中华人民共和国政府
关于《“区域”内矿产资源开发规章草案》的
评论意见

2018 年 9 月 28 日

根据国际海底管理局（海管局）第24届会议理事会主席声明，应海管局秘书处邀请，中华人民共和国政府在2017年12月20日所提评论意见基础上，继续就ISBA/24/LTC/WP.1/Rev.1号文件所载更新后的《“区域”内矿产资源开发规章草案》（《规章草案》）发表评论意见。

一、关于《规章草案》的总体意见

1.中国政府认为，修订后的《规章草案》较前一版有了明显提高，但仍有诸多值得改进之处。开发规章作为落实“‘区域’及其资源属于人类共同继承财产”原则的重要法律文件，应完整、准确、严格地遵守《联合国海洋法公约》（《公约》）以及《关于执行1982年12月10日<联合国海洋法公约>第十一部分的协定》（《执行协定》）的规定和精神。开发规章应明确、清晰地界定“区域”内资源开发活动中有关各方的权利、义务和责任，确保海管局、缔约国和承包者三者的权利、义务和责任符合《公约》以及《执行协定》的规定，确保承包者自身权利和义务的平衡。开发规章应以鼓励和促进“区域”内矿产资源的开发为导向，同时按照《公约》及其《执行协定》的规定，切实保护海洋环境不受“区域”内开发活动可能产生的有害影响。开发规章制定应从当前社会、经济、科技、法律等方面的实际情况出发，基于客观事实和科学证据，确立相适应的制度、规则和标准。开发规章制定还应借鉴各国在陆上或国家管辖海域内开发矿产资源的惯常实践和有益经验，考虑与拟议中的“国家管辖范围以外区域海洋生物多样性养护和可持续利用国际协定”相

关规定相协调。

二、关于《规章草案》的框架结构

2.中国政府主张，《规章草案》应纳入深海采矿惠益分享机制，进一步加强对企业部和区域环境管理计划问题的规定，同时充分考虑不同海底矿产资源的不同特点。

（一）开发规章应纳入惠益分享机制

3.惠益分享是人类共同继承财产原则的重要内容和体现，也是《公约》为海管局规定的一项重要职责。《公约》第140条规定，“区域”内活动应为全人类的利益而进行。海管局应通过任何适当机构，在无歧视的基础上公平分配从“区域”内活动取得的财政及其他经济利益。制定开发规章不能将惠益分享排除在外。惠益分享作为“区域”资源开发整体制度设计中的重要一环，应与深海开发其他问题一并处理。

一是惠益分享与缴费机制密不可分。两者本质上都是对“区域”内活动产生的收益的处置和再分配，应该同时在一个法律文件中加以规范。

二是对受深海采矿影响的发展中陆上生产国的援助离不开惠益分享。《执行协定》附件第7节规定，管理局应设立经济援助基金，用以向受到深海采矿影响的发展中陆上生产国提供援助，且有关资金只能源于承包者（包括企业部）的付款和自愿捐款。惠益分享机制缺位将难以设立上述经济援助基金。

三是保护深海环境应与惠益分享机制统筹考虑。《规章

草案》规定了环境责任信托基金，其资金应源于“区域”内资源开发收益，这充分体现了惠益分享与环保的密切关系。开发规章应涵括全面完整的惠益分享机制，以便通过更多渠道和方式促进深海环境保护。

4.建立惠益分享机制可考虑如下原则：一是公平原则，以实现全人类利益与开发者商业利益的合理平衡，当代人与后代人代际利益的平衡。二是发展中国家优惠待遇原则，以确保发展中国家能够按照《公约》和《执行协定》从深海资源开发中获利。三是公开透明度原则，无论是规则制定还是实际分享采矿收益，都应公开透明。

5.建立惠益分享机制应充分发挥财务委员会的作用，并借鉴其他国际实践。《执行协定》附件第9节第7条（f）项规定，有关公平分配从“区域”内活动取得的财政及其他经济利益的规则、规章和程序以及为此而作的决定，大会和理事会应考虑到财务委员会的建议。惠益分享的方式可包括货币化分享和非货币化分享。另外,《公约》第82条规定的200海里外大陆架非生物资源的收益分享问题应是海管局整体惠益分享制度的重要方面。

（二）开发规章应详细规定企业部问题

6.企业部是直接进行“区域”内活动以及从事运输、加工和销售从“区域”回收的矿物的海管局机关，是《公约》规定的平行开发制的重要机构,也是发展中国家参与“区域”资源开发的重要渠道。企业部的独立运作对有效落实“人类共同继承财产”原则具有重要意义。

7.《规章草案》虽然对企业部申请开发工作计划以及与其他承包者的联合安排等作出了规定，但内容过于简略，操作性不强。《公约》附件三第9条第3款规定，海管局可在其规则、规章和程序内规定联合企业的实质性和程序性要求和条件。《“区域”内多金属硫化物探矿和勘探规章》第19条以及《“区域”内富钴铁锰结壳探矿和勘探规章》第19条均规定，企业部可在联合企业安排中获得股份，其获取相关股份的条款和条件应予进一步阐明。上述内容在现有《规章草案》中均未相应涵及。同时，波兰政府在第24届会议上表示将于2019年提出与企业部经营联合企业的建议，这将引发理事会对企业部独立运作问题的讨论，涉及是否符合健全商业原则以及企业部独立运作的过渡期安排等问题。波兰的提议凸显了企业部问题的紧迫性。《规章草案》有必要进一步丰富和细化关于企业部的制度安排。

8.从《公约》和《执行协定》的有关精神出发，企业部独立运作可考虑如下原则：一是成本效益原则，企业部的运作应尽量减少缔约国为此可能承担的费用。二是渐进原则，企业部独立运作应充分考虑深海采矿的现有技术和市场条件，稳妥务实地开展相关工作。三是健全商业原则，企业部从事“区域”内活动，包括建立联合企业等，都应服从商业规律，遵循商业原则。四是发展中国家优惠待遇原则，企业部独立运作应切实促进发展中国家有效参加“区域”内活动。

（三）开发规章应对“区域环境管理计划”作出规定

9.海管局已在克拉里昂-克利珀顿区创设了首个也是目

前唯一一个区域环境管理计划，并正推动在大西洋中脊、西北太平洋等区域制定新的区域环境管理计划。中国政府认为，区域环境管理计划作为保护深海环境的重要措施，理应在开发规章中予以规定。

（四）开发规章应顾及不同国际海底矿产资源的差别

10.“区域”内多金属结核、多金属硫化物和富钴结壳三种矿产资源各具特点，其赋存环境和开采方式等存在差异，深海开发规则对其处理不宜一刀切。海管局现有勘探规章是针对三种不同矿产资源分别制定的。《公约》第162条第2款o项（2）目也规定，“对于制定有关多金属结核的勘探和开发的规则、规章和程序，应给予优先”。中国政府对制定一个综合性开发规章，还是按照资源种类不同分别制定三份开发规章，持灵活立场。但无论采取何种方式，开发规章都应妥为顾及三种矿产资源的特点差异，确保有关规则科学合理、务实可行。

三、关于《规章草案》的具体条款

（一）第一部分

11.《规章草案》第2条

该条规定了深海开发的基本原则。建议在现有基础上再增加两项原则：一是确保勘探和开发“区域”内资源与保护和保全海洋环境的合理平衡。二是确保“区域”内活动与其他海洋活动相互顾及。

（二）第三部分

12.《规章草案》第19条

该条第 7 款规定，如承包者在开发合同区内进行勘探活动，应根据适用的勘探规章缴纳有关费用。中国政府认为，承包者为获得和履行开发合同，已就全部合同区缴纳了固定年费或特许权使用费，其在开发合同区内的勘探活动属于开发准备或附带活动，不应再另行支付费用。建议删除有关收费的内容。

13.《规章草案》第 30 条

该条规定，承包者因市场条件或者为保护海洋环境或保护人身健康和安全，可减少或暂停生产。建议该条增加“在承包者减少或暂停生产期间，适当减免其缴纳的固定年费或特许权使用费”的规定。

14.《规章草案》第 31 条

该条第 4 款涉及成员国向秘书长提供有关矿物加工、处理和精炼的数据或信息。根据《公约》，海管局的职权限于“组织和控制‘区域’内活动”，不应包括将矿物运到陆上后对其进行的加工、处理和精炼。成员国并无义务提供涉及矿物加工、处理和精炼的信息。建议删除该条第 4 款。

15.《规章草案》第 33 条

该条第 1 款规定，承包者在从事开发时，应依据《公约》第 147 条、经核准的环境管理和监测计划、关闭计划以及主管国际组织制定的任何适用的国际规则和标准，合理顾及海洋环境中的其他活动。中国政府认为，“《公约》第 147 条、经核准的环境管理和监测计划、关闭计划”已足以涵盖承包者合理顾及其他海洋活动的义务。“主管国际组织制定的任

何适用的国际规则和标准”指向不明，过于宽泛，增加承包者负担，建议将其删去。该条第 1 款还规定，“每个承包者均应尽职尽责，确保不损坏合同区域内的海底电缆或管道”。海洋环境中还包括捕鱼、航行等其他活动，将海底电缆或管道问题单列，并为承包者创设超出“合理顾及”的“尽职义务”，容易造成厚此薄彼。建议将相关内容删除。

16.《规章草案》第 34 条

该条规定，承包者应在合理可行的范围内尽量减少事故风险，直至进一步减少风险的成本与其效益严重不成比例。应如何评估和界定此处的“严重不成比例”，建议澄清。

17.《规章草案》第 37 条

该条规定，如在合同区内发现人类遗骸、文物或遗址后，为避免扰动该人类遗骸、文物或遗址，不得在合理范围内继续勘探或开发，直至理事会综合考虑各方意见后作出决定。但如理事会决定不能继续勘探或开发，承包者将面临一定损失。在此情况下，是否考虑对承包者给予一定补偿，比如在其他地方提供同等面积或价值的开发区域，或适当减免承包者缴费等，建议进一步研究。

18.《规章草案》第 38 条

该条规定了承包者购买保险的问题。希进一步明确保险的险种、保险对象和赔偿范围等有关内容。

（三）第四部分

19.《规章草案》第 53 条

该条涉及环境责任信托基金的宗旨和用途，其中（c）

款规定基金将用于“与保护海洋环境有关的教育和培训方案”。中国政府认为，环境责任信托基金应是救济和补充性的，目的在于预防、限制或修复“区域”内活动产生的环境损害。“与保护海洋环境有关的教育和培训方案”过于宽泛，容易稀释基金的核心目标。考虑到相关培训可通过承包者履行培训义务等渠道予以实施，建议删除有关内容。

20.《规章草案》附件四

本部分环境影响评估报告所列项目过于庞杂、操作性不强。一是部分项目涉及连通性、生态系统功能和生命史等基础科学前沿问题，明显超出承包者的科研能力和合同义务。二是部分项目似无评估必要。根据勘探规章，承包者申请勘探矿区，应确保有关设施“不坐落在可能干扰国际航行必经的公认航道的地点或坐落在捕鱼活动集中的区域”。因此，勘探区和开采区都不应在渔场和航道上，开发时再对渔业和海上运输可能受到的影响进行评估似无必要。再如，海面以下作业对空气质量的潜在影响似可忽略不计。鉴上，中国政府主张环境影响报告应删减不必要的评估项目，并参照法律和技术委员会制定的《指导承包者评估“区域”内海洋矿物勘探活动可能对环境造成的影响的建议》（ISBA/19/LTC/8），对“不需要进行环境影响评估的活动”和“需要进行环境影响评估的活动”加以区分。

（四）第七部分

21.关于缴费机制的总体意见

21.1 关于缴费模式

《执行协定》附件第8节第1条(c)款规定，缴费机制“应该考虑采用特许权使用费制度或结合特许权使用费与盈利分享的制度。如果决定采用几种不同的制度，则承包者有权选择适用于其合同的制度。”目前《规章草案》仅提出“从价的特许权使用费”模式，显然不符合上述规定。实际上，从利的特许权使用费等利润分享模式已在陆地采矿中被广泛应用且呈扩大趋势，不少利益相关者也提出应考虑“结合特许权使用费与盈利分享的制度”。建议对特许权使用费、盈利分享或两者组合等不同缴费方式进行研究，保证承包者享有选择不同缴费模式的权利。

21.2 关于缴费制度的公平性

《执行协定》附件第8节第1条(a)款要求，缴费制度“应公平对待承包者和管理局双方”。此处的“公平对待”意味着缴费制度既要落实“人类共同继承财产”原则，保障海管局代表的全人类的利益；也要遵循 “健全商业原则”，使包括企业部在内的承包者有利可图。目前《规章草案》对此尚无规定，建议对“公平对待”问题进一步研究。

21.3 关于与陆地采矿缴费的比较

《执行协定》附件第8节第1条(b)款规定，“此一制度下的缴费率应不超过相同或类似矿物的陆上采矿缴费率的一般范围，以避免给予深海采矿者人为的竞争优势或使其处于竞争劣势”。尽管深海矿物及其开发在矿物品性和生产成本方面与陆地采矿差异较大，比较两者的缴费率确有一定难度，但这是确定深海采矿缴费率不可缺少的法定步骤和程

序。现有《规章草案》尚未体现此方面工作，建议尽快开展相关研究。

22.《规章草案》第 61 条

该条概括规定了对承包者的鼓励。考虑到深海采矿是全新领域，风险远大于陆地采矿，对承包者给予财政鼓励等确有必要。建议《规章草案》进一步明确“财政鼓励”的具体措施，如是否可在商业开发第一阶段减免承包者缴费，或减免首批承包者的费用等。

23.《规章草案》第 68 条

该条第 3 款规定向海管局缴纳的所有款项均应为毛额（gross）。从上下文来看，此处是否应为净额，建议澄清。该条第 4 款表示承包者在特殊情况下可分期缴纳特许权使用费。对于何为“特殊情况”，建议澄清。

24.《规章草案》第 69 条

该条第 1 款（a）（b）两项规定的从采矿区回收和装运的矿石数量均以湿公吨数为计量单位，而《规章草案》附录四所载特许权使用费计算公式中涉及的矿石总量计数单位则为公吨。鉴于矿石的“湿公吨”和“干公吨”重量差别大，有关统计方式应保持一致。建议《规章草案》对矿石计量单位问题予以明确。

25.《规章草案》第 72 条

该条第 4 款规定“承包者应保存所有记录，并根据第 73 条提供这些记录供检查和审计”，建议《规章草案》明确书册和记录应保留的年份，包括闭矿后是否还要保存。

26.《规章草案》附录四

本部分规定了特许权使用费的确定方法。根据《公约》和《执行协定》，海管局的管辖范围应限于“区域”内活动，不应包括海上运输和陆上冶炼。但本部分所载特许权使用费计算公式均以成品金属价格而非矿石价格为参数。成品金属价格必然涉及矿石的运输和冶炼环节，超出海管局的管辖范畴。对于如何处理这一矛盾，建议进一步研究。此外，特许权使用费的计算似还应考虑从矿石到金属的“选冶回收率”。

（五）第八部分

27.《规章草案》第 83 条

该条规定，固定年费应按照开发合同中确定的以平方公里计的合同区总面积乘以以美元计的每平方公里的年度费率计算。该规定不合理。首先，承包者根据要求在合同区内设立的参照区等非采矿区不应计征固定年费。其次，不同海底资源的合同区面积和开采方式差别较大，确定固定年费的费率应区分资源类别。再次，现有《规章草案》仅表示“理事会应确定每个日历年的年度费率”，如何具体确定固定年费费率不够明确。建议慎重考虑固定年费问题，重新起草本条。

（六）第九部分

28.《规章草案》第 87 条

该条第 3 款规定，机密资料在交给秘书长 10 年后将不再视为机密资料。根据现有《规章草案》规定，开发合同期限可为 30 年，而机密资料的保密期限仅为 10 年，两者缺乏

协调。中国政府认为，除非承包者另有表示，机密资料在合同存续期间原则上都应保密。建议对该条款进行相应调整。

（七）第十一部分

29.《规章草案》第103条

该条涉及担保国责任。中国政府重申，《公约》以及《执行协定》已对担保国责任问题作出明确规定，开发规章不应为担保国创设新的义务。此外，制定开发规章还应充分考虑2011年国际海洋法法庭关于担保国责任的咨询意见。建议该条增加“虑及国际海洋法法庭海底争端分庭于2011年2月1日就“区域”内活动担保国责任问题发表的咨询意见”的表述。

Original: Chinese

Comments

by

the Government of the People's Republic of China

on

the Draft Regulations on Exploitation of Mineral Resources in the Area

28 September 2018

Pursuant to the Statement by the President of the Council during the twenty-fourth session of the International Seabed Authority (Authority), and at the invitation of the Secretariat, the Government of the People's Republic of China hereby, on the basis of its previous comments submitted on 20 December 2017, continues to make comments on the updated Draft Regulations on the exploitation of mineral resources in the Area (Draft Regulations) contained in document ISBA/24/LTC/WP.1/Rev.1.

I General Comments on the Draft Regulations

1. The Chinese Government considers that even though the revised Draft Regulations has made tangible progress compared with the previous version, further improvements are still required in many places. As an important legal instrument implementing the principle that the Area and its resources are the common heritage of mankind, the Exploitation Regulations shall comply with the provisions and spirit of the United Nations Convention on the Law of the Sea (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 (Implementing Agreement) in a complete, accurate and strict manner. The Exploitation Regulations should clearly and explicitly define the rights, obligations and responsibilities of various parties involved in the exploitation activities in the Area, and ensure that the respective rights, obligations and responsibilities of the Authority, States Parties and Contractors are in line with the Convention and the Implementing Agreement, and keep the balance of the Contractor's rights and obligations. The Exploitation Regulations should be oriented towards

encouraging and promoting the exploitation of mineral resources in the Area while ensuring, in accordance with the Convention and the Implementing Agreement, effective protection for the marine environment from harmful effects which may arise from such activities. The Exploitation Regulations should, based on objective facts and scientific evidences, establish rules, regulations and standards compatible with the present situation of social, economic, technological and legal realities. The formulation of the Exploitation Regulations should draw on the common practice and useful experience of States in exploiting mineral resources on land or in maritime areas under national jurisdiction, and coordinate with the on-going progress of developing an international instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

II On the Framework and Structure of the Draft Regulations

2. The Chinese Government takes the view that the Draft Regulations should include a benefit sharing mechanism concerning the deep seabed exploitation, further flesh out regulations about the Enterprise and the regional environmental management plan and take into full account the respective characteristics of different mineral resources in the Area.

i The Exploitation Regulations should include a benefit sharing mechanism

3. Benefit sharing is not only part of the important contents and embodiment of the principle of the common heritage of mankind, but

also an important duty of the Authority provided in the Convention. Article 140 of the Convention provides that activities in the Area shall be carried out for the benefit of mankind as a whole. The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis. The formulation of the Exploitation Regulations must not exclude the benefit sharing mechanism. As an important part of the overall system designed to govern the exploitation of the resources in the Area, benefit sharing needs to be addressed along with other issues.

Firstly, benefit sharing is inseparable from the payment mechanism. Both of them are essentially the disposition and redistribution of the benefits derived from activities in the Area and therefore should be specified simultaneously in one legal document.

Secondly, benefit sharing is indispensable for assistance to the affected developing land-based producer States. Section 7 of the Annex to the Implementing Agreement provides that the Authority shall establish an economic assistance fund to assist developing land-based producer States affected by the production of minerals from the deep seabed, for the establishment of which only funds from payments received from Contractors, including the Enterprise, and voluntary contributions shall be used. Therefore, it would be impossible to establish the economic assistance fund without an existing benefit sharing mechanism.

Thirdly, protection for the marine environment and benefit sharing mechanism should be taken into account as a whole. The Draft Regulations provides for the establishment of an environmental liability trust fund which should be mainly financed by the benefits derived from

the exploitation of the resources in the Area. This fully reflects the close link between benefit sharing and the environmental protection. The Exploitation Regulations should encompass a complete and comprehensive benefit sharing mechanism so as to promote the protection for the marine environment through more channels and methods.

4. The following principles may be taken into account when formulating the benefit sharing mechanism: The first one is the principle of equity, to realize the reasonable balance between the benefits of mankind and the commercial interests of Contractors as well as between the interests of current and future generations. The second one is the principle of preferential treatment for developing States, to ensure that developing States could gain benefits derived from exploitation of the resources in the Area in accordance with the Convention and the Implementing Agreement. The third one is the principle of transparency, according to which both the rule-making process and the actual sharing of benefits derived from exploitation should be transparent.

5. The formulation of the benefit sharing mechanism should give full play to the Finance Committee and take other international practice into consideration. Article 7 (f) of Section 9 of the Annex to the Implementing Agreement provides that the Assembly and the Council shall take into account the recommendations of the Finance Committee in making decisions concerning rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area. The modality of benefit sharing could include both monetary benefit sharing and non-monetary benefit sharing. In addition, the issue concerning payments and contributions with respect to the exploitation of

the continental shelf beyond 200 nautical miles provided in Article 82 of the Convention should be one important part of the overall benefit sharing mechanism to be developed by the Authority.

ii The Exploitation Regulations should provide for specific and detailed rules concerning the Enterprise

6. The Enterprise is the organ of the Authority which shall carry out activities in the Area directly as well as the transporting, processing and marketing of minerals recovered from the Area. The Enterprise is also an important organ to implement the parallel system as provided in the Convention and a vital channel for developing States to participate in the exploitation of the resources in the Area. The independent functioning of the Enterprise is significant for the effective implementation of the principle of common heritage of mankind.

7. While the Draft Regulations does contain provisions concerning the Enterprise such as application for approval of Plans of Work, joint arrangements with other Contractors, its contents are too sketchy to be operationalized. Article 9 (3) of Annex III to the Convention stipulates that the Authority may prescribe, in its rules, regulations and procedures, substantive and procedural requirements and conditions with respect to joint ventures. Both Article 19 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area and Article 19 of the Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts in the Area provide that the Enterprise can obtain equity participation in a joint venture arrangement, and the terms and conditions for obtaining such equity participation would need to be further elaborated. None of the above requirements are reflected in the current Draft Regulations. Meanwhile, the Government of Poland

indicated during the twenty-fourth session of the Council that it would submit a full proposal for a joint-venture operation with the Enterprise in 2019, which will trigger the discussion by the Council over the independent functioning of the Enterprise, including whether such a proposal would accord with sound commercial principles and the interim arrangements prior to the independent functioning of the Enterprise. The Polish proposal highlighted the urgency of the Enterprise issue. It is imperative for the Draft Regulations to further extend and specify the institutional arrangements concerning the Enterprise.

8. Based on the spirit of the Convention and the Implementing Agreement, the following principles should be borne in mind for the independent functioning of the Enterprise: The first one is the principle of cost-effectiveness, according to which the operation of the Enterprise should minimize the costs that States Parties may bear. The second one is evolutionary approach, which means that the independent functioning of the Enterprise should take into full account the contemporary technical and market conditions for deep seabed mining and move forward in a sound and practical manner. The third one is the sound commercial principle, which requires that the operations of the Enterprise in the Area, including entry into joint-venture arrangements, should follow commercial rules and comply with commercial principles. The fourth one is the principle of preferential treatment for developing States, under which the independent functioning of the Enterprise should effectively promote the participation of developing States in the activities in the Area.

iii The Exploitation Regulations should provide for regional environmental management plans

9. The Authority has so far developed the first and the only regional environmental management plan (REMP) for the Clarion-Clipperton Zone and is promoting the establishment of new REMPs for other areas such as the Mid-Atlantic Ridge and the North-West Pacific. The Chinese Government believes that being an important measure to protect the deep-sea environment REMPs should be incorporated into the Exploitation Regulations.

iv The distinctions among different international seabed mineral resources should be taken into account in formulating the Exploitation Regulations

10. Polymetallic nodules, polymetallic sulphides and cobalt-rich crusts in the Area each have their own characteristics. The occurrence environments and exploitation methods of the three categories of mineral resources are clearly distinctive. Therefore, the provisions of the Exploitation Regulations should not be "one-size-fits-all". The present regulations on exploration for the three categories of resources were formulated separately. Article 162 (2) (o) (ii) of the Convention also provides that, "〔p〕riority shall be given to the adoption of rules, regulations and procedures for the exploration for and exploitation of polymetallic nodules". The Chinese Government is flexible on whether to develop one comprehensive Exploitation Regulations or instead, three respective Exploitation Regulations according to different categories of the resources. However, no matter what approach will be adopted, the different characteristics of the three categories of mineral resources should be properly considered in formulating the Exploitation Regulations to ensure that the relevant regulations are scientific, reasonable, practicable and feasible.

III On specific Provisions of the Draft Regulations

i Part I

11. Draft regulation 2

This article stipulates the fundamental principles for deep seabed exploitation. It is proposed to add two more principles apart from 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.

ii Part III

12. Draft regulation 19

Paragraph 7 of this article provides that the Contractor shall pay relevant fees in accordance with the applicable Exploration Regulations when conducting exploration activities in the exploitation Contract Area. The Chinese Government is of the view that the Contractor has paid an annual fixed fee or royalties for the total size of the 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.

13. Draft regulation 30

This article provides that a Contractor may temporarily reduce or suspend production due to market conditions or for the purpose of

protecting the marine environment or of protecting human health and safety. It is suggested to add the wording “during the period of reduction or suspension in production, the annual fixed fee or royalties may be reduced or exempted correspondingly.”

14. Draft regulation 31

Paragraph 4 of this article refers to data or information to be provided to the Secretary-General by the Members of the Authority with respect to processing, treatment and refining of ore. In accordance with the Convention, the mandate of the Authority is limited to “organize and control activities in the Area” and does not include the processing, treatment and refining of ore that take place after minerals being transported on land. The Members of the Authority have no obligation to provide the above information. It is proposed to delete paragraph 4 of this article.

15. Draft regulation 33

Paragraph 1 of this article provides that Contractors shall carry out exploitation 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. The Chinese Government considers that “article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan” are sufficient to 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 broad, which increases the burden of the Contractor. It is

suggested to delete it. Paragraph 1 also provides that “each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area”. Given that activities in the marine environment also include fishing, navigation and so on, singling out the issue of submarine cables or pipelines and creating a due diligence obligation for Contractors beyond the obligation of reasonable regard would only lead to selective treatment to different activities in the marine environment. It is proposed to delete the relevant content.

16. Draft regulation 34

This article stipulates that 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. It is suggested to clarify how to ascertain and define the phrase “grossly disproportionate”.

17. Draft regulation 37

This article 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 size or value the same as that of the affected area, or reducing the Contractor’s payments. These issues need to be further studied.

18. Draft regulation 38

This article sets out that a Contractor shall maintain appropriate insurance policies. Further clarification is sought on questions concerning the types of insurance, the insured objects and the scope of compensation.

iii Part IV

19. Draft regulation 53

This article relates to the purposes and use of the environmental liability trust fund. Paragraph (c) of this article provides that the fund could be used for "〔e〕ducation and training programmes in relation to the protection of the Marine Environment". The Chinese Government considers that the environmental liability trust fund should be remedial and complementary in nature, aiming to prevent, limit, or remediate any environmental damage from activities in the Area. "Education and training programmes in relation to the protection of the Marine Environment" is overbroad 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.

20. Annex IV

The items listed in the Environment Impact Statement are too numerous to operate effectively. First, some of the items involve basic and frontier scientific problems such as connectivity, ecosystem function and life-history, which are obviously beyond Contactors' scientific research capacity and the obligations under the contract. Second, it is unnecessary to assess some of the items. According to the Exploration

Regulations，if an applicant applies for exploration，it 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 overlap with sea lanes. It seems that there is no more need to assess the impact upon fisheries and marine traffic for exploitation. For another example， potential effects on air quality from subsurface operations is likely to be negligible. For the reasons above，the Chinese Government proposes that the Environment Impact Statement should delete some unnecessary assessment items and should differentiate “activities not requiring environmental impact assessment” from “activities requiring environmental impact assessment” by reference to 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/19/LTC/8) issued by the Legal and Technical Commission.

iv Part VII

21. General comments on the payment mechanism

21.1 Payment model

Section 8 Article 1 (c) of the Annex to the Implementing Agreement provides that “〔c〕onsideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon，the contractor has the right to choose the system applicable to its contract”. The current Draft Regulations only contains an ad valorem royalty system，which is obviously not in line with the above provision. In fact，profit-based

royalty and other profit-sharing systems have been widely used for land-based mining and tend to be expanding. Quite a few stakeholders also proposed to consider “a combination of a royalty and profit-sharing system”. It is suggested to further study payment models, including royalty, profit-sharing system and the combination of both, so as to ensure the rights of the Contractor to choose among different payment models.

21.2 fairness of the payment system

Section 8 Article 1 (a) of the Annex to the Implementing Agreement requires that the payment system “shall be fair both to the contractor and the Authority”. The wording “be fair” herein means that the payment system should not only implement the principle of “common heritage of mankind” to safeguard the benefit of mankind as a whole represented by the Authority, but also comply with the “sound commercial principle” to enable the Contractor, including the Enterprise, to make certain profits from deep seabed exploitation. At present, there is no relevant provisions in the Draft Regulations, it is suggested to further study the “fair treatment” issues.

21.3 Comparison with the payment of land-based mining

Section 8 Article 1 (b) of the Annex to the Implementing Agreement provides that “[t]he rates of payments under the system shall be within the range of those 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”. Although it’s not easy to compare the payment rates between deep seabed mining and land-based mining due to the differences existing between them in terms of resources characteristics

and production cost, such comparison is still required as indispensable legal steps in determining the payment rates of deep seabed mining. There is no reflection for this issue in the current Draft Regulations. Further study needs to be carried out as soon as possible.

22. Draft regulation 61

This article outlines the incentives for the Contractor. Given that the deep seabed mining is a new area with risks much higher than land-based mining, it is necessary to provide for financial and other incentives to Contractors. It is suggested to further clarify in the Draft Regulations the specific measures of financial incentives, for instance, whether the Contractor's payments could be reduced in the first period of commercial production, or whether the payment of those first group of Contractors could be reduced or exempted.

23. Draft regulation 68

Paragraph 3 of this article provides that all payments made to the Authority shall be made gross. Judging from the context, it may be more reasonable for the payment to be made "net". It's proposed to give clarifications in this regard. Paragraph 4 of the same article indicates that Contractors could pay royalty by way of instalment where special circumstances exist. It would be helpful to make clear what should be deemed as "special circumstances".

24. Draft regulation 69

According to paragraph 1 (a) and (b), the quantity of mineral-bearing ore recovered and shipped from mining area is calculated in wet metric tons. However, the quantity to be calculated in the formula for the calculation of royalty payable in appendix IV of the Draft Regulations is in metric tons. Considering the big difference of weight

between wet metric tons and dry metric tons, the statistical method should be consistent. It's proposed to clarify the issue of measurement unit.

25. Draft regulation 72

Paragraph 4 of this article provides that "[a] Contractor shall maintain all records and make such records available for inspection and audit under regulation 73". It is suggested that the Draft Regulations clarifies the period of maintaining such books and records, including whether they should be kept even after closure.

26. Appendix IV

This part sets forth the methodology for the determination of a royalty liability. According to the Convention and the Implementing Agreement, the jurisdiction of the Authority is limited to activities in the Area and does not cover the marine transportation and smelting on land. However, the calculation of royalty contained in this part is based on the prices of relevant metals rather than the prices of the ore. Prices of metals will inevitably involve the processes of transportation and smelting of ore, which is beyond jurisdiction of the Authority. It is suggested to conduct further study on how to address this conundrum. In addition, the rate of metallurgic recovery from ore to metal may also need to be taken into account for the calculation of royalty.

v Part VIII

27. Draft regulation 83

This article stipulates that 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. This is not reasonable.

First, the non-mining areas, such as reference zones required to be established by Contractors within the Contract Area, should not be counted in calculating annual fees. Second, the size of the Contract Area and the method of exploitation of different resources vary greatly, so the rate of fixed annual fee for each categories of resources should be differentiated accordingly. Third, the current Draft Regulations merely provides that "[t]he Council shall establish such annual rate for each Calendar Year", but how to do so remains unclear. It is proposed to consider the fixed annual fee issue prudently and redraft this article.

vi Part IX

28. Draft regulation 87

Paragraph 3 of the article 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. Pursuant to the Draft Regulations, the term of an exploitation contract could be 30 years. A discrepancy emerges as a result of comparison between the contract period of 30 years and the confidential period of 10 years. The Chinese Government is of the view that Confidential Information in principle should be confidential for the whole contract period unless the Contractor expresses otherwise. It is suggested to adjust this article accordingly.

vii Part XI

29. Draft regulation 103

This article refers to responsibilities of the sponsoring State. The Chinese Government reiterates that the Convention and the Implementing Agreement have clearly stipulated the responsibilities of sponsoring States, and no additional obligations shall be created by the Exploitation

Regulation. Besides， the advisory opinion on responsibilities and obligations of sponsoring States issued by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea in 2011 should be fully considered for the development of the Exploitation Regulations. It is proposed to insert accordingly the wording of “conscious of the advisory opinion on responsibilities and obligations of sponsoring States with respect to the activities in the Area issued by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on 1 February 2011” in this article.