Comments on the Draft Regulations on Exploitation of Mineral Resources in the Area
(ISBA/24/LTC/WP.1/Rev.1)
Submitted by the Government of Japan

As of 28 September 2018

The Government of Japan is of the view that sensible Regulations on Exploitation of Mineral Resources in the Area (hereinafter referred to as "the Regulations"), defined by a good balance of considerations for "exploitation" and "environment", should be formulated in order to realize such exploitation. As we all know, the deep sea is home to one of the most unique, yet vulnerable environments. Any damage suffered to the environment in the deep sea would take immeasurable time to recover. Therefore, exploitation of the deep seafloor requires us to conduct due diligence in order to prevent any damage to the marine environment.

At the same time, considering that deep sea mining is far costlier and technically more challenging compared with traditional land-based mining, we should be careful not to make the Regulations overly burdensome for contractors because such regulations may dampen the potential of deep sea mining by discouraging contractors to engage in exploitation in the Area. The discussions for the formulation of the Regulations should fully take into account the inputs from the stakeholders including contractors, while also fully taking into consideration the environmental aspects.

Japan also considers that the Regulations should be fully consistent with the United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention") and the Agreement Relating to the Implementation of the Part XI of the Convention. In addition, the Regulations should be simple and clear for contractors to follow. It would be useful to clarify procedures and actions to be taken by contractors by making flow charts for processes of issuance of a compliance notice and termination of exploitation contract and Environmental Impact Assessment, as is the case for application and approval process for a plan of work (ISBA/24/LTC/6 Annex I). Such flowcharts could be attached to the Regulation as an appendix and also made available to the public on the Authority's website for reference.

From this basic viewpoint, we would like to submit Japan's current proposals and comments on the Draft Regulations on Exploitation of Mineral Resources in the Area

(ISBA/24/LTC/WP.1/Rev.1) as follows. The following views are as of 28 September 2018 and we reserve the right to make further oral or written comments in the course of future discussions.

I. PART I INTRODUCTION

Draft regulation 1 (Use of terms and scope)

In order to ensure consistency with Agreement and other related regulations as well as the Convention, Japan recommends some modification to Paragraph 1 of the Draft Regulation (hereinafter referred to as "DR") 1 as follows:

< Paragraph 1 of DR 1>

- Terms used in these Regulations shall have the same meaning as those in the Convention [, Agreement and other related regulations thereof].

Stakeholders should be consulted in developing Standards and Guidelines referred to in Paragraph 5 of DR 1 for the sake of their practicability. Therefore Japan suggests modifying the sentence as follows:

<Paragraph 5 of DR 1>

- These Regulations shall be supplemented by Standards and Guidelines, as well as further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment [, all of which shall be developed taking into account the views of relevant stakeholders] .

Adoption of the Regulations is subject to finalization of all the supplementary documents, to say the least key documents, including Standards and Guidelines as it is extremely difficult to make a decision of the appropriateness of the Regulations without the entire picture. In this regard, priority and timeline of making supplementary documents should be identified. In order to formulate well-balanced and sensible Regulations, Japan will make proposals as necessary on what should be provided by the Regulations and what should be included in "guidelines" in order to move the discussions forward.

Draft regulation 3 (Duty to cooperate and exchange of information)

Paragraphs (a) and (g) of DR 3 provides that "Members of the Authority and Contractors shall co-operate with the Authority to provide such data and information *as is reasonably necessary*" and "Contractors shall, upon the request of the Secretary-General, provide or facilitate access to such information *as is reasonably*

required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers," respectively. Clarification of specific data and information to be provided to the Authority and accessibility of information is necessary in order not to overburden the Members of the Authority and Contractors. Unless it is clarified, it is recommended to modify the Paragraphs as follows:

< Paragraph (a) of DR 3 >

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

< Paragraph (g) of DR 3 >

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

In order to eliminate the possibility of overly burdening the Members of the Authority and Contractors with unnecessary responsibilities, careful consideration is required for cooperation among the Members of the Authority, Contractors and the Authority, which is referred to in the Paragraph (f) of DR 3. Therefore, it is recommended that cooperation and information to be provided by the Contactors be defined as non-obligatory as follows:

< Paragraph (f) of DR 3 >

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

Draft regulation 4 (Rights of the coastal States) and Draft regulation 101 (Compliance notice and termination of exploitation contract) relating to issuing a compliance notice and emergency order

Japan considers that the provisions of "Compliance Notice" need further elaborations as those procedures could bring about a serious consequence such as the "termination of exploitation contract". According to Paragraph 3 of DR 4, the Secretary-General shall issue a compliance notice if there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur. Japan seeks clarification on the process leading up to "believing that Serious Harm to the Marine Environment is likely to occur." Necessary procedure/action in case there is no non-compliance following examinations also needs to be clearly specified in the Regulations.

In accordance with DR 4, upon receipt of notification by a coastal state, of a threat of Serious Harm to the Marine environment, the Secretary-General shall issue a "compliance notice" if the Secretary-General believes there is a clear ground for the claim of serious harm. Then DR101 provides the Secretary-General shall specify, in that "compliance notice," actions that the Contractor must implement. And in case the Contractor fails to implement those actions, the Authority may terminate the exploitation contract. As the termination of exploitation contract is a decision of critical importance for both the Authority and contractors, Japan believes that the Commission and the Council should be involved in such a decision making process rather than giving the whole responsibility to the Secretary-General.

Article 165 (2) (m) of the Convention provides that it is the Council who determines regarding the direction and supervision of inspections based on recommendations by the Commission. In addition, according to article 165 (2) (k) of the Convention, it is the Council instead of the Secretary General that issues emergency orders to prevent serious harm to the marine environment. And it is the duty of the Commission to make recommendations to the Council to issue such orders. Given these provisions, it is appropriate that the Council based on recommendation of the Commission issue the compliance notice, which is far more critical than decision of inspection and emergency orders. It shall be clearly stipulated in the Regulation that confirmation of non-compliance and measures for remedial action should be made based on recommendation by the Commission.

Paragraph 5 of DR 101 specifies that if a Contractor fails to implement the measures as set out in a compliance notice the Council may suspend or terminate the exploitation contract. This provision should be consistent with article 18 (1) (a) of annex III to the Convention, which provides that a contractor's rights under the contract may be suspended or terminated only if "in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI and the rules, regulations and procedures of the Authority."

Japan also considers provision of Paragraph 3 of DR4 may not be logical that the Secretary-General is required to issue a "compliance notice" if the Secretary-General believes there are clear grounds for the claim of serious harm to the environment. This is because serious harm to the environment is not necessarily caused by non-compliance. Therefore, a non-compliance order should be issued given that it has reasonable grounds to believe there is a situation attributable to non-compliance of a Contractor.

Japan further considers that in case that there are 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, issuing an emergency order should be taken into consideration in accordance with article 165 (2) (k) and article 162 (2) (w) of the Convention.

Taking into consideration of the above-mentioned issues, Japan recommends modifying DRs 4 and 101 as follows:

<DR 4>

1. Nothing in these Regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.
2. Any coastal State which has grounds for believing that any activity in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall [immediately inform of the notification to the Commission, Contractor and its sponsoring State or States.] ~~provide t~~The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to ~~examine the evidence, if any, provided by the coastal State as the basis for its belief. The Contractor and its sponsoring State or States may~~ submit their observations thereon to the Secretary-General within a reasonable time.

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

4. [If the Commission determines that the Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Commission shall recommend the Council issue compliance-notice in pursuant to regulation 101 or direct and supervise inspectors to inspect the Contractor's activities pursuant to article 165 (2) (m) and part XI of the regulations.]

~~4~~[5.] Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

<DR 101>

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall ~~issue~~ [immediately inform of such situation to the Commission and request the Commission to consider to recommend the Council issue] a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice. [Upon the recommendation by the Commission, the Council shall decide on issuing the compliance notice within 30 days of the receipt of the recommendation. Due to the urgency of the matter, the Commission and the Council shall make decision by e-mail or other means of electronic transmission.]

2. A compliance notice shall:

(a) Describe the alleged breach and the factual basis for it;

(b) Require the Contractor to take remedial action or other such steps as the Authority considers appropriate to ensure compliance within a specified time period; and

(c) In respect of a violation specified in appendix III to these Regulations, impose the applicable monetary penalty.

3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity to make representations in writing to the Secretary-General concerning any aspect of the compliance notice.

Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.

5. If a Contractor [, in spite of warnings by the Authority,] fails to implement the measures as set out in a compliance notice [and continues his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority,] the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

6. In the case of any violation of an exploitation contract not specified in appendix III to these Regulations, or in lieu of suspension or termination under paragraph 5, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation in accordance with the Guidelines.

7. [Except]~~Save~~ for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

II Part II APPLICATIONS FOR APPROVAL OF PLANS OF WORK IN THE FORM OF CONTRACTS

Draft Regulation 5 (Qualified applicants), Draft Regulation 10 (Preliminary review of application by the Secretary-General), Draft Regulation 12 (General) and Draft Regulation 16 (Commission's recommendation for the approval of a Plan of Work) relating to Preference and Priority among Applicants (article 10, annex III of the Convention)

Article 10 of annex III to the Convention provides that an operator who has an approved plan of work for exploration shall have a preference and a priority among applicants for a plan of work covering exploitation of the same area resources. In this respect, the deleted Paragraph 6 of DR5 (Paragraph 6 of DR2 in the previous version (ISBA/23/LTC/CRP.3*)) looks quite reasonable since the exploration under the contract with the Authority has been considered as the process a contractor needs to go through before applying exploitation. In a precise sense, an applicant, who has been transferred rights and obligations under an exploitation contract in accordance with regulation 24 (Transfer of rights and obligations) should be eligible for a preference and a priority.

Therefore, Japan recommends that *the deleted Paragraph should be revived* as Paragraph 6 of DR 5 with supplemental explanation on an applicant who has been transferred rights and obligations in accordance with regulation 24 as follows:

<Paragraph 6 of DR5>

- [6. The Authority shall not accept an application for a Plan of Work from an applicant that has conducted Exploration activities otherwise than under an exploration contract with the Authority, or uses information that was obtained otherwise than under such an exploration contract, except for information collected prior to the entry into force of the Convention for the sponsoring State][, except in the case of eligible applicant who has been transferred rights and obligations under an exploitation contract in accordance with regulation 24]

Paragraph 2 of DR 12 requires the Commission to determine if the applicant has a preference and a priority in accordance with article 10 of annex III to the Convention. Paragraph 3(b) of DR 16 describes that "the Commission shall not recommend the approval of a Plan of Work if it determines that another qualified applicant has a preference and a priority in accordance with article 10 of annex III to the Convention."

Japan is of the view that if the applicant has a preference and a priority, it can be and should be examined by the Secretariat in its preliminary review provided in Paragraph 1 of DR 10. If that applicant doesn't have a preference and a priority, the Commission's considerations would become a useless effort since most likely other contractor with a priority would apply for exploitation. This can be avoided with the preliminary review.

To this end, Japan recommends that Paragraph 2 of DR 12 and Paragraph 3(b) of DR 16 be deleted, and that Paragraph 1 and 2 of DR 10 be revised as follows:

<Paragraph 1 and 2 of DR 10>

- 1. The Secretary-General shall review an application for approval of a Plan of Work and shall determine whether an application is complete for further processing [and the applicant has a preference and a priority in accordance with article 10 of annex III to the Convention and regulation 5 (6)].
- 2. Where an application is not complete, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, together with a justification in writing as to why the information is necessary and a date by which the application must be completed. Further processing of an application will not

begin until the Secretary-General determines that the application is complete, which includes payment of the administrative fee specified in appendix II. [An application will not be processed further if there is another operator who has a preference and a priority and an intention to apply.]

Draft regulation 7 (Form of applications and information to accompany a Plan of Work)
Draft regulation 57 (Closure Plan), and ANNEX III relating to Closure Plan

One of the documents to be accompanied by an application is a Closure Plan referred to in Paragraph 3 (i) of DR 7 (details are provided in Annex VIII). It may not be realistic for the Closure Plan to contain all the detailed information as specified in ANNEX III at the time of the application due to lack of available information. Given that the purpose of a Closure Plan is to set out the responsibility and actions of a Contractor for the decommissioning and closure of activities in a Mining Area, as described in Paragraph 1 of DR 57, the submission of a *detailed* Closure Plan along with an application at the very outset is not always necessary. Therefore, a Contractor should be offered an option of submitting a provisional Closure Plan along with an application and finalizing the Closure Plan at least 12 months prior to the planned end of Commercial Production or any suspension of activities in the Mining Area regardless of requirement of Material Change to the Closure Plan. In light of this, Paragraph 5 of DR 57, ANNEX III and Paragraph 1 of DR 58 should be amended as follows:

<Paragraph 5 of DR 57>

- 5. The Closure Plan shall be updated each time there is a Material Change in a Plan of Work, or, in cases where no such change has occurred, every five years[, and be finalized in accordance with Paragraph 1 of regulation 58].

<ANNEX III>

- [3. The level of detail in the Closure Plan is expected to differ between at the time of application and at the final stage of mining operations. The detail of contents of the Closure Plan is to be commensurate with the maturity of the project.]

< Paragraph 1 of DR 58>

- 1. A Contractor shall, at least 12 months prior to the planned end of Commercial Production or any suspension of activities in the Mining Area under regulation 30, or as soon as is reasonably practicable in the case of any unexpected cessation or suspension, submit to the Secretary-General, for the approval consideration of the

Commission, a final Closure Plan~~, if such cessation or suspension requires a Material Change to the Closure Plan~~.

Draft regulation 11 (Publication and review of the Environmental Plan)

The provisions of "the Scoping" in the previous text of DR 18 Environmental Scoping Report in ISBA/23/LTC/CRP.3* were deleted in the revised draft regulations. Japan understands the scoping is like "design drawing" for Environmental Impact Assessment (hereinafter referred to as "EIA") to be implemented. If the scoping is problematic it would affect the result and reliability of the EIA. Therefore, the Scoping should rather be checked in the early stage of considerations of application. Otherwise EIA may need to be redone and enormous time and efforts and the cost required for the inappropriate EIA would be wasted. In light of this, Japan suggests that *the deleted provisions (previously DR18 in ISBA/23/LTC/CRP.3*) should be revived*.

In addition, in order to make it clear what does "Within a period of 60 Days following the close of the comment period" in Paragraph 1 (c) of DR 11 refer to, amendment should be made as follows:

<Paragraph 1 of DR 11>

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

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

  (b) Provide comments by members of the Authority and Stakeholders and any comments by the Secretary-General to the applicant for its consideration; and

  (c) Consult with the applicant, who may revise the Environmental Plans in response to comments made by members of the Authority, Stakeholders or the Secretary-General [and request the applicant to submit the revised Plan] within a period of 60 Days following the close of the comment period.

Draft regulation 13 (Assessment of applicants)

The current language in Paragraph 4 (d) of DR 13 is insufficient to ensure measures are taken appropriately because it does not address to what extent and which measures exactly should be taken to meet "carrying out with reasonable regard." Instead, Japan recommends that criteria of "carrying out with reasonable regard" be established in

Standards and Guidelines, which should be clearly written in the Paragraph as follows:
<Paragraph 4 (d) of DR 13>

- 4. The Commission shall determine if the proposed Plan of Work: …

(d) Provides for Exploitation activities to be carried out ~~with reasonable regard~~ [in accordance with Standards and Guidelines] for other activities in the Marine Environment, including, but not limited to, navigation, the laying of submarine cables and pipelines, fishing and marine scientific research as referred to in article 87 of the Convention.

PART III RIGHTS AND OBLIGATIONS OF CONTRACTORS

Draft regulation 19 (Rights and exclusivity under an exploitation contract)

Paragraph 7 of DR 19 provides "in relation to Exploration activities in the Contract Area the applicable Exploration Regulation shall continue to apply." Such activities including protection of environment and safety measures should be on the basis of the applicable Exploration Regulations, it is uncertain however if the Exploration Regulation *uniformly* applies to the activities in the Contract Area including payment of fees and reporting requirements. In this respect, it should be sorted out which provisions out of the Exploration Regulation apply to Exploration activities in the Contract Area in Standards and Guidelines. To this end, the amendment should be made in Paragraph 7 of DR 19 as follows:
<Paragraph 7 of DR 19>

- In relation to Exploration activities in the Contract Area, the applicable Exploration Regulations shall continue to apply. In particular, the Contractor shall be expected to continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of such activities to the Authority in accordance with [applicable Standards and Guidelines]~~the applicable Exploration Regulations~~.

Draft regulation 26 (Documents to be submitted prior to production)

Paragraph 2 of DR 26 requires if approved Environmental Plans are to be revised, those revised Plans must go through the public comments (Regulation 11) and considerations by the Commission (Regulation 14) once again and then must be approved by the Council. This would significantly delay commencement of Commercial Production and may affect a project itself. Environmental Plans need to be changed from time to time in order to improve their effectiveness. To avoid such a procedural stalemate, Japan

considers it would be better if modifications of Environmental Plans would be permitted by the Secretary-General in case those modifications do not constitute "Material Change," as is the case with modification of a Plan of Work of Paragraph 1 of DR 26 based on the provisions under DR 55. Therefore, Japan would like to seek to modify Paragraph 2 of DR 26 as follows:

<Paragraph 2 of DR 26>

- Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, [Paragraph 2 of regulation 55 shall apply mutatis mutandis to such Environmental Plans if the modification to the Environmental Plans constitutes a Material Change,] such Environmental Plans shall be dealt with in accordance with the procedure set out in regulations 11 and 14.

Draft regulation 27 (Environmental Performance Guarantee)

If the purpose of the Environmental Performance Guarantee is to secure necessary fund to cover costs for closure of exploitation activities, it is not indispensable to create the Guarantee prior to commencement of Commercial Production in the Mining Area. An alternative option such as progressive appropriation out of the revenue from the production should be taken into consideration to reduce burden on contractors prior to commencement of Commercial Production. In light of this, Paragraph 3 of DR 27 should be amended as follows:

<Paragraph 3 of DR 27>

- The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period [at the option of a Contractor to make payment by appropriation from revenues from commencement of Commercial Production onwards] according to the Guidelines.

Draft regulation 33 (Reasonable regard for other activities in the Marine Environment)

Paragraph 2 of DR 33 provides "Other activities in the Marine Environment shall be conducted with reasonable regard for activities in the Area." Considering that Regulations on Exploitation of Mineral Resources in the Area cannot legally regulate other entities engaged in marine scientific research, submarine cables and pipelines and that an entity responsible for the current clause is unknown, Japan therefore suggests changing the paragraph as follows:

<Paragraph 2 of DR 33>

- [The Authority shall take measures to ensure that] ~~O~~other activities in the Marine Environment shall be conducted with reasonable regard for Contractors activities in the Area.

Draft regulation 38 (Insurance)

Paragraph 1 of DR 38 referred to "a contractor to maintain appropriate insurance policies, with internationally recognized and financially sound insurers satisfactory to the Authority." Japan would like to seek explanation on the criteria of "financially sound insurers satisfactory to the Authority," expecting that the Authority to provide a list of such insurers or determine a minimum rating by a rating agency as suggested in the following modification to Paragraph 1 of DR 38:

<Paragraph 1 of DR 38>

- A Contractor shall maintain, in full force and effect, and cause its subcontractors to maintain, appropriate insurance policies, with internationally recognized and financially sound insurers satisfactory to the Authority [as specified in Standards and Guidelines], on such terms and in such amounts in accordance with applicable international maritime practice and consistent with Good Industry Practice.

Japan would like to know the reasons behind the provisions: 1) "contractors shall include the Authority as an additional assured"; and 2) the underwriters *have to* waive any rights of recourse, including *subrogation rights against the Authority* in relation to Exploitation in Paragraph 2. Unless the practice of mining industry requires otherwise, it is appropriate to *delete the whole Paragraph 2 of DR 38* to ensure consistency with article 22, annex III to the Convention, which reads "the Authority shall have responsibility or liability for any damage arising out of wrongful acts in the exercise of its powers and functions."

In case the provision of "the obligation under an exploitation contract to maintain appropriate insurance policies is a fundamental term of the contract" in Paragraph 3 of DR 38 is retained as it is, exact terms required in the contract with insurance policies must be made clear before this Regulations become operational.

Draft regulation 41 (Books, records and samples)

Paragraph 3 of DR 41 provides contractors shall keep "in good condition" core samples together with biological samples obtained in the course of Exploitation. Usually biological samples from deep sea must be kept in extreme condition, and a contractor is

a firm, which does not have much expertise in conservation of the biological samples, and it is not realistic to ask the contractor for the preservation. Instead Japan suggests that the preservation be addressed by coordination with other specialized agencies as suggested in the following modification to Paragraph 3 of DR 41:

- A Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category together with biological samples obtained in the course of Exploitation until the termination of the exploitation contract. [The Authority shall provide an option for the Contractor to maintain samples by its own; or to have such maintenance performed entirely or in part by other agencies.] Samples shall be maintained in accordance with the Guidelines.

PART IV PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

Draft regulation 48 (Restriction on Mining Discharges)

Regarding mining discharges is permissible to be returned to Ocean, Japan expects the Authority will develop Guidelines, taking account of views of stakeholders including contractors as well as environmental experts, before the Regulations become operational. When mineral resources are lifted to the water surface by suction, the water used for that purpose needs to go back to the ocean somehow. In this sense, that Standards and Guidelines to be developed are those of great significance and should be developed before the Regulations become operational.

Draft regulation 52-54 (environmental liability trust fund)

Given that the primary purpose of the fund is to cover the cost to implement necessary measures to prevent, limit, or remediate any damage to the Area arising from activities in the Area as defined in Para (a) of DR53, a scope of the purposes of the fund should not go much beyond the primary purpose. Therefore, Japan recommends Paragraph (b), (c), (d) and (e) of DR 53 be deleted.

As DR 54 provides funding to the environmental liability trust fund, Japan requests confirmation by the Secretariat that presumed resources of the fund are fees, penalties and any other money received by the Authority as provided in DR 54, and that no contribution from sponsoring States and members of the Authority is required in this

respect.

PART V REVIEW AND MODIFICATION OF A PLAN OF WORK

Draft regulation 55 (Modification of a Plan of Work by a Contractor)

A certain degree of flexibility needs to be allowed for implementation of a plan of work given activities in exploitation of mineral resources in the Area depends on conditions of metal market and nature. Therefore Japan suggests that a Material Change, which requires an approval of the Commission, should be limited to a minimum.

PART VII FINANCIAL TERMS OF AN EXPLOITATION CONTRACT

Draft regulation 60 (Equality of treatment)

Paragraph 7 of Section 3 of annex to the Agreement provides that "decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee", therefore it is recommended to revise DR 60 to be read as follows:

<DR 60>

- The Council shall, based on the recommendations of the Commission [and the Finance Committee in accordance with Section 3 (7) of annex to the Agreement], apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

Draft regulation 61 (Incentives)

Based on article 13 (Financial terms of contracts) of Annex III to the Convention, effective financial incentives such as reduction in the amount of royalty and annual fees paid by contractors to the Authority for the initial period of the exploitation contract can be taken into account. Japan therefore suggests adding the following modification to Paragraph 1 of DR 61:

- The Council may, taking into account the recommendations of the Commission, provide for incentives, including financial incentives [in the forms of reduction or exemption of payment of royalty and annual fees for the First Period of Commercial Production as defined in Appendix IV] on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article

13 (1) of annex III to the Convention.

Draft regulation 62, 68, 76, 77 and 80 (Royalty)

In examining financial payment systems, upfront investment borne by a contractor needs to be taken into account for sustainable and stable exploitation based on sound commercial principles.

Paragraph 2 of DR 76 provides the Secretary-General with a responsibility to adjust the value of such costs, prices, and revenues to reflect an arm's-length value in accordance with internationally accepted principles. As such responsibility is considered as important, Japan recommends modifying the paragraph as follows in order to ensure involvement of the Council, the Commission, and Finance Committee in such process.

<Paragraph 2 of DR 76>

- Where any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, [the Council]~~the Secretary-General~~ may adjust the value of such costs, prices and revenues to reflect an arm's-length value [, taking into account the recommendations of the Commission and Finance Committee,] in accordance with internationally accepted principles.

Paragraph 3 of DR 76 provides "the Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice." Procedures after submission of written representation by the contractors need to be specified in the Regulations as suggested below.

<Paragraph 3 of DR 76>

- 3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice.

<Paragraph 4 of DR 76>

- [4.The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with Finance Committee.]

DR 77 specifies an interest of unpaid royalty by 5 percent. It is appropriate to specify this in Appendix as is the case with royalty rate. Therefore, Japan recommends modifying the paragraph as follows:

<DR 77>

- Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated [in accordance with Appendix XXX]~~by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable~~.

With respect to review of rates of payments (royalty) provided in DR 80, the rates must accord with sound commercial principles without affecting economic feasibility of the Contract. In elaborating the mechanism of the review, practices of mining industry if any may be referenced to explore options including how often the review should be made and automatic application of a certain indicators without approval by the Council.

PART IX INFORMATION-GATHERING AND HANDLING

Draft regulation 87 (Confidentiality of information)

Given that exploitation contract is long-term over three decades, a period of 10 years for being treated as confidential information is too short in our opinion. Under Paragraph 3 of DR 87, which requires contractors to demonstrate to the satisfaction of the Secretary-General that they continue to satisfy the definition of Confidential Information, there is scope for interpretation of the application of confidential information and it would impose uncertainty on contractors. For fair data and information sharing from contractors to the Authority, it is suggested the application of Confidential Information be determined through a consultation between contractors and the Secretary-General. Therefore, Japan would like to suggest changing the last sentence of Paragraph 3 of DR 87 as follows:

<Paragraph 3 of DR 87>

- provided that following the expiration of a period of 10 years after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless [otherwise agreed between the Contractor and the Secretary-General] ~~the Contractor that submitted it can demonstrate to the satisfaction of the~~

~~Secretary-General that it continues to satisfy the definition of Confidential Information under this paragraph~~.

PART X GENERAL PROCEDURES, STANDARDS AND GUIDELINES

Draft regulation 92 (Adoption of Standards)

In making recommendations on Standards by the Commission, views of stakeholders including contractors as well as experts needs to be taken into consideration in order to clarify their commitment on the implementation. Japan therefore recommends the following modification be made in Paragraph 1 of DR 92.

<Paragraph 1 of DR 92>

- The Commission shall, taking into account the views of recognized experts and [relevant stakeholders and] relevant existing internationally accepted standards, make recommendations to the Council on the adoption of Standards relating to Exploitation activities in the Area, including but not limited to standards relating to:

Draft regulation 93 (Issue of guidance documents)

By the same token, it is suggested that views of stakeholders be taken into account in the process of issuing guidance documents in Paragraph 1 of DR 93 as follows:

<Paragraph 1 of DR 93>

- The Commission or the Secretary-General shall, from time to time, issue guidance documents (Guidelines) of a technical or administrative nature [, taking into account the views of relevant stakeholders,] for the guidance of Contractors in order to assist in the implementation of these Regulations.

PART XI INSPECTION, COMPLIANCE AND ENFORCEMENT

Draft regulation 94-99 (Inspection)

Inspections are the system to ensure that exploitation of mineral resources in the Area are undertaken appropriately, but it should be born in mind that inspections may bear unnecessary burden on States, contractors, and the Secretariat of the Authority depending on how they are implemented. To minimize the burden of States, contractors, and the Secretariat of the Authority including financial burdens, Japan is of the view that it is appropriate not to have inspections by Inspectors on a regular basis but to have them only when deemed necessary. With this in mind, Japan is of the view that inspections on a regular basis are not necessary and that they should be carried out only when deemed necessary.

Our idea of cases where an inspection should be considered is a) when doubts arise from the documents submitted by a contractor, b) when doubts arise from information provided by a contractor, c) when risks of environmental pollution caused by accidents arises, and so forth. Expertise and qualifications required to deal with cases may be different. Japan suggests creating lists of professionals, from various fields such as accounting, legal affairs, marine environment and so forth, who are considered by the Authority to be qualified. As article 165 of the Convention assumes members of the Commission carry out the function of supervision and inspection, members of the Commission may be registered on the list likewise. Therefore, the following modification to DR 95 is suggested:

<DR 95>

- 1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part XI. [Based on the specified qualifications and experiences, a roaster of candidates for Inspectors, including the members of the Commission as provided in article 165 (3) of the Convention, shall be made by the Secretariat].
- 2. [The Commission shall consider and make recommendations to the Council on an appointment of Inspector in accordance with Paragraph 1 of regulation 94, along with the recommendation specified in article 165 (2) (m) of the Convention. The Council shall make a decision on an appointment of Inspector as a part of establishment of appropriate mechanisms provided in article 162 (2) (z) of the Convention.] An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

Criteria of and cases where inspection is implemented should be clearly stipulated in Standards and Guidelines, which should be specified in the Regulations in order to facilitate consideration by the Commission. The following paragraph should be inserted to the very beginning of DR 94:

<DR 94>

- [The Council shall make a decision on establishment of appropriate mechanisms on Inspection provided in article 162 (2) (z) of the Convention, taking into consideration of recommendation by the Commission, which consider its necessity in accordance with Standards and Guidelines.]

Article 165 (3) of the Convention provides that a representative of State or other Party concerned can accompany the members of the Commission upon request by any State Party or other party concerned when carrying out their function of supervision and inspection. In addition, according to article 139 (2) of the Convention, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability and *States Parties* or international organizations acting together shall bear joint and several liability. Considering its responsibility, State Party should be permitted to participate in the inspection to make sure that the inspection is carried out appropriately. For this purpose, the modification is suggested to Paragraph 1 of DR 94 as follows:

<Paragraph 1 of DR 94>

- The Contractor shall permit the Authority to send its Inspectors [, who may be accompanied by a representative of its State or other party concerned in accordance with article 165 (3) of the Convention,] aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To this end, Members of the Authority, in particular the Sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

PART XII SETTLEMENT OF DISPUTES

No specific comment.

ANNEX VI HEALTH, SAFETY AND MARITIME SECURITY PLAN

Japan considers DR19 a significant provision as it provides for a contractor's exclusive right. On the other hand, for the safe conduct of exploitation activities, one needs to avoid the situation where other ships carelessly navigate in and out of the area under operation. In this regard, the International Maritime Organization (IMO) administers the "World-wide Navigational Warning Service" in accordance with guidance of the International Convention for the Safety of Life at Sea (SOLAS) (See below). Japan considers it may be a good idea to make it obligatory for contractors to inform the "NAVAREA coordinator" appointed under the Service when they conduct exploitation activities, thereby widely sharing in advance the operational plan of exploitation

activities. To this end, the following sentence should be populated to ANNEX VI following discussion with the IMO Secretariat, members of the Authority and Stakeholders.

Each Contractor shall take all steps necessary to ensure that, when intelligence of any dangers is received from whatever reliable source, it shall be promptly brought to the knowledge of those concerned and communicated to other interested State Parties." There should be a footnote to this provision which reads; "Refer to the Guidance on the IMO/IHO World–Wide Navigational Warning Service adopted by the organization by resolution A.706(17).

<For Reference>WORLD-WIDE NAVIGATIONAL WARNING SERVICE

1.1 Regulation 4, Chapter V of the Annex to SOLAS provides that "Each Contracting Government shall take all steps necessary to ensure that, when intelligence of any dangers is received from whatever reliable source, it shall be promptly brought to the knowledge of those concerned and communicated to other interested Governments." There is a footnote to this provision which reads; "Refer to the Guidance on the IMO/IHO World–Wide Navigational Warning Service adopted by the organization by resolution A.706(17)."

1.2 The Guidance on the IMO/IHO World-Wide Navigational Warning Service lists, as examples of cases where NAVAREA warnings should be issued, "the presence of large unwieldy tows in congested waters", "the establishment of offshore structures in or near shipping lanes" and "information concerning events which might affect the safety of shipping, sometimes over wide areas". Although the exploration for and exploitation of mineral resources in the Area itself does not appear in this list, issuing navigational warnings in this regard is not prohibited either.

1.3 The Guidance divides the entire globe into geographical sea areas, and a NAVAREA coordinator who issues the navigational warnings is appointed for each area .