African Group's submission to the International Seabed Authority

Comments on the revised draft regulations on exploitation of mineral resources in the Area

September 2018

Algeria, on behalf of the African Group, refers to paragraph 8 of the statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session of the International Seabed Authority, contained in document ISBA/24/C/8/Add.1, regarding the agreement reached by Council members inviting Members and Observers of the Authority as well as other Stakeholders to submit their comments on the revised draft regulations on exploitation of mineral resources in the Area (ISBA/24/LTC/WP.1/Rev.1 and ISBA/24/C/20).

The African Group is pleased to respond to this invitation and hereby submit its comments on the revised draft regulations.

This submission is articulated around two sections. The first one deals with African Group's comments covering different parts of the revised draft regulations, and the second one focuses on transboundary harm to the marine environment of national jurisdiction.

Section I

This section deals with African Group's comments covering different parts of the revised draft regulations (DR). We have avoided getting into a drafting exercise.

This section was prepared initially to be read out as an African Group statement at the Council meeting during the second part of the twenty-fourth session of the International Seabed Authority. It should be considered within that context.

Part I - Introduction

The African Group welcomes the addition of DR 2 (fundamental principles), however, it remains unclear as to how these principles will be made operative as they have not been adequately reflected in the other parts of the DR. It remains concerning that transparency is only mentioned in DR2 in relation to the protection of the marine environment, and not in relation to the other ISA functions or public interest areas.

The African Group would like to reiterate its support for the United Kingdom statement on the use of the precautionary principle rather than precautionary approach. The African Group referred to the precautionary principle in its submission of December 2017, contained in its general points concerning the Environmental Aspects.

The precautionary principle is a principle of law, and then it is a source of law. This means that it is compulsory. An approach is generally not. It is to cope with possible risks where scientific understanding is yet incomplete. This is particularly the case with the deep seabed mining. It is also

in response to the need for dealing effectively with risks and uncertainties in environmental management.

The precautionary principle is contained in a number of treaties and agreements, including the African convention on the conservation of nature and natural resources (the revised one) and the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

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

The African Group still has concerns with regard to this Part II, which have not been addressed from our submission of December 2017. The African Group echoes the concerns expressed by other delegations with regards to the lack of definition of 'effective control'.

Whilst DR 7 criteria seem robust, they relate to the specific application and applicant only. They do not take account of other external factors that might also be relevant to the decision, for example, the total number of Exploitation contracts awarded by the ISA. If a new application is received after a number of other exploitation contracts have already signed by the ISA, approving the new application might stretch the ISA's ability to regulate effectively, it might also give rise to cumulative environmental impacts outside of recommendations from a regional environmental management plan, such matters are not included in the DR 7 criteria, and so are outside of the LTC's competence.

A particular comment on DR 7.4: the LTC should in its assessment ensure that all environmental obligations established under UNCLOS, for instance obligations established under Articles 145, 192 and 194.5 are considered, including to protect and preserve rare or fragile ecosystems.

With regard to DR 16, another DR that we see the principle of Common Heritage of Mankind (CHM) can be reflected. As it is currently drafted, DR16 obliges the LTC to recommend approval if DR13 and DR14(2) criteria are met, and these criteria do not include harm to the environment or the CHM.

Finally, the African Group welcomes and supports the submission by Belgium. We also support the suggestion to have a contact group on ISA and BBNJ given the interlinkage between both processes.

Part III - Rights and obligations of Contractors

The African Group still has a number of concerns with regard to Part III, expressed in our submission of December 2017, in particular how these DRs will be put into practice and whether enforcement is feasible based on the current language used, such as that of DR 19(7) and DR 31.

Furthermore, there are various inconsistencies in Annex X section 12 and the provisions of DR

19(4) that makes provision for suspension, revision or termination of the contract and its trigger events. However, the trigger events found in section 12 of DR Annex X are not consistent with the DRs. Both section 12 and 13 of Annex X also contain a raft of provisions around how suspension / terminations should be effected, and what obligations arise in those circumstances. These are not consistent with the DR procedures, and it is unclear why these procedural rules would be found in the contract, rather than the DRs (especially given they speak to one situation where the contract has terminated).

Other regulations that require improvement include DR 23, 25 and 26. It is unclear to us what is envisaged by DR 23. DR 25 also needs to be clarified and could further provide the ISA with some additional regulatory powers in the event of a change of control, for example, an ability to enforce an increased monitoring programme or reporting requirements. The DRs could also take into account for whether that effective control may change with the change of control and finally DR 26 which should include consideration of all ecosystem services.

Part IV - Protection and preservation of the Marine Environment

The African Group commends the Commission for improving the draft regulations as regard the protection and preservation of the Marine Environment.

A good illustration of this is taking into account the suggestion made by our group in its December 2017 submission, mainly in DR 46, by including the suggestions 46 bis and ter, regarding the preparation of the Environmental Impact Statements and the Environmental Management and Monitoring Plan, as well as the minder suggestions in section 2, DR 47- Pollution Control and Management of waist - and DR 48 Restriction on Mining Discharges.

Part VII - Financial terms of an exploitation contract

This part is largely taken care of in the process of developing the Economic Model where the MIT is involved. The African Group submission on this issue and comments made last Monday represent our inputs into this process. We are looking forward to further deliberations and engagements on this highly technical matter, hopefully in the Working Group and the Commission.

As a specific comment, the African Group would like to commend the LTC for improving the language in the DR61.

DR 61 was providing for financial incentives for contractors to achieve the objectives set out in article 13(1) of Annex III of the convention. This idea of financially incentivizing contractors to invest in the Area was not in keeping with UNCLOS.

Part VIII - Annual, administrative and other applicable fees

The African Group wishes to commend the Commission for the additions and improvements made in DR83 (3) and (5), thus making defaulting Contractors liable to pay interest on any unpaid amounts.

Part IX- Information-gathering and handling

1. The African Group commends the Commission for taking into consideration the observations/comments we have made previously, in particular on the need to re-echo the principle of CHM by making available non-confidential information publicly through the provision of the seabed mining register (DR90).
2. The African Group further recognizes the significant improvements in this part through the introduction of several paragraphs in the Regulations (DR2(d), 3, 14, 18(3), 50(4), 56(6), 87, 90) requiring the publication of specific information and in particular defining the role of the Council in information gathering and sharing under DR 87 2(C) and DR 88 (5).
3. The African group wishes to emphasize that the Regulations could be better improved by introducing provisions requiring that published information must meet accessibility requirements for example, free of charge, in a generally-supported software format, available in hard copy upon request and available in all ISA languages.
    - On the definition and confidentiality procedure, the African Group welcomes the addition of paragraphs that strengthens the definition of confidential information under DR 87 and 88, as requested in our submission of December 2017.
    - However, the African Group raises concerns over the omission of 'overriding public interest' as one of the criteria for circumstances that may warrant disclosure of confidential information.
    - Furthermore, the African Group restates that the timeframe for establishing clear criteria for evaluating confidentiality designations under DR 87(4) seems unclear and unnecessarily restrictive.
    - There is also a need to better address the description of confidential information.
    - The list of required annual report content (DR40) could also be expanded to include: a summary of inspector report findings and the contractor's response to these.
    - Inclusion of inspection report in seabed mining register (DR 90)

Part XI - Inspection, compliance and enforcement

The African Group commends the improvement in the sequence of events between inspection, compliance as enumerated under DR94 – 103 and the introduction of more stringent inspection requirements and monitoring through surveillance and other technologies.

However, given the nature of the activities of the Area, the African Group would like to raise concerns and reiterate the following:

- Consideration should be given as to whether Inspector reports should be provided to the LTC and the Council (not currently required by in the DR), given their role to oversee Exploitation Activities.
- The DR 87(1)(a) which gives a unilateral power to Inspectors to require Contractors to suspend mining activities (for 7 days). Other organs of the ISA cannot require suspension of activities without written warnings.

- It might be useful for the ISA to envisage Recommendations or a code of conduct for Inspectors. This could assist ensure admissibility of Inspector evidence in any future legal proceedings, including criminal prosecution in national courts. The African Group reiterated that this could be a suitable subject for Standards or Guidance documents (as envisaged under in DRs 92 and 93).
- As the inspector notifies the sponsoring states in case of an emergency instruction to a contractor and the transmission of the inspection report (DR 97(3), DR 98), there is need to elaborate how it is envisaged that monitoring and enforcement responsibilities will be discharged between the ISA, sponsoring States and flag states. This could be a welcome opportunity to unpack further the primacy of the ISA's role of 'control', and the sponsoring State's role of 'assistance' (as UNCLOS appears to envisage – Articles 139 and 153(4)).

There is a lack of clarity around the division of responsibilities between ISA and sponsoring State with regards to regulating Activities in the Area. The Exploitation Regulations could detail the duty to cooperate, and set out how the ISA and sponsoring States may interact in practice. Particular consideration might be given to coordination around information-sharing, and monitoring and enforcement, with a view to ensure effective, proportionate combined regulation, and avoid duplication of efforts

Part XII - Settlement of disputes

The African Group is of the opinion that it would be useful if the DRs set out who can appeal against plan of work approval or disapproval decisions.

DR104 refers disputes to the procedures in Section 5 of Part XI of the Convention 'Settlement of Disputes and Advisory Opinions'. This expressly enables a disgruntled disapproved applicant to appeal to the Seabed Disputes Chamber (Art 187(d)). the extent to which a (State) party could bring an objection to an approval decision is unclear. (Non-state parties have no standing). The Seabed Disputes Chamber's jurisdiction to over-rule ISA decisions is also limited. At application stage it might be that misuse of power or ISA decision conflicts with a State Party's obligations under the Convention' is the only available ground for claim (see Art 189).

Section II

In this second section of its submission, the African Group acknowledges that the draft exploitation regulations attempts to address the implications in the event of transboundary harm to the marine environment of national jurisdiction. Nevertheless, there is still much work to be done to ensure that the regulations effectively do so. Therefore, the African Group proposes the following:

Application Stage

a) To begin with, in examining the application process starting with DR 4, transboundary harm should be taken into account in its decision-making process before the contract is in place. Therefore, it is recommended that:

i. An addition of a specific requirement at the application stage for neighbouring States to be automatically notified when exploration and exploitation contracts are issued in their geographic region.

ii. Subsequently, it is recommended that coastal States in the geographic region are specifically consulted, in addition to the stakeholder consultation process under DR 11 which provides an opportunity for coastal States to provide their input at an early stage. On the whole, the stakeholder consultation requires further strengthening. First and foremost, the stakeholder comments appear to be limited to the environmental plans rather than the full plan of work. This should be changed so that the full plan of work is made available for review and comment by stakeholders, including coastal States. The follow-through/accountability as to (1) whether stakeholder comments are passed to the LTC/Council, (2) how stakeholder comments are to be assessed and taken into account and (3) what is communicated back to those stakeholders (and the public at large) as to the effect of those comments also need to be strengthened. The most effective way would be amending the draft regulation to require the Commission to provide a written response to stakeholder comments. Of particular relevance is the fact that an overly arduous burden is placed on coastal States, in particular the African ones, which are constrained by limited capacity to bring forward this concern with what we can assume to be supported by scientific and in-depth information.

iii. It is therefore, recommended that the onus is placed on the contractor (and the ISA), to demonstrate in their application that their activities will not cause transboundary harm; verify this through regular monitoring and reporting; and inform the ISA of any unexpected impacts or impacts that exceed permitted levels. The ISA should in turn inform the neighbouring coastal States as to any potential impacts or threats of transboundary harm. Once a concern is flagged to the coastal States, it is hoped that the LTC can serve as a vehicle to require contractors to undertake further diligence, as well as capacity building to address the potential impacts on the marine environment of the coastal States. Article 145 of the Convention provides a basis for the Authority to take measures to protect the marine environment generally, the African Group is then of the view that the ISA should be in a position to assist coastal States, in particular African ones, in this regard.

iv. When assessing an application, transboundary harm should be a relevant consideration for the LTC in assessing the application, i.e. a criterion that the Exploitation will not cause transboundary impacts. This can be added to DR12 (5) or DR 4 can be expanded to include this as well.

v. The issue of confidentiality remains problematic in the decision-making process. In order to have a transparent process and best assist the Council (as the executive body of the ISA and responsible for major regulatory decisions), the current draft

regulation is too weak as it remains too broad with too much discretion left to the Contractor. The African Group believes that a contractor resubmitting any data with an application for exploitation should be required to demonstrate its confidentiality de novo. It is suggested that information that is characterized as confidential can be described in general terms so the Council and stakeholders have a general idea of the nature of the information being kept confidential and stakeholders given an opportunity to challenge these designations. Otherwise, the burden would fall entirely on the SG.

vi. It is further concerning that DR 16(2) includes a list of reasons why the Commission shall not recommend approval, but none of which concern the protection of the marine environment. The African Group proposes that such a reason should be included.

Terms of the Contract

b) Once a contract for exploitation is issued, it is important that the prohibition to cause transboundary harm is explicitly stated as a term of the contract and where such harm is caused, this is a material breach of the contact.

Execution of the contract

c) From the current version of the draft regulations, it is understood that DR 4 provides for an ongoing opportunity for coastal States to notify the Secretary-General if it has "grounds for believing that any activity in the Area is likely to cause serious harm or a threat of Serious Harm to the marine environment under its jurisdiction or sovereignty." Followed by DR4 (3) and if 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.

i. Once again, the burden is placed on the coastal State, including African ones, in having to evaluate documentary materials such as EIS, EMMPs as well as engaging in ongoing monitoring of its EEZ. Here, the African Group believes that the Authority should play a key role but additionally for the Contractor to also provide capacity building and training opportunities in either preparing or analyzing EIAs, baseline studies or supporting REMP development. Enhancing training and capacity building opportunities which are strategic, targeted and proactive will lead to a body of competent individuals to conduct observer operations, and/or peer review of the EIAs, expert input to the LTC on the full range of disciplines likely to be required.

ii. The African Group suggests that environmental plans can be revised but this can be further strengthened through:

a) annual reporting on compliance with environmental plans
b) a regular evaluation on the adequacy of an EEMP, and

c) allow for an EMMP to be updated over the course of a 30-year contract.

However,

a) the performance assessments as to whether the contractor is in compliance are carried out by the contractor itself and it is proposed that an agreed list of independent experts do or review these assessments.
b) the regulations are unclear as to the consequences or implications if the LTC or the Council does not like the revised EMMP; what if the EMMP cannot be revised into acceptable limits and is there power here to terminate the contract if it is not revised into acceptable limits?
c) It is further worth acknowledging that there may be various reasons for the revision of the environmental plans. This could include a revision because the contract is in compliance with the original EMMP, but the original EMMP was determined to be inadequate in a material aspect or if there is a failure in compliance with the EMMP.
d) It is important to ascertain whether this is intentional or not intentional and how if it is unintentional, such as being in financial difficulty to comply with the EMMP, what action would be taken in such circumstances.

iii.There are lessons to learn from fisheries sector such as the introduction of the independent onboard observer programme at different phases of the exploitation phase.

iv. DR 4 also requires further clarity as to the thresholds and burden of proof. Nevertheless, in line with the issue of concern is that once again the burden is placed on the capacity-constrained coastal State to have to show a potential for Serious Harm before the SG undertakes an evaluation. It is recommended that it would be more reasonable for a lower threshold such as 'Adverse Impact" to be the trigger for the coastal State to notify the SG to act. This can then shift the burden to the ISA and the Contractor to act to show that there is no Serious Harm.

v. The regulatory standard remains unclear and needs to be further articulated. Questions remain regarding what constitutes "clear grounds for believing an activity is likely to cause Serious Harm"? Who makes such a determination and on what basis? What mechanism is there for review/appeal? Should such claims be subject to independent and expert review? It is perhaps anticipated that this will be further elaborated in standards or guidelines, presumably separately for each mineral resource type/geographic area with expert scientific input.

vi. If the prohibition to transboundary harm is included in the terms and condition of the exploitation contract, DR 101 (6) must come into play to ensure that the transboundary harm is not perpetuated as soon as the SG is notified.

Penalties for violation of the contract

The African Group acknowledges that DR 78 enables the ISA to fine Contractors monetary penalties in four circumstances set out in Appendix III (underpayment or non-payment of royalty, providing false information about royalties, and failure to submit an annual report). However, monetary penalties are not made available as a compliance tool for the ISA for any other breach by a contractor of the Regulations or contract.

The African Group suggests that this could be broadened to increase the ISA's options for enforcement action and give the ISA the power to impose monetary penalties for any breach of contract of a quantum 'proportionate to the seriousness of the violation' (UNCLOS Annex III, Article 18) which can then be underpinned by Guidelines which would be preferred to prescribed set amounts for set violations. The principles recognized an ecosystem-based approach and the African Group is of the view that this approach should be reflected in the imposition of penalties for violation of the contract, hence ensuring that penalties take into consideration the loss of ecosystem services, for example, that are offered by that marine environment.

Liability

It is concerning that the gap identified in the 2011 ITLOS advisory opinion on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area is not being addressed by the mining regulations. Therefore, the African Group suggests taking stock of the work of the Legal Liability Working Group before getting a new version for the regulations. There are numerous questions about liability that is yet to be addressed:

- What type of damage can be claimed for? Does there have to be a financial loss? Can pure ecological damage be claimed for?
- Who can claim?
- In what forum can they claim? Will it be ITLOS or national courts? Has this been taken into account in designing the ISA regime / by sponsoring States? Could (or should) sponsoring state domestic liability regimes and court procedures be harmonized?
- What remedies can be awarded?
- How does this inter-relate with the insurance requirement, and the Environmental Liability Fund?

Once we have taken stock of the work, a discussion by the Member States on these issues is necessary and urgent before the next revision of the DR.

Other overarching matters

1. Precautionary principle

The DRs mention the precautionary approach at various points in the regulations, which is welcomed. However, the African Group continues to believe that DRs should rather refer to "precautionary principle" for the reasons highlight in Section I of this submission.

But in order to operationalize the precautionary approach in the application process, the African Group believes that it is important to have the Contractor from the initial step to identify uncertainties in the application process. Furthermore, to best protect the interests of both the coastal States, in particular the African ones, and the Contractor, the procedural integration of baseline work is important to document natural conditions prior to test mining. There is also an opportunity to ensure that there are procedural, institutional and substantive components of the precautionary approach reflected in the draft regulations. The basis to do this stems from the 1994 Implementation Agreement annex section 1(5) (g) to adopt the necessary rules, regulations, and procedures incorporating applicable standards for the protection and preservation of the marine environment.

The table below provides a regulation-by-regulation commentary on the issue and the proposed remedy.

Draft Exploitation Regulations: General and Specific recommendations

1. The system of consultation is dealt with under the responsibility of the ISA in ensuring that coastal States are automatically notified, specifically consulted and their comments taken into consideration in reaching a decision as to whether to approve Plans of Work. Although, the consultation should take place at the earliest stage, it is envisioned that this would continue throughout the life of the contract and into the closure plans.

DR	Commentary	Remedy
2	One of the fundamental principles that should be reflected in this section is the prevention of transboundary harm to coastal States' Exclusive Economic Zone (EEZ) and Continental Shelf (CS)	There should be a new 5(e) to reflect this.
3	There should be a specific duty to cooperate with adjacent coastal States in cases where activities are slated to take place in close proximity (geographical distance could be discussed at a later stage).	A new paragraph (h) should be inserted to reflect this.

4	The interests of coastal States are not adequately protected in these draft provisions. There should be a specific requirement at the application stage for adjacent coastal States to be automatically notified when exploration and exploitation contracts are issued in their geographic region. At present, there are no firm timelines, and it is unclear what recourse exist for coastal States if they are not satisfied with the ISA, the Sponsoring State or the contractor. Do they have standing to bring a dispute under Section 5, Part XI?	In place of the existing DR 4(2), a new provision should be in place. In this new provision, it shall first be incumbent on the ISA and the contractor to notify the coastal States in question if there are 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. Since the ISA and the contractor are privy to these details e.g. Annex II Mining Workplan, they should disclose. The existing DR 4(2) should be renumbered as DR 4(3) allowing coastal States to intervene on their own accord. A new provision should also be included to specifically provide coastal States with recourse to dispute resolution.

11	The stakeholder consultation process under DR 11 should be further strengthened to ensure the interests and rights of the coastal States are adequately protected. Following automatic notification, coastal States in the geographic region should be specifically consulted which provides an opportunity for coastal States to provide their inputs at an early stage. On the whole, the stakeholder consultation requires further strengthening. Furthermore, the full plan of work should be made available for review and comment by stakeholders, including coastal States. The follow-through/accountability should also be further strengthened to ensure that (1) stakeholder comments are passed to the LTC/Council, in particular those of adjacent coastal States (2) decisions made on how stakeholder comments are to be assessed and considered and (3) what is communicated back to those stakeholders (and the public at large) as to the effect of those comments also need to be strengthened. There is a disproportionate burden on coastal States, and the onus should be placed on the contractor (and the ISA), to demonstrate in their application that their activities will not cause transboundary harm; verify this through regular monitoring and reporting; and inform the ISA of any unexpected impacts or impacts that exceed permitted levels of harm. The ISA should in turn inform the adjacent coastal States as to any potential impacts or threats of transboundary harm. Once a concern is flagged to the coastal States, it is hoped that the LTC can serve as a vehicle to require contractors to undertake further diligence, as well as capacity building to address the potential impacts on the marine environment of the coastal States.	Draft regulations should be amended to reflect a more robust mechanism including that the LTC should provide a written response to stakeholders' comments, especially, that of adjacent coastal States.

12	The LTC in considering the proposed Plan of Work should take into consideration the prospect of transboundary harm to adjacent coastal States.	Insert a new paragraph 5(e).
13	There is a continued reporting obligation that is put in place, but this continues to place a disproportionate burden on these coastal States, in having to evaluate documentary materials such as EIS, EMMPs as well as engaging in ongoing monitoring of its EEZ. Here, the African Group is of the view that the Authority should play a key role in assisting with this function but additionally for the Contractor to also provide capacity building and training opportunities in either preparing or analyzing EIAs, baseline studies or supporting REMP development. Enhancing training and capacity building opportunities which are strategic, targeted and proactive will lead to a body of competent individuals to conduct observer operations, and/or peer review of the EIAs, expert input to the LTC on the full range of disciplines likely to be required.	
14	The precautionary approach should be reflected and applied in cases where the applications are in close proximity with adjacent coastal States.	
16(2)	Addition of a reason for not approving a Plan of Work should be harm to the marine environment, including to that of adjacent coastal States.	Insert DR 16(2) (e)
26	Documents should include information on whether there is a possibility of transboundary harm to adjacent coastal States prior to production. How would the Environment Performance indicator benefit this scenario?	DR 26/27 – shall cover transboundary harm?

27	The Environment Performance Guarantee should reflect the likely costs required for environmental effects of adjacent coastal States.	Insert DR 27 (2) (d)
34-36	It is important that incidents and notifiable events include occurrences of transboundary harm where the ISA, the Sponsoring State and adjacent coastal State should be notified. The adjacent coastal States must be consulted when deciding what measures and actions are necessary.	Add incidents/occurrence of transboundary harm in Schedule 1 and Appendix I.
39	Inserting what type of training programmes would be beneficial to the adjacent coastal State for purposes of building capacity to address the disproportionate burden placed on it by other DRs.	Add specific training on carrying out EIAs, baseline studies and reviewing EIS, EEMPs for nationals of adjacent coastal States into Schedule 8.
46	There should be a general obligation to take all necessary measures to ensure that there is no transboundary harm caused to adjacent coastal States.	A new 46(f) is needed.
47	The use of language “as far as reasonably practicable” is too broad and allows for discretionary decisions by the Contractor. Additionally, the DR should explicit reference including harm to the marine environment outside the Area.	Add another incisive sentence, that this includes harm occurring outside the Area (even though the current language does not rule out this interpretation).

48 (2)	This is problematic from a regulatory point of view and provides the Contractor with a unilateral ability to breach the DRs. To address this, there should be a new 48(3) to control this power, that is, notification to the ISA and where the environment of coastal States may be affected, both the ISA and the coastal State should be notified, and their views considered in deciding what action is necessary.	Add new 48(3) to control this power – i.e. notification to ISA, and in the case of transboundary harm, notification of the coastal States and views of the coastal States should be considered in deciding what action should be taken.
50	The performance assessment should reflect ensuring that there has not been any transboundary harm. If coastal States complain, or the LTC on its own accord if it finds irregularities, LTC should be permitted to order independent assessment of environmental harm to coastal States.	A new 50(5)(d) to be inserted.

50(8)	This DR raises more questions than answers; The regulations are unclear as to: a) the consequences or implications if the LTC or the Council does not like the revised EMMP; what if the EMMP cannot be revised into acceptable limits and is there power here to terminate the contract if it is not revised into acceptable limits? b)It is further worth acknowledging that there may be various reasons for the revision of the environmental plans. This could include a revision because the contract is in compliance with the original EMMP, but the original EMMP was determined to be inadequate in a material aspect or if there is a failure in compliance with the EMMP. d) It is important to ascertain whether this is intentional or not intentional and how if it is unintentional, such as being in financial difficulty to comply with the EMMP, what action would be taken in such circumstances.	
53	If it is assumed that the Environment Liability Fund seeks to address the gap that is identified in the 2011 Advisory Opinion then, the purpose and scope of the fund should be narrowed and focused. Furthermore, it should take into consideration the restoration and rehabilitation of the marine environment of adjacent coastal States. This however, should not be limited with language such as 'technically and economically feasible' as coastal States should suffer repercussions because of the deep seabed mining in the Area.	- Add new paragraph 53(f) to include coastal states. Should not be limited to 'technically and economically feasible' like 53(e).
56	In reviewing activities, there is no mention of if a complaint has been made by an adjacent coastal State.	Add DR 56 (h): if there is a complaint by coastal State.

87	In order to have a transparent process and best assist the Council (as the executive body of the ISA and responsible for major regulatory decisions), the current draft regulation is too weak, as it remains too broad with too much discretion left to the Contractor. The African Group is of the view that a contractor re-submitting any data with an application for exploitation should be required to demonstrate its confidentiality de novo. It is suggested that information that is characterized as confidential can be described in general terms so the Council and stakeholders have a general idea of the nature of the information being kept confidential and stakeholders given an opportunity to challenge these designations. Otherwise, the burden would fall entirely on the SG. It is recommended that information that contractors intend to keep confidential should be described in general terms so that it can be objected to. In light that we are not aware what type of information is intended to be kept confidential, it is important to increase transparency to best protect the interest and rights of coastal States.	
92 - 96	The Inspector can play a key role in ensuring the protection of the rights and interests of coastal States, and in executing their work take into consideration such rights and interests.	
97	The power to issue instructions to protect the interests and rights of the coastal States to prevent or rectify any occurrence of transboundary harm.	Add 97 (1) (e)
98	The inspector should also send the report to adjacent coastal States.	To include after 'if appropriate' and before 'the flag state' the following: 'adjacent

		coastal States’
100	Electronic monitoring is essential to monitor the movements of mining vessels and collectors in particular when in close proximity to adjacent coastal States so as to ensure operative areas of contractors. Therefore, the reporting should be as determined in the Guidelines in particular to adjacent coastal States and the data should be transmitted to adjacent coastal States.	Add “and adjacent coastal States, if necessary” in DR 100 (4)
101	The terms of conditions should explicitly include the prohibition of transboundary harm.	Add prohibition of transboundary harm in the terms and conditions of the contract as one of the standard clauses (Annex X)
102	The remedial action to prevent or mitigate the effects or potential effects of a contractor’s failure to comply with the terms and conditions of exploitation should include instances of transboundary harm.	Need to specifically include transboundary
104	It is very important to mention that adjacent coastal States have locus standi to bring a claim.	Add DR 104 (3)
Annex II	Mining Workplan – identify the adjacent coastal States of the geographical region	Add to (b) of Annex II

Annex VII and VIII	In both the EMMP and Closure Plan, specific reference should be made to the situation where there is evidence of harm to the coastal States, and the steps that should be taken such as notification and consulted throughout the process. The expense of this should be borne by the Contractor.	Additions can be made in (b) (e) (p)
Annex X (Section 7.1)	There should be specific reference to occurrences of transboundary harm, who should be liable and the Fund that will pay to remedy or rehabilitate the harm.	Insert 7.5
Appendix I	Notifiable events to include transboundary harm as explained in DR 36	Add occurrence of transboundary harm
Schedule 1	The section should include a definition of transboundary harm.	Add definition of Transboundary Harm
Schedule 1	The definition of Environmental Effect/Marine Environment/Serious Harm should include that it is not 'limited to the Area.'	Add 'not limited to the Area'