

Draft regulations on exploitation of mineral resources in the Area

Part I, Part II (Regulation 5), Part V, Part VIII (Appendice II).

Prepared by the Co-Facilitators, Ambassador Georgina Guillén-Grillo (Costa Rica) and Ambassador Constanza Figueroa (Chile), of the Informal Working Group on Institutional Matters

1. During the twenty-sixth session of the Authority, the Council decided to establish three Informal Working Groups, with the mandate and working modalities set out in the annex to its decision (ISBA/26/C/11). In accordance with that decision, we were appointed as Co-Facilitators of the Informal Working Group on the Institutional Matters.
2. In the First and Second Part of the twenty-seventh session, the Working Group discussed Part I and Part 2 (Regulation 5).
3. The facilitators prepared a document reflecting the respective functions and responsibilities of each body of the Authority, according to the UNCLOS, Agreement relating to the implementation of Part XI of UNCLOS, the Rules of Procedure of the Organs and the decisions of the Council and the Assembly of the Authority.
4. The IWG decided that the issue of “Effective Control” needed to be discussed and analysed. The facilitators have worked intersessionally with delegation that express interest to developed an agenda for a webinar on the subject.
5. Part I and Regulation 5 of Part II of the Draft Regulations were discussed and delegations were invited to send text proposals by September 15, 2022
6. It was agreed during the meetings in July 2022, that we would update the draft text for Regulations 1-5 of the Draft regulation on exploitation of mineral resources in the Area (‘the Draft Regulations’, ISBA/25/C/WP.1).
7. The facilitators also prepared a Draft proposal on Part V and VIII.
8. Based on the discussions during the July 2022 session, the proposals received by September 15, 2022 and the written proposals for Part V and VIII sent by delegations in 2019, we have prepared this text (“the Facilitators’ Text”) for Regulations 1 to 5, 57 and 58 and 84 to 88 with the aim of assisting in the discussions in the Informal Working Group.
9. We implemented the following approach to the revisions:
 - (a) Proposals in respect of which there has been no express opposition to are reflected as text. This is without prejudice to their future

consideration or the possibility for delegations to re-introduce textual proposals not incorporated in the present text.

(b) Ideas that reflected a general direction in the discussions have been incorporated, although the precise textual formulations proposed by delegations may not always have been utilized. While not every individual idea or proposal is necessarily reflected, the text presented is an attempt at reflecting the general direction of those ideas and proposals.

(c) Where general comments were made but no drafting suggestions were provided or where several drafting suggestions were made going in a similar direction without being identical, we are proposing wording for the consideration of delegations.

(d) Square brackets are intended for proposals for which conceptual discussion are expected and where further work might be requested by the Council. The absence of square brackets does not imply agreement on the ideas, content or specific language reflected in a provision. The lack of brackets around new ideas which are reflected for the first time in the draft text should not be taken as *a fait accompli* as to their inclusion. Equally, the fact that regulations have not been revised should not be taken to indicate agreement on the unrevised provisions.

(e) Options have been used throughout the text to present alternative conceptual approaches. The order in which options appear in the text should not be taken as indicating any suggested order of priority, nor as indication of the level of support for any particular option.

(f) Boxes are containing explanations of revisions, certain general proposals and/or our comments, where necessary, are included under the relevant articles or sections.

Part I

Introduction

Regulation 1

Use of terms and scope

1. Terms used in the Convention shall have the same meaning in 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. Subject to paragraph 1 and the Schedule, terms used in other rules, regulations and procedures of the Authority shall have the same meaning in these Regulations.

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

5. Nothing in these Regulations shall affect the rights, jurisdiction and duties of States under the Convention, including the right to conduct **marine scientific** research pursuant to articles 143 and 256 of the Convention, and the exercise by States of the freedom of the high seas, **in accordance with** article 87 of the Convention.

6. These regulations are **complemented** 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.

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

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

9. These regulations shall be applied in a uniform and non-discriminatory manner.

Regulation 2

Principles, approaches and policies

1. These regulations, and any decision-making thereunder, shall be applied in conformity with the principles governing the Area embodied in Section 2 of the Part XI and in Part XII of the Convention.

2. The exploitation activities in the Area shall be carried out for the benefit of mankind as a whole, taking into particular consideration the interests and needs of developing States, for peaceful purposes and ensuring the effective protection of marine environment including biological diversity and ecological integrity.

3. Exploitation activities in the Area shall not commence until the legal framework intended for the effective protection and preservation of the Marine Environment is adopted and scientific evidence demonstrates that the Exploitation activities are conducted in such a manner as not to cause significant and harmful changes to the Marine Environment and its resources and to effectively protect and preserve the Marine Environment pursuant to article 145 and Part XII of UNCLOS.

4. According to article 145 of the Convention, the effective protection of the marine environment from the harmful effects which may arise from activities of exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, is based inter alia on the following principles and approaches:

- (i) Intergenerational equity.
- (ii) Precautionary approach.
- (iii) Ecosystem approach.
- (iv) Polluter pays principle
- (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) Effective public participation.

5. These regulations shall be also applied in conformity with the policies relating to activities in the Area established in article 150 of the Convention and related principles contained in the Annex of the Agreement.

6. Member States, Sponsors, Contractors, and the Authority shall ensure public trust and regulatory integrity, and shall not engage on decisions in which they have a clear conflict of interest.

Comments/remarks

The above text is a Facilitator's proposal based on the Informal Working Group discussions on Spain text.

The text highlighted in yellow infra, corresponds to the previous proposal for Regulation 2. It has not been deleted in order to allow a further discussion if needed.

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:

Alt. 1. 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, inter alia, the following Fundamental Principles and approaches, and relevant policies:

(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;

Alt. 1 The Area and its resources are the Common Heritage 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;

Proposal for a new letter b)

(b) Activities shall not be authorized in the Area unless it can be demonstrated that there will be effective protection for the marine environment from harmful effects; that the living marine resources of the Area will be protected; that they will not cause damage to the flora and fauna; that there will be no loss of biodiversity; that rare or fragile ecosystems and their habitat will not be depleted, threatened or endanger species; that other forms of marine life will be protected; and that there will be no interference with marine ecosystems, their resilience, with ecosystem services, or other harmful effects.

New c) 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:

Alt. 1 Ensure the implementation of article 145 of the Convention, in order to provide the effective protection and preservation of the Marine Environment from harmful effects which may arise from Exploitation and related activities, in accordance with the Authority's environmental policy, including by the adoption of regional environmental management plans, standards and guidelines, based on the following Fundamental Principles and approaches:

(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;

Alt 1. A fundamental condition for the approval of a plan of work shall be that the plan of work is sufficient to ensure the effective protection and conservation of the Marine Environment, including its ecological balance, 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;

Alt. 1 Ensure the effective application of the precautionary approach/principle.

Alt. 2 Ensure the effective 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) The application of an ecosystem approach;

Alt. 1 Ensure the effective application of an Ecosystem Approach

Alt. 2. The application of an ecosystem approach, as reflected, inter alia, in the 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;

Alt. 1. Ensure the effective application of “the polluter pays” principle as contained, inter alia, in principle 16 of the Rio Declaration on Environment and Development, (through market-based instruments, mechanisms and other relevant measures);

Alt. 2. Ensure the effective application of “the polluter pays” principle through regulatory mechanisms, including standards and guidelines, market-based instruments, mechanisms and other relevant measures;

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

Alt. 1 Ensure transparency through access to data and information relating to the protection, conservation and preservation of the Marine Environment;

Alt 2 Access to data and information relating to the protection and conservation and, where practicable, restoration of the Marine Environment;

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

Alt. 1. Accountability and transparency in all processes, including, inter alia: administration, decision-making, implementation, monitoring, reporting, compliance.

(vii) Encouragement of effective public participation;

Alt. 1 Ensuring public participation including by Indigenous Peoples and local communities

Proposal of a new (viii)

viii) Identification of areas of particular environmental interest.

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

Alt. 1. 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-but not limited to- drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities.

New e) g) Incorporate the Best Available Scientific Evidence into decision-making processes.

Alt. 1. Incorporate the Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques and Good Industry Practices into decision-making processes. In case where no sufficient scientific information is available to enable informed decisions, the precautionary approach/principle shall be applied.

New f) 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

Alt. 1. Ensure the effective management and regulation of the Area and its Resources in accordance with the principle of common heritage of mankind.

New g) 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:

Alt. 1 Ensure that activities in the Area shall be carried out in accordance with the policies stated under article 150 of the Convention.

(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.

New h) 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;

Alt 1. 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 Best Industry Practice while adopting sustainable and socially responsible policies;

Proposal for a new i):

i) 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 a cross/ adjacent whose jurisdiction such deposits lie, and with a view to ensuring:

a) Consultation, including a system of prior notification to be maintained with coastal state concerned to avoiding infringement of such rights and interests;

b) Neither the principles, approaches 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.

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

Alt. 1. Provide for the protection of human and non-human life and safety;

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

New k) Conflicts of Interest

k) Member States, Sponsors, Contractors, and the Authority shall ensure public trust and regulatory integrity, and shall not engage on decisions in which they have a clear conflict of interest or that could be perceived as such.

Regulation 3

Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority, the Enterprise, the Applicant and Contractors shall cooperate with the Authority to provide such data and information 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 and sponsoring States shall cooperate to develop, implement and ensure effective and transparent communication, public information and public participation procedures;

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

(i) Ensure effective protection of the health and safety of life and property at sea and of the Marine Environment, with respect to activities in the Area;

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

(e) Contractors, the Enterprise, 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 and related activities on the Marine Environment including at the regional scale, 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, sponsoring States, Contractors and the Enterprise shall, in conjunction with the Authority, 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, including by use of data repositories and open-access databases;
- (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 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

Proposal for a new vii)

vii) Establishing a community which links the ocean data with data product users such as biogeographers, and ecologists.

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors and member States shall provide or enable access to such information, upon the request by the Secretary-General, to facilitate the work of the appropriate organs of 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 be in accordance with any relevant Standards and take account of the Guidelines

Proposal for a new h)

h) The Council shall, taking into account recommendations by the Commission, adopt Standards and Guidelines concerning the duties mentioned in paras. (c) to (f) which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis within three years after the adoption of these regulations or before any mineral production commences, whichever take place.

Regulation 4

Rights and legitimate interests of coastal States and duty to notify

1. Nothing in these regulations affects the rights and legitimate interest 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.

Proposal for a new 2)

New 2) 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.

3. 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, damage to the flora and fauna, ecological balance and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that such harmful effects or pollution arising from activities in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. Such measures shall include consulting with any potentially affected coastal State with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

Comments/Remarks

Alt 1 uses the term “harmful effects” which is the one used in art. 145. It also includes other hazards and the measures of consulting coastal states with the view of ensuring their rights and interests are not infringed.

Proposal of a new 4)

4) Such measures shall include consulting with any potentially affected coastal State prior to submitting an application for approval of a Plan of Work. Monitoring of potential transboundary impacts, accurate and precise recording of the operational area, and consultations with any potentially affected coastal State shall be maintained by the Contractor throughout the term of the Contract, with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

Proposal of a new 5)

~~5) 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.~~

This proposal is similar than the text proposal for new parr 6 regulation 5. There were comments suggesting that this is not the best placement for that requirement as it might seem to be limited to coastal states.

6) 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 harm or a threat of harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty, shall 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 or the Enterprise of such notification. The

Contractor and its sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General in the shortest possible time.

Former proposal for paragraph 7 was included at the end of this Regulation as 4.bis.

~~Proposal of a New 8)~~

~~8) In the event of Harm to the Marine Environment and the livelihood of any coastal community, adjacent coastal States which have grounds for believing such harm is caused by activities in the Area, shall notify the Secretary General in writing through appropriate channels of the grounds upon which such belief is based and request a prompt inspection pursuant to regulation 96.~~

~~Proposal of a New 9)~~

~~9). The Secretary General, upon the notification of a Member State, shall promptly initiate inspection in accordance with regulation 96(3), and invite representatives of coastal States to participate in the inspection, no later than 24 hours after such notification was made by the States to assess whether pollution the harm is attributable to activities in the Area.~~

Both proposals are related to Part XI. Delegations might consider moving them to the Inspection, Compliance and Enforcement part of the Regulations.

10) If the Commission determines, taking account of the relevant Standards and Guidelines, that there are clear grounds for believing that Serious Harm or the threat of 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 and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28 (3).

11) If the Commission determines that the harmful effects or Serious Harm, or threat of Harmful Effects or 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 notify the Sponsoring State and the Council 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.

Proposal of a New 12)

12) In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be strictly liable for any

response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired, the Authority, shall require the Contractor to pay compensation, proportionally to the damage caused.

This proposal needs to be further discussed by the Informal Working Group.

4.bis Duty of the Member State to notify.

(former new 7) Regulation 4(6) shall apply mutatis mutandi to any State with grounds for believing that such harm or threat of harm may be caused in any location by an activity under a Plan of Work . After the notification in paragraph 1 takes place, the procedure established in 4(10) and 4 (11) shall be apply.

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 the Enterprise, by its Director-General and;](#)

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

(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) [The name of the applicant, and 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.

Proposal of a New d)

d) Sufficient information to demonstrate the technical capability in environmental management pursuant to regulation 13 (3) (c) and the Section III of Annex I to be able to comply with the requirements of these Regulations.

Proposal of a New c)

c) Sufficient information to demonstrate that the applicant has the necessary financial, 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;

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.

Comments/Remarks about Effective Control

It was agreed in the Institutional Matters informal working group that a discussion on Effective Control is pertinent. Delegations have suggested that a definition of Effective Control is needed for the LTC and other bodies of the Authority to have certainty of how to interpret it and apply it when assessing compliance throughout the process.

Clarity of who may become a sponsoring state and whose sponsorship is required for a contractor's application to be approved by the ISA is crucial to the development of an effective liability system.

To evaluate Effective Control, the Authority must go beyond the location of the registration of the Contractor company, analysing also ownership and business management as factors relevant to determine the level of "de facto" control by the State or its nationals.

The nationality of a company is already a critical issue, but the level of control required for a Country to sponsor a private company remains a debated issue. In 2014, the LTC noted that the decision to grant sponsorship through a certificate is in itself valid to demonstrate the possession of the requirements of effective control over the private company. The Commission considered that effective control was an assessment that each Country must carry out under its own conditions and through its own national laws.

However, Article 4 (3) of the Annex III to UNCLOS provides that the Authority itself is called to develop criteria and procedures for the implementation of the provisions on sponsorship. For the consequences it can entail, we find the Regulations, and particularly Regulations 5 and 6 are relevant to develop such rules and procedures on sponsorship with a view to ensure that the requirement of effective control is duly met.

In this regard, after a more detailed discussion, Member States might decide to include further requirements to demonstrate Effective Control in this Part II and in other sections of the Regulations.

An intersessional webinar to offer a platform for this discussion will be organized by the facilitators together with the Secretariat and with the contributions of interested delegations.

Proposal of a New 6)

6) The Authority shall not accept the application if the sponsoring state has not enacted a mining law that complies with the standards referred to in Regulation 105.

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.

Alt.1. 2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary General **shall inform the Council and transfer the request to the Commission**, which shall consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with **the Standards**. If the **Commission** 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.

<p>A clear definition about what constitutes Material Change is needed. Specific criteria shall be developed through Standards.</p>
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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.

Alt 1. 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 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.

Alt. 1. 4. The Commission may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. The Commission will

recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting.

The facilitators recommend a further discussion about this paragraph.

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, according to the relevant organ of the Authority, as appropriate ~~in the opinion of the Secretary-General~~, there have occurred any of the following events or changes of circumstance in taking into account the applicable standards:

(a) A proposed Material Change in the implementation of the Plan of Work;

(a.bis) Identification of a new environmental risk, or a significant change to existing risk calculations;

(a.ter) 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;

(a.qtr) New information relevant to the effective protection of the marine environment.

(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 Information ~~Evidence~~; or

(h) Operational management changes, including changes to subcontractors, the relevant organ of the Authority as appropriate shall ~~Secretary-General may~~ review with the Contractor the Contractor's activities under the Plan of Work, and such organ shall recommend to the Council ~~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~~ and the Contractor ~~may~~ shall invite the sponsoring State or States, and relevant coastal states to participate in the review of activities ~~perform by~~ the appropriate organ.

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).

Alt 1. 3. The organ in charge of the review shall report on each review to the Commission and Council, the sponsoring State or States and the relevant coastal states. Where, as a result of a review, material changes need to be made to the Plan of Work, the Commission shall recommend said changes to the Council, and the Contractor shall implement such changes as soon as viable. 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 appropriate organ of the Authority ~~Secretary-General, the Sponsor State or States,~~ 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.

Part VIII

Annual, administrative and other applicable fees

The facilitators suggest the Council shall request the Finance Committee to clarify the purpose, use and the mechanism to calculate each annual and administrative fee listed in Appendix II.

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.

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.

A definition and criteria of "Commercial Production" is necessary.

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.

Further clarification is needed regarding the way the annual fixed fee will be determined.

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.

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.

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.

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]