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Item 10 of the agenda
Draft regulations on exploitation of mineral resources in the Area

Draft regulations on exploitation of mineral resources in the Area

Co-Facilitator’s Text (compilation for the resumed reading)

Parts V, IX, XII, XIII, and Appendix III

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1. During the twenty-sixth session of the Authority, the Council decided to establish three Informal Working Groups, with the mandate and working modalities set out in the annex to its decision (ISBA/26/C/11). In accordance with that decision, we, on behalf of Costa Rica and Chile respectively, act as Co-Facilitators of the Informal Working Group on the Institutional Matters.
2. The informal working group on Institutional Matters met three times during the twenty-seventh session of the Authority and once during the first part of the twenty-eight session. During these sessions, attention has been focused on Part I, Part II (up to draft regulation 5), Part V and Part VIII, along with Appendix II, of the draft Regulations.
3. For the second part of the twenty eighth session, the cofacilitators wish to consider the regulations allocated to the Working Group that have not yet been discussed, namely Part V from draft Regulation 6 to 16, Parts IX, XII and XIII, and Appendix III. This is with a view to preparing a complete revised text, including all regulations allocated to the Working Group to be worked on during the third part of the Council.
4. To support those discussions, we hereby provide this new compilation text, for the regulations and Parts listed above. This text has been prepared on the basis of the draft regulations on exploitation of mineral resources in the Area prepared by the Legal and Technical Commission, dated 22 March 2019 (ISBA/25/C/W.P.1), marked up with written proposals received since that date.
5. We wish to remind delegations and observers that this is a compilation of written proposals received. There has not – for the purpose of this first reading – been an attempt to draft a consensus-based text. Therefore, the drafting suggestions are reflected as provided, without additional intervention from the Co-Facilitators, save for minor edits for drafting consistency, and exercising some discretion to combine proposals where similar points were made by more than one delegation. We also provide commentary to guide discussions, in text-boxes throughout.

Regulation 6

Certificate of sponsorship

1. Each application [by a State enterprise or ~~one~~ another of the entities] referred to in regulation 5(1)(b) [alt: by an entity referred to in regulation 5(1)(b)] shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

(a) The name [address and contact details] of the applicant;

(b) The name of the sponsoring State;

(c) A statement [and supporting evidence] that the applicant is:

(i) A national of the sponsoring State; or

(ii) Subject to the effective control of the sponsoring State or its nationals;

(d) A statement by the sponsoring State that it sponsors the applicant;

[*(d) bis.* A copy or description of the necessary and appropriate measures taken by the State to secure effective compliance pursuant to article 139 (2) of the Convention, and to ensure legal recourse for compensation in accordance with article 235 (2) of the Convention.]

(e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and

[alt. proposal to delete (e), because the date of deposit of the relevant instrument and the date on which the State consented to be bound by the Agreement are known to the Authority and need not be repeated in the certificate of sponsorship.]

(f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

[alt. proposal to delete (f) as unnecessary, because the responsibilities of a sponsoring State do not depend on such a declaration, but on the legal force of the Convention, as activated by the issue of a certificate of sponsorship.]

4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this regulation.

[Can be amended depending on EC webinar outcome] Delegations have noted in relation to draft regulation 6(2) that it will be important to have a clear definition of “effective control” for the purposes of the Regulations. One submission noted that this relationship is crucial to ensure that sponsoring States fulfil their obligations under UNCLOS. Clear understanding of the term could also be useful also in determining whether there is a risk of monopolization of the conduct of activities in the Area. The definition of this term could be inserted in the Schedule.

In considering the proposal to delete sub-paragraphs (e) and (f), we bring to delegates’ attention that this same wording has been included in the Exploration Regulations.

Regulation 7

Form of applications and information to accompany a Plan of Work

1. Each application for approval of a Plan of Work shall **be**
 - (a) **be** in the form prescribed in annex I to these regulations,
 - (b) **shall be** addressed to the Secretary-General **and**
 - (c) **shall conform to the requirements of prepared in accordance with** these regulations, the applicable Standards and take account of the applicable Guidelines; and
 - (d) **contain sufficient information to demonstrate that the applicant has access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work.**

In relation to paragraph (1), delegations have noted that annex I to these regulations will need to be updated to ensure consistency, when the text of draft regulations 5 and 6 have been settled.

It is also noted that the proposals for draft regulation 6 sub-paragraphs 1(c) and (d) will need to be aligned with the content of draft regulation 5, to avoid duplication.

Finally delegations have noted that it will also be important to have Standards and/or Guidelines on the preparation and assessment of an application for the approval of a Plan of Work for exploitation to expand on the necessary information requirements at application stage (which will also need alignment with the regulations, once settled).

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:
 - (a) Accept as enforceable **[during all stages of the process chain]** and comply with the applicable obligations created by the provisions of Part XI of the Convention, **[the Agreement]** the rules, regulations and procedures, **[including the Standards]** of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;
 - (b) Accept control by the Authority of activities in the Area **[during all stages of the process chain]** as authorized by the Convention;
 - (c) Provide the Authority with a written **[substantiated]** assurance that its obligations under its contract will be fulfilled in good faith; and
 - ~~(d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention]~~

[Alt. proposal to delete (2) and all its sub-paragraphs, because an applicant should already be subject to the relevant instruments and requirements, and a written statement does not give them new legal force.]

In relation to sub-paragraph (2)(a), if retained, delegates may wish to consider whether it would be appropriate and consistent with other parts of the Regulations, to use the defined term 'Rules of the Authority' in place of a list of separate instruments.

In relation to sub-paragraph 2(d), one delegation expressed concern not to set an impossible requirement, in the case where there may be a contractor with more than one sponsoring State, and where there is conflict or incompatibility between different States' laws or administrative measures.

Please also refer to proposed draft regulation 12 *bis.*(below) which has been proposed to replace draft regulation 7(2), by way of imposing direct obligations upon Contractors (without requiring their written acceptance of it).

3. An application shall be prepared in accordance with these regulations [and applicable Standards] [as well as the respective Regional Environmental Management Plan] and accompanied by the following:

(a) The data and information to be provided pursuant to section 11.2 of the standard clauses for exploration contracts, as annexed to the relevant Exploration Regulations;

[(a)*bis.* A test mining study prepared in accordance with Regulation [48*bis*] Paragraph 2 or 3, as applicable, and Annex [IV*ter*]]

(b) A Mining Work Plan prepared in accordance with annex II to these regulations;

(c) A Financing Plan prepared in accordance with annex III to these regulations;

(d) An Environmental Impact Statement prepared in accordance with regulation 47 and in the format prescribed in annex IV to these regulations;

(e) An Emergency Response and Contingency Plan prepared in accordance with annex V to these regulations;

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with [Regulation 30 and] annex VI to these regulations;

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines;

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations [which documents that management and monitoring are in compliance with the applicable Regional Environment Management Plan];

[(h)*bis.* Information regarding the environmental management system that the Contractor will implement;]

(i) A Closure Plan prepared in accordance with regulation 59 [of] and annex VIII to these regulations; and

(j) An application processing fee in the amount specified in appendix II.

A delegation noted that they had made a proposal for two separate plans covering Health and Safety, and Maritime Security, respectively. If that proposal is taken up, this would need to be reflected in sub-paragraph (3)(f) also.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission may require separate documents under paragraphs 3 [(b)], (d), (h) and (i) above for each Mining Area, unless the applicant demonstrates [to the satisfaction of the Commission] that a single set of documents is appropriate, taking account of the relevant Guidelines.

[5. Where a single set of documents is submitted by the applicant and the Commission considers it is not appropriate, the Commission may reject the application and request separate documents under paragraphs 3 [(b)], (d), (h) and (i) above for each Mining Area.]

Regulation 8

Area covered by an application

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of [geographical] coordinates in accordance with the World Geodetic System 84 ~~most recent applicable international standard used by the Authority~~.

2. The areas under application need not be contiguous and shall be defined in the application in the form of blocks comprising one or more cells of a grid, as provided by the Authority.

[3. The area under application shall be located within an exploration Contract Area]

[3 alt. The area under application shall be an area previously subject to an exploration contract, or an area in which adequate and satisfactory environmental baseline data is in existence and publicly available.]

[4. The areas under application must be covered by a relevant Regional Environmental Management Plan.]

[5. In the application, the applicant shall provide a statement confirming whether the area under application or any part of it has received attention under any other international organisation or treaty regime.]

Delegations are invited to consider whether it is intentional and appropriate to use 'area' (singular) in sub-paragraphs 8(1) and (3), and 'areas' (plural) in sub-paragraphs 8(2) and (4).

Paragraph (5) was suggested to assist the Authority identify where there may be areas designated or managed under other regimes (for example, Ecologically and Biologically Significant Areas (EBSAs) under the Convention on Biological Diversity, and in order to inform the implementation of the 'reasonable regard' duty relating to other marine users (Article 147 of the Convention).

Section 2 Processing and review of applications

Regulation 9

Receipt, acknowledgement and safe custody of applications

1. The Secretary-General shall:
 - (a) Acknowledge in writing, within ~~144~~ 30 Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;
 - (b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and
 - (c) Within 30 Days of receipt of every application for approval of a Plan of Work submitted under this Part ~~[in accordance with regulation 10(1)]~~:
 - (i) Notify the members of the Authority of the receipt of such application and circulate to them ~~[information of a general nature which is not confidential regarding the application the contents of the application save for any Confidential Information contained in the application]~~; and
 - (ii) Notify the members of the Commission of receipt of such application.
2. The Commission shall, subject to regulation 11 (4), consider such application at its next meeting, provided that the notifications and information under paragraph 1 (c) above have been circulated at least ~~130~~ 90 Days prior to the commencement of that meeting of the Commission. ~~[The Commission may defer consideration of such application to its next meeting if it considers the application to be overly complex.]~~

~~[Alt. proposal to delete (2) entirely.]~~

With reference to draft regulation 9, a delegation noted the need for further criteria to clarify the meaning of 'Confidential Information'. We note this matter may also be discussed in relation to draft Regulation 89 (below).
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Regulation 10

Preliminary review of application by the Secretary-General

1. The [Secretary-General] shall review an application for approval of a Plan of Work and determine whether an application ~~[is complete]~~ contains all the information required by Regulation 7] for further processing.

~~[1 bis. In case there is a potential applicant who has preference and priority in the same area and same Resource category under Exploration contract, the Secretary-General shall confirm the intention of such a potential applicant to apply]~~

~~1 ter. Should there be more than one application for the same area and same Resource category, the [Secretary-General] shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention[, and in case of~~

any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision.]

1 ter. alt. Should there be more than one application for the same area and same Resource category, the ~~Secretary General shall determine~~ [Commission shall make recommendations to the Council on] whether the applicant has preference and priority in accordance with Article 10 of Annex III to the Convention.

[1 *quat.* The Secretary-General shall notify the members of the Authority of the determination made, if any, as to whether the applicant has preference and priority.]

[1 *quin.* Where the application concerns a Reserved Area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention].

2. Where an application[~~is not complete~~ does not contain all the information required by Regulation 7] 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 potential applicant who has a preference and priority and an intention to apply in accordance with regulation 10 (1)].

Some delegations questioned whether the Secretary-General is the proper organ of the ISA to conduct this preliminary review under draft regulation 10, noting it requires a determination whether the information and documents that should accompany the application meet the prescribed characteristics, which may include substantive analysis as to adequacy of the documents' contents. One delegation identified a risk of confusion or unfairness if the Secretary-General were to determine an application complete, but the LTC upon their evaluation were to raise issues with the same application e.g. around data adequacy. One delegation queried whether the LTC might be better placed to do this review, as a preliminary step in the fully-fledged review of the application (which may already be covered by draft regulation 13(1)(b)).

It was also queried whether the Secretary-General, Council or the LTC holds the legal authority to determine which applicant has preference and priority.

Delegations are invited to note that Article 10 of Annex III to the Convention also provides that an exploration contractor's preference and priority may be withdrawn if the performance of the operator has not been satisfactory. Questions have been raised in this regard as to: which organ of the ISA would make the determination about past performance, what criteria would be applied, and what recourse the applicant would have to challenge such a determination.

Regulation 11

Publication and review of the Environmental Plans [and Environmental Management Systems]

Alt. [Publication, notification, and review of the Application]

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 Plans [and any information necessary for their assessment as well as the non-confidential parts of the test mining study] on the Authority's website for a period of [60 90] Days, and [notify and] invite members of the Authority, [relevant adjacent coastal States], Stakeholders [and the general public] to submit comments in writing, taking account of the relevant Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans [and the non-confidential parts of the test mining study] within the [90 Day] comment period.

[(c) Establish an independent review team, making use of the roster of competent independent experts, if any, to provide comments on the Environmental Plans within the comment period.]

(c) *alt.* [In the case the Commission evaluates that there are aspects of the Environmental Plans that are not covered entirely by its own internal expertise, the Commission shall nominate within 7 Days from the publication of the Environmental Plans on the Authority's website at least three competent independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector.]

Several delegations noted in their submissions on draft regulation 11(1), the importance that Environmental Plans are reviewed for the ISA by persons with comprehensive independent scientific expertise that is unlikely to be found within the LTC alone. It was suggested that the LTC should be tasked to commission external advice from recognised experts in the field (pursuant to Article 165(2)(e) of the Convention). In terms of modalities, some delegations recalled Belgium's proposal for an expert panel, some referenced the idea of a roster managed by the Authority, and others proposed the establishment of a new subsidiary committee with specific environmental science expertise. The importance of access to experts in relevant socio-cultural matters was also highlighted.

Delegates are invited to comment on those proposals, and/or to make further textual proposals in this regard.

2. The Secretary-General shall, within seven Days following the closure of the comment period, provide the comments submitted by members of the Authority, [relevant adjacent coastal States], Stakeholders, [the general public,] the Commission, [the independent review team] and any comments by the Secretary-General to the applicant [for its consideration].

[2 *bis.* All comments provided pursuant to paragraph (2) shall be published on the Website of the Authority.]

[2 *ter.*] The applicant shall consider the comments provided pursuant to paragraph (2) and [may shall] revise the Environmental Plans [and the test mining study] or provide responses in reply to the [substantive] comments, [as appropriate], and shall submit any revised plans or responses [to the Secretary -General][to the Commission] within a period of [30] Days following the close of the comment period,- [unless otherwise decided by the Secretary-General after considering a request by the applicant before the time period of 30 Days expires for an extension of the period due to the time required to

revise the plans or responses. Notice of the extension of the period shall be posted on the Authority's website].

Two delegations queried whether a deadline of 30 days for the applicant to make revisions was too short in draft regulation 11 (2) (<i>ter.</i>)
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3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans [and the test mining study] in the light of the comments [submitted] ~~made~~ under paragraph 1(a) ~~2~~ ~~above~~, together with any responses by the applicant [provided under paragraph 2 *ter.*], and any additional information provided by the Secretary-General.

4. Notwithstanding the provisions of regulation 12 (2), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans [and the test mining study] have been published and [~~reviewed~~—if necessary, revised] in accordance with this regulation.

5. The Commission shall prepare a report on the Environmental Plans [and the test mining study]. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as [~~a summary of~~] the comments [~~or and~~] responses [~~made submitted~~] under regulation 11 (2) [as well as any further information provided by the Secretary-General under regulation 11(2)] [as well as the relevant rationale for the Commission's determination, with specific explanation as to any comments or responses that are disregarded]. The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14 [and changes subsequently made to application documents by the applicant]. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15. [In preparing the report, the Commission [may][shall] seek advice from competent independent experts as necessary. [In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council.] The experts shall be selected and appointed in accordance with the [relevant Guidelines] [Annex [xxx]]

Some delegations queried why this requirement for publication and consultation pertains only to the Environmental Plans, and not other components of the Plan of Work, e.g. the Mining Plan, the Finance Plan. One delegation questioned that the Environmental Plans could be understood fully in isolation from other information about the project, found in the other parts of the Plan of Work. Delegates are invited to consider whether this draft regulation 11 may be widened to include all (non-confidential) parts of the application?

Throughout this part of the regulations, where reference is made to independent experts, delegations have suggested further clarification as to how such persons will be selected. It will be necessary to re-visit references to independent experts throughout the regulations to ensure consistency, as and when decision are taken elsewhere to define terms (e.g. 'competent independent expert'), or to introduce new provisions or an Annex that establish procedures for a roster or other criteria and means of identifying relevant experts.

One delegation noted that costs of commissioning such experts should be recovered by the Authority from the applicant. This is a matter that may be factored in the calculation of the application fee.

Section 3

Consideration of applications by the Commission

Regulation 12

[General]

1. The Commission shall examine applications in the order in which they are received by the Secretary-General.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from ~~the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 (1)(a)(4) and subject to regulation 14 (2)~~ **whichever date occurs later out of:**

(a) the close of the comment period, in accordance with Regulation 11(1)(a), or

(b) the date of submission of a revised plan, in accordance with Regulation 11(2)ter.]

[2bis. If an application is overly complex or incomplete information has been submitted by the applicant, the Commission may delay its reports and recommendations under regulation 12(2) by a further 90 Days.]

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and **[ensure its compliance with]** ~~[shall have regard to]~~ **[apply]** the principles, policies and objectives relating to activities in the Area as provided for in ~~[the Convention,]~~ **[the Preamble and Part I of these regulations]** ~~[and in particular the manner in which the proposed Plan of Work]~~ **[contributes to realizing benefits for]** ~~[is in the interests of]~~ **[hu]** mankind as a whole ~~[in accordance with decisions of the Council and Assembly]~~ **[and ensures the effective protection of the marine environment].**

[3bis. The Commission in considering a proposed Plan of Work may seek advice and reports from competent independent experts on any matters considered to be relevant.]

4. In considering the proposed Plan of Work, the Commission [~~shall~~ may] take into account:

(a) **[Relevant]** ~~Any~~ reports from the Secretary-General

~~[(a)bis. Any comments received following the publication of the Environmental Plans or the Commission's report on the Environmental Plans pursuant to regulation 11];~~

~~[(a)bis. alt. Any comments made by Stakeholders;]~~

~~[(a)ter. Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject-matter;]~~

(b) Any advice or reports sought by the Commission [~~or the Secretary-General~~] from independent competent persons in respect of [the application][~~the Environmental Plans~~] **[environmental matters]** to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

~~[(b) bis. Any concern raised by a relevant adjacent coastal States with respect to the application;]~~

(c) The previous operating record of responsibility of the applicant [including in relation to mining activities within other jurisdictions][, as well as the applicant's performance during the exploration stage, including the quality of annual reports and baseline data, and the results of test mining activities];

~~[(c)bis. The previous operating record of the Sponsoring State(s), and the Sponsoring State(s)' technical resources and enforcement capabilities to monitor and enforce the applicant's compliance with the Rules of the Authority;]~~

~~[(d) any objectives or measures established in the relevant Regional Environmental Management Plan].~~

One delegation suggested replacing the title of regulation 12 with a more descriptive name. Proposals in this regard are welcomed.

It was noted that Council should check regulation 12(3) against draft regulations 1 and 2, once settled, to avoid unnecessary repetition.

Several delegations expressed concern about the LTC's competence to determine whether a plan of work realises benefits for humankind as a whole (as required by draft regulation 12(3)). Guidance from Council or Assembly was suggested in this regard.

[Regulation 12 bis.

General obligations of contractors

In conducting their activities in the Area, Contractors shall at all times:

(a) comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority; and

(b) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.]

This draft regulation 12 *bis.* has been proposed to replace draft regulation 7(2).

Regulation 13

Assessment of Applicants [and applications]

1. The Commission shall determine [~~under consideration of~~ taking into account the comments made by members of the Authority and Stakeholders, ~~any~~ responses by the applicant and any additional information or comments provided by the Secretary-General] if the applicant:

- (a) Is a qualified applicant under regulation 5;
- (b) Has prepared the application in conformity with these regulations, the Standards and [~~the applicable~~] Guidelines;
- (c) Has given the undertakings and assurances specified in regulation 7 (2);
- (d) Has satisfactorily discharged its obligations to the Authority;
- (e) Has [~~or can demonstrate that it will have~~] the financial and technical capability [and capacity] to carry out the Plan of Work, [meet or exceed environmental performance obligations] and to meet all obligations under an exploitation contract [according to criteria defined by the Council];
- (f) Has demonstrated the [~~economic~~]~~]~~[commercial] viability of the mining project.

[(g) Has demonstrated, in relation to the accommodation of other activities in the Marine Environment, due diligence to:]

[(i) identify in-service and planned submarine cables and pipelines in, or adjacent to, the area under application using the publicly-available data and resources as listed in the Guidelines;]

[(ii) identify sea lanes in, or adjacent to, the area under application that are essential to international navigation;]

[(iii) identify areas of intense fishing activity in, or adjacent to, the area under application]; and

[(iv) where other marine users are identified in relation to the area under application, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities (such as an easement, or a mining exclusion zone within a reasonable radius);]

[(h) Has demonstrated a satisfactory record of past performance both within the Area and in other jurisdictions.]

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether:

- (a) The Financing Plan is compatible with proposed Exploitation activities; and
- (b) The applicant ~~[will be]~~ is capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:
 - (i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations;
 - (ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan ~~[and to restore and remediate the affected Marine Environment in case of a significant Incident];~~
 - (iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan; and
 - (iv) Necessary access to insurance products that are appropriate to the financing of exposure to risk in accordance with Good Industry Practice.

2. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant ~~[has provided sufficient information to demonstrate it] has [or will have]:~~

~~[(a) Certification to operate under internationally recognised quality control and management standards;]~~

~~[(a) bis. The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel;]~~

(b) The technology ~~[knowledge and]~~ procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan ~~[and]~~ the Closure Plan, ~~[and the applicable Regional Environmental Management Plan]~~ including the technical capability to ~~[identify and]~~ monitor key environmental parameters ~~[and ecosystem components so as to detect any adverse effects]~~ and to modify management and operating procedures ~~[as required to avoid the potential for Serious Harm] [when appropriate];~~

(c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques, ~~[Best Available Scientific Information]~~ and Best Environmental Practices and these regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(d) The capability to respond effectively to Incidents, in accordance with the Emergency Response and Contingency Plan; and

(e) The capability ~~[and capacity]~~ to utilize and apply Best Available Techniques.

4. The Commission shall determine if the proposed Plan of Work [foreseeably contributes to realizing the benefits for [hu]mankind as a whole][complies with the fundamental policies and principles contained in regulation 2, and];

~~[(a) Is technically achievable and [economically commercially] viable;]~~

~~[(b) Reflects the economic life of the project;]~~

(c) Provides for the effective protection of human health and safety of individuals engaged in Exploitation activities [in accordance with the rules, regulations and procedures adopted by the Authority and by any other competent international organizations];

(d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, [in line with article 87 and 147 of the Convention] including [*inter alia*] navigation, the laying of submarine cables and pipelines, [the right to maintain and repair existing submarine cables and pipelines], fishing and marine scientific research, [as referred to in article 87 of the Convention] [in accordance with the relevant Guidelines]; and

(e) [~~Provides under~~] [~~Demonstrates that~~] [~~Ensures through~~] the Environmental Plans, [will secure][to secure] ~~for~~ the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, [in particular the fundamental principles and the relevant policies under regulation 2] [~~in particular the fundamental policies and procedures under regulation 2,~~] [as well as the objectives and measures under the applicable Regional Environmental Management Plan] [taking into account the cumulative effects of all relevant activities [and climate change].

[(e)*bis* The effective protection referred to in sub-paragraph (e) implies that the activity will not cause, *inter alia*:

(i) Significant adverse effect on air and water quality;

(ii) Significant changes in atmospheric, terrestrial or marine environment;

(iii) Significant changes in the distribution, abundance or productivity or species of flora and fauna;

(iv) Further jeopardy to endangered or threatened species or populations of said species

(v) Degradation, or risk of degradation to special biological, scientific, archaeological, or historical significance;

(vi) Significant adverse effect on climate of weather patterns.]

[(f) Provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, by assessing whether the proposed Plan of Work:

[(i) contains adequate environmental baseline data, in accordance with applicable Standards and taking into account Guidelines;]

[(ii) will not cause environmental impacts to any area designated by the Authority or other relevant authority as a protected area in terms that prohibit such impacted;]

(iii) Gives rise to a non-negligible risk of pollution, damage to flora and fauna, or other harmful effects to ecosystem integrity (i.e. ecosystem structure or function) in a manner that:

(A) impairs the ability of affected populations to replace themselves; or

(B) degrades the long-term natural productivity of habitats or ecosystems; or

(C) causes, on more than a temporary basis, significant loss of species richness, habitat or community types.

(iv) Gives rise to a non-negligible risk that it will undermine the protection and conservation of other natural resources of the Area.

In conducting this assessment, the Commission shall The Commission shall take into account and shall consider.)]

[5. For the purposes of determining effective protection of the Marine Environment under regulation 13 (4) (e) and (f), the Commission must take into account:

- (a) Any Environmental Effects or impact on other activities of allowing the Exploitation activity;
- (b) All proposed mitigation and risk management measures;
- (c) An evaluation of harmful effects individually, in combination, as well as cumulatively, including effects from other activities in the area under application.
- (d) The effects on human health that may arise from Environmental Effects;
- (e) The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;
- (f) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;
- (g) Traditional knowledge or cultural interests relevant to the area under application;
- (h) the matters set out at Regulation 46bis (2) (b);
- (i) The assessment framework for Mining Discharges as set out in the Guidelines;
- (j) Any relevant Standards and Guidelines developed in accordance with regulations 94 and 95.]

[6. When assessing a Plan of Work, the Commission shall apply the principles set out in regulation 44(a)-(c).]

[7. In assessing a Plan of Work, the Commission shall determine whether the applicant is under the effective control of the sponsoring State[, according to applicable Guidelines], and whether the sponsoring State has enacted domestic legislation covering activities in the Area that:

- (a) is in force and applicable,

(b) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention, and

(c) does not contain provisions that appear to exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.]

The additions to draft regulation 13(1) are a propose re-location of text from draft regulation 12(4).

Delegates suggested that the wording of draft regulation 13(1)(d) could be further specified, to clarify which ‘obligations to the Authority’ are meant.

In relation to 13(4)(e) delegates have queried whether it is appropriate that the fundamental policy and procedures should apply here (only) in relation to environmental matters, particularly if their content includes some principle and policies that do not have particular bearing on environmental matters (e.g. production policies).

Some delegations have reiterated the importance of Standards and/or Guidelines on the assessment of a Plan of Work in order to provide additional understanding as to the application of draft Regulation 13, and some of the terms and principles used therein.

Guidance from the Authority as to the status of ‘Best Environmental Practices’ was requested. Another general comment made by delegations, relevant to various places throughout the draft regulations, is the need for greater certainty about how the term ‘Good Industry Practice’ will be interpreted and applied. Some delegates would prefer to see the term ‘Best Industry Practice’ used.

One delegation considered Guidelines pertaining to the duty of ‘reasonable regard’ also to be of great importance.

Regulation 14

Amendments to the proposed Plan of Work

1. At any [reasonable] time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may:

(a) Request the applicant to provide additional information on any aspect of the application [~~within 30 Days of the date when the application is first considered~~] [prior to making a recommendation]; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations.

2. Where the Commission [~~proposes any amendment to the Plan of Work~~ **makes a request**] under paragraph 1 [(a) or] (b) above, the Commission shall provide to the applicant a brief justification and rationale for such [~~proposed amendment~~ **a request**]. The applicant must respond within [~~the timeframe requested by the Commission~~]**90 Days following receipt of such [proposal** **a request**]~~from the Commission~~] by agreeing to the [~~proposal~~ **request**], rejecting the ~~proposal~~ **request**, or making an alternative proposal for the Commission’s consideration. The Commission shall then, in the light of the applicant’s response, make its recommendations to the Council.

Regulation 15

Commission's recommendation for the approval **or disapproval** of a Plan of Work

1. [Taking into account regulations 12(4) and 13, if] the Commission determines that the applicant [~~meets the criteria set out in regulation[s 12 (4) and] [13(4) meets the relevant requirements]~~, it [~~shall~~ may] recommend approval of the Plan of Work to the Council.

[1bis The Commission shall accompany any recommendation made under paragraph (1) approval with:

[(a)][a summary of [the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as] divergences of opinion in the Commission, if any];

[(b) any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and]

[(c) a draft Contract.]

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[(a) The Commission is unable to determine that the Plan of Work [either alone or in combination with other activities and impacts] ensures effective protection of the marine environment, based on the criteria set out in Regulation 13 (4) (e) and (f)], on the basis of Best Available Scientific Evidence, and applying the precautionary approach.]

[(a) *alt.* Pursuant to regulation 13(4) (e) and (f), the Plan of Work fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4) (e) and (f) that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.]

(b) part or all of the area covered by the proposed Plan of Work is included in:

~~[(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant]~~

(ii) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(iii) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

[(iv) an Area of Particular Environmental Interest or any other site disapproved for exploitation by the Council[, or that sets a spatial or temporal protective measure], as determined in the applicable Regional Environmental Management Plan;

[(v) any other area designated for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;]

(vi) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area.

[(vii) An area that has not been subject to prior exploration activities].

[(viii) An area not covered by a Regional Environmental Management Plan].

[(c) Such approval would undermine or contradict the regional goals, objectives or measures set out in the applicable Regional Environmental Management Plan.]

[(d) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work[or is otherwise unable to give reasonable regard to other marine users in the area under application].]

[(e) There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work, or any part of that area.]

2bis: The Commission shall not recommend approval of a proposed Plan of Work if the applicant, its controlling shareholder or shareholders or its predecessor in law previously violated the general obligations of contractors in a non-negligible way.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work [taking into account relevant Guidelines]; or

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

(i) 75,000 square kilometres in the case of polymetallic nodules;

(ii) 2,500 square kilometres in the case of polymetallic sulphides; or

(iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts; or

[(c) Such approval would permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally; or]

4. If the Commission determines that the applicant does not meet the [criteria requirements] set out in regulation[s 12 (4) and 13] [(4)], the Commission shall so inform the applicant in writing by providing the reasons why any [criterion has requirements have] not been met by the applicant, and provide the applicant with a further opportunity

to make representations within 90 Days of the date of notification to the applicant. During this period the Commission shall not make a recommendation to the Council on the application.

5. At its next available meeting, the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting. ~~[The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.]~~

~~[6. The Commission may refuse an application and return it to the applicant. The Commission must provide reasons for refusing an application.]~~

In relation to draft regulation 15(1), several delegations disliked the original drafting that the Commission “shall” recommend approval, considering it crucial for the Commission (and the Council) to retain a discretion not to approve a Plan of Work, even if an applicant meets qualifying criteria listed in draft regulations 12 and 13. It was noted that there may be relevant circumstances external to the applicant, but which are legitimate factors in the ISA’s decision – for example a lack of sufficient certainty regarding whether or not the Plan of Work will ensure the effective protection of the marine environment from harmful effects.

On delegation suggested to move draft regulation 15(4) and (5) to situate them immediately after draft regulation 15(1).

Several delegations highlighted that failure to meet the stipulated environmental criteria in draft regulation 13 should result in mandatory disapproval of the application, as reflected in proposals made for draft regulation 15(2)(a).

In relation to draft regulation 15(2)(b), it was noted that, ‘Areas of Particular Environmental Importance’ (and similar REMP designations) need to be given legal effect by the Regulations, as REMPs are not themselves legally binding instruments.

In relation to draft regulation 15(3)(a), which includes a proposed requirement for Guidelines on monopolization, it was recalled that Council members and LTC Chairs have consistently noted the need for further clarification and guidance on the concept of monopolization, though the issue has been continually deferred by the LTC for a number of years.

Section 4

Consideration of an application by the Council

16. The Council shall consider the reports and recommendations of the Commission ~~[and any other relevant subsidiary body established in accordance with the Convention and the Agreement,]~~ relating to approval of Plans of Work in accordance with paragraph 11 ~~[and paragraph 12]~~ of section 3 of the annex to the Agreement, ~~[after due consideration, [and within 60 days unless the Council decides to provide for a longer period] the Council shall approve or disapprove the Plan of Work]. [If the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 days or such other time period as has been established by the Council, the Plan of Work shall be deemed to have been approved by the Council at the end of that period.]~~

Delegates are invited to consider whether the proposal is appropriate to insert reference here to paragraph 12 of section 3 of the annex to the 1994 Agreement (“Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.”)

Part IX

Information-gathering and handling

Regulation 89

Confidentiality of information

1. ~~There shall be a presumption that any~~ **All** data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract ~~are shall be~~ public, other than Confidential Information.

2. “Confidential information” means:

(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by **[the Secretary-General]** on the basis that there would be substantial risk of serious or unfair economic prejudice **[risk of harm]** if the data and information were to be released.

[(e) Documents exempt from disclosure due to attorney-client legal privilege].

3. “Confidential Information” does not mean or include data and information that:

(a) Are generally known or publicly available from other sources;

(b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;

(c) Are already in the possession of the Authority with no obligation concerning its confidentiality;

(d) Are required to be disclosed under the Rules of the Authority to protect the Marine Environment or human health and safety;

(e) Are necessary for the formulation by the Authority of rules, regulations and procedures concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;

(f) Relate to the protection and preservation of the Marine Environment, ~~provided that unless~~ [the Secretary-General] may ~~agree that designate~~ such information ~~is regarded~~ as Confidential Information for a reasonable period[, ~~subject to such conditions as may be appropriate,~~] [which shall under no circumstances exceed a period of [2] [4] years] where [the Commission agrees] there are bona fide academic reasons for delaying its release [on the terms proposed by the Secretary-General, and the decision including the reasons are reported to Council];

(g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);

(h) The Contractor has given prior written consent to its disclosure;

(i) Relates to an area no longer covered by an exploitation contract; 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] [in accordance with the relevant Guidelines,] and save any data and information relating to personnel matters under paragraph 2 (b) above[; or

(j) Are in a category designated by the Council as not being Confidential Information].

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party [without reasonable cause or] without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's secretariat, as authorized by the Secretary-General, and by members of the Commission [as necessary] for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation [within a period of 30 Days], the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with [through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures]. ~~in accordance with Part XII of these regulations.~~]

6. Nothing in these regulations shall affect the rights of a holder of intellectual property.

In relation to draft regulation 89, concern was expressed that the determination of what data is 'confidential information' is not a purely administrative matter, and as is not a suitable task for the Secretary-General. To address this, one delegation proposed creation of a small Data Committee (comprising nominees appointed by Council, as well as members of the LTC and Secretariat), to perform this function. The same Committee may also assist with other data management and oversight responsibilities necessary for the ISA's functioning, such as overseeing maintenance of the DeepData database). Other proposals were for the adoption of Guidelines or Standards to direct such a designation, which may provide more specific indicative lists of which information falls into the various categories described in draft regulation 89, along with periodic independent review of the process and decisions taken, to minimise risk of abuse.

In relation to draft regulation 89(3)(f), one delegation did not agree with this possible exemption, noting that Contractor data was not collected for academic reasons.

One delegation queried whether there should be a log kept, for designated Confidential Information, and persons accessing it.

A delegation queried the consistency between the 10-year time limit envisaged in draft regulation 89(3)(i), and the potential 30-year term of a contract.

Regulation 90

Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information and shall not, except with the prior written consent of a Contractor, release such information to any person external to the Authority. To ensure the confidentiality of such information, the Secretary-General shall establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information by members of the Secretariat, members of the Commission[, members of the Council.] and any other person participating in any activity or programme of the Authority. Such procedures shall include:

(a) The maintenance of Confidential Information in secure facilities and the development of security procedures to prevent unauthorized access to or removal of such information; and

(b) The development and maintenance of a classification, log and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition.

2. A person who is authorized pursuant to these regulations to access Confidential Information shall not disclose such information except as permitted under the Convention and these regulations. The Secretary-General shall require any person who is authorized to access Confidential Information to make a written declaration witnessed by the Secretary-General or duly authorized representative to the effect that the person so authorized:

(a) Acknowledges his or her legal obligation under the Convention and these regulations with respect to the non-disclosure of Confidential Information; and

(b) Agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such information.

3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these regulations or a contract issued under these regulations. In accordance with the provisions of article 163 (8), of the Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose or use, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their employment with the Authority.

5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who ~~is in~~ breaches any of the obligations relating to confidentiality contained in the Rules of the Authority. ~~In the case of a breach of the obligations relating to confidentiality, the Authority shall notify the relevant Contractor and Sponsoring State.~~

Regulation 91

Information to be submitted upon expiration of an exploitation contract

1. ~~Upon expiration of an exploitation contract,~~ ~~the~~ Contractor shall transfer to the Authority ~~within 90 Days~~ all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and ~~taking into account~~ the Guidelines.

2. Upon termination of an exploitation contract, the Contractor and the Secretary-General shall consult together and, taking into account the Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority ~~within 90 Days~~.

Delegates are invited to discuss whether the allocation of responsibility to the Secretary-General, and the degree of discretion afforded, falls within relevant legal mandates established by the Convention, including with regards the need for uniform and non-discriminatory application of rules.

Regulation 92

Seabed Mining Register

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and ~~taking account of the~~ Guidelines. Such register shall contain:

(a) The names of the Contractors and the names and addresses of their designated representatives;

(b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7 ~~including any revisions~~;

(c) The terms of the various exploitation contracts in accordance with regulation 17;

- (d) The geographical extent of Contract Areas and Mining Areas to which each relate;
- (e) The category of Mineral Resources to which each relate;

[(e) *bis.* Non-confidential parts of annual reports, including the amount of Mineral Resources mined, and details of any Incidents, Notifiable Events, Compliance Notices or other compliance-related interventions taken by the Authority;]

[(e) *ter.* The results of monitoring and test mining projects;]

[(e) *quat.* Inspection reports;

- (f) All payments made by Contractors to the Authority under these regulations;
- (g) Any encumbrances regarding the exploitation contract made in accordance with regulation 22;
- (h) Any instruments of transfer; and
- (i) Any other details which the Secretary-General considers appropriate (save Confidential Information).

2. The Seabed Mining Register shall be publicly available [free of charge] on the Authority’s website.

One delegation queried when and where equivalent documents pertaining to *exploration* contracts would be similarly published.

It was also queried whether there could be more stipulation as to language and format requirements for the documents in the Register (which may be covered by the relevant Standards and Guidelines).

APPENDIX III: Monetary Penalties

Penalty in respect of any underdeclaration or underpayment in respect of a royalty	
Penalty in respect of any failure to deliver or furnish a royalty return	
Penalty in respect of false royalty returns and information	
Failure to submit an annual report (regulation 38)	
Other: to be considered e.g. relating to Notifiable Events (failure to notify); environmental & other Incidents; not achieving/exceeding environmental thresholds. A desktop study should be performed in connection with monetary penalties under comparable national regimes for extractive industries, including those relating to a broader range of breaches of the environmental provisions and failure to adhere to the Plan of Work annexed to an exploitation contract.	

Delegates are invited to agree that Appendix III should no longer be referenced in the draft regulations, and that monetary penalties to be imposed by the Council (referenced in regulations 80 and 103 (6)) should instead be set out in a Council decision, subject to review from time to time.

Part XII Settlement of disputes Regulation

Regulation 106

Settlement of disputes

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI of the Convention [and the rules of procedure adopted by the International Tribunal for the Law of the Sea for the conduct of expedited hearings concerning the Rules of the Authority].
2. ~~[In accordance with article 21 (2) of annex III to the Convention, A-a]~~ny final decision rendered by a court or tribunal having jurisdiction under the [Convention] [Rules of the Authority] relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention affected thereby.

Delegates are requested to consider whether the regulations should provide mechanisms for administrative review procedures for decisions of the Authority (in addition to the more formal dispute resolution procedures in UNCLOS). This may, for example, provide for procedures that can be more efficient than a referral to ITLOS, and may provide more comprehensive grounds for review and/or legal standing in certain circumstances to parties other than Contractors and States.

Delegates are also invited to discussed whether the regulations should include a requirement to attempt alternative dispute settlement, rather than requiring immediate recourse to ITLOS.

Part XIII Review of these regulations

Regulation 107

Review of these regulations

1. Five years following the approval of these regulations by the Assembly, or at any time thereafter, the Council shall undertake a [full] review of the manner in which the regulations have operated in practice.
2. If, in the light of improved knowledge[, implementation experience, identification of regulatory gaps,] or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission or any Contractor [or Stakeholder] through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these regulations [and the matter shall be included in the provisional agenda of the Council for that session].
3. The Council shall establish a process that gives [relevant] Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.
4. In the light of that review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these regulations, taking into account the recommendations of the Commission or other subordinate organs.

[5. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an exploitation contract with the Authority.]

The reference to a process to enable stakeholder comments in draft regulation 107(3) may be further considered as a result of the inter-sessional working group focused on stakeholder consultation.

Delegates are invited to consider the proposed inclusion of draft regulation 107(5), in light of the potentially long term of contracts, the untested nature of these regulations, and the need for the Council to retain ability to exercise control over Contractors. An alternative proposal is for the Council to incorporate an appropriate transition period for existing Contractors to implement any amendment to the Regulations.