

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I

Informal Working Group - Environment

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.

1. Name(s) of Delegation(s) making the proposal:

Federal Republic of Germany

2. Please indicate the relevant provision to which the textual proposal refers.

Schedule

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

Schedule

Use of terms and scope

“**Agreement**” means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

“**Best Available Scientific [Evidence] [Information]**” means the [best] scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.

~~**Alt. 1 “Best Available Techniques”** means [the latest stage of development, and state of the art [the most appropriate] processes], [within reasonable technical and economic constraints,] [of] facilities or [of] methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Guidelines]~~ **Alt. 2 [“Best Available Techniques”** means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

(a) ‘techniques’ includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

(b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.

(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;]

“Best Environmental Practices” means the application of the most appropriate combination of environmental control measures and strategies, [based on the Best Available Scientific Information and Best Available Technology which] [that] will change with time in the light of improved knowledge, understanding or technology, [as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities] taking into account the [guidance set out in the] applicable [Standards and] Guidelines.

“Calendar Year” means a period of 12 months, ending with 31 December.

“Closure Plan” means the document referred to in Regulation 59 and in ~~in~~ annex VIII.

“Commercial Production” shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.¹

“Commission” means the Legal and Technical Commission of the Authority.

“Confidential Information” shall have the meaning assigned to that term by regulation 89.

“Contract Area” means the part or parts of the Area allocated to a Contractor under an exploitation contract and defined by the coordinates listed in schedule 1 to such exploitation contract.

“Contractor” means a [contractor having a holder of] a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.}]

Alt [means a party to an exploitation contract in accordance with Part III of these regulations.]

“Convention” means the United Nations Convention on the Law of the Sea.

¹ 1 This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of

“Council” means the executive organ of the Authority established under article 158 of the Convention.

“Cumulative Environmental Effect” means any consequences in the Marine Environment arising over time from the conduct of Exploitation activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority.]

“Damage to the Marine Environment” means] [...]

“Day” means calendar Day.

“Ecological Balance of the Marine Environment” means] [...]

“Ecosystem Approach” means] or [Ecosystem-based approach to management]

“Effective Control” means] [...]

“Effective Protection” means] [...]

“Emergency Response and Contingency Plan” means the document referred to in Regulation XX and annex V.

“Environmental Effect” means any ~~material~~ consequences in the Marine Environment arising from the conduct of Exploitation activities, ~~whether~~ being positive, ~~negative~~, direct, indirect, temporary or permanent, or ~~C~~umulative environmental effect arising over time or in combination with other mining impacts effects or impacts [stressors and activities in the same area, including those not regulated by the Authority].

“Environmental Impact” means] [...]

“Environmental Management System”] [means]

[Alt. 1 that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance.]

[Alt. 2 means the part of the overall management system implemented by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving,

_____ commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

reviewing and maintaining environmental policy, objectives and environmental performance.]

“Environmental Objectives” means specific statements of desired environmental outcomes that represent the achievement of the Authority’s high-level environmental goal and support inter alia the implementation of Article 145 of the Convention. Environmental Objectives should take into account best available science, relevant traditional knowledge of Indigenous Peoples and local communities, as well as public opinion regarding the acceptability of risks to the marine environment from activities in the Area. Environmental

Objectives are implemented inter alia through science-based and measurable indicators and thresholds.

[...]

["Environmental Risk" means the chance of something happening that will have an adverse effect measured in terms of the environmental consequences and the likelihood of those particular consequences occurring.]

["Environmental Risk Assessment" means the process for identifying and evaluating Environmental Risk using a generally accepted risk assessment methodology.]

"Environmental Performance Guarantee" means a financial guarantee supplied under regulation 26.

"Environmental Plans" means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

"Exploit" and **"Exploitation"** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in the Area, for the production and marketing of metals, as well as the decommissioning and closure of mining operations.

"Exploration Regulations" means the regulations on prospecting and exploration for polymetallic nodules in the Area, the regulations on prospecting and exploration for polymetallic sulphides in the Area and the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

"Explore" and **"Exploration"**, as applicable, mean the searching for Resources in the Area with exclusive rights, the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation.

["Facilities-maritime infrastructure-floating platforms" means] [...]

"Feasibility Study" means a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered, pursuant to Regulation 25.

"Financing Plan" means the document referred to in Regulation XX and annex Annex III.

"Good Industry Practice" **["Best Industry Practice"]** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide, [based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology]. [Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to

be applied by a skilled and experienced person engaged in the marine mining industry]

“Guidelines” means documents that provide guidance on technical and administrative matters, issued pursuant to regulation 95.

“Incident” means an event, or sequence of events, where activities in the Area result in:

(a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);

(b) Serious Harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious Harm to the Marine Environment is a reasonably foreseeable consequence of the situation; and/or (c) Damage to a submarine cable or pipeline, or any Installation.

“Incidents Register” means a register maintained under regulation 33 (2) (e).

“Inspector” means a person acting under Part XI of these regulations.

“Installations” includes, insofar as they are used for carrying out activities in the Area, structures and platforms, whether stationary or mobile.

“Interference with the Ecological Balance of the Marine Environment” means [...]

“Marine Environment” includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, [species, biodiversity, ecosystems,] as well as the seabed and ocean floor and subsoil thereof.

“Material Change” means a [substantial or significant] change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, [changes to harmful effects of activities on the Marine] eEnvironment[al effects or effects on stakeholders] the availability of new knowledge or technology and changes to operational management that are to be considered in [the] light of the Guidelines.

“Metal” means any metal contained in a Mineral.

“Minerals” means Resources that have been recovered from the Area.

“Mining Area” means the part or parts within the Contract Area, described in a Plan of Work, as may be modified from time to time in accordance with these regulations.

“Mining Discharge” means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site.

“Mining Workplan” means the document referred to in annex II.

“Mitigate” and **“Mitigation”** includes:

- (a) Avoiding an effect altogether by undertaking or not undertaking a certain activity or parts of an activity;
- (b) Minimizing effects by limiting the degree or magnitude of the activity and its implementation [to the extent practicable and necessary to ensure protection of the Marine Environment];
- (c) Rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment, if and when it becomes scientifically and technically feasible; and
- (d) Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity.

“Plan of Work” means a Plan of Work for Exploitation in the Area, defined collectively as all and any plans or other documents setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an exploitation contract. ["Proponent" means] [...]

["Protection" means] [...]

["Preservation" means] [...]

["Rehabilitation" means] [...]

["Regional environmental management plan" means] [...]

“Reserved Area” means any part of the Area designated by the Authority as a reserved area in accordance with article 8 of annex III to the Convention.

“Resources” means all solid, liquid or gaseous mineral resources, [mineral-bearing ore, associated minerals, or mixture thereof] in situ in the Area at or beneath the seabed, including: (a) polymetallic nodules, defined as any deposit or accretion of nodules, on or below the surface of the deep seabed, which contain metals such as manganese, nickel, cobalt and copper; (b) polymetallic sulphides, defined as hydrothermally formed deposits of sulphides and accompanying mineral resources in the Area which contain concentrations of metals such as copper, lead, zinc, gold and silver; and (c) cobalt crusts, defined as cobalt-rich ferromanganese hydroxide/oxide deposits formed from direct precipitation of Minerals from seawater onto hard substrates containing concentrations of metals such as cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium and other metallic and rare earth elements.

["Resource Category" means] [...]

["Restoration" means] [...]

“Rules of the Authority” means [the Convention, the Agreement,] these regulations and other rules, regulations and procedures of the Authority [including Standards] and Guidelines] as may be adopted from time to time.

“Seabed Mining Register” means the registry established and maintained by the Authority in accordance with regulation 92.

“Serious Harm” means any effect from activities in the Area on the Marine Environment which represents a n [unlawful] significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted

by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific [\[Evidence\]](#) [\[Information\]](#).

[\["Sound commercial principles" means\] \[...\]](#)

[\["Special Circumstances" means\] \[...\]](#)

"Sponsoring State" means a State party or parties to the Convention which submits a certificate of sponsorship of an applicant in accordance with regulation 6.

"Stakeholder" means a natural or juristic person or an association of persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information or expertise. **"Standards"** means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. [\[Standards have to be considered as mandatory.\]](#)

[\["Synergistic Impacts" means joint effects caused for the interaction of two or more simultaneous activities that result in a combined effect that is greater than the sum of individual and isolated effects\]](#)

4. Please indicate the rationale for the proposal. [150 word limit]

There are duplications in the schedule contained in the IWG ENV facilitator draft and this one in the "president's text". We comment only in this draft.

Re the definition of *Best environmental practice* (BEP), we suggest deleting the reference to applicable Standards and Guidelines, because BEP may develop quicker than the Standards and Guidelines are updated.

Re *Best available technique*, we support Alt2. If Alt1 is chosen we would argue to delete the text in square brackets "the most appropriate" and "within reasonable technical and economic constraints".

It needs to be discussed whether in addition to the terms "*Contract area*" and "*Mining area*" the term "*Environmental Impact area*" should be reintroduced. This term had been used in earlier drafts of the regulations.

Re the definition of "*Contractor*" we look forward to discuss whether the parent company of the holder of the contract can be considered in the context of liability as is common practice e.g. in the oil and gas industry. We look forward to discussions on "effective control" in this context.

Instead of or in addition to "*damage to the environment*" we suggest that definitions for "*harmful effects*" and "*serious harm*" are included in the schedule, as these are terms used in the Convention.

Re "*Environmental effects*" we support reference to "*Underwater Cultural Heritage*", as suggested in Council. Furthermore we strongly support the inclusion of "indirect effects" in this definition.

Re "*Minerals*" and "*Resources*", we suggest limiting the definition to the three currently relevant deposit types (nodules, sulphides, crusts). We will also suggest including this in DR1. This will ensure that the ISA revisits the exploitation regulations with respect to any additional deposit types that may become relevant in the future.

We strongly support the inclusion of definitions on PRZ/IRZ and we support the definitions on intangible and underwater cultural heritage, as included in the ENV facilitator draft text as of March 2023.