance of doubt, the Plan of Work includes:

(a) The Mining Workplan;

(b) The Financing Plan;

(c) The Emergency Response and Contingency Plan;

(d) The Training Plan;

(e) The Environmental Management and Monitoring Plan;

(f) The Closure Plan; and

(g) The Health and Safety Plan and Maritime Security Plan,

that are appended as schedules to this Contract, as the same may be amended from time to time in accordance with the regulations.

3.3 The Contractor shall, in addition:

(a) Comply with the regulations, as well as other Rules of the Authority, as amended from time to time, and the decisions of the relevant organs of the Authority;

(b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

(c) Pay all fees and royalties required or amounts falling due to the Authority under the regulations, including all payments due to the Authority in accordance with Part VII of the regulations; and

(d) Carry out its obligations under this Contract with due diligence, including compliance with the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment, and exercise reasonable regard for other activities in the Marine Environment.

Section 4
Security of tenure and exclusivity

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein.

4.2 The Authority undertakes not to grant any rights to another person to Explore for or Exploit the same resource category in the Contract Area for the duration of this Contract.

4.3 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than the resource category specified in this Contract but shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation activities of the Contractor.

4.4 If the Authority receives an application for an exploitation contract in an area that overlaps with the Contract Area, the Authority shall notify the Contractor of the existence of that application within 30 Days of receiving that application.

Section 5
Legal title to Minerals

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof, in compliance with this Contract.

5.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

Section 6
Use of subcontractors and third parties

6.1 No Contractor may subcontract any part of its obligations under this Contract unless the subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority.

6.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its subcontractors and any work that is further subcontracted, in accordance with Good Industry Practice.

6.3 Nothing in this section shall relieve the Contractor of any obligation or liability under this Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under this Contract in the event that it subcontracts any aspect of the performance of those obligations.

Section 7
Responsibility and liability

7.1 The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, including the costs of reasonable measures to prevent and limit damage to the Marine Environment, account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage caused by the Contractor regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term.

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.

7.3 The Authority shall be liable to the Contractor for the actual amount of any damage caused to the Contractor arising out of its wrongful acts in the exercise of its powers and functions, including violations under article 168 (2) of the Convention, account being taken of contributory acts or omissions by the Contractor, its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract, or third parties.

7.4 The Authority shall indemnify the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, against all claims and liabilities of any third party arising out of any wrongful acts or omissions in the exercise of its powers and functions hereunder, including violations under article 168 (2) of the Convention.

Section 8
Force majeure

8.1 The Contractor shall not be liable for an unavoidable delay or failure to perform any of its obligations under this Contract due to force majeure, provided the Contractor has taken all reasonable steps to overcome the delay or obstacle to performance. For the purposes of this Contract, force majeure shall mean an event or condition that the Contractor could not reasonably be expected to prevent or control; provided that the event or condition was not caused by Contractor action, negligence or by a failure to observe Good Industry Practice.

8.2 The Contractor shall give written notice to the Authority of the occurrence of an event of force majeure as soon as reasonably possible after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance and if a remedy is possible, the estimated time to cure or overcome the event or circumstance and the obligations that cannot be properly or timely performed on account of the event or circumstance) and similarly give written notice to the Authority of the restoration of normal conditions.

8.3 The Contractor shall, upon request to the Secretary-General, be granted a time extension equal to the period by which performance was delayed hereunder by force majeure and the term of this Contract shall be extended accordingly.

Section 9
Renewal

9.1 The Contractor may renew this Contract for periods not more than 10 years each, on the following conditions:

(a) The resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(c) This Contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.

9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.

9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract shall be renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.

Section 10
Renunciation of rights

10.1 The Contractor, by prior written notice to the Authority, may renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

Section 11
Termination of sponsorship

11.1 If the nationality or control of the Contractor changes or the Contractor's sponsoring State or States, as defined in the regulations, terminates its sponsorship, the Contractor shall promptly notify the Authority, and in any event within 90 Days following such changes or termination.

11.2 In either such event, if the Contractor does not obtain another sponsor meeting the requirements prescribed in the regulations which submits to the Authority a certificate of sponsorship for the Contractor in the prescribed form within the time specified in the regulations, this Contract shall terminate forthwith.

Section 12
Suspension and termination of Contract and penalties

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:

(a) If, in spite of written warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this Contract, Part XI of the Convention, the Agreement and the rules, regulations and procedures of the Authority;

(b) If the Contractor has failed, within a reasonable period, to comply with a final binding decision of the dispute settlement body applicable to it;

(c) If the Contractor knowingly, recklessly or negligently provides the Authority with information that is false or misleading;

(d) If the Contractor or any person standing as surety or financial guarantor to the Contractor pursuant to regulation 26 of the regulations becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction; or

(e) If the Contractor has not made bona fide efforts to achieve or sustain Commercial Production and is not recovering Minerals in commercial quantities at the end of five years from the expected date of

Commercial Production, save where the Contractor is able to demonstrate to the Council's satisfaction good cause, which may include force majeure, or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving commercial production.

12.2 The Council may, without prejudice to Section 8, after consultation with the Contractor, suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if the Contractor is prevented from performing its obligations under this Contract by reason of an event or condition of force majeure, as described in Section 8, which has persisted for a continuous period exceeding two years, despite the Contractor having taken all reasonable measures to overcome its inability to perform and comply with the terms and conditions of this Contract with minimum delay.

12.3 Any suspension or termination shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate this Contract in accordance with Part XI, Section 5, of the Convention, in which case this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

12.4 If the Contractor takes such action, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

12.5 If the Council has suspended this Contract, the Council may by written notice require the Contractor to resume its operations and comply with the terms and conditions of this Contract, not later than 60 Days after such written notice.

12.6 In the case of any violation of this Contract not covered under Section 12.1 (a), or in lieu of suspension or termination under Section 12, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation.

12.7 Subject to Section 13, the Contractor shall cease operations upon the termination of this Contract.

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

Section 13
Obligations on Suspension or following Expiration, Surrender or Termination of a Contract

13.1 In the event of termination, expiration or surrender of this Contract, the Contractor shall:

(a) Comply with the final Closure Plan, and continue to perform the required environmental management of the Contract Area as set forth in the final Closure Plan and for the period established in the final Closure Plan;

(b) Continue to comply with relevant provisions of the regulations, including:

(i) Maintaining and keeping in place all insurance required under the regulations;

(ii) Paying any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of suspension or termination; and

(iii) Complying with any obligation to meet any liability under Section 8;

(c) Remove all Installations, plant, equipment and materials in the Contract Area; and

(d) Make the area safe so as not to constitute a danger to persons, shipping or the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any, shall be deducted from the Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

Section 14
Transfer of rights and obligations

14.1 The rights and obligations of the Contractor under this Contract may be transferred in whole or in part only with the consent of the Authority and in accordance with the regulations, including payment of the fee as set out in appendix II to the regulations.

14.2 The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant in accordance with the regulations and assumes all of the obligations of the Contractor, and if the transfer does not confer to the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention.

14.3 The terms, undertakings and conditions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 15
No waiver

No waiver by either party of any rights pursuant to a breach of the terms and conditions of this Contract to be performed by the other party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

Section 16
Modification of terms and conditions of this Contract

16.1 When circumstances have arisen or are likely to arise after this Contract has commenced which, in the opinion of the Authority or the Contractor would render this Contract inequitable or make it impracticable or impossible to achieve the objectives set out in this Contract or in Part XI of the Convention, the parties shall enter into negotiations to revise it accordingly.

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

16.3 This Contract may be revised only:

(a) With the consent of the Contractor and the Authority; and

(b) By an appropriate instrument signed by the duly authorized representatives of the parties.

16.4 Subject to the confidentiality requirements of the regulations, the Authority shall publish information about any revision to the terms and conditions of this Contract.

Section 17
Applicable law

17.1 This Contract is governed by the terms of this Contract, the Rules of the Authority and other rules of international law not incompatible with the Convention.

17.2 The Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract shall observe the applicable law referred to in Section 17.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

17.3 Nothing contained in this Contract shall be deemed an exemption from the necessity of applying for and obtaining any permit or authority that may be required for any activities under this Contract.

17.4 The division of this Contract into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 18
Disputes

Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part XII of the regulations.

Section 19
Notice

Any notice provided to or from one party to another pursuant to this Contract shall be provided in accordance with the notice provision set out at regulation 91 of the regulations.

Section 20
Schedules

This Contract includes the schedules to this Contract, which shall be an integral part hereof.

I - Members of the International Seabed Authority

Canada

(a) The resource category is recoverable annually in commercial ~~and profitable~~ quantities from the Contract Area;

Chile

Cláusula 8.1
Fuerza mayor

Incorporar como cláusula estándar en un contrato de estas características, la exclusión de responsabilidad de los contratistas por fuerza mayor, trasladando la carga de la prueba a la Autoridad. Chile considera que este tema debe ser objeto del análisis jurídico más profundo, por cuanto los efectos de este tipo de cláusula pueden perjudicar tanto a la Autoridad como a los Estados.

Cláusula 12
Suspensión y rescisión del contrato y sanciones

Se estima inconveniente utilizar una expresión tan amplia como "***período razonable***". Debido a la importancia de este tema sería más adecuado establecer plazos.

Exoneración

Se requiere una mayor claridad en esta redacción, por cuanto es confusa y no queda claro cuál es su objetivo.

France

A la **section 9**, le renouvellement pour 10 ans devrait pouvoir se faire sur simple demande du contractant, sans avoir à fournir un nouveau plan de travail, plan de formation, plan de gestion de l'environnement, etc.

Mexico

Por lo que respecta a la **parte VII, los Apéndices II y IV y el anexo X, cláusula 5** del Proyecto de Código de Explotación relativa las cuestiones financieras de los contratos de explotación en los que se incluyen el reparto y la participación de los beneficios, México recuerda que las formas en las que se traduce este reparto pueden ser desde una perspectiva monetaria o no monetaria.

En los Contratos de Utilidad Compartida los derechos de exploración y explotación se reparten entre el contratista y el Estado, mientras que la titularidad sobre la producción es en favor del Estado **(Anexo X, cláusula 5)**. En este esquema el contratista tiene derecho a la recuperación de los costos operativos y al remanente de la utilidad operativa después de cubrir la contraprestación al Estado por la utilidad operativa. La comercialización de la producción está en manos o del Estado o de un tercero y el contratista no participa de ella.

Del mismo modo, se debe contemplar que estas garantías respondan al incumplimiento de fallos, sentencias, decisiones o resoluciones en contra de los contratistas derivadas de los procedimientos de resolución de controversias, en términos del **proyecto de artículos 106 y cláusula 12 del Anexo X** .

Russian Federation

53.	**Standard clauses for exploitation contract (Annex X), paragraphs 12.3 and 12.4**	Clause 12.3: <…>The suspension or termination shall be effective 60 Days after such written notice, unless the	It is proposed to delete the repeating phrase.	The final part of the last phrase 12.3 and clause 12.4 repeat each other.

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

(d) Make the area safe so as not to constitute a danger to persons, shipping or to result in adverse impacts, or a reasonable likelihood of such impacts, to the Marine Environment.

Commented [A76]: To specify what is meant by "danger" to the marine environment.

Advisory Committee on Protection of the Sea

Section 3: Undertakings
Section 6: Use of subcontractors and third parties
Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on these two sections.

Section 9: Renewal
Section 9.1(a): "The resource category is recoverable annually in **commercial and profitable quantities** from the Contract Area;" ***[Emphasis supplied.]***
See our comment on the **bolded** text here as made under **DR 20(6)(a)** above.

Section 9.1(b): Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on section 9.1(b).

Section 12: Suspension and termination of Contract and penalties
Section 13: Obligations on Suspension or following Expiration, Surrender or Termination of a Contract
Noting that the LTC implemented our comments submitted in September 2018, we have no further comments on these two sections.

Institute for Advanced Sustainability Studies

103. Concerning Annex X, Section 9, we are concerned that the renewal of contracts can continue indefinitely. We recommend that section 9.3 we slightly reworded to remove the second "shall", and thus read as follows: "[…] this Contract may be renewed […]. This provides the Council with some discretion, although it should be used sparingly and specifically to prevent a contract from being one that is 'in perpetuity'.

The Pew Charitable Trusts

Section 3 Undertakings

[…]

3.3 The Contractor shall, in addition:

(a) Comply with the Regulations, as well as other Rules of the Authority, as amended from time to time, and the decisions of the relevant organs of the Authority;

(b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

~~Observe, as far as reasonably practicable, any guidelines which may be issued by the Commission or the Secretary-General from time to time in accordance with the Regulations;~~

It is unclear why this requirement for Contractors to observe Guidelines as far as reasonably practicable has been deleted. See earlier commentary to DR95, regarding issuance of Guidelines

(c) Pay all fees and royalties required or amounts falling due to the Authority under the Regulations, including all payments due to the Authority in accordance with Part VII of the Regulations; and

(d) Carry out its obligations under this Contract with due diligence, ~~efficiency and economy;~~including compliance with ~~due regard to~~ the ~~effect of its activities on~~rules, regulations and procedures adopted by the Authority to ensure the effective protection for the Marine Environment, and ~~while~~ exercising reasonable regard for other activities in the Marine Environment.

Section 9

Renewal

9.1 The Contractor may renew this Contract for periods not more than 10 years each, on the following conditions:

(a) The resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

~~(a)~~(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including ~~obligations with regard~~rules, regulations and procedures adopted by the Authority to ~~the~~ensure effective protection ~~of~~for the Marine Environment from harmful effects which may arise from activities in the Area;

~~(b)~~(c) This Contract has not been terminated earlier; and

~~(c)~~(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the Regulations.

[…]

Section 11

Termination of sponsorship

11.1 If the nationality or control of the Contractor changes or the Contractor's sponsoring State or States, as defined in the Regulations, terminates its sponsorship, the Contractor shall promptly notify the Authority~~.~~, and in any event within 90 Days following such changes or termination.

11.2 In either such event, if the Contractor does not obtain another sponsor meeting the requirements prescribed in the Regulations which submits to the Authority a certificate of sponsorship for the Contractor in the prescribed form within the time specified in the Regulations, this Contract shall terminate forthwith.

Section 12

Suspension and termination of Contract and penalties

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur: ~~(a)~~ […]

(c) If the Contractor knowingly or recklessly or negligently provides the Authority with information that is false or misleading; […]

Section 13

Obligations on Suspension or following Expiration, Surrender or Termination of a Contract

13.1 In the event of termination, expiration or surrender of this Contract, the Contractor shall: […]

(c) Make the area safe so as not to constitute a danger to persons, shipping or to the Marine Environment ~~to the reasonable satisfaction of the Authority.~~ […]

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

III - Stakeholders

Nauru Ocean Resources Inc

Section 3.3 requires the Contractor to comply with the "Rules of the Authority", as amended from time to time. The term "Rules of the Authority" is also defined as including "other rules, regulations and procedures of the Authority as may be adopted from time to time."

NORI submits that, if there is a change to the "Rules of the Authority" that has a material commercial impact on a Contractor, then, the Contractor should be exempt from the change or the Contractor should be compensated by the Authority.

Section 7.1
This section deals with the responsibility and liability of the Contract for damage arising out of its wrongful acts. As such, further clarity should be made to ensure this provision relates to "wrongful acts".
For clarity the following changes should be made to this Section:

- "including the costs of reasonable measures to prevent and limit damage to the Marine Environment **arising out of its wrongful acts**"; and
- This clause survives the termination of the Contract and applies to all damage **arising out of the Contractors wrongful acts** regardless of whether it is caused or arises before, during, or after the completion of the Exploitation activities or Contract term.

Section 17.1
This clause essentially removes certainty from the Contract because it states that it is governed by the "Rules of the Authority", which in turn is defined as including "other rules, regulations and procedures of the Authority **as may be adopted from time to time**."

Section 17.3
The reference to additional permits and authorities of the Authority are open ended and could frustrate the development of operations by the Contractor. The requirement for these additional permits and authorities should be clearly defined in the Contract, rather than left open ended.

Appendix I

Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 36 include:

1. Fatality of a person.
2. Missing person.
3. Occupational lost time illness.
4. Occupational lost time injury.
5. Medical evacuation.
6. Fire/explosion resulting in an injury or major damage or impairment.
7. Collison resulting in an injury or major damage or impairment.
8. Significant leak of hazardous substance.
9. Unauthorized Mining Discharge.
10. Adverse environmental conditions with likely significant safety and/or environmental consequences.
11. Significant threat or breach of security.
12. Implementation of Emergency Response and Contingency Plan.
13. Major impairment/damage compromising the ongoing integrity or emergency preparedness of an Installation or vessel.
14. Impairment/damage to safety or environmentally critical equipment.
15. Significant contact with fishing gear.
16. Contact with submarine pipelines or cables.

I - Members of the International Seabed Authority

Germany

- With regard to **Appendix I on "Notifiable events"**, we suggest including the following additional incident as a further trigger for notification.

Appendix I: Notifiable Events
In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 36 include:
[…] 17. Significant contact with equipment related to marine scientific research."

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

10. Adverse environmental conditions with likely significant safety and/or environmental consequences such as Serious Harm
11. Significant threat or breach of security.

Commented [A77]: "environmental consequences" needs some sort of clarification here.

Deep Ocean Stewardship Initiative

Appendix I

- Notifiable Events: Given the awareness by many international organizations of marine mammal concerns, as well as efforts to reduce negative interactions (see IWC and IMO, among others), we suggest that marine mammal fatality or evident distress be a notifiable event.

International Marine Minerals Society

Appendix 1, Notifiable Event	Should a significant displacement of the seabed be included, such as a submarine landslide, caused either naturally or due to contractor disturbance? Such a disturbance could disrupt cable communications or cause tsunamis, for example.

The Pew Charitable Trusts

Appendix I Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 36 include:

1. Fatality of a person.
2. Missing person.
3. Occupational Lost Time illness.
4. Occupational ~~injuries~~Lost Time injury.
5. Medical evacuation (MEDEVAC).
6. Fire/explosion resulting in an injury or major damage or impairment.
7. Collison resulting in an injury or major damage or impairment.

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8. Significant leak of hazardous substance.
9. Unauthorized Mining Discharge.
10. Adverse environmental conditions with likely significant safety and/or environmental consequences.
11. ~~Threat~~Significant threat or breach of security.
12. Implementation of Emergency Response and Contingency Plan.
13. Major impairment/damage compromising the ongoing integrity or emergency preparedness of an Installation or vessel.
14. Impairment/damage to safety or environmentally critical equipment.
15. ~~Contact~~Significant contact with fishing gear.
16. Contact with submarine pipelines or cables.

Appendix II

Schedule of annual, administrative and other applicable fees

	Prescribed amount (United States dollars)
Annual fees	
Submission of annual report (regulation 84)	[ ]
Application and other fees	
Application for the approval of a Plan of Work (regulation 7 (3) (j))	[ ]
Renewal of an exploitation contract (regulation 20)	[ ]
Transfer of an interest in an exploitation contract and approved Plan of Work (regulation 23)	[ ]
Use of a contract or approved Plan of Work as security (regulation 22)	[ ]
Temporary suspension in Commercial Production (regulation 29)	[ ]
Modification to a Plan of Work (regulation 57)	[ ]
Approval of a revised/final Closure Plan (regulations 59 (2) and 60)	[ ]
Approval of a revised Environmental Management and Monitoring Plan (regulation 52 (8) (b))	[ ]
[Other]	

I - Members of the International Seabed Authority

Russian Federation

54.	**Appendix II Schedule of annual, administrative and other applicable fees**		It is suggested to make this Schedule exhaustive and exclude the word "*[Other]*".	The suggested modification is intended to protect the property interests of a Contractor and to balance the interests of a Contractor and the Authority.

Appendix III

Monetary penalties

This appendix is no longer referenced in these draft regulations. Monetary penalties referenced in regulations 80 and 103 (6) to be imposed by the Council should be set out in a Council decision, which would be subject to review from time to time.

	Prescribed amount (United States dollars)
Penalty in respect of any underdeclaration or underpayment in respect of a royalty	[ ]
Penalty in respect of any failure to deliver or furnish a royalty return	[ ]
Penalty in respect of false royalty returns and information	[ ]
Failure to submit an annual report (regulation 38)	[ ]
Other: *to be considered e.g. relating to notifiable events (failure to notify); environmental & other Incidents; not achieving/exceeding environmental thresholds. A desktop study should be performed in connection with monetary penalties under comparable national regimes for extractive industries, including those relating to a broader range of breaches of the environmental provisions and failure to adhere to the Plan of Work annexed to an exploitation contract.*	

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

The Pew Charitable Trusts

Appendix III Monetary penalties

	~~Prescribed amount (United States dollars)~~
~~Penalty in respect of any underdeclaration or underpayment in respect of a royalty~~	~~[ ]~~
~~Penalty in respect of any failure to deliver or furnish a royalty return~~	~~[ ]~~
~~Penalty in respect of false royalty returns and information~~	~~[ ]~~
~~Failure to submit an annual report (regulation 4038)~~	~~[ ]~~

Appendix IV

Determination of a royalty liability

This appendix sets out the methodology for the calculation of a royalty payable under regulation 64 in respect of the categories of resources. It is indicative and presented for discussion only at this time.

In the present appendix:

Applicable Royalty Rate means the royalty rate shown in the tables below for the applicable Resource category or as determined by a decision of the Council following any review under these regulations.

Average Listed Price means the Average Listed Price for a Relevant Metal, which is a price calculated by averaging the daily prices (in United States dollars)[1] per metric ton listed for the metal in an Official Listing during a royalty return period as specified and published by the Authority.

Average Grade means the average metal content of the Relevant Metal obtained from a range of grades in the Mining Area[2] expressed as the percentage of the metal per ton of the mineral-bearing ore at the Valuation Point and shown under column B in the tables below for the applicable Resource category.

First Period of Commercial Production means a fixed period of [x][3] years following the date of commencement of Commercial Production.

Official Listing means a list of quoted or published prices of metals:

(a) On a recognized international mineral exchange or market;

(b) In a publication recognized for quoting or publishing prices of metals in an international market; or

(c) Where there is no listed price, the Council shall, based on recommendations of the Commission and following consultation with Contractors, determine a formula for the determination of the Average Listed Price for a Relevant Metal.

Relevant Metal means a metal contained in the mineral-bearing ore identified and determined by the Council as relevant for the purposes of calculating the assumed gross value.

Relevant Metal Value(s) means the assumed gross value(s) of a Relevant Metal calculated as the product of its Average Listed Price and Average Grade.

Second Period of Commercial Production means a fixed period of [y][4] years following the end of the First Period of Commercial Production.

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[1] To consider the use of special drawing rights as a unit of account to value the revenue on which a royalty would be based.

[2] An average grade (content) could be determined from resource assessments provided to the Authority in accordance with its resource classification guidelines. A range of acceptable grade parameters could be included in the regulations, with the actual average grade shown in a royalty return, subject where necessary to assay.

[3] To be informed by financial model discussion.

[4] See footnote 3.

Valuation Point is the point of first sale or the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore from the Contract Area.

Valuation of mineral-bearing ore[5]

1. The value of the mineral-bearing ore shall be an assumed gross value per metric ton at the Valuation Point.

2. The assumed gross value shall reflect the assumed gross value of each Relevant Metal contained in the mineral-bearing ore, calculated under this appendix.

Royalty rate

1. The Applicable Royalty Rate shall be:

   (a) For the First Period of Commercial Production, the percentage(s) shown under column C in the tables below for the applicable Resource category; and

   (b) For the Second Period of Commercial Production, the percentage(s) shown under column D in the tables below for the applicable Resource category.

2. The Applicable Royalty Rate and the manner and basis of its calculation may vary as between a royalty payable in respect of different Relevant Metals and different Resource categories.

Calculation of royalty payable

1. The royalty payable for a royalty return period is the product of the sum of the Relevant Metal Values multiplied by the Applicable Royalty Rate for each Relevant Metal and the quantity (in metric tons) of the mineral-bearing ore sold or transferred at the Valuation Point, thus:

$RP = ((RMV^1 \times ARR^1) + (RMV^2 \times ARR^2) + (RMV^3 \times ARR^3) + ...(RMV \times ARR)) \times$ Total quantity of mineral-bearing ore in metric tons)

Where:

RP = Royalty Payable

RMV^1 = the first Relevant Metal Value

ARR^1 = the Applicable Royalty Rate applicable to the first Relevant Metal

RMV^2 = the second Relevant Metal Value

ARR^2 = the Applicable Royalty Rate applicable to the second Relevant Metal, and so on

RMV^3 = the third Relevant Metal Value

ARR^3 = the Applicable Royalty Rate applicable to the third Relevant Metal, and so on

[5] This approach towards determining a reference value for the metals contained in the ore has been discussed in connection with polymetallic nodules only. Whether this approach is appropriate for other mineral resource categories remains open for discussion. That said, the approach uses international reference prices, and to that extent does not present the Authority with potentially burdensome transfer pricing issues.

2. Where the Council, under columns C and/or D in the tables below for the applicable Resource category, has determined that a composite royalty rate[6] shall be applicable to the assumed gross value of the mineral-bearing ore, the royalty payable for a royalty return period is the product of the sum of the Relevant Metal Values and the quantity (in tons) of the mineral-bearing ore sold or transferred at the Valuation Point multiplied by the composite royalty rate, thus:

$RP = (RMV^1 + RMV^2 + RMV^3 + ... RMV)$ x Total quantity of mineral-bearing ore (in tons) x composite royalty rate

The following tables shall be adopted progressively, from time to time:

Table 1
Polymetallic nodules

A	*B*	*C*	*D*
Relevant Metal	*Average grade (percentage)*	*First Period of Commercial Production: Applicable Royalty Rate (percentage)*	*Second period of commercial production: applicable royalty rate (percentage)*
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Table 2
Polymetallic sulphides

A	*B*	*C*	*D*
Relevant Metal	*Average grade (percentage)*	*First Period of Commercial Production: Applicable Royalty Rate (percentage)*	*Second Period of Commercial Production: Applicable Royalty Rate (percentage)*
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Table 3
Cobalt-rich ferromanganese crusts

[6] In connection with polymetallic nodules, discussions to date have focused on a single royalty rate to be applied to a metal basket value. Other than simplicity in calculation, no detailed discussion has taken place in terms of applying different royalty rates to different metals contained in the basket.

A	*B*	*C*	*D*
Relevant Metal	*Average grade (percentage)*	*First Period of Commercial Production: Applicable Royalty Rate (percentage)*	*Second Period of Commercial Production: Applicable Royalty Rate (percentage)*
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Schedule

Use of terms and scope

"Agreement" means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

"Best Available Scientific Evidence" means the best scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.

"Best Available Techniques" means the latest stage of development, and state-of-the-art processes, of facilities or of methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Guidelines.

"Best Environmental Practices" means the application of the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved knowledge, understanding or technology, taking into account the guidance set out in the applicable Guidelines.

"Calendar Year" means a period of 12 months, ending with 31 December.

"Closure Plan" means the document referred to in annex VIII.

"Commercial Production" shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.[7]

"Commission" means the Legal and Technical Commission of the Authority.

"Confidential Information" shall have the meaning assigned to that term by regulation 89.

"Contract Area" means the part or parts of the Area allocated to a Contractor under an exploitation contract and defined by the coordinates listed in schedule 1 to such exploitation contract.

"Contractor" means a contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.

"Convention" means the United Nations Convention on the Law of the Sea.

"Council" means the executive organ of the Authority established under article 158 of the Convention.

"Day" means calendar day.

[7] This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

"Emergency Response and Contingency Plan" means the document referred to in annex V.

"Environmental Effect" means any consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, temporary or permanent, or cumulative effect arising over time or in combination with other mining impacts.

"Environmental Performance Guarantee" means a financial guarantee supplied under regulation 26.

"Environmental Plans" means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

"Exploit" and **"Exploitation"** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in the Area, for the production and marketing of metals, as well as the decommissioning and closure of mining operations.

"Exploration Regulations" means the regulations on prospecting and exploration for polymetallic nodules in the Area, the regulations on prospecting and exploration for polymetallic sulphides in the Area and the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

"Explore" and **"Exploration"**, as applicable, mean the searching for Resources in the Area with exclusive rights, the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation.

"Feasibility Study" means a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

"Financing Plan" means the document referred to in annex III.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide.

"Guidelines" means documents that provide guidance on technical and administrative matters, issued by the Authority pursuant to regulation 95.

"Incident" means an event, or sequence of events, where activities in the Area result in:

(a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);

(b) Serious Harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious Harm to the Marine Environment is a reasonably foreseeable consequence of the situation; and/or

(c) Damage to a submarine cable or pipeline, or any Installation.

"Incidents Register" means a register maintained under regulation 33 (2) (e).

"Inspector" means a person acting under Part XI of these regulations.

"Installations" includes, insofar as they are used for carrying out activities in the Area, structures and platforms, whether stationary or mobile.

"Marine Environment" includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof.

"Material Change" means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.

"Metal" means any metal contained in a Mineral.

"Minerals" means Resources that have been recovered from the Area.

"Mining Area" means the part or parts within the Contract Area, described in a Plan of Work, as may be modified from time to time in accordance with these regulations.

"Mining Discharge" means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site.

"Mining Workplan" means the document referred to in annex II.

"Mitigate" and **"Mitigation"** includes:

(a) Avoiding an effect altogether by undertaking or not undertaking a certain activity or parts of an activity;

(b) Minimizing effects by limiting the degree or magnitude of the activity and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and

(d) Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity.

"Plan of Work" means a Plan of Work for Exploitation in the Area, defined collectively as all and any plans or other documents setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an exploitation contract.

"Reserved Area" means any part of the Area designated by the Authority as a reserved area in accordance with article 8 of annex III to the Convention.

"Resources" means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including: (a) polymetallic nodules, defined as any deposit or accretion of nodules, on or below the surface of the deep seabed, which contain metals such as manganese, nickel, cobalt

and copper; (b) polymetallic sulphides, defined as hydrothermally formed deposits of sulphides and accompanying mineral resources in the Area which contain concentrations of metals such as copper, lead, zinc, gold and silver; and (c) cobalt crusts, defined as cobalt-rich ferromanganese hydroxide/oxide deposits formed from direct precipitation of Minerals from seawater onto hard substrates containing concentrations of metals such as cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium and other metallic and rare earth elements.

"Rules of the Authority" means the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time.

"Seabed Mining Register" means the registry established and maintained by the Authority in accordance with regulation 92.

"Serious Harm" means any effect from activities in the Area on the Marine Environment which represents a significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Evidence.

"Sponsoring State" means a State party or parties to the Convention which submits a certificate of sponsorship of an applicant in accordance with regulation 6.

"Stakeholder" means a natural or juristic person or an association of persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information or expertise.

"Standards" means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94.

I - Members of the International Seabed Authority

Belgium

"Material Change" means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as the extension of the term, physical modifications, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.

Commented [VS60]: Prolonging the activity for a period of 10 years is a fundamental change for the evaluation of the (environmental) impact of the activity.

France

Définitions et champ d'application

La définition des directives pourrait être précisée, pour spécifier les organes concernés plutôt que de faire une référence générique à « l'Autorité ». Le projet de définition pourrait être clarifié comme suit : « documents d'orientation d'ordre technique et administratif publiés par [l'Autorité] **la Commission et le Secrétaire général, respectivement,** en application de l'article 95 ».

Germany

- We furthermore hold the view that certain terms need to be clearly defined, including "Best Environmental Practices", "Best Available Scientific Evidence" and "Best Available Techniques". With particular regard to the latter term, we recommend that the current definition be replaced by the definition established by the European Industrial Emissions Directive[1] (**Schedule 1**). We strongly advocate for a clarification in Schedule 1 that Standards are legally binding.
- In general, we question the use of various instances of "use their best endeavours", as this does not strike us to be the clearest and practically most feasible level of care.

Netherlands

- Good Industry Practice is a vital component for the production phase. How will this concept - described under the "Use of terms" (Schedule) - be operationalized?

New Zealand

	Definition of "Environmental Effect" **"Environmental Effect"** means any consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, temporary or permanent, or cumulative effect arising over time or in combination with other stressors and activities in the same area, including those not regulated by the Authority. ~~mining impacts~~.	The definition of Environmental Effect should adequately provide for cumulative effects to be considered, including the combined impact of mining activity, natural stressors and other activities not managed under the regulations.
	Definition of "Material Change" **"Material Change"** means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, changes to environmental effects or effects on stakeholders, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.	The definition of Material Change should take into account changes related to environmental effects or effects on other interests likely to be affected.

Russian Federation

Schedule, Use of terms and scope	"**Contractor**" means a contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.	It is suggested that this provision shall be read as follows: "***Contractor***" *means a party to an exploitation contract in accordance with Part III of these regulations*".	As it follows from the Part III of the Regulations, none of the listed in the initial definition persons are endowed with the rights of a Contractor. A Contractor is the one who shall have the rights and obligations under an exploitation contract. A Contractor has the right to give other persons (agents, subcontractors) the right to act on its own behalf only within the limits of a separate contract concluded with such Contractor, therefore, direct reference to other persons in the definition is not appropriate. What concerns employees, it does not make sense to designate them as acting on behalf of a Contractor, as they do not fulfil the rights and obligations of such Contractor but perform certain work under an exploitation contract. A Contractor is the one liable to the Authority

Regulation	Text of the Regulation	Comments / Remarks	Explanation
			under an exploitation contract, not employees.

56.	**Schedule, Use of terms and scope**	"**Rules of the Authority**" means the Convention, the Agreement, these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time.	It is suggested to modify this term so that it reads as follows: "***Rules of the Authority***" *means these regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time*".	It is inappropriate to use the wording "*Rules of the Authority*" when referring to the international legal norms established in international treaties – the UNCLOS and the Agreement relating to the implementation of Part XI of the UNCLOS.
57.	**Schedule, Use of terms and scope**		It is suggested to include into the Schedule the definition of "*regional environmental management plan*" mentioned in Regulations 2(e), 47(3)(c), 48(3)(b), and Para. 1 of Annex VIII to the Regulations.	The words "*regional environmental management plan*" are referred to in the 4 indicated provisions of the Regulations in connection with the obligations of a Contractor to implement measures aimed at protection and preservation of the marine environment. It is, therefore, necessary to clarify the meaning in order to enable a Contractor to perform its duties properly.

United Kingdom

Schedule 1 Use of terms and scope	*[definitions of terms]*	Ecosystem Approach Special Circumstances	Needs definitions added for the terms noted here. For the definition of Ecosystem Approach there are possible examples of language which could be drawn upon from the Convention on Biological Diversity. All definitions of terms included in this schedule should involve consultation to ensure that all parties are agreed as to the essential features.

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

"~~Best Available Scientific Evidence~~Best Available Scientific Information" means the best scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.

"Best Environmental Practices" means the application of the most appropriate combination of environmental control measures and strategies, based on the Best Available Scientific Information and Best Available Technology, which~~that~~ will change with time in the light of improved knowledge, understanding or technology, taking into account the guidance set out in the applicable Guidelines.

Commented [A78]: To clarify the use of "appropriate" here.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide, based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology .

Commented [A79]: This term should be tied to other relevant terms.

"Guidelines" means documents that provide guidance on technical and

"Mitigate" and **"Mitigation"** includes:

(a) Avoiding an effect altogether by undertaking or not undertaking a certain activity or parts of an activity;

(b) Minimizing effects by limiting the degree or magnitude of the activity and its implementation to the extent practicable and necessary to ensure protection of the marine environment;

"Serious Harm" means any effect from activities in the Area on the Marine Environment which represents a significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by ~~Best Available Scientific Evidence~~Best Available Scientific Information.

Deep Sea Conservation Coalition

"Mining Area" and "Contract Area" definitions ignore the fact that the area impacted may be far greater than the contracted mining area (e.g. included the water column and any area impacted by the mining plume)

"Incident" has had the word "situation" deleted and now reads:

"Incident" means a ~~situation~~ an event, or sequence of events where activities in the Area result in: (b) Serious Harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious Harm to the Marine Environment is a **reasonably foreseeable** consequence of the situation. (Note: situation is still here, but is left hanging where the chapeau has deleted "situation".)

This is too narrow. A situation can arise due to seabed mining which was not necessarily triggered by an 'event'. Secondly, reasonable foreseeability is misplaced: strict liability should apply. It should read "may be" a consequence of the situation. Foreseeability should not be a requirement. Causation is the nexus.

Schedule 1 Definitions	Environmental Effect	The definition of "Environmental Effect" includes an inappropriate restriction on cumulative impacts to "cumulative effect arising over time or in combination with **other mining** impacts." This implies cumulative impacts only include mining impacts. Cumulative impacts must include impacts from other anthropogenic activities as well as effects such as ocean acidification. "Mining" should be deleted. So it should read: "Environmental Effect" means any consequence in the Marine Environment arising from the conduct of Exploitation activities, being positive, negative, direct, indirect, temporary or permanent, or cumulative effect arising over time or in combination with other effects or impacts.
	"Marine Environment"	Species, biodiversity and ecosystems should be added to this definition."
	"Serious Harm"	This term needs to be better defined and operationalised through specific criteria of significant adverse effects.
	'Good' industry practice	"Good industry practice" should be "Best Industry Practice". The criterion "degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry" is too weak and would only catch the worst practice, and is inconsistent with 'Best Environmental Practice". Instead, the definition should require (adapting the OSPAR definition of Best Available Technique) the "employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is and would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry."

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"Best Available Techniques" means the latest stage of development, and state-of-the-art processes, of facilities or of methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the ~~criteria~~guidance set out in the applicable Guidelines.

"Best Environmental Practices" means the application of the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved knowledge, understanding or technology, taking into account the ~~criteria~~guidance set out in the applicable Guidelines.

In the Regulations' definition of 'Best Environmental Practices' (BEP), no objective is given for determining the '*most appropriate*' measures. One objective could be protection of the Marine Environment. Further elaboration could also be provided as to the meaning of '*measures and strategies*'. How is BEP inter-related with Best Available Techniques (BAT)? Is the latter subsumed in the former, or are they distinct and non-overlapping? The current definition also lacks explicit reference to international best practices.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide~~, including Best Environmental Practice, the performance and process requirements under the rules, regulations and procedures of the Authority and applicable Standards that may be adopted by the Authority from time to time.~~

Note: The Commission determined that, rather than incorporate 'Best Environmental Practices' within then definition of 'Good Industry Practice,' it would be better to develop the two concepts independently. This has been reflected in the Schedule 1 definitions, and also throughout the revised Regulations, where references to 'Best Environmental Practices' have been inserted alongside references to 'Good Industry Practice' as appropriate.

"Incident" means ~~a situation~~an event, or sequence of events where activities in the Area result in:

~~(a)~~ ~~A~~ marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty ~~(b)~~(a) Investigation Code, effective 1 January 2010);

~~(c)~~ ~~Serious~~ Harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious Harm to the Marine Environment is a reasonably ~~Harm to the Marine Environment is a reasonably~~ foreseeable consequence of the situation; and/or

~~(d)~~(b)

~~(e)~~ ~~Damage~~ to a submarine cable or pipeline, or any ~~installation or floating platform.~~

~~(f)~~(c) Installation.

"Installations" includes, insofar as they are used for carrying out activities in the Area, structures, platforms, ~~equipment and surface and bottom devices,~~ whether stationary or mobile~~, including unmanned submersibles~~.

It is unclear why the definition of 'Installations' has been narrowed so as now to include only structures and platforms, and to remove equipment and unmanned submersibles from its scope. This will have implications each time 'Installations' is used throughout the Regulations, for example DR30(1)(a): "*The Contractor shall ensure at all times that all vessels and Installations operating and engaged in Exploitation activities are in good repair, in a safe and sound condition ...*"

"Marine Environment" includes the physical, chemical, geological and biological ~~and genetic~~ components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof.

Explanation as to the reason and implications behind the removal of 'genetic' components from the definition of 'Marine Environment' would be helpful. Does this deletion imply that genetic material is not considered to form part of the Marine Environment for the purposes of the Regulations (including those provisions that seek to protect the Marine Environment from harm from Exploitation)?

Consideration should be given to adding to the definition: 'species, biodiversity and ecosystems'.

"Material Change" means a change ~~(which is not minor or administrative)~~ to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.

"Metal" means any metal contained in a Mineral.

"Mining Discharge" means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site.

"Reserved Area" means ~~an area~~any part of the Area designated by the Authority as a reserved area in accordance with article 8 of annex III to the Convention.

"Rules of the Authority" means the Convention, the Agreement, these Regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time.

It would be helpful for the Regulations to clarify expressly whether or not 'Rules of the Authority' includes Standards (or Guidelines). The term is used repeatedly and significantly throughout the Regulations: for example, the Commission must apply the Rules of the Authority in reviewing a proposed Plan of Work (DR12(4)), and a contract will be renewed provided the Contractor is not in breach of the Rules of the Authority. If Standards are not encompassed in those provisions, it is important for all parties to know, but would weaken the status and import of Standards.

The term "Serious Harm to the Marine Environment" needs definition.

III - Stakeholders

Global Sea Mineral Resources NV

Schedule – Material Change	The definition of Material Change is crucial for the commencement of production in a Mining Area, as it will determine whether the original environmental plans of the approved Plans of Work must be once again reviewed by the Commission (DR 11) and approved by the Council (DR 16).	The Material Change definition should exclude the following events: - Adoption of alternatives to technologies already foreseen in the documents submitted by the Contractor with the approved Plan of Work; and - Test results when such results are comprised within the threshold values foreseen in the environmental plans of the approved Plan of Work, among other.

Nauru Ocean Resources Inc

"**Best Available Scientific Evidence**", "**Best Available Techniques**" and "**Best Environmental Practices**":
Given these terms are used throughout the Regulations as legally required standards, the definition of these terms needs to be made more achievable from a commercial and practicable perspective.

It also needs to be made clear in the Regulations that a Contractor is not required to update its equipment or technology simply because what is "best" may change over time. A Contractor should be allowed to use their equipment and methods for the useful life of such technology, particularly given the significant investment and timelines required to design, build and commission such technology.

"**Best Available Scientific Evidence**"
NORI agrees with the wording "within reasonable technical and economic constraints", however recommends against using the term "best" within this definition, which is trying to define what "best" means.

"**Best Available Techniques**"
This Definition also needs to include the wording "within reasonable technical and economic constraints", given it is a mandatory legal obligation for a Contractor to apply "Best Available Techniques". NORI also comments that sometimes the best technique is the most appropriate technique which may be a low-tech, yet elegant solution which may not be state of the art but may be more effective that the high-tech state of the art solution.

"**Best Environmental Practices**"
This Definition also needs to include the wording "within reasonable technical and economic constraints", given it is a mandatory legal obligation for a Contractor to apply "Best Available Practices".

"Environmental Effect" – this definition is extremely broad as it includes "**any** consequences in the Marine Environment". This should be changed to "any material consequences", particularly given how that term is used throughout the Regulations, and it does not appear reasonable to expect a Contractor to deal with and study every single consequence no matter how insignificant or trivial.

"**First Period of Commercial Production**" (used in Appendix IV)
This needs to be defined as at least 20 years from the date of signing the Exploitation Contractor, particularly given it could be greater than 5 years from the date of signing before commercial production even begins given the time it is likely to take to carry out the Feasibility Study, make any changes necessary to the Plan of Work (including potentially resubmitting the EMMP), construct and commission the vessel and equipment, as well as ramp up to full scale production.

"**Material Change**" - the threshold for what constitutes a "Material Change" needs to be high. NORI recommends that the term "Material Change" should be defined as a "significant change".

"Serious Harm"
This is defined as any effect which results in a "significant adverse change in the Marine Environment". It will be important that the concept of Unlawful Harm is introduced to this definition and the threshold be far higher before this definition is triggered. This is because of the way the term is used in UNCLOS. Effectively UNCLOS dictates that if it is classified as Serious Harm to the Marine Environment then no activity can be permitted. For example, refer Article 162(2)(x) which states that the Council shall disapprove areas for exploitation if there is just a "risk" of Serious Harm to the Marine Environment. Pursuant to Article 162(2) "the Council shall: (x) disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment."

Likewise under Article 165(2)(k) the LTC shall "make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment"

Also, an "Incident" is triggered even if there is merely a situation where "Serious Harm to the Marine Environment" is a reasonably foreseeable consequence of the situation. And pursuant to Regulation 33, "The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident."

As such, under the current definition of Incident and Serious Harm, this means that pursuant to Regulation 33, a Contractor cannot proceed with Exploitation if it is (i) reasonably foreseeably that it is (ii) a reasonably foreseeable consequence of the situation that there will be a significant adverse change in the Marine Environment. But of course simply by carrying out seafloor polymetallic nodule exploitation it is (i) reasonably foreseeably that it is (ii) a reasonably foreseeable consequence of the situation that there will be a significant adverse change in the Marine Environment.

NORI's recommendation is that the term Serious Harm needs to be defined as harm that results from:

(i) a wrongful act;
(ii) damage to the Marine Environment beyond that which was reasonably anticipated in the EIS; or
(iii) damage to the Marine Environment caused by the Contractor carrying out activities that have not been permitted under an approved Plan of Work.

"**Stakeholders**"
NORI recommends that the stakeholder should have a closer connection to the project, and/or be affected or impacted by the project, rather than simply any person "with an interest of any kind".

5. Practical definition for "Serious Harm"

The term Serious Harm is currently triggered by any effect which results in a "significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority".

We note that the term Serious Harm is used in two important situations:

(i) at the time of submitting an exploitation application, the LTC and Council must ensure that the planned exploitation does not pose a risk of Serious Harm; and

(ii) during Exploitation the Contractor must ensure that it does not cause Serious Harm or carry out its activities in such a manner as to pose a risk of Serious Harm.

With respect to (i), it is important that the term "Serious Harm" is not defined in such a way as may be used to prevent the very act of exploitation from being approved. That is, the threshold needs to be set higher and the concept of "scale" needs to be introduced. For example, at the scale of the mining operation it may be arguable that there is a significant adverse change, however at the regional scale it will likely not be a significant adverse change.

With respect to (ii), the concept of "Unlawful Harm" needs to be included in the definition of "Serious Harm".

NORI is committed to the protection of the Marine Environment, however makes this submission simply because of how the term "Serious Harm" is used in the Convention and the Regulations. Effectively, the Convention dictates that if there is a risk of Serious Harm to the Marine Environment then no activity can be permitted. For example, per Article 162(2)(x) the Council shall disapprove areas for exploitation if there is even a risk of Serious Harm to the Marine Environment. Pursuant to Article 162(2) "the Council shall: (x) disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment."

Likewise, under Article 165(2)(k) the LTC shall "make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment".

Furthermore, throughout the Regulations the Contractor is required to suspend activities if there is a risk of Serious Harm to the Marine Environment.

As is the case with all extractive activities, there will be an environmental impact, which is the cost incurred by society to obtain the raw materials essential for global social and economic development.

NORI acknowledges that the Authority is establishing these regulations in order to permit exploitation in the Area, and as such understands that it is not the intention of the Authority to prevent normal exploitation activities from occurring. However, for the sake of clarity, NORI seeks for the regulations to be explicit that the "Serious Harm" the Authority is trying to prevent is the serious harm that either:

(i) exceeds what was reasonably expected to occur when the Plan of Work was approved; or
(ii) results from a wrongful act; or
(iii) is caused by the Contractor carrying out activities that have not been permitted under an approved Plan of Work.

Essentially, it needs to be made clear that if there is a "significant adverse change" to the Environment caused by the Contractor simply carrying out the permitted Plan of Work, this will not fall within the definition of "Serious Harm".

Also, an "Incident" is triggered even if there is merely a situation where "Serious Harm to the Marine Environment" is a reasonably foreseeable consequence of the situation. In addition, pursuant to Regulation 33, "The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident."

As such, under the current definition of Incident and Serious Harm, this means that pursuant to Regulation 33, a Contractor cannot proceed with Exploitation if it is (i) reasonably foreseeably that it is (ii) a reasonably foreseeable consequence that there will be a significant adverse change in the Marine Environment. By simply carrying out seafloor mineral exploitation, it is (i) reasonably foreseeable that it is (ii) a reasonably foreseeable consequence of the situation that there will be a significant adverse change in the Marine Environment, at the scale of the mining operation. As such, the definition of "Serious Harm" needs to be changed so as it cannot be interpreted to prevent the very activity of exploitation from occurring.