

# Discussion Paper

## THE RIGHTS AND OBLIGATIONS OF THE INTERNATIONAL SEABED AUTHORITY AND THE SPONSORING STATE WITH RESPECT TO ACTIVITIES IN THE AREA



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## ABBREVIATIONS

1994 Agreement	1994 Agreement Relating to the Implementation of Part XI of UNCLOS
CFC	cobalt-rich ferromanganese crusts
CIL	Centre for International Law
EIA	environmental impact assessment
EIS	environmental impact statement
EMMP	environmental management and monitoring plan
IMO	International Maritime Organization
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
LTC	Legal and Technical Commission
PMN	polymetallic nodules
PMS	polymetallic sulphides
NUS	National University of Singapore
SDC	Seabed Disputes Chamber
UNCLOS	United Nations Convention on the Law of the Sea

## EXECUTIVE SUMMARY

The relationship between the role of the International Seabed Authority (ISA) in organizing, carrying out and controlling activities in the Area and the sponsoring State in ensuring that entities sponsored by them (i.e., the Contractors) conduct activities in the Area in conformity with Part XI of the 1982 United Nations Convention on the Law of the Sea and the terms of their contract have been raised in the course of developing draft regulations on exploitation of mineral resources in the Area. Comments have been made by the Legal and Technical Commission (LTC) and other stakeholders that the division of duties and responsibilities between ISA and sponsoring States vis-à-vis each other and vis-à-vis the Contractors has not been clearly defined. A clearer demarcation of the respective duties and responsibilities of ISA and the sponsoring State is necessary in order to fulfill various regulatory objectives, including maximizing efficiencies in regulatory resources to ensure proper regulatory functioning. The LTC has accordingly been requested by ISA Council to formulate a matrix of duties and responsibilities of ISA and the sponsoring States and to consider extending that, where practicable, to reflect the roles of other states, such as the flag States.

To this end, the Centre for International Law at the National University of Singapore, in collaboration with the ISA Secretariat, brought together a group of experts from academia, the ISA Secretariat, members of the LTC and government officials from sponsoring States to examine the issues related to establishing a division of rights and obligations between ISA and sponsoring States in a workshop, the Role of the sponsoring State in activities in the Area, held in Singapore on 12-13 April 2019. Please note this discussion paper uses “rights and obligations” rather than “duties and responsibilities” as it mirrors the nomenclature used in UNCLOS. The workshop discussions informed the preparation of this discussion paper, the overarching aim of which is to provide a starting point for discussion to assist the LTC in formulating a matrix of rights and obligations of ISA and the sponsoring State. This discussion paper focuses on the rights and obligations of ISA and the sponsoring States. It does not provide a detailed examination of the role of other states, such as flag States and port States which are being discussed in other forums.

Annex I to this paper includes a Matrix of the rights and obligations of ISA and sponsoring State (see also [ISBA/27/C/CRP4](#)). It sets out the (a) Contractor’s obligations, (b) ISA’s rights and obligations and (c) sponsoring State’s rights and obligations consisting of (i) direct rights and obligations and (ii) obligations to ensure compliance.

Annex I should be read with the analysis in the discussion paper below. This discussion paper is structured as follows. Section 2 gives an overview of the methodology and framework for analysis. Sections 3-14 discuss the various categories of rights and obligations of the Contractor, ISA and the sponsoring State and are intended to accompany the Matrix in Annex I. These sections discuss the rights and obligations of the Contractor, ISA and the sponsoring State in relation to (1) co-operation, (2) nationality and effective control of Contractors, (3) financial and technical capabilities of Contractors, (4) obligations to protect the marine environment from harmful effects of activities in the Area, (5) coastal State rights and legitimate interests, (6) human remains and objects of an archeological and historical nature, (7) accommodation of activities in the Area, (8) incidents and notifiable events, (9) monitoring of Contractors’ obligations through reporting, (10) monitoring of Contractor’s obligations through inspections, (11) non-compliance by Contractors and (12) obligations after notice of termination of sponsorship and termination of contract. Section 15 sets out several conclusions.

# 1. METHODOLOGY AND FRAMEWORK FOR ANALYSIS

## 1.1 Background

1. Part XI of the 1982 United Nations Convention on the Law of the Sea (UNCLOS),<sup>1</sup> as modified by the 1994 Agreement Relating to the Implementation of Part XI of UNCLOS (1994 Agreement),<sup>2</sup> establishes a detailed regime for the exploration and exploitation of the resources<sup>3</sup> of the Area<sup>4</sup> which are designated, along with the Area, as the common heritage of (hu)mankind.<sup>5</sup> The International Seabed Authority (ISA) is the intergovernmental organization that organizes, carries out and controls activities in the Area (i.e. exploration for and exploitation of the resources)<sup>6</sup> on behalf of (hu)mankind as a whole.<sup>7</sup> Activities in the Area may be carried out by the Enterprise (currently non-operational) and, in association with ISA, State Parties or State enterprises or natural or juridical persons<sup>8</sup> (the Contractors). For natural or juridical persons to carry out activities in the Area, they must possess the nationality of States Parties or be effectively controlled by them or by their nationals and must be sponsored by State Parties (the Sponsoring State[s]).<sup>9</sup>
2. As of March 2022, 31 contracts for exploration have been issued pursuant to the Exploration regulations for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts (the Exploration Regulations).<sup>10</sup> ISA is in the process of developing regulations on the exploitation of mineral resources in the Area.<sup>11</sup> On 22 March 2019, the Legal and Technical Commission (LTC) issued Draft regulations on the exploitation of mineral resources in the Area Draft Exploitation Regulations), which are under consideration by the Council.<sup>12</sup>
3. The relationship between ISA and the sponsoring State(s) has been raised in the course of developing the Draft Exploitation Regulations. Undoubtedly, the 2011 Advisory Opinion of the Seabed Disputes Chamber (SDC) on the Responsibilities and Obligations of Sponsoring States (SDC Advisory Opinion)<sup>13</sup> has shed light on the responsibilities and obligations of the sponsoring State and its consequent liability for any failure to comply with the provisions of UNCLOS, in particular Part XI, and the 1994 Agreement. However, as observed by the LTC in 2015:

<sup>1</sup> UNCLOS, 10 December 1982, 1833 UNTS 397, Art. 153 (1); entered into force 16 November 1994.

<sup>2</sup> 1994 Agreement, 10 December 1982, 28 July 1994, UNTS vol 1836 Annex, s 2 (1-2); entered into force 28 July 1996.

<sup>3</sup> The term “resources” refers to “all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules” (UNCLOS, Article 133 (a)).

<sup>4</sup> UNCLOS, Article 1 (1) defines the Area as “the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.”

<sup>5</sup> UNCLOS, Article 136.

<sup>6</sup> UNCLOS, Article 1 (3).

<sup>7</sup> UNCLOS, Article 153 (1).

<sup>8</sup> UNCLOS, Article 153 (2) (b).

<sup>9</sup> Ibid.

<sup>10</sup> ISA. 2000. Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area ([ISBA/6/A/18](#)). In 2013, these polymetallic nodules (PMN) regulations, were amended ([ISBA/19/C/17](#)) to be consistent with the regulations adopted in 2010 and 2012 for the polymetallic sulphides (PMS) and cobalt-rich ferromanganese crusts (CFC), respectively. ISA. 2010. Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area ([ISBA/16/A/12/Rev.1](#)). ISA. 2013. Regulations on Prospecting for Cobalt-rich Ferromanganese Crusts in the Area ([ISBA/18/A/11](#)).

<sup>11</sup> ISA. [The mining code](#).

<sup>12</sup> ISA. 2019. Draft Regulations on Exploitation of Mineral Resources in the Area, Prepared by the Legal and Technical Commission ([ISBA/25/C/WP.1](#)).

<sup>13</sup> ITLOS, SDC. 2011. Responsibilities and Obligations of States with respect to Activities in the Area, Advisory Opinion (Case no. 17, 1 February 2011, 50 ILM 458).

It is not believed that the division of duties and responsibilities is clearly defined between a sponsoring State and [ISA]. This relates to matters including enforcement and monitoring/inspection, offence and penalty systems, liability and responsibility of a contractor etc. From a contractor's perspective, there is the potential for a duplicative regulatory and financial burden. This needs to be clarified and duties and responsibilities more clearly defined. Equally, this also points to effective co-operation between [ISA] and a sponsoring State. Matrix setting out duties and responsibilities to be developed.<sup>14</sup>

4. Similarly, a summary of the stakeholder comments on the 2017 version of the Draft Exploitation Regulations noted that:

On a more practical level, stakeholders do see a need for clarity in cooperation between [ISA] and the sponsoring State particularly in relation to monitoring and enforcement to avoid duplication. The sharing and communication of information between [ISA] and sponsoring State(s) is also seen as a key element to be reflected in the regulations. In essence, there is a need to set out how [ISA] and sponsoring State(s) will interact and co-operate in practice, and in co-ordination on information-sharing, monitoring and enforcement...<sup>15</sup>

5. To this end, the Centre for International Law (CIL) at the National University of Singapore (NUS), in collaboration with the ISA Secretariat, has prepared the present discussion paper to identify the respective rights and obligations of ISA and the sponsoring State vis-à-vis the Contractor and the rights and obligations that ISA and the sponsoring State have towards each other under the existing legal framework. This paper uses "rights and obligations" rather than "duties and responsibilities" as it mirrors the nomenclature used in UNCLOS. "Rights" refer to the power or legal authority to take certain actions, whereas "obligations" refer to a required course of action that is binding. A workshop, the Role of the Sponsoring State in Activities in the Area, was held in Singapore on 12-13 April 2019, bringing together law of the sea experts from academia, the ISA Secretariat, members of the LTC and government officials from sponsoring and non-sponsoring States (a full list of the participants can be found in the Appendix).
6. Before setting out the methodology and framework, the following sections explore the mandate of ISA and the role of the sponsoring State in activities in the Area and outline some general considerations that must be borne in mind when discussing the rights and obligations of ISA and the sponsoring State.

## 1.2 The ISA mandate

7. ISA is the intergovernmental organization that organizes, carries out and controls "activities in the Area" on behalf of (hu)mankind as a whole.<sup>16</sup> It consists of the Assembly, consisting of all members of ISA, the Council, as the executive organ comprising 36 members, the Secretariat and the Enterprise, which is currently non-operational. The current subsidiary organs of ISA are the LTC and the Finance Committee.

<sup>14</sup> See ISA. 2015. Developing a Regulatory Framework for Deep Sea Mineral Exploitation in the Area. Available at: [https://www.isa.org.jm/wp-content/uploads/2022/04/Rev\\_RegFramework\\_ActionPlan\\_14072015.pdf](https://www.isa.org.jm/wp-content/uploads/2022/04/Rev_RegFramework_ActionPlan_14072015.pdf). ISA. 2018. Briefing Note to the Council on the Submissions to the Draft Regulations on Exploitation of Mineral Resources in the Area ([ISBA/24/C/CRP.1](#)), Annex III.

<sup>15</sup> Briefing Note, 7-8.

<sup>16</sup> UNCLOS, Article 153 (1).

8. ISA “shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of [ISA], and the plans of work approved in accordance with [Article 153 (3) of UNCLOS].”<sup>17</sup> Further, ISA “shall have the right to take at any time any measures provided for under [Part XI] to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract.”<sup>18</sup>
9. ISA has express powers conferred upon it by UNCLOS and “incidental powers, consistent with [UNCLOS] as are implicit in and necessary for the exercise of those powers and functions with respect to activities in the Area.”<sup>19</sup> ISA must adopt and uniformly apply rules, regulations and procedures relating to, inter alia, (1) the prospecting for, exploration and exploitation of resources in the Area,<sup>20</sup> (2) the effective protection of the marine environment from harmful effects which may arise from exploration and exploitation,<sup>21</sup> (3) financial and internal administration of ISA,<sup>22</sup> (4) a payment mechanism and financial terms of contracts for the exploitation of mineral resources between ISA and the Contractors,<sup>23</sup> (5) the equitable sharing and other economic benefits derived from activities in the Area and contributions made pursuant to Article 82.<sup>24</sup>
10. ISA has other functions, including promoting and encouraging marine scientific research in the Area and on its resources and potentially carrying out such research, as well as coordinating and disseminating the results of such research and analysis when available,<sup>25</sup> promoting and encouraging the transfer to developing countries of technology and scientific knowledge relating to activities in the Area<sup>26</sup> and promoting international co-operation regarding activities in the Area.<sup>27</sup>

### 1.3 Purpose of sponsorship for activities in the Area

11. The importance of sponsorship was captured by the SDC in its 2011 Advisory Opinion:

The purpose of requiring the sponsorship of applicants for contracts for the exploration and exploitation of the resources of the Area is to achieve the result that the obligations set out in [UNCLOS], a treaty under international law which binds only States Parties thereto, are complied with by entities that are subjects of domestic legal systems. This result is obtained through the provisions of [ISA]’s Regulations that apply to such entities and through the implementation by the sponsoring States of their obligations under UNCLOS and related instruments.<sup>28</sup>

<sup>17</sup> UNCLOS, Article 153 (4).

<sup>18</sup> UNCLOS, Article 153 (5).

<sup>19</sup> UNCLOS, Article 157 (2).

<sup>20</sup> UNCLOS, Article 160 (2) (f) (ii), Article 162 (2) (o) (ii), Annex III, Article 17 (1).

<sup>21</sup> UNCLOS, Article 145.

<sup>22</sup> UNCLOS, Article 162 (2) (o) (ii).

<sup>23</sup> UNCLOS, Annex III, Article 13, 1994 Agreement, Annex, Section 8.

<sup>24</sup> UNCLOS, Articles 82, 140 (2), 160 (2) (f) (i), 162 (2) (o) (i). UNCLOS, Part VI, Article 82 addresses the obligation of coastal States to contribute part of the revenue from the exploitation of non-living resources of the continental shelf beyond 200 nautical miles to be distributed to States Parties through ISA. The ISA’s mandate in the distribution of revenues pursuant to Article 82 is more limited than its other mandates.

<sup>25</sup> UNCLOS, Articles 143 (2) and (3).

<sup>26</sup> UNCLOS, Article 144 (1) and (2).

<sup>27</sup> UNCLOS, Article 160 (2).

<sup>28</sup> SDC Advisory Opinion, note 13, para. 75.

Sponsoring States contribute to “the realization of the common interest of all States in the proper application of the principle of the common heritage of (hu)mankind which requires faithful compliance with the obligations set out in Part XI.”<sup>29</sup>

12. The SDC has held that the sponsoring State has two distinct but inter-related types of obligations, which, for ease of reference, can be categorized as (1) the obligation to ensure that the Contractor complies with its obligations under UNCLOS and relevant instruments<sup>30</sup> and (2) direct obligations independent of their obligation to ensure compliance by the Contractor.<sup>31</sup>

### **1.3.1 *Obligation to ensure that Contractor complies with its obligations under Part XI of UNCLOS and related instruments***

13. The obligations of the sponsoring State are mainly set out in UNCLOS, Article 139(1) and Article 153(4) and UNCLOS, Annex III, Article 4(4).<sup>32</sup> Under these provisions, the SDC found that the sponsoring State has a **due diligence obligation** to take necessary and appropriate measures within its legal system to ensure that the Contractor complies with its obligations under (1) the relevant provisions of Part XI, (2) Annexes III and IV of UNCLOS, (3) the rules, regulations and procedures of ISA, (4) plans of work approved by the LTC, (5) terms of its contract and (6) its obligations under UNCLOS.<sup>33</sup> It is not an obligation to achieve the result that the sponsored Contractor complies with its obligations but rather an obligation to “deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result.”<sup>34</sup> These necessary and appropriate measures consist of “laws and regulations, and...administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.”<sup>35</sup> The sponsoring State’s laws, regulations and administrative measures should be in force at all times that a contract with ISA is in force.<sup>36</sup> The content, scope and extent of the laws and regulations and administrative measures required depend upon the legal system of the sponsoring State and policy choices on such matters are the sovereign prerogative of the sponsoring State.<sup>37</sup> As discussed further below, the SDC did, however, provide some guidance on the general considerations that should shape the laws, regulations and administrative measures of the sponsoring State.

14. First, the sponsoring State must adopt “reasonably appropriate” measures that take into account the relevant options in a manner that is reasonable, relevant and conducive to the benefit of (hu)mankind as a whole and must act in good faith and a non-arbitrary manner.<sup>38</sup>

15. Second, the laws, regulations and administrative measures should not hinder the Contractor in the effective fulfillment of its contractual obligations but rather assist the Contractor in that respect.<sup>39</sup>

<sup>29</sup> Ibid., para. 76.

<sup>30</sup> See SDC Advisory Opinion, Part IV.

<sup>31</sup> See SDC Advisory Opinion, Part V.

<sup>32</sup> SDC Advisory Opinion, para. 99.

<sup>33</sup> Ibid, paras. 104-106. Note that the SDC observed that the reference to Contractor’s obligations in Annex III, Article 4 (4) would seem broader than the references in UNCLOS, Articles 139 and 153 and that the difference would be relevant if there were obligations of sponsored contractors that were in UNCLOS other than Part XI and annexes thereto, the rules, regulations and procedures of the relevant contracts. As this was not the case, the obligations of the sponsored contractors indicated in Articles 139, 153 (4) and Annex III, Article 4 (4) are, in fact, substantially the same.

<sup>34</sup> Ibid., para. 110.

<sup>35</sup> UNCLOS, Annex III, Article 4 (4), SDC Advisory Opinion, paras. 216-217.

<sup>36</sup> SDC Advisory Opinion, para. 219. Note that having such laws, regulations and administrative measures is not a condition precedent for concluding a contract with the ISA.

<sup>37</sup> Ibid, para. 218.

<sup>38</sup> Ibid, para. 230.

<sup>39</sup> Ibid, para. 238.



16. Third, UNCLOS, Annex III, Article 21(3) states that while a flag State or a sponsoring State may not impose conditions on a Contractor that are inconsistent with Part XI, the application by a sponsoring State to sponsored Contractors of environmental or other laws and regulations more stringent than those in the rules, regulations and procedures adopted by ISA dealing with the protection of the marine environment, shall not be deemed inconsistent with Part XI.<sup>40</sup> The SDC observed that this approach is also confirmed by UNCLOS, Article 209(2).<sup>41</sup>
17. Fourth, the SDC also noted that the sponsoring State may find it necessary to have certain provisions in its laws, regulations and administrative measures. These may concern inter alia, "the financial viability and technical capacity of sponsored contractors, conditions for issuing a certificate of sponsorship and penalties for non-compliance by such contractors,"<sup>42</sup> as well as provisions on the co-ordination between the various activities of the sponsoring State and ISA with a view to eliminating avoidable duplication of work.<sup>43</sup> In addition, it may also include the "establishment of enforcement mechanisms for active supervision of the activities of the sponsored contractor."<sup>44</sup> Further, a sponsoring State's laws should ensure that any final decision rendered by a court or tribunal having jurisdiction under UNCLOS relating to the rights and obligations of ISA and the Contractor shall be enforceable in the territory of each State Party.<sup>45</sup>
18. Fifth, the sponsoring State may also wish to reflect in their laws, regulations and administrative measures certain direct obligations that sponsoring States have independent of their obligation to ensure compliance by the sponsored Contractor (although the SDC was careful to note that these are mentioned only as examples).<sup>46</sup> This leads us to the second category of obligations the sponsoring State has - the direct obligations.

### 1.3.2 Direct obligations of the sponsoring State

19. In addition to the due diligence obligations of sponsoring States to ensure that the Contractors comply with their obligations, sponsoring States have **certain direct obligations** under UNCLOS and related instruments which they must comply with *independently* of their obligation to ensure a certain behavior by the sponsored Contractor.<sup>47</sup> According to the SDC, the most important of these obligations are the obligation to assist ISA in the exercise of control over activities in the Area under Article 153(4),<sup>48</sup> the obligation to apply the precautionary approach as required by the Exploration Regulations,<sup>49</sup> the obligation to apply best environmental practices as required by the Exploration Regulations,<sup>50</sup> the obligation to take measures to ensure the provision of guarantees in the event of an emergency order by ISA for the protection of the marine environment as required by the Exploration

<sup>40</sup> Ibid, para. 240.

<sup>41</sup> Ibid, para. 241. Notwithstanding, it should be noted that Article 209 is textually different from Annex III, Article 21 (3). Article 209 applies to all States and provides that "States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be" which shall be "no less effective" than the rules adopted by the ISA.

<sup>42</sup> Ibid, para. 234

<sup>43</sup> Ibid, para. 218.

<sup>44</sup> Ibid, para. 218.

<sup>45</sup> Ibid, para. 235.

<sup>46</sup> Ibid, para. 236.

<sup>47</sup> Ibid, para. 121.

<sup>48</sup> Ibid, para. 124.

<sup>49</sup> Ibid, paras. 125-135.

<sup>50</sup> Ibid, paras. 136-137.

Regulations,<sup>51</sup> the obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution as required by UNCLOS, Article 235(2)<sup>52</sup> and the obligation to conduct environmental impact assessments (EIA) as required by UNCLOS, Article 206, general international law and the Exploration Regulations.<sup>53</sup> The SDC observed that the said obligations are, in most cases, couched as obligations to ensure compliance with a specific rule and that the implementation of these direct obligations will be a factor that will be taken into consideration when assessing whether the sponsoring State has fulfilled its due diligence obligations.<sup>54</sup>

## 1.4 General considerations in the division of rights and obligations between ISA and sponsoring State

20. UNCLOS does not make explicit how the respective rights and obligations of ISA and the sponsoring State relate to each other or how they should be delineated for regulatory efficiency. The following sections highlight some general considerations that impact the division of rights and obligations between ISA and the sponsoring State with respect to activities in the Area.

### 1.4.1 *The need to avoid sponsoring States of convenience and the discretion of sponsoring States to implement their own legislative framework*

21. While sponsoring States must adopt laws, regulations and administrative measures to fulfill their obligations under UNCLOS, the SDC has observed that UNCLOS “leaves it to the sponsoring State to determine what measures will enable it to discharge its responsibilities.”<sup>55</sup> The SDC sets out some general considerations that should guide the sponsoring State’s adoption of laws, regulations and administrative measures (see paras 26-31) but affirmed that the determination of the measures was left to the discretion of the sponsoring State within the framework of its legal system.<sup>56</sup> This makes practical sense given the differences in the legal systems of the various sponsoring States, as well as a reluctance to dictate to sovereign States matters that lie within domestic jurisdiction.<sup>57</sup> However, this also means that there inevitably is and/or will be a lack of uniformity across the national legislation of sponsoring States.<sup>58</sup>

22. At the same time, the SDC also stated there is a need to “prevent commercial enterprises based in developed States from setting up companies in developing States, acquiring their nationality and obtaining their sponsorship in the hope of being subjected to less burdensome regulations and controls.”<sup>59</sup> The “spread of sponsoring States of convenience would jeopardize uniform application of the highest standards of protection of the marine environment, the safe development of activities in the Area and protection of the common heritage of [hu]mankind.”<sup>60</sup> The SDC recognized the need

<sup>51</sup> Ibid, para. 138.

<sup>52</sup> Ibid, para. 139-140.

<sup>53</sup> Ibid, para. 122.

<sup>54</sup> Ibid, para. 122.

<sup>55</sup> Ibid, para. 227.

<sup>56</sup> Ibid, para. 228.

<sup>57</sup> ISA. Comparative Study of the Existing National Legislation on Deep Seabed Mining (unedited advance text). Available at: [https://www.isa.org.jm/wp-content/uploads/2022/04/Comparative\\_Study\\_NL.pdf](https://www.isa.org.jm/wp-content/uploads/2022/04/Comparative_Study_NL.pdf) (Comparative Study), 25.

<sup>58</sup> Lily, Hannah. 2018. “Liability Issues for Deep Seabed Mining Series | Paper Sponsoring State Approaches to Liability Regimes for Environmental Damage Caused by Seabed Mining.” Available at: [https://www.cigionline.org/static/documents/documents/Deep%20Seabed%20Paper%233\\_2.pdf](https://www.cigionline.org/static/documents/documents/Deep%20Seabed%20Paper%233_2.pdf). Lily illustrates how different sponsoring states have implemented their obligations in their national legislation.

<sup>59</sup> SDC Advisory Opinion, note 13, para. 159.

<sup>60</sup> Ibid.

for equality of treatment between developing and developed sponsoring States so as to prevent “sponsoring States of convenience” but at the same time acknowledged that developing States should receive the necessary assistance to ensure effective participation in the deep seabed regime.<sup>61</sup>

23. It has been suggested that some degree of harmonization across the laws, regulations and administrative measures adopted by sponsoring States would be in the common interest.<sup>62</sup> However, this does not fall within the remit of ISA. From a regulatory perspective, ISA must endeavor to ensure that ISA rules, regulations and procedures provide a level playing field to all Contractors (be they State, State enterprises or private entities) so that no Contractor or group of Contractors is prejudiced or advantaged by any of the provisions of the rules, regulations and procedures. In contrast, ISA has no explicit authority under UNCLOS to prescribe how the sponsoring State fulfills its various obligations under UNCLOS. At present, ISA’s approach vis-à-vis sponsoring States is to recognize that they have the discretion in the manner in which they implement their sponsorship obligations within their own legal systems and to provide necessary assistance for such implementation,<sup>63</sup> for example, establishing the national database of deep seabed mining legislation and drafting the comparative study on national legislation.<sup>64</sup>

#### **1.4.2 Identification of the rights and obligations of the sponsoring State**

24. The division allocation of rights and obligations between ISA and the sponsoring State with respect to activities in the Area first requires determining the rights and obligations of the sponsoring State, which interface with ISA’s rights and obligations. In principle, and as suggested by the SDC, the content of the rights and obligations of the sponsoring State can be derived from a variety of legal instruments, including UNCLOS, the 1994 Agreement, the Exploration Regulations and, at some point, the future Exploitation Regulations. With regard to the sponsoring State’s “obligation to ensure the Contractor’s compliance,” this obligation is linked to the Contractor’s obligations as set out in UNCLOS and related instruments. It is consequently possible to determine the content of the sponsoring States’ obligations to ensure the Contractor’s compliance by reference to the Contractor’s obligations in the relevant instruments.

25. In relation to sponsoring States’ direct obligations, the SDC identified several of these direct obligations but noted that these were “among the most important.”<sup>65</sup> Sponsoring States have other direct obligations contained in other parts of UNCLOS by virtue of being a State Party to UNCLOS, most notably in relation to the protection and preservation of the marine environment in Part XII.<sup>66</sup>

<sup>61</sup> Ibid.

<sup>62</sup> See Pew Charitable Trusts. 2020. Code project. Template National Sponsorship Law for Seabed Mining beyond National Jurisdiction. Available at: [https://www.pewtrusts.org/-/media/assets/2020/09/seabed\\_mining\\_white\\_paper.pdf](https://www.pewtrusts.org/-/media/assets/2020/09/seabed_mining_white_paper.pdf).

<sup>63</sup> As per the SDC’s advice that developing States should receive necessary assistance to ensure effective participation in the deep seabed regime: SDC Advisory Opinion, note 13, para. 163.

<sup>64</sup> In 2011, the LTC suggested ISA should be tasked, as part of its work programme and subject to resources being made available, with preparing model legislation to assist sponsoring States in fulfilling their obligations. See ISA. 2011. Summary Report of the Chair of the LTC on the work of the Commission at its seventeenth session (ISBA/17/C/13), para. 70. In response, the Council requested the Secretary-General prepare a report on the status of the laws, regulations and administrative measures which has now developed into the database on national laws. See ISA. 2012. Report of the Secretary-General of the International Seabed Authority under article 166, paragraph 4, of the United Nations Convention on the Law of the Sea (ISBA/18/A/2). In addition, the Assembly also requested the Secretary-General to provide the Council with a comparative study of existing national legislation with a view to deriving common elements. See ISA. 2017. Decision of the Assembly of the International Seabed Authority relating to the final report on the first periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea (ISBA/23/A/13). See Lily, note 59, 32-34.

<sup>65</sup> SDC Advisory Opinion, note 13, para. 122; para. 236.

<sup>66</sup> Ibid, para. 139 and para. 145.

Some provisions in Annex III of UNCLOS (for example, Article 4(4) and Article 21(3)) expressly refer to the sponsoring State.<sup>67</sup> At the same time, several provisions in Part XI itself are framed in passive language and do not identify the addressee of the obligation.<sup>68</sup> For example, Article 146 on the Protection of Human Life merely states that “with respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life” and proceeds to give ISA the authority to adopt the necessary rules, regulations and procedures. It has been said, “it can be assumed that the first sentence is intended to establish a general requirement, aimed to apply to all relevant actors that can be bound by [UNCLOS],” which would include ISA and States parties.<sup>69</sup>

### 1.4.3 When does the implementation of the obligations of the sponsoring State commence?

26. One important issue that deserves further consideration is *when* the implementation of the rights and obligations of the sponsoring State begins, which inevitably impacts the division of rights and obligations vis-a-vis ISA. The prospective Contractor will have to apply first under the laws and regulations of the sponsoring State to obtain sponsorship, evidenced by a Certificate of Sponsorship and then apply to ISA for an exploration or exploitation contract. The prospective Contractor may have to go through two sets of processes: (1) the application procedure with the sponsoring State, which may or may not be formalized in legislation (application for sponsorship phase) and (2) the application procedure with ISA (ISA application phase).
27. Not all sponsoring States will have formal application procedures for sponsorship in place, reflected in national legislation or otherwise.<sup>70</sup> Those that do have laws in place impose differing requirements for obtaining a Certificate of Sponsorship (required by ISA) and/or license to conduct activities in the Area with varying levels of complexity.<sup>71</sup> Several of them make the ability to conduct activities in the Area explicitly contingent upon obtaining a Certificate of Sponsorship as well as a contract from ISA.<sup>72</sup> Further, in practice, during the ISA application phase, the sponsoring State may not have any formal role in the process (with the exception of providing the Certificate of Sponsorship and providing evidence of a State enterprise’s financial capabilities) and is simply waiting to hear the outcome of ISA application.<sup>73</sup>
28. It is clear that once the contract is signed between ISA and the Contractor, the sponsoring State has certain direct obligations and obligations to ensure compliance by the Contractor with its obligations under (1) the relevant provisions of Part XI, (2) Annexes III and IV of UNCLOS, (3) the rules, regulations and procedures of ISA, (4) plans of work approved by the Council, (5) terms of its contract and (6) its

<sup>67</sup> The SDC found that although Articles 139 (1) and 153 (4) refer generically to States Parties, they should be interpreted as referring to sponsoring States. The SDC found this on the basis that “since the entities which conduct activities in the Area mentioned in article 139, paragraph 1, of [UNCLOS] can do so only when there is a State Party sponsoring them, all three provisions must be read as referring to sponsoring States.” See SDC Advisory Opinion, para. 12.

<sup>68</sup> See UNCLOS, Articles 142, 145, 146, 147 and 149.

<sup>69</sup> Vonecky S., Beck F. 2017. Article 146, Protection of Human Life in Alexander P. (ed.), United Nations Convention on the Law of the Sea, Hart, 1028-1035, 1030.

<sup>70</sup> Some sponsoring States do not have national legislation, regulations or administrative measures in place. Lily, note 64, 5. The SDC noted that the existence of such laws, regulations and administrative measures is not a condition for concluding a contract with the ISA, it is a necessary requirement for compliance with the obligation of due diligence of the sponsoring State and for its exemption from liability. See SDC Advisory Opinion, note 13, para. 219.

<sup>71</sup> Comparative Study, note 16, 10-15.

<sup>72</sup> See Republic of Nauru. 2015. International Seabed Minerals Act No. 26 of 2015. Available at: [https://www.isa.org.jm/wp-content/uploads/2022/05/Nauru\\_ISM.pdf](https://www.isa.org.jm/wp-content/uploads/2022/05/Nauru_ISM.pdf), Section 20.

<sup>73</sup> Note that some sponsoring States may take a more pro-active role in the ISA application process. For example, Nauru’s legislation provides that Nauru’s competent national authority “will co-operate with the Sponsored Party to facilitate the preparation, submission and support of the application to the ISA.” Ibid, Section 26 (2).

obligations under UNCLOS.<sup>74</sup> The contract between ISA and the Contractor is the key instrument that makes these obligations legally binding on the Contractor.

29. The nature and content of the sponsoring State's obligations prior to the signing of the contract between ISA and the Contractor warrant further analysis. Generally speaking, it has been said that the decision to sponsor by the sponsoring State is a critical one and "[d]emonstrating that sponsorship is conferred prudently is therefore an important first step in fulfilling the sponsoring State's due diligence obligation."<sup>75</sup> It is in the interest of the sponsoring State to satisfy itself through the application for sponsorship phase that the applicant will be able to fulfill its duties as a Contractor before it agrees to sponsor the applicant and issue the Certificate of Sponsorship. Indeed, the sponsoring State may have certain direct obligations (as identified by the SDC), which are applicable before the contract with ISA is signed and which will continue throughout the contractual relationship between ISA and the Contractor (this includes, for example, the obligation to apply the precautionary approach and best environmental practices, as well as the obligation to conduct an EIA).<sup>76</sup> The sponsoring State also may have obligations to ensure compliance by prospective Contractors with certain requirements in the ISA application phase prior to the ISA contract coming into effect. For example, the SDC observed that the sponsoring State is under a due diligence obligation to ensure compliance by the sponsored Contractor with the requirement that "an application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities."<sup>77</sup> Pre-ISA contract obligations of the sponsoring State will be discussed further in the relevant sections below.

#### 1.4.4 Implications of the role of the sponsoring State vis-à-vis ISA

30. The SDC observed that under Article 153 (4) of UNCLOS, the sponsoring State has the obligation to "assist" ISA in ensuring compliance by the Contractor with UNCLOS and related instruments and that the "subordinate role of the sponsoring State is reflected in Annex III, Article 22 of [UNCLOS], in which the liability of the contractor and [ISA] is mentioned while that of the sponsoring State is not [emphasis added]."<sup>78</sup> In this connection, the SDC went on to say that the "main liability for a wrongful act committed in the conduct of the contractor's operations or in the exercise of the [ISA's] powers and functions rests with the contractor and [ISA], respectively, rather than with the sponsoring State." This "reflects the distribution of responsibilities for deep seabed mining activities between the contractor, [ISA] and the sponsoring State."<sup>79</sup> Accordingly, the SDC found that the liability of the sponsoring State and the Contractor exists in parallel and that UNCLOS and related instruments leave no room for residual liability.<sup>80</sup>

<sup>74</sup> SDC Advisory Opinion, note 13, paras. 103-106. Note that the SDC observed that the reference to Contractor's obligations in Annex III, Article 4 (4) would seem broader than the references in UNCLOS, Articles 139 and 153, and that the difference would be relevant if there were obligations of sponsored contractors that were in UNCLOS other than Part XI and annexes thereto, the rules, regulations and procedures or the relevant contracts. As this was not the case, the obligations of the sponsored contractors indicated in Articles 139, 153 (4) and Annex III, Article 4 (4) are, in fact, substantially the same.

<sup>75</sup> Elana G. 2017. The Due Diligence Obligation of a Sponsoring State; A Framework for Implementation in Myron H. N., John N. M. and R. L. (eds), *International Marine Economy*, 246, 257.

<sup>76</sup> The SDC found that these were direct obligations that the sponsoring State had to comply with independently of its obligation to ensure compliance of the Contractor with UNCLOS and relevant instruments. It has also been observed that these obligations are "norms of international environmental law with broad application" and "fall into a category of obligations that can be satisfied prior to undertaking mining activities." Robert M. and Ana P. L. 2016. *Deep Seabed Mining: Key Obligations in the Emerging Regulation of Exploration and Development in the Pacific* in Robin W. and Stuart K. (eds.), *Routledge Handbook of Maritime Regulation and Enforcement* (New York: Routledge), 231, 235.

<sup>77</sup> SDC Advisory Opinion, note 13, para. 141.

<sup>78</sup> *Ibid*, para. 102.

<sup>79</sup> *Ibid*, para. 200.

<sup>80</sup> *Ibid*, para. 204.

31. The description of the role of the sponsoring State as “subordinate” should not be interpreted to mean that the sponsoring State has a role that is secondary to that of ISA when it comes to the exercise of rights and implementation of obligations by the sponsoring State and ISA. ISA and the sponsoring State have rights and obligations in relation to the Contractor that exist concurrently and address the same subject-matter. ISA regulates activities in the Area conducted by the Contractor based on the contractual relationship between them. The sponsoring State (which has no jurisdiction in the Area) regulates the Contractor through its domestic laws to ensure that it complies with UNCLOS and related instruments. Both functions exist in tandem, albeit at different levels, i.e. national and international.

#### 1.4.5 Avoidable duplication of work

32. As highlighted by the LTC and the Council, the concurrent exercise of the rights and/or implementation of the obligations by ISA and sponsoring State may lead to a duplicative regulatory and financial burden on the Contractor (see paras. 7-8). The question is whether and how the respective exercise of the rights and implementation of the obligations by ISA and the sponsoring State can be divided and whether there are any general principles that can assist in such a division.

33. The SDC has provided some practical guidance on how to minimize such regulatory and financial burdens. It observed that the laws, regulations and administrative measures of sponsoring States may also provide for the co-ordination between the various activities of the sponsoring State and ISA, “with a view to eliminating avoidable duplication of work.”<sup>81</sup> The current version of the Draft Exploitation Regulations (Regulation 3(b)) reflects the SDC’s guidance by providing that “[ISA], sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements.”<sup>82</sup> Accordingly, the allocation of the exercise of rights and implementation of obligations between ISA and the sponsoring State should be guided by this principle, namely, the need to eliminate “avoidable duplication of work.” Implicit in this is the acknowledgment that there will be some duplication in the respective exercise and implementation of rights and obligations of ISA and the sponsoring State, which may be unavoidable and necessary.

34. While not elaborated by the SDC, this paper proceeds on the basis that “avoidable duplication” refers to a situation where there are two similar sets of processes with the same objectives and where one set of processes can be eliminated without undermining the overall governance structure. However, determining whether there is duplication requires a comparison of the rules, regulations and procedures of ISA and the laws, regulations and administrative measures of the sponsoring State. Given that not all sponsoring States have adopted national legislation and those that have will have adopted national legislation in accordance with their own legal systems, there is a lack of uniformity amongst those that have,<sup>83</sup> it may not be possible to ascertain with certainty whether there is avoidable duplication between ISA and *all* sponsoring States. The analysis is accordingly confined to *potential* avoidable duplication, using the Comparative Study on National Legislation and/or selected examples of existing sponsoring State national legislation for illustrative purposes only.

<sup>81</sup> SDC Advisory Opinion, note 13, para. 218.

<sup>82</sup> There is a question as to what is meant by “administrative procedures” and whether it has the same meaning as “administrative measures” used by the SDC which opined that “administrative measures are aimed at securing compliance with laws and regulations.” See SDC Advisory Opinion, para. 218. Further, administrative procedures and/or measures may have different interpretations in different countries.

<sup>83</sup> See Lily, note 59.

#### 1.4.6 Relationship between ISA rules, regulations and procedures and sponsoring State's laws, regulations and administrative measures

35. One issue which warrants further study is the relationship between ISA rules, regulations and procedures and sponsoring State laws, regulations and administrative measures. For example, UNCLOS, Annex III, Article 21(3), states that "No State Party may impose conditions on a Contractor that are *inconsistent* with Part XI." This should be read together with the sponsoring State's obligations to adopt reasonable and non-arbitrary laws as well as to act in good faith.<sup>84</sup> There is one clear exception recognized in UNCLOS, Annex III, Article 21(3): sponsoring States can apply more stringent environmental regulations to Contractors sponsored by it than those adopted by ISA, and this will not be considered "inconsistent" with Part XI.
36. In practice, ISA regulations may provide a benchmark for sponsoring States' legislation and sponsoring States may use ISA rules, regulations and procedures to guide the content of their national legislation. Some sponsoring States have adopted various techniques within their national legislation to ensure some form of co-ordination with ISA regulations. Some examples include:
- a provision that states that unless a contrary intention appears, words and expressions used in this Act are accorded the same meaning used in UNCLOS and ISA rules<sup>85</sup>
  - a recognition that rights to the Area are governed by ISA rules, regulations and procedures and that ISA has certain obligations in relation to activities in the Area<sup>86</sup>
  - a general obligation on the Contractor to adhere to the provisions of ISA rules and regulations<sup>87</sup>
  - if the sponsoring State requires the payment of security, some sponsoring States are required to take into account the type and quantum of any security that the Contractor is also required to deposit with ISA.<sup>88</sup>
37. A related question that raises issues that goes beyond the scope of this paper is to what extent can the sponsoring State fulfill its direct obligations or its due diligence obligations to ensure the Contractor's compliance by relying on ISA rules, regulations and procedures without having independent laws, regulations and administrative procedures in its own national legislation. A paradigmatic example relates to EIAs. The sponsoring State has a direct obligation to conduct an EIA under UNCLOS, Article 206, and under customary international law<sup>89</sup> as well as an obligation to ensure compliance by the Contractor with its EIA obligations under UNCLOS, the 1994 Agreement and the Exploration Regulations (and in the future Exploitation Regulations). Is it sufficient for sponsoring States to have a general provision in their national legislation requiring the Contractor to adhere to the provisions of ISA rules, regulations and procedures (including the EIA requirements), or is it necessary for the sponsoring State to adopt separate EIA processes within their national

<sup>84</sup> SDC Advisory Opinion, note 13, para. 230.

<sup>85</sup> Nauru's International Seabed Minerals Act 2015, Section 4 (2).

<sup>86</sup> The Kingdom of Tonga. 2014. Seabed Minerals Act 10 of 2014. Available at: <https://www.isa.org.jm/wp-content/uploads/2022/05/Tonga-2014.pdf>, Section 8 (b) (ii) and (iii); The Republic of Kiribati. 2017. Seabed Minerals Act 2017. Available at: <https://faolex.fao.org/docs/pdf/kir177489.pdf>, Section 8 (b) (ii) and (iii); Nauru's International Seabed Minerals Act 2015, Section 6 (b); The Republic of Germany. 2016. Seabed Mining Act, Bundesgesetzblatt, Part I, No. 29, 14 June 1995, pp. 782-787. Available at: <https://faolex.fao.org/docs/pdf/ger112896.pdf>, Section 1 para. 2. In relation to the recognition that rights to the Area are governed by, inter alia, ISA rules and regulations.

<sup>87</sup> Tonga Seabed Minerals Act 2014, Section 38 (2); Kiribati's Seabed Minerals Act 2017, Section 44 (2); Germany's Seabed Mining Act 2016, Section 1 para. 3, Section 5 para. 1.

<sup>88</sup> Nauru's International Seabed Minerals Act 2015, Section 45 (2).

<sup>89</sup> SDC Advisory Opinion, note 13, para. 145.

legal systems? Conversely, to what extent can ISA rely on sponsoring States' laws and regulations to fulfill its own obligations under UNCLOS and related instruments? These issues warrant further analysis.

#### **1.4.7 A forum for dialogue between ISA and the sponsoring State**

38. There is presently an absence of a forum or platform for communication between ISA (be it the Council, the LTC or the Secretariat) and the sponsoring States as a group.<sup>90</sup> The meeting of pioneer investors, when the contractors and the sponsoring States were the same, used to serve this function. Presently, the Secretary-General of ISA meets with the Contractors both bilaterally as well as through annual Contractors' meetings, but the Contractors may be faced with different issues compared to sponsoring States. Despite the fact that sponsoring States themselves may have different interests, it would be beneficial for a forum for dialogue between the Secretary-General and/or ISA organs and the sponsoring States as a group to be established.

### **1.5 Methodology and framework for analysis**

39. The primary legal instruments used for this discussion paper consist of UNCLOS, Annex III to UNCLOS, the 1994 Agreement, the Exploration Regulations and the SDC Advisory Opinion. These instruments will be referred to collectively as either "UNCLOS and related instruments" or "the existing legal framework." The current version of the Draft Exploitation Regulations is also relied upon. Although the current version of the Draft Exploitation Regulations is under consideration by the Council and their content may therefore evolve, they are a useful basis for comparison.

40. Other sources include existing legal and policy scholarly literature, the Singapore workshop discussions, ISA Comparative study of the existing national legislation on deep seabed mining,<sup>91</sup> as well as the Report on competencies of [ISA] and International Maritime Organization (IMO) in the context of activities in the Area (IMO/ISA Report).<sup>92</sup>

41. The discussion paper and accompanying matrix first identify categories of rights and obligations that ISA and the sponsoring State may have under the existing legal framework as well as the current version of the Draft Exploitation Regulations. Within each category of rights and obligations, the discussion paper identifies (1) the rights and obligations of ISA, (2) the rights and obligations of the Contractor and (3) the rights and obligations of the sponsoring State, further sub-categorized into the direct obligations and due diligence obligations to ensure compliance of the Contractor (utilizing the guidance provided in the SDC Advisory Opinion as highlighted in Section 2.3). The objective of this exercise is to determine areas where there may be "avoidable duplication," which can be minimized through the establishment of co-operative mechanisms between ISA (or the relevant organ) and the sponsoring State.

<sup>90</sup> Sponsoring States can be members of the Council in Group B. The Council is a forum in which the interests of sponsoring States can be taken into account. Not all sponsoring States are members of the Council.

<sup>91</sup> Comparative Study, note 58.

<sup>92</sup> IMO/ISA Report.



42. A few clarifications are in order. First, classifications of rights and obligations may be connected. For example, there are instances where the sponsoring State has an obligation but one which can be met by the sponsoring State's due diligence obligation to ensure compliance by the Contractor (i.e. through the adoption of laws, regulations and administrative measures vis-à-vis the Contractor).<sup>93</sup>
43. Second, the paper does not discuss the division of rights and obligations of ISA and the sponsoring State in the prospecting phase,<sup>94</sup> given that prospecting does not require sponsorship under UNCLOS.<sup>95</sup>
44. Third, the paper may not comprehensively list all the rights and obligations of the sponsoring State, but rather, borrowing the language of the IMO/ISA Report, it focuses on the "interface" between ISA and the sponsoring State.<sup>96</sup>
45. Fourth, the discussion paper does not expressly address the division of rights and obligations between ISA and State Contractors, which are not 'sponsoring States.' That said, some of the analysis on the rights and obligations of the sponsoring State may be relevant to such State Contractors.<sup>97</sup>
46. Fifth, this discussion paper focuses on primary rights and obligations and does not address consequent liability issues which have been comprehensively addressed elsewhere.<sup>98</sup>
47. Sixth, the analysis avoids discussion on what instrument or document should address arrangements or the relationship between ISA and the sponsoring State. For present purposes, this paper proceeds on the basis that there is a range of options on the appropriate instrument or document that can contain the necessary clarifications on the respective rights and obligations of ISA and sponsoring State and requisite co-ordination between them.

<sup>93</sup> SDC Advisory Opinion, note 13, paras. 123 and 124.

<sup>94</sup> See CFC Regulation 1 (e). "Prospecting" is defined as "the search for deposits of cobalt crusts in the Area, including estimation of the composition, sizes and distributions of deposits of cobalt crusts and their economic values, without any exclusive rights."

<sup>95</sup> The SDC noted that because prospecting is often treated as the preliminary phase of exploration in mining practice and legislation, "some aspects of the present Advisory Opinion may also apply to prospecting," (SDC Advisory Opinion, note 13, para. 98). Certain sponsoring States such as Belgium, China, Czech Republic and Germany have national legislation on prospecting, including obligations of the prospector (who must be a national of one of these States) to, inter alia, inform the relevant national agency of their registration with the Secretary-General of the ISA. See Comparative Study, note 58, 9.

<sup>96</sup> IMO/ISA Report, note 94, 19.

<sup>97</sup> The SDC noted that States Parties engaged in deep seabed mining are directly bound by UNCLOS and there is no reason to apply to them the requirement of sponsorship but observed that at least two State Contractors, when applying for a contract, considered it necessary to submit to the ISA documents of sponsorship. See SDC Advisory Opinion, note 13, para. 79-80.

<sup>98</sup> See Centre for International Governance Innovation. Legal Working Group on Liability. Available at: <https://www.cigionline.org/person/legal-working-group-liability>. IMO/ISA Report, note 94, 46-52.

## 2. OBLIGATIONS OF CO-OPERATION BETWEEN ISA AND THE SPONSORING STATE

These are found in [Annex 1: Table a].

48. The existence of the obligation of co-operation between States is well-established in international law,<sup>99</sup> including under UNCLOS, and will take different forms depending on the issue at hand.<sup>100</sup> The obligation to co-operate is inherent in the common heritage of (hu)mankind. Part XI has several references to international co-operation.<sup>101</sup> It also bears mentioning that the duty to co-operate in the environmental context includes the duty of notification, consultation and negotiation, as well as the duty to exchange information.<sup>102</sup>

### 2.1 Contractor

49. Under both the Exploration Regulations and the current version of the Draft Exploitation Regulations, the Contractor (and sponsoring States and other interested States) shall co-operate with ISA in the establishment and implementation of monitoring and evaluating the impacts of deep seabed mining,<sup>103</sup> must share the findings, and extend such cooperation and collaboration to the implementation and further development of best environmental practices in the Area.<sup>104</sup>

50. Under the current version of the Draft Exploitation Regulations, the Contractors (and ISA Members) would be obliged to use their best endeavors, in conjunction with ISA, to cooperate with each other as well as with other contractors and national and international scientific research and technology development agencies on a range of issues, including, inter alia, sharing, exchanging and assessing environmental data and information in the Area, collaborating with the scientific community to identify best practices and promoting the advancement of marine scientific research.<sup>105</sup>

### 2.2 ISA

51. Under the current version of the Draft Exploitation Regulations:

- a. ISA, the sponsoring State and flag States are required to cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements<sup>106</sup> and
- b. ISA is required to consult and co-operate with sponsoring States to (a) develop measures to promote the health and safety of life at sea and the protection of the marine environment and (b) exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards.<sup>107</sup>

<sup>99</sup> See United Nations. 1970. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations ([A/RES/2625 \(XXV\)](#)), Principle 4.

<sup>100</sup> See Wolfrum, Rudiger. 2010. International Law of Cooperation. Max Planck Encyclopedia of Public International Law.

<sup>101</sup> UNCLOS, Articles 138, 143, 144, 169.

<sup>102</sup> See Wolfrum, note 102.

<sup>103</sup> PMN Regulations 33 (1) and 33 (2), PMS Regulations 33 (6) and 34 (1), CFC Regulations 33 (6) and 34 (1), PMN, PMS and CFC, Section 5, Annex IV, Standard Exploration Terms, Draft Exploitation Regulation 3 (e).

<sup>104</sup> Draft Exploitation Regulation 3 (e).

<sup>105</sup> Draft Exploitation Regulation 3 (f).

<sup>106</sup> Draft Exploitation Regulation 3 (b).

<sup>107</sup> Draft Exploitation Regulation 3 (d).

## 2.3 Sponsoring State

52. Under UNCLOS, the sponsoring State has a direct obligation to assist ISA in its task of controlling activities in the Area for the purpose of ensuring compliance with the relevant provisions of Part XI of UNCLOS and related instruments.<sup>108</sup>
53. Under the current version of the Draft Exploitation Regulations, ISA, the sponsoring State and flag States are required to cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements.<sup>109</sup>
54. ISA and sponsoring States are required to co-operate to (a) develop measures to promote the health and safety of life at sea and the protection of the marine environment and (b) exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards.<sup>110</sup>
55. Under both the Exploration Regulations and the current version of the Draft Exploitation Regulations, the sponsoring States (and Contractors of other interested States) shall co-operate with ISA in the establishment and implementation of monitoring and evaluating the impacts of deep seabed mining,<sup>111</sup> must share the findings and extend such cooperation and collaboration to the implementation and further development of best environmental practices in the Area.<sup>112</sup>
56. Under the current version of the Draft Exploitation Regulations, ISA Members (which would include sponsoring States) and Contractors would be obliged to use their best endeavors, in conjunction with ISA, to cooperate with each other as well as with other contractors and national and international scientific research and technology development agencies on a range of issues, including, inter alia, sharing, exchanging and assessing environmental data and information in the Area, collaborating with the scientific community to identify best practices and promoting the advancement of marine scientific research.<sup>113</sup>
57. Some sponsoring States' national legislation also contains obligations of co-operation:
- A recognition that State Parties to UNCLOS have an obligation to assist ISA in exercising its duties<sup>114</sup>
  - The relevant national agency has the authority to liaise with ISA and other relevant international organizations to facilitate the lawful conduct of seabed minerals activities<sup>115</sup>

<sup>108</sup> SDC Advisory Opinion, note 13, para. 124.

<sup>109</sup> Draft Exploitation Regulation 3 (b).

<sup>110</sup> Draft Exploitation Regulation 3 (d).

<sup>111</sup> PMN Regulations 33 (1) and 33 (2), PMS Regulations 33 (6) and 34 (1), CFC Regulation 33 (6) and 34 (1), PMN, PMS and CFC, Section 5, Annex IV, Standard Exploration Terms, Draft Exploitation Regulation 3 (e).

<sup>112</sup> Draft Exploitation Regulation 3 (e).

<sup>113</sup> Draft Exploitation Regulation 3 (f).

<sup>114</sup> Tonga Seabed Minerals Act 2014, Section 8 (b) (v), Kiribati's Seabed Minerals Act 2017, Section 8 (b) (v), Nauru's International Seabed Minerals Act 2015, Section 6 (e), Section 11 (i).

<sup>115</sup> Tonga Seabed Minerals Act 2014, Section 12 (1) (r), Kiribati's Seabed Minerals Act 2017, Section 12 (p) (q), Nauru's International Seabed Minerals Act 2015, Section 11 (g).

- A general obligation on the sponsoring State to take necessary actions to give effect to the sponsorship obligations, including communication and providing assistance, documentation, certificates and undertakings to ISA.<sup>116</sup>

## 2.4 Analysis

58. The question is how to operationalize the above obligations of co-operation. The following warrant further discussion:

- **Forum for discussion:** Establishing a forum or channel for discussion and consultation between ISA and the sponsoring State similar to what presently exists for the Contractors. This could take the form of meetings or workshops between the ISA Secretariat or other ISA organs and the sponsoring States or establishing one focal point for communication between the sponsoring States and ISA Secretariat.
- **Notification procedures:** Establishing consistent and streamlined mechanisms for notification between the Contractors, sponsoring State and ISA. For example, any notification made by the Contractor could be made to both the sponsoring State and ISA at the same time, and any notification by ISA to the Contractor could also be made to the sponsoring State.
- **Exchange of data and information:** There are presently two streams of information and data provided by the Contractor – one to ISA (either as part of ISA application procedures or as part of the ongoing monitoring obligations) and one to the sponsoring State (also as part of the sponsoring State application procedures and ongoing monitoring obligations). ISA is subject to certain confidentiality requirements under UNCLOS and related instruments<sup>117</sup> and may face certain challenges in sharing data and information provided by the Contractor unless they are deemed non-confidential information. In light of this, both the sponsoring State and ISA may wish to consider the following:
  - Sponsoring States may wish to consider harmonizing their national requirements for certain data and information from the Contractors with ISA's requirements for data and information from the Contractors so as to avoid unnecessary duplication.
  - If the sponsoring State requires data and information that goes beyond what is required by ISA, the sponsoring State may wish to ensure that it has provisions in its national legislation which allow for the disclosure and sharing of such data and information provided by the Contractor to ISA.<sup>118</sup>
  - Both the sponsoring State and ISA may wish to consider establishing mechanisms to facilitate the exchange of information and sharing of data, which can include using the DeepData database established by ISA.

<sup>116</sup> Tonga Seabed Minerals Act 2014, Section 85 (a), Kiribati's Seabed Minerals Act 2017, Section 93 (a), Nauru's International Seabed Minerals Act 2015, Section 30 (c).

<sup>117</sup> See CFC Regulation 38, Draft Exploitation Regulation 89.

<sup>118</sup> See Comparative Study, note 58, 19.

### 3. SPONSORSHIP

These are found in [Annex 1: Table b].

59. UNCLOS requires that when State enterprises or natural or juridical persons carry out activities in the Area, they must be sponsored by States Parties.<sup>119</sup> The “connection between States Parties and domestic law entities is twofold, namely that of nationality and that of effective control.”<sup>120</sup> All applicants for contracts must secure and maintain the sponsorship of the State or States of which they are nationals or by which they are effectively controlled.<sup>121</sup>
60. The prospective Contractor will have to apply first under the laws and regulations of the sponsoring State to obtain sponsorship which is evidenced by a Certificate of Sponsorship, and then apply to ISA for an exploration or exploitation contract. The prospective Contractor may have to go through two sets of processes: (1) the application procedure with the sponsoring State, which may or may not be formalized in legislation (application for sponsorship phase) and (2) the application procedure with ISA (ISA application phase).

#### 3.1 Contractor

61. In the application for sponsorship phase, the Contractor must comply with the requirements of sponsorship set out in the national legislation of sponsoring States. Those that do have laws in place impose differing requirements for obtaining a Certificate of Sponsorship (required by ISA) and/or license to conduct activities in the Area with varying levels of complexity.<sup>122</sup> Several of them make the ability to conduct activities in the Area explicitly contingent upon obtaining a Certificate of Sponsorship as well as a contract from ISA.<sup>123</sup>
62. In ISA application phase, the Exploration Regulations require the application by State enterprises and natural or juridical persons to contain sufficient information to determine the nationality of applicant or the identity of the State by which, or by whose nationals, the applicant is effectively controlled, the principle place of business or domicile and if applicable, the place of registration of the applicant and, if the application is by a partnership or consortia, the consortia shall submit required information in respect of each member of the partnership or consortium.<sup>124</sup> The Exploration Regulations also require each application for a contract to ISA to 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 and sets requirements on the information that needs to be reflected in the Certificate of Sponsorship including a statement from the sponsoring State that the applicant is a national of the sponsoring State and subject to the effective control of the sponsoring state or its nationals.<sup>125</sup> The current version of the Draft Exploitation Regulations reflects similar requirements.<sup>126</sup>

<sup>119</sup> UNCLOS, Article 153 (2), UNCLOS, Annex III, Article 4 (3).

<sup>120</sup> SDC Advisory Opinion, note 13, para. 77.

<sup>121</sup> UNCLOS, Annex III, Article 4.

<sup>122</sup> Comparative Study, note 58, 10-15.

<sup>123</sup> See Nauru's International Seabed Minerals Act 2015, Section 20.

<sup>124</sup> PMN/PMS/CFC Regulations 10 (3) (a) and 10 (4). See Draft Exploitation Regulation 5 (3) (a).

<sup>125</sup> PMN/PMS/CFC Regulation 11.

<sup>126</sup> Draft Exploitation Regulation 6.

## 3.2 ISA

63. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures adopted by ISA.<sup>127</sup> During the consideration of an application, the LTC has to determine if the prospective Contractor has provided the required information under the Regulations,<sup>128</sup> which includes the aforementioned requirements relating to nationality, effective control and the Certificate of Sponsorship.

## 3.3 Sponsoring State

### 3.3.1 Direct obligations

64. During the application for sponsorship phase and prior to the Certificate of Sponsorship being issued, the sponsoring State has the responsibility to ensure that the applicant Contractor has the same nationality as the sponsoring State and that the sponsoring State or its nationals have effective control over the applicant.<sup>129</sup> The national laws and regulations of the sponsoring State will usually set out the requirements determining nationality and effective control.<sup>130</sup> The Comparative Study notes that most countries have adopted “the criteria of nationality or registration/residence within their jurisdiction as a necessary requirement,” while Belgium and Germany have added the requirement of “effective control” as a criterion.<sup>131</sup>

65. In this regard, the LTC has taken the position that the onus is on the sponsoring State to ensure that the entity to be sponsored is a national of a State party and is effectively controlled by a State party or its nationals; and they must be sponsored by one or more parties to UNCLOS.<sup>132</sup> To the LTC, the act of incorporation, or the conferring of nationality, combined with the undertakings given as a sponsoring State, is sufficient to establish “effective control” for the purposes of satisfying the sponsorship conditions.<sup>133</sup> The LTC has opined that any developments for the granting of sponsorship in the context of the Part XI regime would seem more appropriately addressed in the context of domestic laws if a sponsoring State found it necessary.<sup>134</sup> Accordingly, although there have been calls for ISA to elaborate on the definition of “effective control,”<sup>135</sup> the current position taken by the LTC is that it is up to the sponsoring State to develop additional requirements if they feel necessary in order to satisfy itself that the objective of effective control has been met.<sup>136</sup>

<sup>127</sup> UNCLOS, Annex III, Article 4 (3).

<sup>128</sup> PMN Regulation 21 (3) (a), PMS/CFC Regulation 23 (3) (a). See Draft Exploitation Regulation 13 (1) (b).

<sup>129</sup> SDC Advisory Opinion, note 13, para. 77 which states that the “connection between States Parties and domestic law entities required by [UNCLOS] is twofold, namely that of nationality and that of effective control.”

<sup>130</sup> SDC Advisory Opinion, para. 234, which states that the sponsoring State may wish to have domestic law provisions on conditions for certificate of sponsorship.

<sup>131</sup> Comparative Study, note 18, 10. See Germany’s Seabed Mining Act 2016, Section 1, para. 10.

<sup>132</sup> ISA. 2014. Summary report of the Chair of the Legal and Technical Commission on the work of the Commission during the twentieth session of the International Seabed Authority (ISBA/20/C/20), para. 29. This was in response to concerns about new business arrangements characterized by “the existence of close associations or collaborations between developing States and their sponsored entities, with the business interests of entities registered in, or owned by nationals of, developed States.”

<sup>133</sup> Ibid, para. 27.

<sup>134</sup> Ibid, para. 28.

<sup>135</sup> See Rojas, Andrés, Phillips, Kai. 2019. “Liability Issues for Deep Seabed Mining Series | Paper Effective Control and Deep Seabed Mining: Toward a Definition.” [https://www.cigionline.org/static/documents/documents/Deep%20Seabed%20Paper%20No.7\\_0.pdf](https://www.cigionline.org/static/documents/documents/Deep%20Seabed%20Paper%20No.7_0.pdf).

<sup>136</sup> See Geddis, note 78, 258.

66. Once the sponsoring State has satisfied itself that the prospective Contractor has met its requirements for sponsorship, the sponsoring State is required to issue a Certificate of Sponsorship under the Exploration Regulations and current version of the Draft Exploitation Regulations that is part of the Contractor's application to ISA.<sup>137</sup> The Certificate of Sponsorship from the sponsoring State must contain certain information, including an undertaking that the sponsoring States assumes responsibility in accordance with UNCLOS, Articles 139 and 153(4), and UNCLOS, Annex III, Article 4(4).<sup>138</sup>

### 3.3.2 *Obligation to ensure compliance by the Contractors*

67. After the sponsoring State has issued the Certificate of Sponsorship, the ISA application process will start by the prospective Contractor. The level of involvement of the sponsoring State during the ISA application phase will vary. For example, the sponsoring State may not have any formal role in the process (with the exception of providing the Certificate of Sponsorship and providing evidence of a State enterprise's financial capabilities) and is simply waiting to hear the outcome of the ISA application.<sup>139</sup> On the other hand, some sponsoring States may have provisions in their national legislation that stipulate that the competent national authorities can liaise with ISA to facilitate a prospective Contractor's application to ISA.<sup>140</sup> The sponsoring State will, in principle, have an obligation to adopt laws, regulations and administrative measures to ensure that its sponsored Contractor complies with the relevant ISA rules and requirements relating to the application process, even prior to the contract being signed between ISA and the prospective Contractor. For example, the SDC observed that the sponsoring State is under a due diligence obligation to ensure compliance by the sponsored Contractor with the requirement that "an application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities."<sup>141</sup>

## 3.4 Analysis

68. Under the current legal framework and practice, the Contractor must comply with the requirements of both the sponsoring State in the application for sponsorship phase and the ISA's requirements in the ISA application phase. ISA, through the LTC, develops the criteria and procedures for implementation of the sponsorship requirements in its rules, regulations and procedures, which it has done in requiring the prospective Contractor to provide sufficient information on its nationality or effective control and to provide the certificate of sponsorship. The sponsoring State is responsible for ensuring that the applicant Contractor has the same nationality as the sponsoring State and that the sponsoring State or its nationals have effective control over the applicant and must adopt the necessary laws and administrative measures to ensure this. The LTC reviews the application, including the Certificate of Sponsorship, to ensure the requirements are met.

<sup>137</sup> PMN/PMS/CFC Regulation 11.

<sup>138</sup> PMN/PMS/CFC Regulation 11 (3) (f).

<sup>139</sup> Note that some sponsoring States may take a more pro-active role in the ISA application process. For example, Nauru's legislation provides that Nauru's competent national authority "will co-operate with the Sponsored Party to facilitate the preparation, submission and support of the application to the ISA." Nauru's International Seabed Minerals Act 2015, Section 26 (2).

<sup>140</sup> Sponsoring State Draft Legislation, note 63, Section 11 (1) (e).

<sup>141</sup> SDC Advisory Opinion, note 13, para. 141.

## 4. FINANCIAL AND TECHNICAL CAPABILITIES OF THE PROSPECTIVE CONTRACTOR

These are found in [Annex 1: Table c].

### 4.1 Contractor

69. UNCLOS provides that prospective Contractors must meet the qualification standards set forth in the rules, regulations and procedures of ISA and that such qualification standards shall relate to the financial and technical capabilities of the applicant.<sup>142</sup> The Exploration Regulations set out the requirements for the information to be provided by the prospective Contractor on its financial and technical capabilities.<sup>143</sup> The current version of the Draft Exploitation Regulations has similar requirements.<sup>144</sup> Both sets of Regulations draw a distinction between prospective Contractors that are States or State enterprises and those that are private entities. Prospective contractors that are private entities are required to provide copies of financial statements and a statement that they have the financial resources to carry out the plan of work for exploration. If the entity is controlled by a State or State enterprise, the State or State enterprise must also certify that the applicant has the requisite financial resources to carry out the work.<sup>145</sup> All categories of Contractors have the same obligations in relation to technical capabilities.<sup>146</sup>

### 4.2 ISA

70. UNCLOS provides that prospective Contractors must meet the qualification standards set forth in the rules, regulations and procedures of ISA and that such qualification standards shall relate to the financial and technical capabilities of the applicant.<sup>147</sup> During the ISA application phase, the LTC must review this information and determine whether the applicant possesses the financial and technical capabilities to carry out the proposed plan of work for exploration and make a recommendation to the Council.<sup>148</sup>

### 4.3 Sponsoring State

#### 4.3.1 Direct obligations

71. During the application for sponsorship phase, it is in the sponsoring State's interest to ensure that the prospective Contractor has the necessary financial resources and technical capabilities before it decides to sponsor the applicant.<sup>149</sup> The SDC noted that the sponsoring State may wish to include provisions in its domestic law that concern the financial viability and technical capacity of

<sup>142</sup> UNCLOS, Annex III, Article 4 (1) and (2), Annex III, UNCLOS.

<sup>143</sup> PMN Regulation 12, PMS/CFC Regulation 13.

<sup>144</sup> See Draft Exploitation Regulation 6 and Annex 1, Section IV.

<sup>145</sup> PMN Regulation 12 (5) and (8), PMS/CFC Regulation 13 (4), Draft Exploitation Regulation Annex X, Standard clauses, Section 14 and Section 21 (c), Draft Exploitation Regulation, Annex I.

<sup>146</sup> PMN Regulation 12 (10), PMS/CFC 13 (6).

<sup>147</sup> UNCLOS, Annex III, Article 4 (1) and (2).

<sup>148</sup> PMN Regulation 21 (3) (c), PMS/CFC Regulation 23 (3) (c). See Draft Exploitation Regulation 13 (2).

<sup>149</sup> Geddis, note 78, 258.



Contractors.<sup>150</sup> Some sponsoring States have criteria on the financial and technological capabilities and reliability of applicants.<sup>151</sup>

72. During the ISA application phase, the sponsoring State must only certify that the *State enterprise applicant* has the necessary *financial resources* (and not a natural or juridical entity) to meet the estimated costs of the proposed plan of work and to carry out the plan of work.<sup>152</sup>

#### 4.3.2 *Obligation to ensure compliance*

73. In principle, the sponsoring State also has an obligation to adopt laws, regulations and administrative measures to ensure that its sponsored Contractor complies with the relevant ISA rules and requirements relating to financial and technical capabilities.

### 4.4 Analysis

74. Both the sponsoring State and ISA will have their own requirements to ensure that prospective Contractors have the requisite financial and technical capabilities to conduct activities in the Area, as required by UNCLOS. The sponsoring State can use ISA requirements as a benchmark or can choose to go beyond it, and this would seem to be a case of unavoidable duplication that occurs at both the national and international levels.

## 5. OBLIGATIONS TO PROTECT THE MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

These are found in [Annex 1: Table D].

### 5.1 General obligation to protect the marine environment

#### 5.1.1 *Contractor*

75. The Contractor also has a general obligation to protect the marine environment under the Exploration Regulations and the current version of the Draft Exploitation Regulations.<sup>153</sup>

#### 5.1.2 *ISA*

76. ISA's obligation to take necessary measures to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area is found in UNCLOS, Article 145, reinforced by Article 209(1), and Annex III, Article 17(2)(f), reflected in the Exploration Regulations<sup>154</sup>

<sup>150</sup> SDC Advisory Opinion, note 13, para. 234.

<sup>151</sup> Belgium, China, Germany, Japan, Kiribati, Nauru, Singapore and Tonga have criteria on the financial, technical and technological capabilities and reliability of applicants. See Comparative Study, note 18, 11, Germany's Seabed Mining Act 2016, Section 4 para. 6 and Section 6 para. 1.

<sup>152</sup> PMN Regulation 12 (4) and 12 (8), PMS/CFC Regulation 13 (3) and (7). See Draft Exploitation Regulations, Section 21 (b), Annex 1, Section IV.

<sup>153</sup> PMN Regulation 31 (5), PMS/CFC Regulation 33 (5), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 5.1, Draft Exploitation Regulation 44.

<sup>154</sup> PMN Regulation 31 (1), PMS/CFC Regulation 33 (1).

and the current version of the Draft Exploitation Regulations.<sup>155</sup> The organs of ISA have certain competencies relating to the protection of the marine environment. For example, the Council can disapprove areas for exploitation by Contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment.<sup>156</sup> The LTC has a range of environmental-related functions which include, for present purposes, the authority to make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field (other environmental-related functions will be addressed below).<sup>157</sup>

### 5.1.3 Sponsoring State

77. Direct obligations: The sponsoring State, as a State Party to UNCLOS, is also obliged to protect and preserve the marine environment under Article 192.<sup>158</sup> In addition, Article 194 requires, inter alia, States Parties to take individually or jointly all measures consistent with UNCLOS that are necessary to prevent, reduce and control pollution of the marine environment from any source using the best practicable means at their disposal and, in accordance with their capabilities, to endeavor to harmonize their policies in this connection, and to take all measures necessary to prevent transboundary pollution to other states. With regard to the specific context of activities in the Area, it has been said that States parties (including sponsoring States) are also the addressees of the obligation in Article 145 to protect and preserve the marine environment from the harmful effects of activities in the Area.<sup>159</sup> Further, sponsoring States, as States Parties to UNCLOS, have obligations under Article 194(3)(d) to take measures to prevent pollution from installations and devices operating in the marine environment and regulating the design, construction, equipment, operation and manning of such installations and devices as well as under Article 209(2) which obliges States parties to UNCLOS to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices that are flying their flags or of their registry or operating under their authority. UNCLOS, Annex III, Article 21(3) affirms the sponsoring State's right to apply environmental or other laws and regulations more stringent than those in the rules, regulations and procedures of ISA relating to the protection of the marine environment to its sponsored Contractor. The obligation of the sponsoring State to protect the marine environment has been reflected in the current version of the Draft Exploitation Regulations.<sup>160</sup>
78. Obligations to ensure compliance: The sponsoring State has an obligation to ensure the Contractor's compliance with its various obligations to preserve and protect the marine environment under the Exploration Regulations through the adoption of laws, regulations and administrative measures.<sup>161</sup> It would have similar obligations under the current version of the Draft Exploitation Regulations.<sup>162</sup> Some sponsoring States' legislation places a blanket obligation on the Contractors to comply with all rules and regulations promulgated by ISA<sup>163</sup> and also impose other types of obligations to protect and preserve the marine environment, which are described below.

<sup>155</sup> Draft Exploitation Regulation 44.

<sup>156</sup> UNCLOS, Article 162 (2) (x).

<sup>157</sup> UNCLOS, Article 165 (2) (e).

<sup>158</sup> The SDC acknowledged that Article 192 was also applicable to sponsoring States. See SDC Advisory Opinion, note 13, para. 97.

<sup>159</sup> Vonecky S., Beck F. 2017. Article 145, Protection of the Marine Environment in Proelss, Alexander (ed.) United Nations Convention on the Law of the Sea, Hart, 1007-1028, 1018.

<sup>160</sup> Draft Exploitation Regulation 44.

<sup>161</sup> See PMN/PMS/CFC, Part V, PMN/PMS/CFC, Annex IV (Standard Clauses), Section 5.1.

<sup>162</sup> See the obligations relating to the Marine Environment in Part IV and Draft Exploitation Regulation 105.

<sup>163</sup> See Tonga's Seabed Minerals Act 2014, Section 38 (2), Nauru's International Seabed Minerals Act 2015, Section 28 (a), Germany's Seabed Mining Act 2016, Section 5 para. 1.

## 5.2 Precautionary approach and best environmental practices

### 5.2.1 Contractor

79. UNCLOS does not refer explicitly to the precautionary approach or principle. However, the Contractor has an obligation to apply the precautionary approach and best environmental practices under the Exploration Regulations<sup>164</sup> and the current version of the Draft Exploitation Regulations.<sup>165</sup>

### 5.2.2 ISA

80. However, the Exploration Regulations require ISA to apply the precautionary approach as reflected in Principle 15 of the Rio Declaration.<sup>166</sup> The current version of the Draft Exploitation Regulations places similar obligations on ISA.<sup>167</sup> ISA also has an obligation to apply best environmental practices under the Exploration Regulations and has similar obligations under the current version of the Draft Exploitation Regulations.<sup>168</sup>

### 5.2.3 Sponsoring State

81. Direct obligations: The Exploration Regulations require the sponsoring State to apply the precautionary approach as reflected in Principle 15 of the Rio Declaration.<sup>169</sup> The current version of the Draft Exploitation Regulations places a similar obligation on the sponsoring State.<sup>170</sup> The SDC noted that the obligation to apply the precautionary approach is both a direct obligation under the Exploration Regulations but also an integral part of the general obligation of due diligence of sponsoring States, applicable outside the scope of the Regulations.<sup>171</sup> Some sponsoring States have undertaken to promote the application of the precautionary approach in their national laws.<sup>172</sup>

82. The sponsoring State also has an obligation to apply best environmental practices under the Exploration Regulations and the current version of the Draft Exploitation Regulations.<sup>173</sup> According to the SDC, this is both a direct obligation and part of the sponsoring States' obligation of due diligence.<sup>174</sup>

83. Obligations to ensure compliance: The sponsoring State has an obligation to ensure that the Contractor complies with these obligations. Some sponsoring States' national legislation place obligations on the Contractor to comply with the precautionary approach and best environmental practices.<sup>175</sup>

<sup>164</sup> PMN Regulation 31 (5), PMS/CFC Regulation 33 (5).

<sup>165</sup> Draft Exploitation Regulation 44 (a) and (b).

<sup>166</sup> PMN Regulations 31 (2), PMS/CFC Regulation 33 (2).

<sup>167</sup> Draft Exploitation Regulation 44 (a).

<sup>168</sup> PMN Regulations 31 (2), PMS/CFC Regulation 33 (2). See Draft Exploitation Regulation 13 (3)(c), 44 (b) and (c). Draft Exploitation Regulations define "best environmental practices" as the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved knowledge, understanding or technology, taking into account the guidance set out in the applicable Guidelines. See Draft Exploitation Regulations, Schedule 1.

<sup>169</sup> PMN Regulation 31 (2), PMS/CFC Regulations 33 (2).

<sup>170</sup> Draft Exploitation Regulation 44 (a).

<sup>171</sup> SDC Advisory Opinion, note 13, para. 131.

<sup>172</sup> Comparative Study, note 18, 17-18.

<sup>173</sup> PMN Regulation 31 (2), PMS/CFC Regulation 33 (2). See Draft Exploitation Regulations 13 (3)(c), 44 (b) and (c). Draft Exploitation Regulations define "best environmental practices" as the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved knowledge, understanding or technology, taking into account the guidance set out in the applicable Guidelines. See Draft Exploitation Regulations, Schedule 1.

<sup>174</sup> SDC Advisory Opinion, note 13, para. 136.

<sup>175</sup> Comparative Study, note 58, 18.

## 5.3 Environmental impact assessments

### 5.3.1 Contractor

84. The 1994 Agreement states that an application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures of ISA.<sup>176</sup>
85. With regard to exploration, the Exploration Regulations require the Contractor to submit as part of the application process a *preliminary assessment* of the possible impact of the proposed exploration activities on the marine environment<sup>177</sup> as well as a description of a programme for oceanographic and environmental baseline studies which would enable an assessment of the potential environmental impact of proposed exploration activities, as part of ISA application process.<sup>178</sup> After an exploration contract has been signed but prior to any exploration activities, the Contractor is also required to submit an impact assessment of the potential effects on the marine environment of proposed activities along with a proposal for a monitoring programme to determine the potential effect on the marine environment of the proposed activities; and data that could be used to establish an environmental baseline.<sup>179</sup>
86. With regard to exploitation, under the current version of the Draft Exploitation Regulations, the application by a prospective Contractor must be accompanied by an environmental impact statement (EIS) prepared in accordance with Regulation 47, an environmental management and monitoring plan (EMMP) prepared in accordance with Regulation 48, and a closure plan in accordance with Regulation 59<sup>180</sup> (defined as Environmental Plans in the Draft Exploitation Regulations).<sup>181</sup>

### 5.3.2 ISA

87. UNCLOS provides that the LTC shall “prepare assessments of the environmental implications of activities in the Area.”<sup>182</sup> The LTC must also formulate and submit to the Council the rules, regulations and procedures, taking into account all relevant factors, including *assessments of the environmental implications of activities in the Area*.<sup>183</sup> The 1994 Agreement states that an application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures of ISA.<sup>184</sup> The LTC has issued recommendations for guidance of Contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area, including a list of activities that require EIAs and those that do not.<sup>185</sup>

<sup>176</sup> 1994 Agreement, Section 1 (7).

<sup>177</sup> PMN Regulation 18 (c), PMS/CFC Regulation 20 (1) (c).

<sup>178</sup> PMN Regulation 18 (b), PMS/CFC Regulation 20 (1) (b).

<sup>179</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 5.2.

<sup>180</sup> Draft Exploitation Regulations 7 (3), (d), (h) and (i), 47, 48 and 49.

<sup>181</sup> Draft Exploitation Regulations, Schedule 1.

<sup>182</sup> UNCLOS, Article 165 (2) (d).

<sup>183</sup> UNCLOS, Article 165 (2) (f).

<sup>184</sup> 1994 Agreement, Section 1 (7).

<sup>185</sup> ISA. 2020. Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area ([ISBA/25/LTC/6/Rev.1](#)).

88. Under the Exploration Regulations, the adequacy of the preliminary assessment is not expressly mentioned as one of the aspects that the LTC must take into consideration when reviewing the plan of work. However, the LTC must determine whether the proposed plan of work provides for effective protection and preservation of the marine environment, including but not restricted to impact on biodiversity, which could include consideration of the adequacy of the preliminary assessment.<sup>186</sup>
89. Under the current version of the Draft Exploitation Regulations, the Environmental Plans would then go through a publication and review process whereby they are placed on ISA's website for 60 days inviting members of ISA and stakeholders to submit comments, along with the LTC.<sup>187</sup> ISA Secretary-General will then provide the comments submitted to the applicant for its consideration to give it an opportunity to respond to the comments and revise the Environmental Plans. The LTC shall examine the Environmental Plans, or revised plans, together with any responses by the applicant and any additional information provided by the Secretary-General and shall provide a report on the Environmental Plans which shall also be published on the ISA's website and shall be included as part of the reports and recommendations to the Council.<sup>188</sup> The LTC is required to assess the Environmental Plans to ensure that the prospective Contractor provides for the effective protection of the marine environment in accordance with the rules, regulations and procedures of ISA.<sup>189</sup>

### 5.3.3 Sponsoring State

90. Direct obligations: As noted by the SDC, the sponsoring State has a direct obligation under Article 206 of UNCLOS to, as far as practicable, assess the potential effects of planned activities under its jurisdiction and control that may cause "substantial pollution of or significant and harmful changes to the marine environment" and communicate the results of such assessments.<sup>190</sup> This obligation exists under customary international law.<sup>191</sup> This obligation applies during the sponsorship application phase and continues for the duration of the contract between the Contractor and ISA. The threshold of harm which triggers the EIA requirement under Article 206 is that States have "reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment." International case law suggests that an EIA must be undertaken if there is some evidence of a risk of significant harm to the environment, even if the risk is uncertain.<sup>192</sup>
91. While Article 206 and customary international law do not "specify the scope and content of an [EIA],"<sup>193</sup> the SDC held that the indications in the Regulations and Recommendations add precision and specificity to the obligation in the context of activities in the Area.<sup>194</sup> The extent of the detail

<sup>186</sup> PMN Regulation 21 (4) (b), PMS/CFC Regulation 23 (4) (b).

<sup>187</sup> Draft Exploitation Regulation 11 (1) and (2).

<sup>188</sup> Draft Exploitation Regulation 11 (5).

<sup>189</sup> Draft Exploitation Regulation 13 (4) (e).

<sup>190</sup> SDC Advisory Opinion, note 13, para. 145-146.

<sup>191</sup> *Ibid*, paras. 145-150.

<sup>192</sup> For example, in both the Land Reclamation Case (Case Concerning Land Reclamation in and around the Straits of Johor, Malaysia v. Singapore, ITLOS Provisional Measures, Order of 8 October 2003, ITLOS Reports (2003), 10) and in the Southern Bluefin Tuna Case (Southern Bluefin Tuna Cases (Australia v. Japan; New Zealand v. Japan), Provisional Measures, Order of 27 August 1999, in essence held that an EIA needs to be conducted if there is evidence of risk of significant harm.

<sup>193</sup> SDC Advisory Opinion, note 13, para. 149 citing Pulp Mills on the River Uruguay (Argentina v. Uruguay), International Court of Justice (ICJ) Rep. 14 (2010), para. 205. Generally, the ICJ has found that it is for each State to determine in its domestic legislation or in the authorization process for the project, the specific content of the EIA required in each case, having regard to the "nature and magnitude of the proposed development and its likely adverse impact on the environment as well as to the need to exercise due diligence in conducting such an assessment."

<sup>194</sup> *Ibid*, para. 149.

required by an EIA will also depend on the activity and potential risk to the marine environment. Further, it is open to sponsoring States to impose more stringent requirements for EIAs as allowed by UNCLOS, Annex III, Article 21(3).<sup>195</sup>

92. Obligations to ensure compliance: The sponsoring State has a due diligence obligation to ensure compliance by the prospective Contractor with its obligation to provide an assessment of the potential environmental impacts of the proposed activities under a plan of work and, after the contract is signed, that the Contractor also meets its obligations in relation to EIAs prior to exploration activities.<sup>196</sup> The SDC also mentioned the obligation to conduct EIAs as an example of laws and regulations that a sponsoring State may have as part of its due diligence obligations to discharge its responsibilities.<sup>197</sup>
93. Some sponsoring States have imposed some form of an EIA as a condition of the application for sponsorship.<sup>198</sup> Some also require that the content required by ISA Regulations for an application for approval of a plan of work be included in the sponsorship application, which would include the documents/data submitted as part of the preliminary assessment for exploration and EIS for exploitation.<sup>199</sup> Other sponsoring States do not explicitly require the Contractor to conduct an EIA as part of the sponsorship application process but generally require the application and plan of work to meet the conditions of UNCLOS and the rules and regulations of ISA, which would include EIA requirements.<sup>200</sup>

## 5.4 Monitoring of environmental effects of activities in the Area

### 5.4.1 Contractor

94. Under the Exploration Regulations, the Contractor is required to gather environmental baseline data and to establish environmental baselines against which to assess the likely effects of its activities under the plan of work for exploration on the marine environment and a programme to monitor and report on such effects.<sup>201</sup> The Exploration Regulations require the Contractor to report annually to the Secretary-General of ISA on the implementation and results of monitoring programmes and to submit data and information.<sup>202</sup>
95. The current version of the Draft Exploitation Regulations requires an applicant or Contractor to prepare an EMMP to be reviewed by the LTC as part of the application process.<sup>203</sup> Similarly, the current version of the Draft Exploitation Regulations requires the Contractor to comply with certain

<sup>195</sup> Ibid, para. 232.

<sup>196</sup> Ibid, para. 141.

<sup>197</sup> Ibid, para. 236.

<sup>198</sup> According to the Comparative Study, Belgium requires an EIA for activities as recommended by the LTC, and other States such as Fiji, Kiribati, Nauru, Tonga and Tuvalu require summaries of any studies or other data in relation to the potential of the proposed area/sites and potential impact of seabed mineral activities on the marine environment. See Comparative Study, note 58, 10-11.

<sup>199</sup> See Tonga's Seabed Minerals Act 2014, Section 79 (1) (b), Nauru's International Seabed Minerals Act 2015, Section 22 (b) (i).

<sup>200</sup> See Republic of Singapore. 2015. Deep Seabed Mining Act, No. 6 of 2015. Available at: <https://www.isa.org.jm/wp-content/uploads/2022/05/Singapore.pdf>. Section 10 (a) and (b) states that the licensee must comply with the applicable provisions of UNCLOS, the 1994 Agreement, rules, regulations and procedures of ISA as well as the terms and conditions of the ISA contract and any plan of work under the ISA contract.

<sup>201</sup> PMN Regulation 32 (1), PMS/CFC Regulation 34 (1).

<sup>202</sup> PMN Regulation 32 (2), PMS/CFC Regulation 34 (2), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 10.2.

<sup>203</sup> Draft Exploitation Regulations 7 (h) and 48.

obligations relating to the EMMP, including the obligation to report annually on the environmental effects of its activities on the marine environment, maintain the currency and adequacy of the EMMP, as well as conducting performance assessments on the EMMP.<sup>204</sup>

96. Under both the Exploration Regulations and the current version of the Draft Exploitation Regulations, the Contractor (along with the sponsoring States and other interested States) shall co-operate with ISA in the establishment and implementation of monitoring and evaluating the impacts of deep seabed mining,<sup>205</sup> must share the findings and extend such cooperation and collaboration to the implementation and further development of best environmental practices in the Area.<sup>206</sup>

#### 5.4.2 ISA

97. Under UNCLOS, the LTC shall make recommendations to the Council on the establishment of a monitoring programme to observe, measure, evaluate and analyze the risks or effects of pollution of the marine environment resulting from activities in the Area.<sup>207</sup> Under the Exploration Regulations, the LTC is empowered to issue recommendations of a technical or administrative nature on the Contractor's obligations relating to environmental baselines and monitoring.<sup>208</sup> The annual reports prepared by the Contractor on its monitoring programme are submitted to the Secretary-General of ISA, who shall submit it to the LTC for its consideration.<sup>209</sup>

98. Under the current version of the Draft Exploitation Regulations, the LTC is obliged to issue recommendations to the Council on the development of standards for monitoring procedures.<sup>210</sup> The LTC must review the environmental monitoring and management plan as part of the prospective Contractor's application,<sup>211</sup> review the Contractor's performance assessment of its EMMP<sup>212</sup> and report to the Council on such performance assessments.<sup>213</sup>

#### 5.4.3 Sponsoring State

99. Direct obligations: Sponsoring States have an obligation under UNCLOS, Article 204, which provides that "States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or *through the competent international organizations*, to observe, measure, evaluate and analyze, by recognized scientific methods, the risks or effects of pollution of the marine environment" [emphasis added].

<sup>204</sup> Draft Exploitation Regulations 51 and 52.

<sup>205</sup> PMN Regulations 31 (6) and 32 (1), PMS/CFC Regulations 33 (6) and 34 (1), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 5, Draft Exploitation Regulation 3 (e).

<sup>206</sup> Draft Exploitation Regulation 3 (e).

<sup>207</sup> UNCLOS, Article 165 (2) (h).

<sup>208</sup> PMN Regulations 32 and 39, PMS/CFC Regulations 34 and 41.

<sup>209</sup> PMN Regulation 32 (2), PMS/CFC Regulation 34 (2).

<sup>210</sup> Draft Exploitation Regulations 45 (b) and 94.

<sup>211</sup> Draft Exploitation Regulations 13 (4) (e) and 48.

<sup>212</sup> Draft Exploitation Regulation 52 (4).

<sup>213</sup> Draft Exploitation Regulation 52 (9).

100. Under both the Exploration Regulations and the current version of the Draft Exploitation Regulations, the sponsoring State (along with the Contractor and other interested States) shall co-operate with ISA in the establishment and implementation of monitoring and evaluating the impacts of deep seabed mining,<sup>214</sup> must share the findings and extend such cooperation and collaboration to the implementation and further development of best environmental practices in the Area.<sup>215</sup>
101. Obligations to ensure compliance: The sponsoring State must ensure that the Contractor complies with its monitoring obligations described in Section 6.4.1 above.

## 5.5 Incidents of serious harm to the marine environment

102. See Section 10 on incidents and notifiable events below.

## 5.6 Reporting, compliance and enforcement

103. Mechanisms by ISA and sponsoring State to address the reporting obligations of Contractors, Contractors' non-compliance of obligations under UNCLOS and related instruments and enforcement of Contractors' obligations relating to the marine environment are addressed below in Sections 11-13 of this paper.

## 5.7 Analysis

104. It is clear from the above that ISA, the sponsoring State and the Contractor share obligations in relation to the protection and preservation of the marine environment from harmful effects of activities in the Area. The question is whether there is a duplication in the implementation of such obligations by ISA and sponsoring State that can be minimized. For certain types of obligations, like the obligation to apply the precautionary approach and best environmental practices, it may not be possible to identify whether there is "avoidable duplication" in the way in which ISA and sponsoring States implement their obligations. Implementation of the precautionary approach and best environmental practices will generally infuse decision-making and impact burdens of proof and risk assessment. With regard to ISA, the implementation of the precautionary approach and best environmental practices by ISA in the context of activities in the Area has been extensively discussed elsewhere,<sup>216</sup> including by the ISA Secretariat on how the precautionary approach is applied in the context of the regulations.<sup>217</sup> The ISA Secretariat has said that, for ISA, "establishing a framework that promotes participation and discussion in the decision-making processes is the primary goal for the successful implementation of the precautionary approach and due consideration should be given to the cost-effectiveness of any measures under such framework."<sup>218</sup>

<sup>214</sup> PMN Regulations 31 (6), 32 (1), PMS/CFC Regulations 33 (6), 34 (1), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 5, Draft Exploitation Regulation 3 (e).

<sup>215</sup> Draft Exploitation Regulation 3 (e).

<sup>216</sup> See ISA. 2012. Environmental Management Needs for Exploration and Exploitation of Deep Sea Minerals Report of a workshop held by The International Seabed Authority in collaboration with the Government of Fiji and the SOPAC Division of the Secretariat of the Pacific Community (SPC) in Nadi, Fiji, from 29 November to 2 December 2011 ([Technical Study 10](#)). Jaeckel, Aline. 2020. "Strategic Environmental Planning for Deep Seabed Mining in the Area." Marine Policy 114 (April): 103423. <https://doi.org/10.1016/j.marpol.2019.01.012>.

<sup>217</sup> ISA. 2019. Implementing the precautionary approach to activities in the Area, Note by the secretariat ([ISBA/25/C/8](#)).

<sup>218</sup> *Ibid*, para. 19.



ISA's role, amongst other things, is to ensure that it applies the precautionary approach consistently vis-à-vis the Contractors. In contrast, different sponsoring States may implement the precautionary approach and best environmental practices in different ways depending on their capabilities, legal systems and environmental objectives.<sup>219</sup> The sponsoring States may use ISA's implementation of these obligations in ISA rules, regulations and procedures as guidance or a benchmark.

105. There are other types of environmental obligations where it may be possible to minimize avoidable duplication in implementation by ISA and sponsoring State and enhance co-operation between these two actors. For example, with regard to EIA requirements, there is the possibility of the prospective Contractor having to fulfill two different sets of EIA requirements established by the sponsoring State and ISA. This is not prohibited by UNCLOS. Some scholars have commented that ideally, there would be "both vertical (ISA-sponsoring State) and horizontal (between sponsoring States) harmonization of EIA processes and related compliance action to avoid conflicting instructions and duplication."<sup>220</sup> However, this may not be feasible given that sponsoring States have the discretion to adopt their own EIA processes (which could be more stringent than ISA EIA processes). Pending such harmonization, the question then becomes what measures can be taken to minimize the duplication and enhance co-ordination between the two processes, bearing in mind that during the sponsoring State application phase and ISA application phase, a sponsoring State may have different levels of interaction and coordination with ISA.
106. The following issues (which are confined to EIAs carried out either under the sponsoring State application process or ISA application process) warrant further consideration:
- If the sponsoring State does not require prospective Contractors to submit an EIA as a condition of sponsorship for either exploration or exploitation, whether it can rely on ISA requirements for the Contractor to submit a preliminary assessment under the Exploration Regulations and EIS under the future Exploitation Regulations to fulfill its EIA obligations.<sup>221</sup> It warrants noting that in the event that stakeholder consultation has not yet been conducted, the LTC has recommended that the LTC, through the Secretary-General of ISA, may encourage the sponsoring State(s) to require the conduct of such consultation or to conduct such consultations.<sup>222</sup>
  - In the event the sponsoring State does require an EIA to be submitted as a condition of sponsorship, whether it should consider harmonizing its own national EIA requirements with ISA requirements under the Exploration Regulations and the future Exploitation Regulations.

<sup>219</sup> For example, Birnie, Boyle and Redgwell have observed that national implementation of the precautionary approach will differ according to the context and legal culture and that it "should not be assumed that national law and international law on the subject are necessarily the same." See Birnie, Patricia, Boyle, Alan, Redgwell, Catherine. 2009. *International Law and the Environment* (3<sup>rd</sup> Edition) (Oxford University Press), 159. The SDC also noted that under Principle 15 of the Rio Declaration, the requirements for complying with the obligation to apply the precautionary approach may be stricter for the developed States than the developing sponsoring States but "what counts in a specific situation is the level of scientific knowledge and technical capability available to a given State in the relevant scientific and technical fields." See SDC Advisory Opinion, note 13, paras. 161-162

<sup>220</sup> Craik, Neil. 2016. *Enforcement and Liability Challenges for Environmental Regulation of Deep Seabed Mining*. ISA Discussion Paper No. 4, 10.

<sup>221</sup> In this regard, it should be borne in mind that it has been commented that the ISA Exploration Regulations do not provide a detailed set of prescriptive requirements for an EIA, especially when compared to EIA requirements in domestic systems, and the LTC recommendations on EIAs are non-binding. See Craik, 13-15.

<sup>222</sup> ISA. 2020. *Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area* ([ISBA/25/LTC/6/Rev.1/Corr.1](#)).

For example, some States require (1) the same content be submitted as part of the sponsorship application that is required by ISA Regulations for an application of a plan of work and/or (2) copies or summaries of any studies conducted by the prospective Contractor or other data in relation to the potential impact on the environment,<sup>223</sup> which may be the same studies the prospective Contractor undertook for ISA application. This could potentially minimize avoidable duplication of the work subject to the caveat that both ISA and the sponsoring State would be able to review the EIAs undertaken by the prospective Contractor.

- In the event that the sponsoring State has required an EIA from the prospective Contractor as a condition of sponsorship which imposes different requirements and/or asks for different data (as it is permitted to do under UNCLOS, Annex III, Article 21(c)), whether the sponsoring State should consider making this data publicly available, particularly vis-à-vis ISA.<sup>224</sup>
- In the event the sponsoring State has a national public participation component in its own domestic EIA requirements,<sup>225</sup> the sponsoring State may wish to consider whether it is necessary to coordinate the sponsoring State's public participation requirements and ISA requirements on the publication and review of EMMPs in the current version of the Draft Exploitation Regulations, which are technically different but arguably have the same objectives. Certain mechanisms can be explored, such as the sponsoring State sharing the outcome of its own national participation processes during the ISA publication and review process.
- An example, although done after the exploration contract between the Contractor and ISA, is the EISs submitted by Contractors sponsored by Belgium (Global Sea Mineral Resources) and Germany (Federal Institute for Geosciences and Natural Resources), respectively, for the testing of a pre-prototype manganese nodule collector vehicle in the German and Belgium license areas in the CCZ,<sup>226</sup> as required under the Exploration Regulations.<sup>227</sup> Both of these Contractors carried out public consultations and then published the submissions made during the public consultation period, even though public consultation was not required by ISA rules and regulations at that stage in the process.<sup>228</sup> These were made available on the ISA website.

<sup>223</sup> Tonga's Seabed Minerals Act 2014, Section 79 (1) (b), (e), Nauru's International Seabed Minerals Act 2015, Section 22 (b) (i), (d).

<sup>224</sup> The legal basis for this is provided for in Articles 205 and 206 of UNCLOS which state that States shall communicate reports of the results of EIAs at appropriate intervals to the competent international organization.

<sup>225</sup> Consultation and participation with the public has been identified as a common element in many national EIA processes, although this would apply particularly for activities within national jurisdiction that may have a direct impact on the public. It is not clear whether consultation and participation with the public is a specific requirement for EIAs under international law. See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Rep. 14 (2010), para. 216 where the ICJ could find no legal obligation to consult affected populations.

<sup>226</sup> See ISA. [Environmental impact assessments](#).

<sup>227</sup> CFC Regulations, Annex III, Section 5.2.

<sup>228</sup> *Ibid.*

## 6. COASTAL STATE RIGHTS AND LEGITIMATE INTERESTS

These are found in [Annex 1: Table E].

### 6.1 Resource deposits in the Area that lie across limits of national jurisdiction

#### 6.1.1 Contractor

107. UNCLOS, Article 142(1), does not specify which actor has the obligation to ensure that activities in the Area are conducted with due regard to the rights and legitimate interests of any coastal State in relation to resource deposits in the Area which lie across the limits of national jurisdiction. Article 142 (2) does not specify which actor must maintain a system of consultations with a view to avoiding infringement of such rights and interests, including which actor must get prior consent of the coastal State when activities in the Area may result in exploitation of resources lying within national jurisdiction.
108. Commentaries to UNCLOS note the intention of Article 142 was to prevent controversy between “the [ISA] and Contractors on one hand and coastal States on the other,”<sup>229</sup> and to “balance the interests of coastal States and the *entities conducting the activities in the Area...*”<sup>230</sup> Prima facie, because it involves “activities in the Area,” a reasonable interpretation would be that the Contractor and ISA would be subject to this obligation, although UNCLOS is technically not binding on non-State Contractors. The Exploration Regulations and the current version of the Draft Exploitation Regulations state that “[n]othing in these Regulations shall affect the rights of coastal State in accordance with article 142 and other relevant provisions of the Convention.”<sup>231</sup>

#### 6.1.2 ISA

109. See the discussion above.

#### 6.1.3 Sponsoring States

110. This obligation to give due regard to the rights and interests of the coastal States may also be a direct obligation for the sponsoring State by virtue of it being a party to UNCLOS and the entity sponsoring activities in the Area.<sup>232</sup> It has been said that the subject that owes the obligation of reasonable regard under a different article, i.e. Article 147, is the sponsoring State.<sup>233</sup> Article 147, like Article 142, does not identify the actor which owes the obligation and states, “activities in the Area shall be carried out with reasonable regard for other activities in the marine environment,” and this reasoning could apply to other articles which do not specify the actor which is responsible for complying with the obligations in the said article. The Comparative Study indicates that certain

<sup>229</sup> Nandan, Satya, Rosenne, Shabtai, Lodge, Michael (eds.). 2003. United Nations Commentary on the Law of the Sea, Volume VI, Brill, 152.

<sup>230</sup> Vonecky, Silja, Hofelmeier, Anja. 2017. Article 142: Rights and Legitimate Interests of coastal States in Proelss, Alexander, United Nations Convention on the Law of the Sea: A Commentary. Hart, 986, 988.

<sup>231</sup> PMN Regulation 34 (1), PMS/CFC Regulation 36 (1). Draft Exploitation Regulation 4 (1).

<sup>232</sup> Article 142 was based on a paragraph in the 1970 Declaration of Principles which placed the obligation on States to pay due regard to the rights and legitimate interests of coastal States in the region of such activities. Vonecky and Hofelmeier, note 232, 987.

<sup>233</sup> Treves, Tullio. 2019. Background Paper: Advancing the Practical Implementation of the Due Regard / Reasonable Regard Obligations: The Applicable Legal Framework and Practical Options for its Implementation. ISA Technical Study No. 24, 19.

sponsoring States have provisions in their national legislation stating that nothing in that legislation affects the rights of the coastal State in accordance with Article 142.<sup>234</sup> To the extent that Contractors have the obligation to exercise due regard in respect of the coastal state's rights over resources under UNCLOS and related instruments, the sponsoring state would have to ensure compliance.

#### 6.1.4 Analysis

111. The issue of possible interference with coastal State rights to resources that straddle the Area is arguably not one of the most pressing issues, considering that exploitation has not occurred and the full extent of the continental shelf beyond 200 nautical miles has not been determined yet.<sup>235</sup> That said, there may come a time when activities in the Area do impact resource deposits that straddle both the Area and areas within national jurisdiction, necessitating the implementation of Article 142 (1) and (2) of UNCLOS. In light of this, the following warrants further consideration:

- *Due regard obligation:* What role does the sponsoring State play in ensuring that activities in the Area are conducted with due regard to the rights and legitimate interests of any coastal State in relation to resource deposits in the Area which lie across limits of national jurisdiction, and whether this is an obligation that has to be complied with prior to the granting of the Certificate of Sponsorship.
- *System of notification:* Article 142 envisages a system of notifications to be established. One question is whether a system of notification needs to be separately developed to ensure that the coastal State is duly informed of any exploration and exploitation activities. For example, one of the stakeholder comments to the August 2018 Draft Exploitation Regulations was that there should be a specific requirement at the application stage for adjacent coastal States to be automatically notified when exploration and exploitation contracts are issued in their geographic region.<sup>236</sup> However, it warrants note that when a plan of work is submitted to ISA, the Secretary-General has an obligation to notify members of the Authority (which would include coastal State members) of the receipt of such an application and circulate to them information of a general nature which is not confidential.<sup>237</sup> A further question is whether this notification by ISA Secretary-General is sufficient or whether the sponsoring State also has to notify the coastal State, although, in the interests of reducing administrative burden, the Secretary-General's general notification would seem to suffice.
- *System of consultations:* Article 142 (2) also states that "consultations, including a system of prior notification," shall be maintained. The provision does not identify who has an obligation to consult with the coastal State and when this obligation is triggered.<sup>238</sup> From a practical point of view, consultations may best be carried out between ISA (or a specific organ) and the coastal State and may also involve the Contractor. The role of the sponsoring State in this process warrants further discussion.

<sup>234</sup> Comparative Study, note 58, 22.

<sup>235</sup> This is due to the on-going process under article 76 of UNCLOS related to the continental shelf beyond 200 nautical miles: Lodge, Michael. 2015. "The Deep Seabed," in Donald R. Rothwell, Alex G Oude Elferink, Karen N Scott and Tim Stephens, *The Oxford Handbook on the Law of the Sea* (Oxford University Press), 226, 228.

<sup>236</sup> See comments of the African Group to the Revised Draft Regulations on Mineral Resources in the Area, September 2018. Available at: <https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/documents/EN/Regs/2018/Comments/AfricanGroup.pdf>.

<sup>237</sup> PMN Regulation 20 (c), PMS/CFC Regulation 22 (c). See Draft Exploitation Regulation 9 (1) (c) (i).

<sup>238</sup> Consultations usually involve prior notification, negotiations which give reasonable weight to the other party's interests but not necessarily a right of veto and "no claim to insist on specific precautions." See Birnie, Boyle and Redgwell, note 221, at 178 citing the Lac Lanoux Arbitration 24 ILR (1957).

- *System of prior consent*: Prior consent of the coastal State is required when activities in the Area may result in the exploitation of resources lying within national jurisdiction under Article 142 (2). Again, the provision does not identify which actor has to obtain prior consent and what exactly triggers this obligation. From a practical perspective, the Contractor and/or the coastal State may be in the best position to determine when activities in the Area may result in the exploitation of resources lying within national jurisdiction. The role of ISA and the sponsoring State in this process also warrants further discussion.

## 6.2 Protection of the marine environment of the coastal State

### 6.2.1 Contractor

112. Article 142 (3) preserves the right of coastal States to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests from pollution, threat of pollution or other hazardous occurrences in connection with activities in the Area, to be exercised consistently with the rights in Part XII of UNCLOS.<sup>239</sup>
113. The Exploration Regulations and the current version of the Draft Exploitation Regulations require the Contractor to take all measures necessary to ensure that activities are conducted so as not to cause serious harm to the marine environment under the jurisdiction or sovereignty of coastal States and that such serious harm or pollution arising from incidents or activities does not spread into areas under coastal State jurisdiction or sovereignty.<sup>240</sup>

### 6.2.2 ISA

114. While this only expressly confers rights upon the coastal State, ISA has obligations to protect the marine environment from harmful effects of activities in the Area, which would extend to ensuring activities in the Area do not cause pollution to coastal States.<sup>241</sup> It should also be borne in mind that although the requirement of prior notification and consultation does not strictly apply to the environmental protection rights in Article 142 (3),<sup>242</sup> the SDC found that the “[EIAs] should be included in the system of consultations and prior notifications set out in Article 142 of the Convention with respect to resource deposits in the Area which lie across limits of national jurisdiction.”<sup>243</sup>
115. Under the Exploration Regulations, if a coastal State has grounds for believing that any activity in the Area by a Contractor is likely to cause harm or a serious threat of harm to the marine environment under its jurisdiction or sovereignty, it notifies ISA Secretary-General, who then provides the Contractor and the sponsoring State with a reasonable opportunity to examine the evidence and to submit their observations within a reasonable time to the Secretary-General.<sup>244</sup> If there are clear grounds for believing that serious harm to the marine environment of the coastal State is likely to occur, the Secretary-General can take immediate measures of a temporary nature.<sup>245</sup>

<sup>239</sup> See UNCLOS, Articles 209 (2) and 221.

<sup>240</sup> PMN Regulation 34 (4), PMS/CFC Regulation 36 (4). See Draft Exploitation Regulation 4 (2).

<sup>241</sup> UNCLOS, Article 145.

<sup>242</sup> See Vonecky and Hofelmeier, note 232, 988.

<sup>243</sup> SDC Advisory Opinion, note 13, para. 148.

<sup>244</sup> PMN Regulation 34 (2), PMS/CFC Regulation 36 (2).

<sup>245</sup> PMN Regulation 34 (3), PMS/CFC Regulation 36 (3).

116. Under the current version of the Draft Exploitation Regulations, the coastal State would have to notify ISA Secretary-General in writing on the grounds for its belief that the Contractor's activities have caused serious harm or a threat of serious harm to its coastline or the marine environment under its jurisdiction or sovereignty. ISA must immediately notify the Commission, the Contractor and its sponsoring State and must provide the Contractor and sponsoring State reasonable opportunity to examine the evidence and submit observations within a reasonable time to the Secretary-General.<sup>246</sup>
117. Under the current version of the Draft Exploitation Regulations, if there are clear grounds for believing that serious harm to the marine environment of the coastal State is likely to occur, the LTC may recommend that the Council issue an emergency order<sup>247</sup> and in certain circumstances under the Draft Exploitation Regulations, the Secretary-General may issue a compliance notice or direct an inspection.<sup>248</sup>

### 6.2.3 Sponsoring State

118. The sponsoring State has general obligations to protect the marine environment and specific obligations to protect the marine environment from harmful effects of activities in the Area, which would extend to ensuring activities in the Area do not cause pollution to coastal States (see Section 6.1).
119. Sponsoring States have an obligation to ensure the Contractor's compliance with its obligations vis-à-vis the coastal State's marine environment and can impose more stringent measures for the protection of the marine environment than ISA. Some sponsoring States have enacted provisions in their national legislation which address the rights of the coastal State by affirming that the coastal State may notify the competent national authority in writing about its belief that the sponsored Contractor's activities have caused or are likely to cause serious harm to the coastal State's marine environment. The competent national authority shall then provide the Contractor with a reasonable opportunity to examine the evidence within a reasonable time. The competent national authority can take necessary measures within its national legislation.<sup>249</sup>

### 6.2.4 Analysis

120. There is potentially avoidable duplication (depending on the applicable procedures in sponsoring State legislation) that may benefit from co-ordination between ISA, the Contractor and the sponsoring State. The following warrants further consideration:
- The sponsoring State may wish to consider harmonizing its own procedures related to the protection of the marine environment of the coastal State with ISA procedures. For example, the sponsoring State may also wish to consider requiring the Contractor to submit the same observations in response to a notification by the coastal State to both ISA and its sponsoring State.
  - In the event there is potential harm to the marine environment of the coastal State, whether it is necessary for the sponsoring State and ISA to consult and/or exchange information on what

<sup>246</sup> Draft Exploitation Regulation 4 (3).

<sup>247</sup> Draft Exploitation Regulation 4 (4).

<sup>248</sup> Draft Exploitation Regulation 4 (5).

<sup>249</sup> See Kiribati's Seabed Minerals Act, Section 119.

measures are being taken by each other (if any). If there is harm that triggers an emergency order, it will, of course, not be feasible to consult with the sponsoring State.

- Whether there is a need to consider further the SDC's suggestion that EIAs should be included in the system of consultations and prior notifications set out in Article 142 of the Convention with respect to resource deposits in the Area which lie across limits of national jurisdiction.<sup>250</sup> Questions include whether the current EIA requirements under the Exploration Regulations and current version of the Draft Exploitation Regulations would cover impacts on areas within national jurisdiction; and whether the publication of the Environmental Plans under the Draft Exploitation Regulations is a sufficient notification to the coastal State (who would be allowed to comment as a Stakeholder),<sup>251</sup> and what impact this may have on national EIA requirements of the sponsoring State.

## 7. HUMAN REMAINS AND OBJECTS AND SITES OF AN ARCHAEOLOGICAL AND HISTORICAL NATURE

These are found in [Annex 1: Table F].

121. UNCLOS, Article 149 provides that objects of archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of (hu)mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, the State of cultural origin, or the State of historical and archaeological origin.

### 7.1 Contractor

122. Under both the Exploration Regulations and the current version of the Draft Exploitation Regulations, the Contractor has an obligation to immediately notify the ISA Secretary-General in writing of not only objects of an archaeological or historical nature but also human remains.<sup>252</sup> Further, no prospecting/exploration or exploitation shall take place within a reasonable radius of such sites until such time as the Council decides, after taking into account the views of the Director-General of UNESCO or other competent international organizations.<sup>253</sup>

### 7.2 ISA

123. Article 149 does not specify the addressee of the obligation to preserve objects of an archaeological and historical nature, but early drafts of the article envisaged a role for ISA.<sup>254</sup> This obligation would appear to bind ISA in view of their mandate over activities in the Area.

<sup>250</sup> SDC Advisory Opinion, note 13, para. 148.

<sup>251</sup> See Draft Exploitation Regulation 11. Also, as part of the EIS in Annex IV of the Draft Exploitation Regulations, the Contractor would be required to describe the nature and extent of consultations that have taken place with parties identified to have existing interests in the proposed project area and with other relevant stakeholders (see Section 13 of Annex IV on Consultation). Under the Exploration Regulations, the preliminary assessment provided by the prospective Contractor as part of its plan of work during the application phase is not publicly available although data and information that is necessary for the formulation by the ISA of the rules, regulations and procedures concerning the protection and preservation of the marine environment and safety, other than proprietary equipment design data shall not be deemed confidential. PMS/CFC Regulation 38 (2).

<sup>252</sup> PMN Regulation 35, PMS/CFC Regulation 37, Draft Exploitation Regulation 35.

<sup>253</sup> Ibid.

<sup>254</sup> See Nandan et al, note 231, 233.

124. Under the Exploration Regulations, after the Contractor has notified the Secretary-General of ISA, the Secretary-General of ISA must notify the Director-General of UNESCO and any other competent organization. There is no obligation on the Secretary-General of ISA to inform the sponsoring State. In contrast, under the current version of the Draft Exploitation Regulations, the Secretary-General of ISA would have to transmit the information to the sponsoring State, the State from which the remains originated and the UNESCO Director-General and to any other competent organization.<sup>255</sup>

### 7.3 Sponsoring State

125. As a State party to UNCLOS, the sponsoring State is bound by the obligations in Article 149. Under the current version of the Draft Exploitation Regulations, it also has the right to receive information from the Secretary-General of ISA on the discovery of human remains and objects of archaeological or historical interest by its sponsored Contractor. Sponsoring States have an obligation to ensure compliance by the Contractors of their obligations relating to the discovery of human remains and objects of an archeological or historical nature. Some sponsoring States have national legislation which obliges the Contractor to safeguard objects of an archaeological or historical nature as well as notify the competent national authority and follow the instructions, if any, of the competent national authority.<sup>256</sup>

### 7.4 Analysis

126. There is potentially an avoidable duplication of processes on the part of the sponsoring State and ISA (depending on the applicable procedures in the sponsoring State's legislation) that may benefit from co-ordination between these two actors, particularly when it comes to the Contractor's notification to ISA and the sponsoring State.

## 8 ACCOMMODATION OF ACTIVITIES IN THE AREA

These are found in [Annex 1: Table G].

127. This section only addresses Articles 147(1) and (3). The jurisdictional competencies over installations used for carrying out activities in the Area go beyond the scope of this discussion paper and have also been discussed in the IMO/ISA Report.
128. Articles 147(1) and (3) state that activities in the Area shall be carried out with reasonable regard for other activities in the marine environment and that other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.<sup>257</sup> Like Articles 142 and 147, there are no specific addressees of this reciprocal obligation to exercise due regard.

<sup>255</sup> Draft Exploitation Regulation 35.

<sup>256</sup> Comparative Study, note 58, 22, Germany's Seabed Mining Act 2016, Section 9.

<sup>257</sup> See UNCLOS, Article 87 (2) which states that freedoms of the high seas shall be exercised with due regard for the rights under UNCLOS with respect to activities in the Area.



## 8.1 Contractors

129. The Exploration Regulations provide that the Regulations:

...shall not in any way affect the freedom of scientific research, pursuant to article 87 of [UNCLOS] or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of [UNCLOS]. Nothing in these Regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in article 87 of [UNCLOS].<sup>258</sup>

130. The standard terms of the exploration contract require the Contractor to make an undertaking that it shall carry out the programme of activities “with reasonable regard for other activities in the marine environment.”<sup>259</sup> Regulation 31 of the current Draft Exploitation Regulations also reiterates that Contractors shall, consistent with the relevant Guidelines, carry out exploitation with reasonable regard for other activities in the marine environment in accordance with Article 147, including exercising due diligence to ensure that it does not cause damage to submarine cables or pipelines in the contract area.<sup>260</sup>

## 8.2 ISA

131. While ISA is not expressly mentioned in UNCLOS, Article 147(1) or (3), ISA has the obligation under UNCLOS, Annex III, Article 17(1)(ix), to adopt and apply rules, regulations and procedures on “the prevention of interference with other activities in the marine environment.” As mentioned in paragraph 120, the Exploration Regulations state that the Regulations should not affect the freedom of marine scientific research or other high seas freedoms referred to in Article 87.

132. The current version of the Draft Exploitation Regulations states that one of the considerations that must be taken into account by the LTC in considering a plan of work for exploitation is that the proposed plan of work provides for exploitation activities “to be carried out with reasonable regard for other activities in the Marine Environment, including navigation, the laying of submarine cables and pipelines, fishing and marine scientific research as referred to in article 87 of [UNCLOS].”<sup>261</sup>

133. The current version of the Draft Exploitation Regulations also provides that *in conjunction with member States*, ISA shall take measures to ensure that *other activities in the marine environment* shall be conducted with reasonable regard for the activities of Contractors in the Area.<sup>262</sup> ISA has no jurisdiction over the exercise of high seas freedoms and the activities falling thereunder, which may also qualify as “other activities in the marine environment.”<sup>263</sup> States Parties to UNCLOS exercising these freedoms have the competence to ensure that these activities are carried out with reasonable regard to activities in the Area. The inclusion of “in conjunction with Member States” recognizes that ISA has a role in facilitating co-operation between the sponsoring state and its sponsored Contractor on the one hand and States parties with jurisdiction over these high seas freedoms.

<sup>258</sup> PMN/PMS/CFC, Regulation 1 (4).

<sup>259</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 13.3 (c).

<sup>260</sup> Draft Exploitation Regulation 31 (1).

<sup>261</sup> Draft Exploitation Regulation 13 (4) (d).

<sup>262</sup> Draft Exploitation Regulation 31 (2).

<sup>263</sup> Treves, *supra* note 235, 22.

### 8.3 Sponsoring State

134. While not explicitly mentioned, the 1970 Declaration of Principles adopted by initially placed the obligation of reasonable regard on States.<sup>264</sup> The sponsoring State must ensure compliance with the Contractor's obligations to exercise reasonable regard for other activities in the marine environment. Some sponsoring States have provisions in their national legislation reflecting general obligations on the Contractor to pay reasonable regard to other high seas freedoms.<sup>265</sup>

### 8.4 Analysis

135. The reasonable regard obligation is context-specific and will depend on the competing rights at hand, although case law suggests that it would involve some form of consultations with the State whose rights and interests are to be affected (with the provision of information to the other State and a reasonable exchange between them), as well as a balancing exercise between the rights and interests of the bearer of the obligation and those of the other States.<sup>266</sup> Apart from the LTC's obligation to verify based on the information provided by the Contractor at the plan of work stage that activities in the Area will be carried out with reasonable regard for other activities in the marine environment, the implementation of the reasonable regard obligation in the Exploration Regulations and current Draft Exploitation Regulations needs to be at a general level. This is because the implementation of the reasonable regard obligation will differ depending on the circumstances at hand, and it may be difficult to develop a blanket rule that will apply to all activities. The sponsoring State will also play a role in ensuring that activities in the Area pay reasonable regard to other activities in the marine environment.

## 9. INCIDENTS AND NOTIFIABLE EVENTS

These are found in [Annex 1: Table H].

136. Under the Exploration Regulations, incidents are referred to as "any incident arising from activities which have caused, are causing or pose a threat of serious harm to the marine environment."<sup>267</sup> Notifiable Events are not mentioned.
137. Under the current version of the Draft Exploitation Regulations, "Incidents" are defined as a marine incident or a marine casualty or as Serious Harm to the Marine Environment (also defined in Schedule 1) or to other existing legitimate sea uses or a situation in which Serious Harm to the Marine Environment is a reasonably foreseeable consequence of the situation or damage to a submarine cable or pipeline or any Installation.<sup>268</sup> Notifiable Events, set out in Appendix I of the Draft Exploitation Regulations, include fatality of a person, missing person, medical evacuation, fire/explosion resulting in an injury or major damage or impairment, significant leak of hazardous substance unauthorized mining discharge, significant contact with fishing gear, contact with submarine pipelines or cables.

<sup>264</sup> Ibid. 19. United Nations. 1970. Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction ([A/RES/2749 \(XXV\)](#)), para. 12.

<sup>265</sup> See Comparative Study, note 58, 22.

<sup>266</sup> Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Award, 18 March 2015. Available at: <http://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>, para. 534.

<sup>267</sup> PMN Regulation 33 (1), PMS/CFC Regulation 35 (1).

<sup>268</sup> Draft Exploitation Regulations, Schedule 1.

## 9.1 Contractor

138. Under the Exploration Regulations, the Contractor notifies the Secretary-General of any incident that poses a threat of serious harm to the marine environment.<sup>269</sup> The Secretary-General can take temporary measures pending action by the LTC and the Council. Action by the Council may include emergency orders which may consist of suspension or adjustment orders. If the Contractor does not comply, the Council shall take the necessary measures to prevent serious harm to the marine environment.
139. Under the current version of the Draft Exploitation Regulations, the Contractor has an obligation to reduce the risk of Incidents as far as reasonably practicable.<sup>270</sup> The Contractor must notify the sponsoring State and the Secretary-General of any Incident and Notifiable event.<sup>271</sup>

## 9.2 ISA

140. Under both the Exploration Regulations and the current version of the Draft Exploitation Regulations, ISA has certain obligations vis-à-vis the sponsoring State:
- The Secretary-General must notify the sponsoring State (and the Contractor, LTC, the Council and other members of ISA) of an incident under the Exploration Regulations.<sup>272</sup>
  - Under the current version of the Draft Exploitation Regulations, the Contractor would be obliged to undertake any instructions on Incidents received from the Secretary-General *in consultation* with the sponsoring States, flag State, coastal State or relevant international organization as the case may be. If the Contractor fails to comply with its obligations, the Secretary-General *must report* it to the sponsoring States and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.<sup>273</sup>
  - Under the current version of the Draft Exploitation Regulations, ISA would have to consult with the sponsoring State (the Contractors and other States and organizations) on the exchange of knowledge, information and experiences relating to incidents.<sup>274</sup>
  - For Notifiable Events, the Secretary-General shall consult with sponsoring States or other regulatory authorities as necessary.<sup>275</sup>

## 9.3 Sponsoring State

141. The sponsoring State also has obligations vis-à-vis ISA. Under the Exploration Regulations, if there is serious harm or threat of serious harm to the marine environment, and the Contractor fails to provide the Council with a guarantee of its financial and technical capabilities to comply promptly with emergency orders, the sponsoring State shall take measures to ensure that the

<sup>269</sup> PMN Regulation 33 (1), PMS/CFC Regulation 35 (1).

<sup>270</sup> Draft Exploitation Regulation 32.

<sup>271</sup> Draft Exploitation Regulation 33 (2) (a) and 34 (1).

<sup>272</sup> PMN Regulation 33 (2), PMS/CFC Regulation 35 (2).

<sup>273</sup> Draft Exploitation Regulation 33 (2) (c).

<sup>274</sup> Draft Exploitation Regulation 53 (2).

<sup>275</sup> Draft Exploitation Regulation 34 (3).

Contractor provides such a guarantee or ensure that assistance is provided to ISA in the discharge of its responsibilities to prevent, contain and minimize serious harm to the marine environment.<sup>276</sup> According to the SDC, this is an obligation which is directly incumbent on the sponsoring State.<sup>277</sup> There is no equivalent obligation on the sponsoring State in the Draft Exploitation Regulations, and instead, the Contractor must maintain an Emergency Response and Contingency Plan.<sup>278</sup> Some sponsoring States' national legislation requires financial guarantees or security to address potential damage or take measures rectifying the Contractor's potential failure to fulfill its obligation.<sup>279</sup>

142. The sponsoring State has an obligation to ensure that the Contractor complies with its obligations in relation to incidents under the Exploration Regulations and Incidents and Notifiable Events under the current version of the Draft Exploitation Regulations. Some sponsoring States have incident reporting, response and inquiry processes, including for incidents resulting in harm to the marine environment.<sup>280</sup> For example, under Tonga's legislation, the Contractor is obliged to inform ISA of any incidents (defined in the legislation) and copy all information provided to ISA to the Tonga Seabed Minerals Authority, to respond efficiently and responsibly to the incident, follow the instructions of ISA and the Tonga Seabed Minerals Authority. The Tonga Seabed Minerals Authority may hold inquiries into incidents and also shall provide administrative assistance to facilitate efficient response to an Incident.

#### 9.4 Analysis

143. The possibility that there may be two incident /notifiable event reporting procedures for the Contractor (depending on whether the sponsoring State has such provisions in place) may create avoidable duplication of work. The sponsoring State may wish to harmonize the obligations it has imposed on the Contractors under its national legislation with ISA rules on incidents under the Exploration Regulations and Incidents and Notifiable Events under the Draft Exploitation Regulations (once they come into effect), including:
- Requiring the Contractor to notify ISA and the sponsoring State at the same time with the same information.
  - Ensuring that the incidents for which the Contractor has to report to the sponsoring State under its legislation matches the definitions of Incidents and Notifiable Events under the Mining Code.
  - To the extent that sponsoring States require a deposit or guarantee to be issued by the Contractor to the sponsoring State, it may also wish to specify that when deciding on the form and value of the deposit or guarantee, it will take into account the form and quantum of the security required by ISA.<sup>281</sup>
  - The sponsoring State may also wish to keep ISA informed about any proceedings and/or inquiries it undertakes in relation to the Incident/Notifiable Event.

<sup>276</sup> CFC Regulation 35 (8).

<sup>277</sup> SDC Advisory Opinion, note 13, para. 138.

<sup>278</sup> Draft Exploitation Regulation 53.

<sup>279</sup> Comparative Study, note 58, 20.

<sup>280</sup> Comparative Study, note 58, 18.

<sup>281</sup> See Nauru's Seabed Minerals Act 2015, Section 45 (2).

## 10. MONITORING OF CONTRACTORS THROUGH REPORTING OBLIGATIONS

These are found in [Annex 1: Table I].

### 10.1 Contractor

144. ISA has placed several obligations on the Contractor in relation to the monitoring of the Contractor's compliance with its contractual obligations:

- The obligation of the Contractor to submit an **annual report** to ISA on various issues depending on whether iCt is an exploration or exploitation contract, including details of the exploration/exploitation work done that year, the quantity and quality of resources recovered, financial information, health and safety information, the actual results obtained from environmental monitoring programmes under the Exploration Regulations and current version of the Draft Exploitation Regulations.<sup>282</sup>
- The obligations of the Contractor in relation to the **periodic review of the implementation of plans of work**: under the Exploration Regulations, the Contractor and the Secretary-General shall jointly undertake a periodic review of the implementation of the plan of work for exploration at intervals of five years.<sup>283</sup> Under the current version of the Draft Exploitation Regulations, the Secretary-General may review with the Contractor the Contractor's activities under the plan of work every five years or if, in the Secretary-General's opinion, a prescribed list of events or changes of circumstances occur and the Contractor is required to provide all information required by the Secretary-General.<sup>284</sup>
- The obligations of the Contractor, in relation to the **monitoring of the Contractor's compliance with its environmental obligations**, to submit a performance assessment report on the EMMP.<sup>285</sup>

### 10.2 ISA

145. ISA has a general mandate to "exercise such control over activities in the Area as is necessary for the purpose of securing compliance" with Part XI, the Annexes to UNCLOS and the rules, regulations and procedures of ISA, and has the "right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract."<sup>286</sup>

146. ISA has an obligation to adopt rules, regulations and procedures on operations, including progress reports.<sup>287</sup> With regard to annual reports submitted under the Exploration Regulations, the Secretary-General of ISA shall transmit such reports to the LTC for its consideration.<sup>288</sup> Under

<sup>282</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 10, Draft Exploitation Regulation 38.

<sup>283</sup> PMN Regulation 28 (1) and (2), PMS/CFC Regulation 30 (1) and (2).

<sup>284</sup> Draft Exploitation Regulation 58 (1) and (4).

<sup>285</sup> Draft Exploitation Regulations 51, and 52 (1) and (3).

<sup>286</sup> UNCLOS, Article 153 (4) and (5).

<sup>287</sup> UNCLOS, Annex III, Article 17 (1) (b) (vi).

<sup>288</sup> PMN Regulation 32 (2), PMS/CFC Regulation 34 (2).

the Draft Exploitation Regulations, annual reports shall be published in the Seabed Mining Register.<sup>289</sup>

147. Both the Exploration Regulations and Draft Exploitation Regulations provide for periodic reviews to be undertaken by the Secretary-General. Under the Exploration Regulations, the periodic review shall be jointly undertaken by the Contractor and the Secretary-General every five years.<sup>290</sup> The Secretary-General shall report the review to the LTC and the Council and must indicate whether any observations transmitted by States Parties on the way in which the Contractor has discharged its obligations relating to marine environment protection were taken into account.<sup>291</sup>
148. Under the Draft Exploitation Regulations, the Secretary-General may, with the Contractor, review the Contractor's plan of work every five years or if, in the opinion of the Secretary-General, a prescribed set of events or circumstances has occurred under the current version of the Draft Exploitation Regulations).<sup>292</sup> The Secretary-General *may* invite the sponsoring State to participate in the review of activities.<sup>293</sup> The Secretary-General must report on each review to the LTC and Council as well as to the sponsoring State<sup>294</sup> and shall make publicly available the findings and recommendations from a review of activities.<sup>295</sup>
149. Under the current version of the Draft Exploitation Regulations, the Secretary-General is to submit the performance assessment report to the LTC. The LTC shall review a performance assessment report, and the Secretary-General shall make public the report and the findings and recommendations of the LTC.<sup>296</sup> The LTC shall report annually to the Council on such performance assessments, including any relevant recommendations for the Council's consideration.<sup>297</sup>

### 10.3 Sponsoring State

150. Under the Exploration Regulations, the sponsoring State as a State party may be asked to submit observations as part of the periodic review of activities. Under the current version of the Draft Exploitation Regulations, the sponsoring State may be invited to participate in the periodic review and is entitled to receive the report from the Secretary-General.<sup>298</sup>
151. The sponsoring State has an obligation to assist ISA in its function of securing compliance with relevant provisions of UNCLOS and ISA rules, regulations and procedures by "taking all measures necessary to ensure such compliance in accordance with Article 139 [of UNCLOS]."<sup>299</sup> The sponsoring State's due diligence obligation is ongoing in that it requires not only the adoption of appropriate rules and measures "but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of

<sup>289</sup> Draft Exploitation Regulation 38 (3).

<sup>290</sup> PMN Regulation 28 (1), PMS/CFC Regulation 30 (1).

<sup>291</sup> PMN Regulation 28 (3), PMS/CFC Regulation 30 (3).

<sup>292</sup> PMN Regulation 28, PMS/CFC Regulation 30.

<sup>293</sup> Draft Exploitation Regulation 58 (1) and (2).

<sup>294</sup> Draft Exploitation Regulations 30 (3), and 58 (3) and (6).

<sup>295</sup> Draft Exploitation Regulation 58 (6).

<sup>296</sup> Draft Exploitation Regulation 52 (4).

<sup>297</sup> Draft Exploitation Regulation 52 (9).

<sup>298</sup> Draft Exploitation Regulation 58 (2) and (6).

<sup>299</sup> UNCLOS, Article 153 (4).

activities undertaken by such operators.<sup>300</sup> Some sponsoring States have provisions in their national legislation on reporting obligations.<sup>301</sup> For example, Singapore requires the Contractor to report on its exploration and exploitation activities at such intervals as may be specified and to inform Singapore of any matter relating to its exploration or exploitation activities.<sup>302</sup> The United Kingdom legislation provides that the Contractor may be required to provide “plans, returns, accounts or other records with respect to any matter connected with the licensed mineral resource and the licensed area or licensed operations or ancillary operations” to the Secretary of State.<sup>303</sup> Germany’s legislation states that the relevant agency can “demand the information necessary for it to fulfill its tasks, can access and scrutinize operational notes and other documents, and can undertake visits.”<sup>304</sup>

## 10.4 Analysis

152. The reporting obligations of the Contractor to ISA in the Exploration Regulations and the current version of the Draft Exploitation Regulations and the sponsoring State in their national laws have the same objectives, namely, to ensure that the Contractor is fulfilling its obligations and to enable ISA and sponsoring State to take any necessary action if it discovers any issues. While the reporting obligations have the same objectives, they may differ in their precise content and requirements. This may create avoidable duplication of work and require a certain degree of coordination between the sponsoring State and ISA, bearing in mind that there is presently no obligation in UNCLOS or Exploration Regulations or the current version of the Draft Exploitation Regulations for ISA to share the information it receives from the Contractor with the sponsoring State (apart from the obligation of the Secretary-General to report the results of the periodic reviews to the sponsoring State and make publicly available the findings under the current version of the Draft Exploitation Regulations).<sup>305</sup> Some of this information may be publicly available on the ISA website/Seabed Mining Register, subject to the confidentiality requirements laid out in the relevant regulations.<sup>306</sup> With this in mind, the following points warrant further discussion:

- The sponsoring State may wish to harmonize the reporting requirements in its laws and regulations with those imposed in the Exploration Regulations and Exploitation Regulations (once in effect). It could do this by requiring that all information/reports/data, including the annual reports submitted to ISA, should also be submitted by the Contractor to the sponsoring State (see, for example, the legislation of Singapore, Germany and the UK described above). This will mean that, apart from translation requirements, the Contractor, in effect, only prepares one set of documents and submits it to both ISA and the sponsoring State.
- In the event the sponsoring State has different reporting obligations (for example, in relation to the Contractor’s marine environmental obligations), which impose requirements for additional data or information, the sponsoring State may wish to consider sharing these

<sup>300</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, 14, para. 197, cited in the SDC Advisory Opinion, note 13, para. 115 and the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, para. 132.

<sup>301</sup> See Comparative Study, note 58, 15.

<sup>302</sup> Singapore’s Deep Seabed Mining Act 2015, Section 10 (2) (c) and (d).

<sup>303</sup> United Kingdom. 2014. Deep Sea Mining Act. Available at: <https://www.legislation.gov.uk/ukpga/2014/15/contents>, Section 3(A) (d).

<sup>304</sup> Germany’s Seabed Mining Act, Section 8 (2).

<sup>305</sup> Draft Exploitation Regulation 58 (3) and (6).

<sup>306</sup> See PMN/PMS/CFC Regulations 38 and 39.

reports with ISA. The legal basis for this would be its obligation to assist ISA under UNCLOS, Article 153(4), as well as the duty to co-operate and exchange information under Draft Exploitation Regulation 3(b), (d) and (e). Some sponsoring States have general provisions in their national legislation which state that the competent national authority will take all actions necessary to give effect to its obligations, including undertaking any communications with and providing any assistance, documentation, certificates and undertakings to ISA.<sup>307</sup>

- The sponsoring State may also have its own review procedures when receiving such information to ensure that the Contractor has complied with its obligations under ISA Contract and its own national laws. In the event that ISA or the sponsoring State discovers that the Contractor has not fulfilled its obligations in their respective reviews, each may wish to consider notifying the other.

## 11. MONITORING OF CONTRACTORS THROUGH INSPECTIONS

These are found in [Annex 1: Table J].

### 11.1 Contractor

153. Under both the Exploration Regulations and Draft Exploitation Regulations, the Contractor has obligations under the Exploration Regulations, including the obligation to permit ISA's inspectors to board vessels and installations and to assist the inspectors in the performance of their duties.<sup>308</sup>

### 11.2 ISA

154. As mentioned above, ISA has the right to take at any time any measures provided for under this Part to ensure compliance with its provisions in Part XI and the exercise of the functions of control and regulation assigned to it under UNCLOS and under any contract, including the right to inspect all installations in the Area used in connection with activities in the Area.<sup>309</sup> The Council has the authority to establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether Part XI, the rules, regulations and procedures of ISA and the contract are being complied with.<sup>310</sup> The LTC is mandated under UNCLOS to make recommendations to the Council on matters of inspection.<sup>311</sup> Furthermore, the LTC shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State or other party concerned when carrying out their function of supervision and inspection.<sup>312</sup>

155. The Exploration Regulations have implemented an inspection regime for vessels and installations used by the Contractor for activities in the Area.<sup>313</sup> Under the Exploration Regulations, inspectors have the authority to inspect any vessel or installation, including its log, equipment, records, facilities, all other recorded data and any relevant documents which are necessary to monitor the

<sup>307</sup> See Tonga's Seabed Minerals Act 2014, Section 85 (a), Nauru's International Seabed Minerals Act 2015, Section 30 (c).

<sup>308</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Sections 14. 1 and 14.4, Draft Exploitation Regulation 96 (2) and (5).

<sup>309</sup> UNCLOS, Article 153 (5).

<sup>310</sup> UNCLOS, Articles 162 (2) (z), 165 (2) (m).

<sup>311</sup> UNCLOS, Article 165 (2) (m).

<sup>312</sup> UNCLOS, Article 165 (3).

<sup>313</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 14.



Contractor's compliance.<sup>314</sup> Inspectors also have certain obligations vis-à-vis the Contractor.<sup>315</sup> The Secretary-General shall give reasonable notice to the Contractor as well as the names of the inspectors and any activities that the inspectors are likely to perform.<sup>316</sup> The Secretary-General must also provide relevant information contained in the reports of inspectors to the Contractor and its sponsoring State.<sup>317</sup>

156. Part XI of the current version of the Draft Exploitation Regulations stipulates that the Contractor shall permit ISA to send its inspectors, who may be accompanied by the representative of its State or other party concerned aboard vessels and installations, whether offshore or onshore, as well as to enter its offices wherever situated.<sup>318</sup> Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all recorded data and samples and any vessel or installation, including its log, personnel, equipment, records and facilities.<sup>319</sup> Under the current Draft Exploitation Regulations, reasonable notice can be dispensed with if the matter is so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification.<sup>320</sup> Inspectors have certain obligations vis-à-vis the Contractor.<sup>321</sup> The current version of the Draft Exploitation Regulations also gives the inspector wide-ranging powers,<sup>322</sup> including the issuance of written instructions either suspending mining activities for a specified period, placing conditions on the continuation of mining activities, setting out steps that the Contractor must take, or specific tests or monitoring.<sup>323</sup> The Secretary-General has to report annually to the Council on the findings and recommendations following the inspections.<sup>324</sup>
157. The current version of the Draft Exploitation Regulations envisages the establishment of an Inspectorate.<sup>325</sup> The LTC shall make recommendations on the appointment, supervision and direction of inspectors, the Council shall determine relevant qualifications and appropriate experience and the Secretary-General shall manage and administer such inspection programmes, at the direction of the Council.<sup>326</sup>
158. ISA has certain obligations towards the sponsoring State and other States. UNCLOS provides that the LTC shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State or other party concerned when carrying out their function of supervision and inspection.<sup>327</sup> Under the Exploration Regulations, the Secretary-General must provide relevant information contained in the reports of the inspector to the Contractor and its sponsoring State or States *where the action is necessary*.<sup>328</sup> Under the current version of the Draft Exploitation Regulations, the inspector may issue a written instruction requiring certain action by

<sup>314</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 14.3.

<sup>315</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 14.5.

<sup>316</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 14.2.

<sup>317</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 14.7.

<sup>318</sup> Draft Exploitation Regulation 96 (1).

<sup>319</sup> Draft Exploitation Regulation 96 (4).

<sup>320</sup> Draft Exploitation Regulation 96 (3).

<sup>321</sup> Draft Exploitation Regulation 96 (6).

<sup>322</sup> Draft Exploitation Regulation 98.

<sup>323</sup> Draft Exploitation Regulation 99.

<sup>324</sup> Draft Exploitation Regulation 100 (2).

<sup>325</sup> Draft Exploitation Regulation 97.

<sup>326</sup> Draft Exploitation Regulation 97. Also see the ongoing discussions in ISA. 2018. Implementing an inspection mechanism for activities in the Area, Note by the secretariat ([ISBA/25/C/5](#)).

<sup>327</sup> UNCLOS, Article 165 (3).

<sup>328</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 14.7.

the Contractor, and the inspector must immediately report to the Secretary-General of ISA and the sponsoring State that an instruction has been issued.<sup>329</sup> The Inspector's report produced at the end of an inspection must also be sent to the Secretary-General, who shall then send a copy to the Contractor and to the sponsoring States and, if appropriate, the relevant coastal State and the flag State.<sup>330</sup> In addition, any acts of violence, intimidation, abuse, willful obstruction or harassment of an inspector by any person or failure by a Contractor to comply with the regulation shall be reported to the sponsoring State and the flag State concerned for consideration of the institution of proceedings under national law.<sup>331</sup>

159. The current version of the Draft Exploitation Regulations obliges all mining vessels and collectors to be fitted with an electronic monitoring system that shall record the date, time and position of all mining activities. All data transmitted to ISA under this regulation shall also be transmitted to the sponsoring State.<sup>332</sup>

### 11.3 Sponsoring State

160. Sponsoring states can request to observe inspections by an ISA inspector aboard vessels or installations, whether offshore or onshore, used by the Contractor to carry out exploitation activities under UNCLOS and the current version of the Draft Exploitation Regulations.<sup>333</sup> Some sponsoring States have also provided for the sending of an observer to the site of the Seabed Mineral Activities and vessel on a continuous basis.<sup>334</sup>
161. Sponsoring States also have a direct obligation to assist ISA in its function of securing compliance with relevant provisions of UNCLOS and ISA rules, regulations and procedures by "taking all measures necessary to ensure such compliance in accordance with Article 139 [of UNCLOS]."<sup>335</sup> This has been implemented in the current version of the Draft Exploitation Regulations, which places an obligation on the sponsoring State, as a Member State of ISA, to assist the Council, the Secretary-General and inspectors in discharging their inspection functions.<sup>336</sup>
162. Sponsoring States also have a due diligence obligation to ensure that the Contractor complies with its obligations under UNCLOS and related instruments. In particular, the SDC observed in relation to the sponsoring State's obligations that "laws, regulations and administrative measures may include the establishment of enforcement mechanisms for active supervision of the activities of the sponsored contractor."<sup>337</sup> "Administrative measures" are aimed at securing compliance with laws and regulations and may include inspections and information-sharing, and this is a matter left to the discretion of sponsoring States.<sup>338</sup>

<sup>329</sup> Draft Exploitation Regulation 99 (3).

<sup>330</sup> Draft Exploitation Regulation 100 (1).

<sup>331</sup> Draft Exploitation Regulation 100 (3).

<sup>332</sup> Draft Exploitation Regulation 102.

<sup>333</sup> UNCLOS, Article 165 (3), Draft Exploitation Regulation 96 (2).

<sup>334</sup> See Section 31 (1) (a), Nauru's International Seabed Mineral's Act 2015.

<sup>335</sup> UNCLOS, Article 153 (4), SDC Advisory Opinion, note 13, para. 124.

<sup>336</sup> Draft Exploitation Regulation 96 (2). See Draft Exploitation 75 (5).

<sup>337</sup> SDC Advisory Opinion, note 13, para. 218.

<sup>338</sup> ISA. 2019. Report of the Chair on the outcome of the first meeting of an open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ([ISBA 25/C/15](#)), para. 6.

163. Some sponsoring States have separate procedures for inspection,<sup>339</sup> which include the establishment of an Inspectorate to assist with the sponsoring States' monitoring and compliance function and which give the sponsoring State's inspector a broad range of powers to have access to and examine books, accounts, documents or records<sup>340</sup> and oblige the Contractor to give the sponsoring State's inspectors such access.<sup>341</sup> Several sponsoring States have provisions in their national legislation which establish an Inspectorate and give the inspectors a broad range of powers, including the power to access ISA contract area and all parts of the premises, vessel or equipment used for or in connection with activities in the Area and inspect or test any machinery or equipment.<sup>342</sup> This would most likely be confined to when the vessel and installation (provided that the installation is mobile) are within the jurisdiction of the sponsoring State.

#### 11.4 Role of other States

164. Other States may also have a role in inspections of Contractors' offices, vessels and installations used for exploitation activities. For example, the current version of the Draft Exploitation Regulations states that the Contractor shall permit ISA to enter its offices wherever situated. This may not necessarily be the sponsoring State and could be another State where the Contractor's offices are located, such as the state of nationality of the parent company of the sponsored Contractor.

165. The flag State may also have a role to play in the inspections of vessels. Vessels operating in areas beyond national jurisdiction are subject to the exclusive enforcement jurisdiction of the flag State,<sup>343</sup> subject to several carefully circumscribed exceptions under UNCLOS or other rules of international law.<sup>344</sup> While physical inspections of the mining area located in an area beyond national jurisdiction are said to be a practical impossibility,<sup>345</sup> the flag State may need to be involved on some level wherever the inspection occurs.<sup>346</sup>

166. Another State that may need to be involved in inspections is the port State, given that there may be practical difficulties in inspecting vessels and installations in the Area (assuming that the installation is mobile), which may not necessarily be the port of the sponsoring State. As mentioned above, under the Exploration Regulations and the current version of the Draft Exploitation Regulations, the Contractor is required to permit ISA to send its inspectors on board vessels and installations used to carry out activities in the exploration area or exploitation contract, whether offshore or onshore. Inspection of vessels and installations at the port will require the co-operation of the port State. Indeed, port States have increasingly played a more important role in the enforcement of internationally agreed shipping standards through an array of measures such as inspection and

<sup>339</sup> See Comparative Study, note 58, 17-18.

<sup>340</sup> See Kiribati's Seabed Minerals Act 2017, Sections 22-23.

<sup>341</sup> Kiribati's Seabed Minerals Act 2017, Section 45.

<sup>342</sup> See Comparative Study, note 58, 17.

<sup>343</sup> UNCLOS, Article 92, reaffirmed by the *MV Norstar Case (Panama v. Italy) Judgment*, ITLPS Reports 2018-2019, p. 10.

<sup>344</sup> See UNCLOS, Articles 105, 109 (4), 110 and 111.

<sup>345</sup> ISA. 2018. Implementing an inspection mechanism for activities in the Area, Note by the secretariat ([ISBA/25/C/5](#)), para. 14.

<sup>346</sup> UNCLOS places obligations on the port State and coastal State to, at the very least, notify the flag State if any enforcement measures are taken against a vessel relating to the protection and preservation of the marine environment. See UNCLOS, Article 218, 220 and 228. Although there is no provision in UNCLOS which requires a port State to notify the flag State or to obtain the authorization of the flag State of a foreign vessel operated for a commercial purpose before boarding and inspection. See *M/V Louisa Case (Saint Vincent and the Grenadines v. Kingdom of Spain) Judgment* of 28 May 2013, ITLOS Reports 2013, 4, para. 125.

verification to ensure that vessels meet IMO requirements.<sup>347</sup> Port State Control has also been utilized in the context of fisheries.<sup>348</sup> The obligation placed on Member States of ISA to assist the Council, the Secretary-General and inspectors in discharging their functions under the ISA rules would also cover ISA Member States that were flag States or port states or other concerned states.<sup>349</sup>

167. A comprehensive discussion of the role of the above-mentioned state actors in the inspection of the Contractor's offices and vessels and installation used for or in connection with activities in the Area goes beyond the scope of this discussion paper and warrants further discussion on how to facilitate and co-ordinate co-operation between ISA, the sponsoring State on the one hand, and these actors on the other to minimize avoidable duplication.<sup>350</sup>

## 11.5 Analysis

168. The inspection procedures of ISA and the sponsoring State may create "avoidable duplication." However, it should also be borne in mind that the reasons and objectives for the inspections conducted by ISA and the sponsoring State may be different, and it may not be possible or feasible to remove either layer of inspections. Nonetheless, apart from the sponsoring State having the right to request observers accompany inspections conducted under the authority of ISA and the post-inspection obligations of notification placed on ISA vis-à-vis the sponsoring State, further co-operative measures could also be considered. The following issues warrant further discussion:

- From ISA's perspective, an inspection of offices may require the permission of the State in which the Contractor's offices are located and compliance with national law. The Draft Exploitation Regulations require the Contractor to permit access to its offices wherever situated. *Prima facie*, the legal basis for the sponsoring State or other State giving permission can be found in the current version of the Draft Exploitation Regulations, which provide that Members of ISA, in particular sponsoring States, shall, to the best of their abilities, cooperate with and assist the Secretary-General and any inspector in carrying out the audit and assist in the exchange of information relevant to a Contractor's obligations.
- Whether there should be an establishment of a mechanism for co-operation between ISA's staff of inspectors and other appropriate agencies appointed by the sponsoring State, to the extent that there is one:
  - Notification and exchange of information: This mechanism could enable the ISA Inspectorate and the sponsoring State to notify and exchange information on when inspections (either by ISA or the sponsoring State) are occurring.
  - Opportunity to attend inspections: While the sponsoring States can request to accompany ISA inspectors under UNCLOS and the current version of the Draft Exploitation Regulations,

<sup>347</sup> The inception of Port State Control is found in the early IMO Conventions which enables port States to verify the validity of certain certificates held by the vessel and to report any discrepancy to the flag State, a right that was ultimately reflected in UNCLOS, Article 94 (6). There are now a range of memorandums of understanding on port State control which calls for inspection of foreign merchant ships to ensure compliance with internationally accepted pollution, design, construction and crewing, health and safety standards. See Rayfuse, Rosemary. 2015. "The Role of Port States," in Robin Warner and Stuart Kaye (eds). Routledge Handbook of Maritime Regulation and Enforcement, 71, 75-80.

<sup>348</sup> Ibid, 80.

<sup>349</sup> Draft Exploitation Regulation 96 (2).

<sup>350</sup> See Draft Exploitation Regulation 3 (b).

the sponsoring State may also wish to give ISA inspectors the same opportunity to attend inspections by the sponsoring State if feasible.

- Sharing information on outcomes of inspections: Under the Exploration Regulations, Inspector's report is only shared where the action is necessary. Under the current version of the Draft Exploitation Regulations, ISA has an obligation to share the outcome of the inspections (either the inspector's instructions or reports). The sponsoring State may also wish to share the outcome, results or report of its own inspection with the ISA Secretary-General and keep the sponsoring State informed of any additional proceedings that the sponsoring State may take vis-à-vis the Contractor as a result of its inspection.
- Joint inspections: Both the sponsoring State and ISA may wish to consider the option of coordinating for joint inspections (which would *prima facie* appear to be different from an inspection in which the representative of the sponsoring State accompanies the ISA inspector during its inspection).
- Both the sponsoring State and ISA may wish to take into account the fact that inspections have been previously conducted (and any follow-up actions) when making a decision to conduct a subsequent inspection.

169. With regard to the role of other States, it may be beneficial for ISA and relevant stakeholders to study whether Member States' obligations to assist ISA in inspections can be implemented in further detail. For example, it may wish to consider developing an inspection mechanism based on the inspection mechanism adopted in the 1995 Fish Stocks Agreement<sup>351</sup> or Regional Fisheries Management Organizations and/or modeled on Port State Control arrangements adopted in the context of international shipping and fisheries. This could be potentially initiated by the Assembly, pursuant to its power to "initiate studies and make recommendations for the purpose of promoting international cooperation concerning activities in the Area."<sup>352</sup>

## 12. MECHANISMS ADDRESSING CONTRACTOR'S NON-COMPLIANCE

These are found in [Annex 1: Table K].

170. As observed by the International Tribunal for the Law of the Sea (ITLOS), in another context, it is necessary that there are adequate enforcement mechanisms to monitor and secure compliance with the relevant rules and sanctions to deter violations and to deprive offenders of the benefits accruing from their breaches.<sup>353</sup> This section deals with the mechanisms available to ISA and the sponsoring State to address non-compliance of the Contractor with ISA rules, regulations and procedures and the sponsoring States' national laws, regulations and administrative procedures.

### 12.1 ISA

171. UNCLOS, the Exploration Regulations and the current version of the Draft Exploitation Regulations give ISA several enforcement mechanisms to address the Contractor's non-compliance with its

<sup>351</sup> See 1995 United Nations Fish Stocks Agreement, Articles 21 and 22.

<sup>352</sup> UNCLOS, Article 160 (2) (j).

<sup>353</sup> SDC Advisory Opinion, note 13, para. 115 and the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, para 138.

rules, regulations and procedures, namely (1) written warnings,<sup>354</sup> (2) compliance notices,<sup>355</sup> (3) monetary penalties,<sup>356</sup> (4) suspension or termination of the contract<sup>357</sup> and (5) the initiation of dispute settlement proceedings against the Contractor pursuant to UNCLOS, Part XI, Section 5.<sup>358</sup>

172. ISA has no express obligations in UNCLOS, the Exploration Regulations and the current version of Draft Exploitation Regulations towards the sponsoring States when it takes any of the above measures, with the exception of proceedings initiated by ISA against the Contractor before the SDC under Article 187. Article 190(1) states that if a natural or juridical person is a party to a dispute referred to in Article 187, the sponsoring State shall be given notice and shall have the right to participate in the proceedings by submitting written or oral statements.

## 12.2 Sponsoring State

173. Sponsoring States also have a direct obligation to assist ISA in its function of securing compliance with relevant provisions of UNCLOS and ISA rules, regulations and procedures by “taking all measures necessary to ensure such compliance in accordance with Article 139 [of UNCLOS].”<sup>359</sup> According to the Comparative Study and part of its continuing obligation to adopt “a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators,”<sup>360</sup> some sponsoring States have incorporated a range of escalating enforcement measures in the event of non-compliance by the Contractor including (1) written notice or warnings, (2) the establishment of offenses which can incur either fines or possible imprisonment and (3) suspension or revocation of sponsorship.<sup>361</sup> Some sponsoring State legislation also provides for any disputes between the sponsoring State and the Contractor to be submitted to national courts, arbitration or in accordance with the dispute settlement options in UNCLOS.<sup>362</sup> Other sponsoring States also provide for recognition and enforcement of SDC decisions or arbitral awards pursuant to UNCLOS, Article 188(2)(a).<sup>363</sup>
174. Under the Exploration Regulations and the current version of the Draft Exploitation Regulations, the sponsoring State must inform the Secretary-General of ISA in writing of the termination of sponsorship and the reasons for such termination, who, in turn, must inform ISA Member States of the reason for termination.<sup>364</sup>

<sup>354</sup> UNCLOS, Annex III, Article 18 (1) (a), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.1.

<sup>355</sup> Draft Exploitation Regulations 103 (1) (2) and (3).

<sup>356</sup> UNCLOS, Annex III, Article 18 (2), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.6, 21.7. See Draft Exploitation Regulations 80 and 103 (6), Annex X (Standard Clauses), Section 12.6. The amount of penalties will be set out in a Council decision which is envisaged to be subject to review from time to time (Draft Exploitation Regulations, Appendix III).

<sup>357</sup> See UNCLOS, Annex III, Article 18 (1), PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21. See Draft Exploitation Regulation 103 (5), and Annex X (Standard Clauses), Section 12.

<sup>358</sup> UNCLOS, Articles 187 (c) (i), 187 (c) (ii) and 188 (2).

<sup>359</sup> UNCLOS, Article 153 (4), SDC Advisory Opinion, para. 124.

<sup>360</sup> International Court of Justice. 2010. Reports of judgments, advisory opinions and orders, Case concerning Pulp Mills on the river Uruguay (Argentina v. Uruguay). Judgment of 20 April 2010, cited in the SDC Advisory Opinion, note 10, para. 115 and the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015 (SRFC Advisory Opinion), para. 132.

<sup>361</sup> Comparative Study, note 58, 20-21.

<sup>362</sup> Comparative Study, note 58, 22-23. See Kiribati’s Seabed Minerals Act 2017, Section 130, Tonga’s Seabed Minerals Acts 2014, Section 122.

<sup>363</sup> Comparative Study, *ibid*, 22.

<sup>364</sup> PMN Regulation 29 (2), PMS/CFC Regulation 31 (2), Draft Exploitation Regulation 21 (2).

## 12.3 Analysis

175. In relation to enforcement measures, there is the possibility of “avoidable duplication of work” between ISA and the sponsoring State in that the Contractor may face the possibility of two different sets of enforcement measures being instituted against it, possibly for the same event. Practically speaking, however, there may be limited ways in which to reduce duplication. First, the enforcement measures that ISA, as an international organization, may take are limited as compared to the sponsoring State, which can create offenses and impose civil and criminal sanctions. Second, the sponsoring State can take enforcement measures for matters ISA may not have the authority to address. The sponsoring State, for example, can adopt more stringent environmental measures vis-à-vis the Contractor than ISA and would be able to take the necessary enforcement measures for that breach, even if it was not necessarily a breach of ISA Regulations and/or contract between ISA and Contractor. Third, while it may be beneficial for ISA and sponsoring State to notify or consult or coordinate with each other before taking the decision to initiate non-compliance and enforcement proceedings described above, it may not be feasible. Some of the penalties imposed by the sponsoring State may be the result of national administrative or judicial proceedings, which may preclude any sort of consultation or coordination between ISA and the sponsoring State. Bearing these points in mind, the following warrants further consideration:

- Where practicable, the sponsoring State and ISA may wish to notify the other when non-compliance and enforcement proceedings are being initiated.
- Where practicable, both ISA and the sponsoring State may wish to consider the imposition and extent of enforcement measures, particularly monetary penalties, the other party has imposed on the Contractor and take that into account when imposing its own compliance or enforcement measures.<sup>365</sup> This is subject to the caveat that this may be easier for ISA to do than the sponsoring State in that it might not be possible for the administrative or judicial authorities of the sponsoring State to take into consideration penalties that have been imposed by ISA.
- The issue of parallel judicial or arbitral proceedings against the Contractor arising out of the same facts by ISA pursuant to UNCLOS, Part XI, Section 5, and by the sponsoring State pursuant to its national legislation deserves further consideration, which goes beyond the scope of this analysis.<sup>366</sup> Both the sponsoring State and ISA may wish to develop mechanisms to ensure that pursuing the Contractor in various forums is time and cost-effective.

<sup>365</sup> Some sponsoring States’ national legislation state that if payment of security is required, the sponsoring State should take into account the type and quantum of any security that the Contractor is required to deposit with the ISA. Nauru’s International Seabed Minerals Act 2015, Section 45 (2).

<sup>366</sup> See Davenport, Tara. 2019. Responsibility and Liability for Damage Arising out of Activities in the Area: Potential Claimants and Possible For a. Liability Issues for Deep Seabed Mining Series, CIGI Paper No. 5, 20-24.

## 13. OBLIGATIONS AFTER NOTICE OF TERMINATION OF SPONSORSHIP AND TERMINATION OF CONTRACT

These are found in [Annex 1: Table L].

### 13.1 Termination of sponsorship by sponsoring State

176. The sponsoring State can terminate its sponsorship under the Exploration Regulations and the current version of the Draft Exploitation Regulations. Under the Exploration Regulations, termination of sponsorship takes effect six months after the date of receipt of the notification by the Secretary-General unless the notification specifies a later date.<sup>367</sup> If the Contractor fails to obtain new sponsorship within the six months period, then the contract with ISA is terminated.<sup>368</sup> Under the Draft Exploitation Regulations, termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General, except when the termination is due to a Contractor's non-compliance under its terms of sponsorship when termination shall take effect no later than six months after the date of notification.<sup>369</sup>

#### 13.1.1 Contractor

177. The Contractor has six months under the Exploration Regulations and six to twelve months under the current version of the Draft Exploitation Regulations to find a new sponsoring State.<sup>370</sup>

#### 13.1.2 ISA

178. The Council, based on recommendations by the LTC, shall take into account the reasons for the termination of sponsorship, and the contract shall only be automatically terminated if the Contractor does not obtain new sponsorship.<sup>371</sup> The Secretary-General of ISA is obliged to inform ISA Members of a termination or change of sponsorship.<sup>372</sup>

#### 13.1.3 Sponsoring State

179. A sponsoring State is not discharged by reason of termination of its sponsorship from any obligations accrued while it was a sponsoring State, and termination shall not affect any legal rights and obligations created during such sponsorship.<sup>373</sup> Some sponsoring States' national legislation provides that after the termination of sponsorship, the rights granted to the Contractor shall cease, but the Contractor's liability is ongoing, and a Contractor shall remain subject to ongoing obligations with respect to activities in the Area that occurred prior to termination and shall remain liable for any damage from its wrongful acts carried out prior to termination.<sup>374</sup>

<sup>367</sup> PMN Regulation 29 (2), PMS/CFC Regulation 31 (2).

<sup>368</sup> PMS/CFC Regulations 29 (3) and 31 (3). PMN/PMS/CFC, Annex IV (Standard Clauses), Section 20.

<sup>369</sup> Draft Exploitation Regulation 21 (2).

<sup>370</sup> Regulation 29 (3) Regulation 31 (3). See Draft Exploitation Regulation 21 (3).

<sup>371</sup> Draft Exploitation Regulation 21 (6).

<sup>372</sup> PMN Regulation 29 (5), PMS/CFC Regulation 31 (5). See Draft Exploitation Regulation 21 (5).

<sup>373</sup> PMN Regulation 29 (4), PMS/CFC Regulation 31 (4). See Draft Exploitation Regulation 21 (4).

<sup>374</sup> See Nauru's International Seabed Minerals Act No. 2015, Sections 35, 36, Tonga's Seabed Minerals Act 2014, Sections 86, 90.



180. If a sponsoring State terminates its sponsorship, it is required by the Exploration Regulations and Draft Exploitation Regulations to notify the Secretary-General of ISA and inform the Secretary-General of the reasons for its termination.<sup>375</sup>

## 13.2 Termination of contract

### 13.2.1 Contractor

181. Post notice of contract termination by ISA, the Contractor has certain obligations. Under the Exploration Regulations, in the event the Council suspends or terminates the contract, the suspension or termination shall be effective for 60 days after such notice, and within those 60 days, the Contractor can dispute ISA's right to suspend or terminate the Contract.<sup>376</sup> If the Council has only suspended the contract, the Council can require the Contractor to resume operations and comply with the terms and conditions of the contract, no later than 60 days after such notice.<sup>377</sup> The obligation of the Contractor after termination is to comply with the Regulations and remove all installations, plant, equipment and materials in the exploration area. The Contractor shall make the area safe so as not to constitute a danger to persons, shipping or the marine environment.<sup>378</sup>
182. Under the current version of the Draft Exploitation Regulations, in the event the Council suspends or terminates the contract, the suspension or termination shall be effective for 60 days after such notice, and within those 60 days, the Contractor can dispute ISA's right to suspend or terminate the Contract.<sup>379</sup> If the Council has only suspended the contract, the Council can require the Contractor to resume operations and comply with the terms and conditions of the contract, no later than 60 days after such notice.<sup>380</sup> The Draft Exploitation Regulations describe in greater detail the obligations of the Contractor on termination. They state that termination is without prejudice to rights and obligations in the contract that survives termination or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan and all provisions of the contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.<sup>381</sup> They further state the specific obligations that a Contractor has, including complying with the Closure Plan, environmental management obligations, insurance obligations, payment of fees and royalties, liability obligations, as well as the removal of all installations, plant, equipment and materials in the contract area.<sup>382</sup> In the event the Contractor fails to undertake these obligations *within a reasonable period*, ISA may take necessary steps to affect such removal and make the area safe at the expense of the Contractor, including using the environmental performance guarantee.<sup>383</sup>

### 13.2.2 Sponsoring State

183. The sponsoring State has no express obligations after notice has been given by ISA of the termination of the contract under UNCLOS, the Exploration Regulations and the current version of the Draft

<sup>375</sup> PMN Regulation 29 (2), PMS/CFC Regulation 31 (2). See Draft Exploitation Regulation 21 (2).

<sup>376</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.3.

<sup>377</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.4.

<sup>378</sup> PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.8.

<sup>379</sup> Draft Exploitation Regulations, Annex X (Standard Clauses), Section 12.3.

<sup>380</sup> Draft Exploitation Regulations, Annex X (Standard Clauses), Section 12.5.

<sup>381</sup> Draft Exploitation Regulations, Annex X (Standard Clauses), Section 12.8.

<sup>382</sup> Draft Exploitation Regulations, Annex X (Standard Clauses), Section 13.1.

<sup>383</sup> Draft Exploitation Regulations, Annex X (Standard Clauses), Section 13.2.

Exploitation Regulations. Several sponsoring States make the termination of ISA contracts a ground for termination of sponsorship in their national legislation.<sup>384</sup> As termination of the contract only takes effect after 60 days, the Contractor still has certain obligations during that period described above. If, during the 60 days notice period, the contract has not been terminated, the sponsoring State would still have obligations (although not expressly stated) to ensure the Contractor's compliance with its accrued and continuing obligations under the contract. In any event, even if the Contractor does not comply with its obligations within a reasonable period, the Draft Exploitation Regulations place the responsibility on ISA to take the necessary action and use the environmental performance guarantee if necessary.

### 13.3 Analysis

184. The rights and obligations of ISA and the sponsoring State after notice of termination of sponsorship and ISA contract are clearly demarcated.

## 14. CONCLUSIONS

185. This discussion paper, along with the matrix in Annex 1, aims to be a starting point for discussions between ISA and the sponsoring State on the division of rights and obligations between two critical actors in the administration of activities in the Area and the first step towards a formulation of an official matrix of rights and obligations between ISA and sponsoring State.
186. The paper identified several obligations under the existing legal framework governing activities in the Area that ISA and the sponsoring State have towards each other, including, inter alia, the sponsoring State's obligation to assist ISA in its task of controlling activities in the Area, the obligation between ISA and the sponsoring State to cooperate towards the avoidance of unnecessary administrative procedures and compliance requirements, the obligation of ISA to consult and cooperate with sponsoring States in the development of measures to promote the health and safety of life at sea and the protection of the marine environment, as well as the obligation between the sponsoring State, Contractor and ISA to co-operate in the establishment and implementation of environmental monitoring programmes.
187. The discussion paper suggested possible ways to operationalize these obligations of cooperation:
- **Forum for discussion:** Establishing a forum for discussion and consultation between ISA and the sponsoring State (similar to what presently exists for the Contractors).
  - **Notification procedures:** Establishing consistent and streamlined mechanisms for notification between the Contractors, sponsoring State and ISA. For example, any notification made by the Contractor could be made to both the sponsoring State and ISA at the same time, and any notification by ISA to the Contractor could also be made to the sponsoring State.
  - **Exchange of data and information:** There are presently two streams of information and data provided by the Contractor: one to ISA (either as part of ISA application procedures

<sup>384</sup> See, for example, Section 35, Nauru's International Seabed Minerals Act 2015.

or as part of the ongoing monitoring obligations) and one to the sponsoring State (also as part of the sponsoring State application procedures and ongoing monitoring obligations). ISA is subject to certain confidentiality requirements under UNCLOS and related instruments and may face certain challenges in sharing data and information provided by the Contractor unless they are deemed non-confidential information and nonproprietary. In light of this, both the sponsoring State and ISA may wish to consider the following:

- Sponsoring States may wish to consider harmonizing their national requirements for certain data and information from the Contractors with ISA's requirements for data and information from the Contractors so as to avoid unnecessary duplication.
- If the sponsoring State requires data and information that goes beyond what is required by ISA (which is allowed, for example, in relation to the protection of the marine environment), the sponsoring State may wish to ensure that it has provisions in its national legislation which allows for the disclosure and sharing of such data and information provided by the Contractor to ISA.
- Both the sponsoring State and ISA may wish to consider establishing mechanisms to facilitate the exchange of information and sharing of data, which can include using the DeepData database established by ISA.

188. The discussion paper also attempted to identify where there was the *possibility* of avoidable duplication vis-à-vis the regulation of the Contractor, subject to the caveat that the discussion paper did not undertake an in-depth examination of each sponsoring State's laws, regulations and administrative measures to determine whether there was actual duplication. It identified the following areas in which the Contractor may have to fulfill two sets of processes under ISA rules, regulations and procedures and the sponsoring State's laws, regulations and administrative procedures:

- EIAs
- procedures relating to the Contractors' discovery of human remains and objects and sites of an archaeological and historical nature
- procedures relating to the notification and response to incidents and notifiable events
- procedures relating to the monitoring of the Contractor's fulfillment of its obligations through annual reports, Contractor's obligation to review its activities and environmental monitoring obligations
- inspections of offices, vessels and installations
- procedures addressing the non-compliance of the Contractor, including the issuance of written warnings and compliance notices, the imposition of monetary penalties and the initiation of legal proceedings against the Contractor.

189. The discussion paper made several suggestions on how potential duplication could be minimized, which would depend on the subject matter of the potentially duplicative regulations. These suggestions included the following:

- The sponsoring State may wish to consider harmonizing its laws, regulations and administrative measures with ISA rules, regulations and procedures and/or utilizing them as a minimum benchmark.

- As mentioned above, such harmonization could include ensuring that any data or information required by the sponsoring State is the same as what ISA requires under its rules, regulations and procedures. If the sponsoring State requires data and information that goes beyond what is required by ISA (which is allowed, for example, in relation to the protection of the marine environment), the sponsoring State may wish to ensure that it has provisions in its national legislation which allows for the disclosure and sharing of such data and information provided by the Contractor to ISA.
- If the sponsoring State requires the payment of security, it may wish to take into account the type and quantum of any security that the Contractor is also required to deposit with ISA.
- ISA and sponsoring State may wish to notify the other prior to initiating any compliance or enforcement measures are to be imposed against the Contractor for non-compliance.
- Where practicable, both ISA and the sponsoring State may wish to consider the imposition and extent of enforcement measures, particularly monetary penalties, the other party has imposed on the Contractor and take that into account when imposing its own compliance or enforcement measures. This is subject to the caveat that this may be easier for ISA to do than the sponsoring State in that it might not be possible for the administrative or judicial authorities of the sponsoring State to take into consideration penalties that have been imposed by ISA.

190. The discussion paper noted that in certain cases, there may not be “avoidable duplication” resulting from the imposition of certain processes and procedures respectively imposed by ISA and the sponsoring State. For example, UNCLOS permits the sponsoring State to adopt more stringent measures vis-à-vis the Contractor on the protection of the marine environment than what has been adopted by ISA. If there are different environmental measures imposed by ISA and sponsoring State which address the same issue, there is no duplication *per se*. Further, the duplication may be unavoidable in that it is not possible to solely identify a certain right or obligation to ISA or sponsoring State exclusively, and both will exercise these concurrently. Moreover, it should also be borne in mind that ISA, as an international organization, may be more limited in the measures it can take compared to the sponsoring State, particularly with regard to the creation of offenses and imposition of civil and criminal sanctions.

## APPENDIX: PARTICIPANTS AT THE 2019 WORKSHOP ON THE ROLE OF THE SPONSORING STATE

[Designations accurate as of 2019]

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ANNEX - MATRIX OF RIGHTS AND OBLIGATIONS OF THE INTERNATIONAL SEABED AUTHORITY AND THE SPONSORING STATE

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1. This Matrix is organized into (a) Contractor's obligations; (b) ISA's rights and obligations and (c) sponsoring State's rights and obligations.
2. The source of these rights are:
  - The UN Convention on the Law of the Sea (UNCLOS) and the 1994 Agreement relating to the Implementation of UNCLOS;
  - the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ; Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area, ; Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area, ;
  - Draft Regulations on Exploitation of Mineral Resources in the Area, prepared by the Legal and Technical Commission.
3. The following abbreviations are used:

1982 UN Convention on the Law of the Sea	<b>UNCLOS</b>
1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982	<b>1994 Agreement</b>
Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area	<b>PMN</b>
Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area	<b>PMS</b>
Regulations on Prospecting for Cobalt-rich Ferromanganese Crusts in the Area	<b>CFC</b>
Draft Regulations on Exploitation of Mineral Resources in the Area	<b>DR</b>
International Seabed Authority	<b>ISA</b>
Sponsoring State	<b>SS</b>
ISA Secretary-General	<b>SG</b>
Legal and Technical Commission	<b>LTC</b>
Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports	<b>AO</b>

TABLE A: OBLIGATIONS OF CO-OPERATION

TABLE A: OBLIGATIONS OF CO-OPERATION			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
		SS shall assist the ISA in its task of controlling activities in the Area for the purpose of ensuring compliance with the relevant provisions of Part XI and related instruments [UNCLOS, Art 153 (4), AO, para. 124]	
SS, Contractor, member States of ISA, other interested States and entities shall co-operate with the ISA in the establishment and implementation of monitoring and evaluating the impacts of activities in the Area [PMN, Reg 31 (6); PMS, Reg 33 (6) CFC, Reg 33 (6)]	SS, Contractor, member States of ISA, other interested States and entities shall co-operate with the ISA in the establishment and implementation of monitoring and evaluating the impacts of activities in the Area [PMN, Reg 31 (6); PMS, Reg 33 (6) CFC, Reg 33 (6)];	SS, Contractor, member States of ISA, other interested States and entities shall co-operate with the ISA in the establishment and implementation of monitoring and evaluating the impacts of activities in the Area [PMN, Reg 31 (6); PMS, Reg 33 (6) CFC, Reg 33 (6)]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106]
	ISA required to consult and co-operate with SS, flag States, competent international organizations and other relevant bodies as appropriate to develop measures to promote the health and safety of life at sea; and exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards [DR, Reg 3 (d)]	ISA required to consult and co-operate with SS, flag States, competent international organizations and other relevant bodies as appropriate to develop measures to promote the health and safety of life at sea; and exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards [DR, Reg 3 (d)]	
	ISA required to cooperate with SS and flag State towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements [DR Reg 3 (b)]	SS required to cooperate with ISA and flag State towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements [DR, Reg 3 (b)]	
SS, Contractor, member States of ISA, other interested States and entities shall co-operate with the ISA in the establishment and implementation of monitoring and evaluating the impacts of activities in the Area [DR Reg 3 (e)]	SS, Contractor, member States of ISA, other interested States and entities shall co-operate with the ISA in the establishment and implementation of monitoring and evaluating the impacts of activities in the Area [DR Reg 3 (e)]	SS, Contractor, member States of ISA, other interested States and entities shall co-operate with the ISA in the establishment and implementation of monitoring and evaluating the impacts of activities in the Area [DR Reg 3 (e)]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106; DR Reg 105]

TABLE A: OBLIGATIONS OF CO-OPERATION

TABLE A: OBLIGATIONS OF CO-OPERATION			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
SS, Contractor, member States of ISA, other interested States and entities shall share the findings and results of such monitoring programmes with the ISA and extend such co-operation to the implementation and further development of Best Environmental Practices [DR, Reg 3 (e)]	SS, Contractor, member States of ISA shall share the findings and results of such monitoring programmes with the ISA and extend such co-operation to the implementation and further development of Best Environmental Practices [DR, Reg 3 (e)]	SS, Contractor, member States of ISA, other interested States and entities shall share the findings and results of such monitoring programmes with the ISA and extend such co-operation to the implementation and further development of Best Environmental Practices [DR, Reg 3 (e)]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106; DR Reg 105]
Contractors, Member States of ISA (including SS) obliged to use their best endeavours, in conjunction with the ISA to cooperate with each other as well as with other contractors and national and international scientific research and technology development agencies on a range of issues [DR, Reg 3 (f)]	Contractors, Member States of ISA (including SS) obliged to use their best endeavours, in conjunction with the ISA to cooperate with each other as well as with other contractors and national and international scientific research and technology development agencies on a range of issues [DR, Reg 3 (f)]	Contractors, Member States of ISA (including SS) obliged to use their best endeavours, in conjunction with the ISA to cooperate with each other as well as with other contractors and national and international scientific research and technology development agencies on a range of issues [DR, Reg 3 (f)]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106; DR Reg 105]

TABLE B: SPONSORSHIP

TABLE B: SPONSORSHIP			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
Contractor Obligation to obtain sponsorship of UNCLOS [UNCLOS, Art 153 (2) (b); Annex III, Article 4 (3)]		Each applicant shall be sponsored by the State Party of which it is a national unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application [UNCLOS, Annex III, Art. 4 (3); AO, para. 74]	
Requirement that applications by State enterprises, natural or juridical persons contain sufficient information to determine the nationality of applicant or by whose nationals the applicant is effectively controlled as well as place of business [PMN, Reg 10 (3); PMS, Reg 10 (3); CFC, Reg 10 (3)]	Obligation of ISA to establish criteria and procedures for implementation of sponsorship requirements in rules, regulations & procedures [UNCLOS, Annex III, Art. 4 (1), (3); PMN, Annex II paras. 13-16; PMS, Annex II paras. 13-16; CFC, Annex II paras. 13-16]		
	LTC to determine whether applicant has fulfilled requirements [PMN, Reg 23 (1) (a); PMS, Reg 23 (3)(a); CFC, Reg 23 (3(a))]		
Requirement that applications by State enterprises, natural or juridical persons contain sufficient information to determine the nationality of applicant or by whose nationals the applicant is effectively controlled as well as place of business and the place of registration, if applicable [DR Reg 5 (3)]	LTC to determine whether applicant has fulfilled requirements [DR Reg 13 (1)]	SS obligation to issue a Certificate of Sponsorship with requisite information set out in Regulations [DR Reg 6; AO, paras. 74 and 78]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106; DR Reg 105]

TABLE C: FINANCIAL AND TECHNICAL CAPABILITIES

TABLE C: FINANCIAL AND TECHNICAL CAPABILITIES			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
Applicants to Comply with ISA Rules, Regulations and Procedures on Financial and [PMN, Reg 12; PMS, Reg 13; CFC, Reg 13]	LTC to determine if applicant possesses the necessary financial and technical capabilities [PMN Reg 21 (3) (c); PMS, Reg 23 (3) (c); CFC, Reg 23] (3) (c)]	SS Obligation to provide a statement that a State enterprise has necessary financial resources to meet the estimated costs of the proposed plan of work [PMN, 12(3); PMS/CFC Reg 13 (3)]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106]  SS may find it necessary, depending upon its legal system, to include in its domestic law provisions which may concern financial viability and technical capacity of sponsored contractors [AO, para. 234]
Applicants to Comply with ISA Rules, Regulations and Procedures on Financial and Technical Capabilities [DR, Annex I, Section III (Technical Information) and Section IV (Financial Information)]	LTC to determine if prospective Contractor possesses the necessary financial and technical capabilities [DR Reg 13 (2) and (3)]	SS Obligation to provide a statement certifying that a State enterprise has necessary financial resources to meet the estimated costs of the proposed plan of work [DR Annex I, Section IV, Section 21 (b)]	SS obligation to ensure compliance by the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106; DR Reg 105]

TABLE D: OBLIGATION TO PROTECT THE MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

General Obligation to Protect the Marine Environment			
Contractor	ISA	Sponsoring State	
		Direct Obligation	Obligation to Ensure Compliance
Contractor's General Obligation to Protect and Preserve the Marine Environment [PMN, Reg 31 (5); PMS, Reg 33 (5); CFC, Reg 33 (5); PMN/PMS/CFC, Annex IV, Section 5.1; DR, Reg 44 and Part IV generally]	ISA shall adopt rules, regulations and procedures to prevent, reduce and control pollution of the marine environment from activities in the Area and keep under periodic review [UNCLOS, Art. 145; Art 209 (1); PMN, Reg 33 (1); PMS, Reg 33 (1); CFC Reg 33 (1); DR, Reg 44 (1)]	General obligation on SS to protect and preserve marine environment [UNCLOS, Art. 192]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR, Regulation 105; SDC AO, para. 103 - 106]
	<p>ISA shall adopt rules, regulations and procedures relating to:</p> <ul style="list-style-type: none"> <li>- Prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects such as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities [UNCLOS, Art 145 (a)]</li> <li>- the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment [UNCLOS, Art. 145 (b)]</li> <li>- mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment [UNCLOS, Annex III, Art. 17 (1) (b) (xii)]</li> <li>- harmful effects directly resulting from activities in the Area or from shipboard processing immediately above a mine</li> </ul>	<p>SS Obligation to take measures to prevent, reduce and control pollution from any source including from pollution from installations, vessels flying its flag and other devices operating in the marine environment:</p> <ul style="list-style-type: none"> <li>- Adopt measures relating to minimizing to the fullest possible extent inter alia pollution from installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices [UNCLOS, Art. 194 (3) (d)]</li> <li>- Measures relating to prevention, reduction and control of pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1 [UNCLOS, Art. 209 (2); DR, Reg 44]</li> </ul>	



TABLE D: OBLIGATION TO PROTECT THE MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

General Obligation to Protect the Marine Environment			
Contractor	ISA	Sponsoring State	
		Direct Obligation	Obligation to Ensure Compliance
	site of minerals derived from that mine site, taking into account the extent to which such harmful effects may directly result from drilling, dredging, coring and excavation and from disposal, dumping and discharge into the marine environment of sediment, wastes or other effluents [UNCLOS, Annex III, Art. 17 (2) (f)]	- Measures can be more stringent than ISA rules, regulations and procedures of the ISA [UNCLOS, Annex III, Art. 21 (3)]	
	The Council shall disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment [UNCLOS, Art. 162 (2) (x)]		
	The LTC shall (a) make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field; and (b) make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment [UNCLOS, Arts 165 (2) (e) and (l); PMN, Reg 31 (4); PMS, Reg 33 (4); CFC, Reg 33 (4)]		
	The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to:  (i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and	The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to:  (i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and	

TABLE D: OBLIGATION TO PROTECT THE MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

General Obligation to Protect the Marine Environment			
Contractor	ISA	Sponsoring State	
		Direct Obligation	Obligation to Ensure Compliance
	(ii) Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards [DR, Reg 3 (d)]	(ii) Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards [DR, Reg 3 (d)]	

TABLE D: OBLIGATION TO PROTECT MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

Precautionary Approach and Best Environmental Practices			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Contractor's Obligation to Apply Precautionary Approach, best available techniques and best environmental practices [PMN, Reg 31 (5); PMS, Reg 33 (5); CFC, Reg 33 (5); PMN/PMS/CFC, Annex IV (Standard Terms), Section 5.1; DR, Regulation 44 (a)]	ISA obligation to apply precautionary approach as reflected in principle 15 of Rio Declaration, best available techniques and best environmental practices [PMN, Reg 31 (2); PMS, Reg 33 (2); CFC, Reg 33 (2); DR, Reg 44 (a) – (c)]	<p>SS Obligation to apply precautionary approach as reflected in principle 15 of Rio Declaration, best available techniques and best environmental practices [PMN, Reg 31 (2); PMS, Reg 33 (2); CFC, Reg 33 (2); DR, Reg 44 (a) – (c)]</p> <p>Application of precautionary approach is both a direct obligation and an integral part of SS obligation of due diligence which is applicable outside the regulations. [AO, paras. 125 – 135]</p> <p>SS obligation to apply best environmental practices is a direct obligation [AO, paras 136 – 137]</p>	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR, Reg 105; AO, para. 103 - 106]

TABLE D: OBLIGATION TO PROTECT MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

Environmental Impact Assessment (Pre-Contract)			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
<p>Application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of proposed activities in accordance with rules, regulations and procedures of the ISA [1994 Implementation Agreement, Annex, Section 1 (7)]</p>	<p>LTC shall prepare assessments of the environmental implications of activities in the Area [UNCLOS, Art. 165 (2) (d)]</p> <p>LTC shall formulate and submit to Council rules, regulations and procedures on prospecting, exploration and exploitation which shall take into account all relevant factors including assessments of the environmental implications of activities in the Area [UNCLOS, Art. 165 (2) (f)]</p>	<p>Obligation of SS to, as far as practicable, assess the potential effects of planned activities under its jurisdiction and control that may cause substantial pollution of or significant and harmful changes to the marine environment and communicate the results of such assessments [UNCLOS, Art. 206; AO paras. 124 and 145 – 146]</p>	<p>SS has a due diligence obligation to ensure compliance by the prospective Contractor with its obligation to provide an assessment of the potential environmental impacts of the proposed activities under a plan of work [AO, para. 141; DR Reg 105]</p>
<p>Applicant to submit a preliminary assessment of possible impact of proposed exploration activities on the marine environment [PMN, Reg 18 (1) (c); PMS, Reg 20 (1) (c); CFC, Reg 20 (1) (c)]</p>	<p>LTC to determine whether plan of work provides for effective protection and preservation of marine environment [PMN, Reg 21 (4); PMS, Reg 23 (4) (b); CFC, Reg 23 (4) (b)]</p>		
<p>Applicant is required to submit an Environmental Impact Statement, Environmental Management and Monitoring Plan and a Closure Plan [DR, Reg 7 (3) (d) (h) and (i), Reg 47, Reg 48, Reg 59]</p>	<p>Secretary-General Obligation to Place Environmental Plans on Website for Stakeholder Review &amp; Compile Comments for Prospective Contractor [DR, Reg 11 (1) and (2)]</p> <p>LTC Obligation to Examine and Report on Environmental Plans and Make Recommendations to Council: Environmental Plans to be commented upon by ISA Members, Stakeholders, LTC and Secretary-General and then by prospective Contractor. LTC to provide report on Environmental</p>		<p>SS has a due diligence obligation to ensure compliance by the Contractor with its obligation to provide an assessment of the potential environmental impacts of the proposed activities under a plan of work [AO, para. 141]</p>

TABLE D: OBLIGATION TO PROTECT MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

Environmental Impact Assessment (Pre-Contract)			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	Plans and make recommendations to Council [DR, Reg 11 (5); Reg 13 (4) (e)]		
Environmental Impact Assessment (Post-Contract but Prior to Exploration)			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Contractor's obligation to submit an EIA to ISA prior to the commencement of exploration activities [PMN/PMS/CFC, Annex IV (Standard Clauses) Section 5.1]	LTC shall prepare assessments of the environmental implications of activities in the Area [UNCLOS, Art. 165 (2) (d)]  LTC shall formulate and submit to Council rules, regulations and procedures on prospecting, exploration and exploitation which shall take into account all relevant factors including assessments of the environmental implications of activities in the Area [UNCLOS, Art. 165 (2) (f)]	Obligation of SS to, as far as practicable, assess the potential effects of planned activities under its jurisdiction and control that may cause substantial pollution of or significant and harmful changes to the marine environment and communicate the results of such assessments [UNCLOS, Art. 206; AO paras. 124 and 145 – 146]	SS has a due diligence obligation to ensure compliance by the Contractor with its obligation to provide an assessment of the potential environmental impacts of the proposed activities under a plan of work [AO, para. 141]

TABLE D: OBLIGATION TO PROTECT MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

Monitoring of Environmental Effects of Activities in the Area			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
	LTC Obligation to Recommend to the Council an Environmental Monitoring Programme: [UNCLOS, Art. 165 (2) (h)]	SS obligation to, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment [UNCLOS, Art. 204]	
Contractor's Obligation to gather environmental data, establish environmental baselines and establish a monitoring programme under Exploration	LTC empowered to issue recommendations to the Council on development of monitoring programmes [PMN Reg 32 (1) and 39; PMS Reg 34 (1) and 41; CFC Reg 34 (1) and 41]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]

TABLE D: OBLIGATION TO PROTECT MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

Monitoring of Environmental Effects of Activities in the Area			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
Contract [PMN Reg 32 (1); PMS Reg 34 (1); CFC Reg 34 (1)]			
Contractor's Obligation to report on implementation and results of monitoring programme under Exploration Contract to SG [PMN Reg 32 (2); PMS Ref 34 (2); CFC Reg 34 (2); PMN/PMS/CFC, Annex IV Section 5.4, 5.5, 10.2]	SG to receive annual report from Contractor and to transmit to LTC for consideration [PMN Reg 32 (2); PMS Reg 34 (2); CFC, Reg 34 (2)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
Contractor's Obligation to Co-operate with ISA & sponsoring State on establishment in establishment and implementation of monitoring obligations [PMN, Regs 31 (6), 32 (1); PMS, Regs 33 (6) and 34 (1), CFC Regs 33 (6) and 34 (1)]		SS Obligation to Co-operate with ISA & Contractor on establishment in establishment and implementation of monitoring obligations [PMN, Regs 31 (6), 32 (1); PMS, Regs 33 (6) and 34 (1), CFC Regs 33 (6) and 34 (1)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]
Applicant's Obligation to Prepare Environmental Management and Monitoring Plan as part of application for Exploitation Contract [DR Regs 7 (h) and 48]	LTC to review Contractor's Environmental Management and Monitoring Plan [DR, Regs 13 (4) (e) and 48]		SS Obligation to Ensure Compliance of the Sponsored Entity by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]
Contractor's Obligations on Environmental Management and Monitoring Plan including reporting annually on the Environmental Effects of its exploitation activities on the marine environment and carrying out performance assessments [DR Regs 51 and 52]	LTC to review Annual Report and Performance Assessments on Environmental Management and Monitoring Plan and report to Council [DR Regs 52 (4) and (9)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]
Contractor's Obligation to Co-operate with ISA and sponsoring State in establishment and implementation of monitoring obligations and share the findings and extend co-operation and collaboration with			SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR, Reg 105; AO, para. 103 - 106]

TABLE D: OBLIGATION TO PROTECT MARINE ENVIRONMENT FROM HARMFUL EFFECTS OF ACTIVITIES IN THE AREA

Monitoring of Environmental Effects of Activities in the Area			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
ISA to further develop Best Environmental Practices [DR Reg 3 (e)]			

TABLE E: COASTAL STATE RIGHTS AND LEGITIMATE INTERESTS

Resource Deposits in the Area which Lies Across the Limits of National Jurisdiction			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
Activities in the Area, with respect to resource deposits in the Area, which lie across limits of national jurisdiction shall be conducted with due regard to the rights and legitimate interests of any coastal State whose jurisdiction such deposits lie [UNCLOS, Art. 142 (1) and (2)]	Activities in the Area, with respect to resource deposits in the Area, which lie across limits of national jurisdiction shall be conducted with due regard to the rights and legitimate interests of any coastal State whose jurisdiction such deposits lie [UNCLOS, Art. 142 (1) and (2)]	Activities in the Area, with respect to resource deposits in the Area, which lie across limits of national jurisdiction shall be conducted with due regard to the rights and legitimate interests of any coastal State whose jurisdiction such deposits lie [UNCLOS, Art. 142 (1) and (2)]	
Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [PMN Reg 34 (1); PMS Reg 36 (1); CFC Reg 36 (1)]	Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [PMN Reg 34 (1); PMS Reg 36 (1); CFC Reg 36 (1)]	Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [PMN Reg 34 (1); PMS Reg 36 (1); CFC Reg 36 (1)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [DR Reg 4 (1)]	Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [DR Reg 4 (1)]	Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [DR Reg 4 (1)]	Regulations shall not affect the rights of coastal States in accordance with article 142 and other relevant provisions of UNCLOS [DR Reg 4 (1)]

TABLE E: COASTAL STATE RIGHTS AND LEGITIMATE INTERESTS

Protection of the Marine Environment of the Coastal State			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area [UNCLOS, Art. 142 (3)]	Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area [UNCLOS, Art. 142 (3)]	Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area [UNCLOS, Art. 142 (3)]	
Contractor to take all measures necessary to ensure that activities are conducted so as not to cause serious harm to the marine environment under the jurisdiction or sovereignty of coastal States and that such serious harm or pollution arising from incidents or activities does not spread into areas under coastal State jurisdiction or sovereignty [PMN Reg 34 (4); PMS Reg 36 (4); CFC Reg 36 (4)]			SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR, Reg 105; AO, para. 103 - 106]
Contractor Right to submit own observations to SG within a reasonable time [PMN Reg 34 (2); PMS Reg 36 (2); CFC Reg 36 (2)]	SG obligation to inform SS and Contractor of coastal State notification of harm to environment and give SS and Contractor reasonable opportunity to examine evidence [PMN Reg 34 (2); PMS Reg 36 (2); CFC Reg 36 (2)]	SS right to submit observations to SG within a reasonable time [PMN Reg 34 (2); PMS Reg 36 (2); CFC Reg 36 (2)]	

TABLE E: COASTAL STATE RIGHTS AND LEGITIMATE INTERESTS

Protection of the Marine Environment of the Coastal State			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	SG right to take immediate measures of a temporary nature under Exploration Regulations [PMN Reg 34 (3); PMS Reg 36 (3); CFC Reg 36 (3)]		
Contractor to take all measures necessary to ensure that activities are conducted so as not to cause serious harm to the marine environment under the jurisdiction or sovereignty of coastal States and that such serious harm or pollution arising from incidents or activities does not spread into areas under coastal State jurisdiction or sovereignty [DR Reg 4 (2)]	SG obligation to inform LTC, SS and Contractor of coastal State notification of serious harm or threat of serious harm to environment and give SS and Contractor reasonable opportunity to examine evidence [DR Reg 4 (3)]	SS right to submit observations to SG within a reasonable time [DR Reg 4 (3)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR, Reg 105; AO, para. 103 - 106]
Contractor Right to submit own observations to SG within a reasonable time [DR Reg 4 (3)]	LTC to determine whether serious harm to the marine environment is likely to occur and shall recommend that Council issue an emergency order [DR Reg 4 (4)]		
	LTC to determine that serious harm or threat of serious harm to the marine environment is attributable to Contractor's breach of Exploitation Contract [DR Reg 4 (5)]		
	SG to issue a compliance notice or direct an inspection if LTC determines that serious harm or threat of serious harm to the marine environment is attributable to Contractor's breach of Exploitation Contract [DR Reg 4 (5)]		



TABLE F: HUMAN REMAINS AND OBJECTS AND SITES OF AN ARCHAEOLOGICAL AND HISTORICAL NATURE

TABLE F: HUMAN REMAINS AND OBJECTS AND SITES OF AN ARCHAEOLOGICAL AND HISTORICAL NATURE			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin [UNCLOS, Art 149]	All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin [UNCLOS, Art 149]	All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin [UNCLOS, Art 149]	
Contractor's obligation to immediately notify the SG of human remains and objects of an historical or archaeological nature in Exploration Area [PMN Reg 35; PMS Reg 37; CFC Reg 37]	SG Obligation to transmit information to Director-General of UNESCO and other competent international organizations [PMN Reg 35; PMS Reg 37; CFC Reg 37]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
Contractor Obligation not to explore within reasonable radius until Council decides otherwise [PMN Reg 35; PMS Reg 37; CFC Reg 37]	Council to take a decision after taking into account the views of the Director-General of UNESCO or any other competent international organization [PMN Reg 35; PMS Reg 37; CFC Reg 37]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
Contractor's obligation to immediately notify the SG of human remains and objects and sites of an historical or archaeological nature in Exploitation Area [DR Reg 35]	SG Obligation to transmit information to SS, origin State, Director-General of UNESCO and other competent international organizations [DR Reg 35]	SS right to receive information on findings of human remains and objects and sites of an historical or archaeological nature in Exploitation Area from SG [DR Reg 35]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106; DR Reg 105]
	Council to take a decision after taking into account the views of origin State the Director-General of UNESCO or any other competent international organization [DR Reg 35]		

TABLE G: ACCOMMODATION OF ACTIVITIES IN THE AREA

Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment. [UNCLOS, Article 147 (1)]	Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment. [UNCLOS, Article 147 (1)]	Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment. [UNCLOS, Article 147 (1)]	

TABLE G: ACCOMMODATION OF ACTIVITIES IN THE AREA

Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Regulations shall not affect freedom of scientific research or restrict freedom of the high seas [PMN/PMS/CFC Reg 1 (4)]	Regulations shall not affect freedom of scientific research or restrict freedom of the high seas [PMN/PMS/CFC Reg 1 (4)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO para. 103 - 106]
Contractor's obligations under Exploration Contract to conduct activities in the Area with reasonable regard for other activities in the marine environment [PMN/PMS/CFC Annex IV, Standard Terms, Section 13.3 (c)]			SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO para. 103 - 106]
Contractor's obligations under Exploitation Contract to conduct activities in the Area with reasonable regard for other activities in the marine environment [DR Reg 31 (1)]	LTC obligation under DR to determine if the proposed Plan of Work provides for Exploitation activities to be carried out with reasonable regard 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 [DR Reg 13 (4) (d)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO para. 103 - 106; DR Reg 105]
Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	Other Activities in the marine environment shall be conducted with reasonable regard for activities in the Area [UNCLOS Art 147 (3)]	Other Activities in the marine environment shall be conducted with reasonable regard for activities in the Area [UNCLOS Art 147 (3)]	
	ISA, in conjunction with member States, shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area [DR Reg 31 (2)]		

TABLE H: INCIDENTS &amp; NOTIFIABLE EVENTS

Incidents [Definition of Incidents in PMN Reg 33 (1); PMS Reg 35 (1); CFC Reg 35 (1); DR (Schedule )]			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Contractor obligation to provide Council with a guarantee of its financial and technical capability to comply promptly with emergency orders or assure the Council that it can take such emergency measures [PMN Reg 33 (8); PMS Reg 35 (8); CFC Reg 35 (8)]		If the contractor does not provide the Council with such a guarantee, the sponsoring State or States shall, in response to a request by the Secretary-General and pursuant to articles 139 and 235 of the Convention, take necessary measures to ensure that the contractor provides such a guarantee or shall take measures to ensure that assistance is provided to the Authority in the discharge of its responsibilities under paragraph 7 [PMN Reg 33 (8); PMS Reg 35 (8); CFC Reg 35 (8)]; AO para. 138]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO para. 103 - 106]
Contractor Obligation to promptly report to SG any incident arising from activities which have caused, are causing or pose a threat of serious harm to the marine environment under Exploration Regulations [PMN Reg 33 (1); PMS Reg 35 (1); CFC Reg 35 (1)]	SG's obligation to notify and report under the Exploration Regulations: - To notify incident to Contractor & SS; - Report to LTC, Council and ISA Members, competent international organizations, sub-regional, regional, global organizations and bodies; - Monitor developments and report to LTC, Council and ISA Members; take immediate measures of a temporary nature [PMN Reg 33 (2); PMS Reg 35 (2); CFC Reg 35 (2)]	SS right to be informed of an incident by SG [PMN Reg 33 (2); PMS Reg 35 (2); CFC Reg 35 (2)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO para. 103 - 106]
	SG right to take immediate measures of a temporary nature to prevent, contain and minimize serious harm or threat of serious harm to the marine environment [PMN Reg 33 (2); PMS Reg 35 (2); CFC Reg 35 (2)]		
	LTC to determine necessary measures and make recommendations to Council [PMN Reg 33 (4); PMS Reg 35 (4); CFC Reg 35 (2)]		

TABLE H: INCIDENTS &amp; NOTIFIABLE EVENTS

Incidents [Definition of Incidents in PMN Reg 33 (1); PMS Reg 35 (1); CFC Reg 35 (1); DR (Schedule )]			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	Council's right to issue emergency orders and take measures to minimize harm to the marine environment [PMN Reg 33 (5) and (6); PMS Reg 35 (5) and (6); CFC Reg 35 (5) and (6)]		
Contractor's Obligation to reduce risks of Incidents as much as reasonably practicable and Obligation to Respond to Incidents [DR Reg 32; Reg 33 (2)]	SG Obligation to report Contractor's failure to comply with regulations on Incidents to SS, flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law [DR Reg 33 (3)]	SS has a right to be informed of an incident by SG [DR Reg 33 (3)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [Dr Reg 105; AO para. 103 - 106]
Contractor Obligation to Notify SG and SS [DR Reg 33 (2)]	SG has an obligation to report incidents and measures taken to the LTC and Council at the next available meeting [DR Reg 33 (4)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO para. 103 - 106]
Contractor Obligation to undertake promptly any instructions received from SG in consultation with SS, flag State, coastal State or relevant international organizations [DR Reg 33 (2) (c)]	SG to consult SS, flag State, coastal State or relevant international organizations on instructions to be given to Contractor [DR Reg 33 (2) (c)]	SG and SS to consult SS, flag State, coastal State or relevant international organizations on instructions to be given to Contractor [DR Reg 33 (2) (c)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO para. 103 - 106]

TABLE I: MONITORING OF CONTRACTORS THROUGH REPORTING OBLIGATIONS

Annual Reports			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	ISA obligation to adopt rules, regulations and procedures on operations, including progress reports [UNCLOS, Annex III, Art. 17 (1) (b) (vi)]	SS obligation to assist the ISA by taking all measures necessary to ensure such compliance in accordance with Article 139 [UNCLOS Art 153 (4)]	
Contractor Obligation under the Exploration Regulations to submit annual reports to the Secretary-General [PMN/PMS/CFC, Annex IV (Standard Clauses), Section 10]	SG to transmit such reports to LTC for consideration [PMN Reg 32 (2); PMS Reg 34 (2); CFC Reg 34 (2)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
Contractor Obligation under the Draft Exploitation Regulations to submit annual reports to the Secretary-General [DR, Reg 38, Reg 51]	SG to publish annual reports in Seabed Mining Register, except for Confidential Information, which shall be redacted. [DR Reg 38 (3)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]

TABLE I: MONITORING OF CONTRACTORS THROUGH REPORTING OBLIGATIONS

Periodic Review of Activities			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Contractor and SG shall jointly undertake a periodic review of the implementation of the plan of work every five years [PMN Reg 28 (1) and (2); PMS Reg 30 (1) and (2); CFC Reg 30 (1) and (2)]	SG shall report the review to the LTC and the Council and must indicate whether any observations transmitted by States Parties on the way in which the Contractor has discharged its obligations relating to marine environment protection were taken into account [PMN Reg 28 (3); PMS Reg 30 (3) and (2); CFC Reg 30 (3)]	SS may be asked to submit observations on Periodic Review carried out by the SG and Contractor [PMN Reg 28 (3); PMS Reg 30 (3) and (2); CFC Reg 30 (3)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
SG may review with the Contractor the Contractor's activities under the plan of work every five years or if in the Secretary-General's opinion, a prescribed list of events or changes of circumstances occur and the Contractor is required to provide all information required by the Secretary-General [DR Reg 58 (1) and (4)]	SG may invite SS to participate in the review of activities [DR Reg 58 (1) (2)]  SG must report on each review to the LTC, the Council and the SS and shall make publicly available the findings and recommendations from a review of activities [DR Reg 58 (3) and (6)]	SS may participate in review of activities under a plan of work for exploitation [DR Reg 58 (2)]  SS right to receive report from SG [DR Reg 58 (3)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]

TABLE I: MONITORING OF CONTRACTORS THROUGH REPORTING OBLIGATIONS

Performance Assessment Report			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Contractor obligation in relation to the monitoring of the Contractor's compliance with its environmental obligations, to submit a performance assessment report on the Environmental Management and Monitoring Plan to SG [DR Reg 52 (1) – (3)]	SG to submit performance assessment report to LTC [DR Reg 52 (4)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]
	LTC to review performance assessment report and SG to make public the report and findings and recommendations of the LTC [DR Reg 52 (4)]		
	LTC shall report annually to Council on performance assessments [DR Reg 52 (9)]		

TABLE J: INSPECTIONS

Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	ISA shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the	SS obligation to assist the ISA by taking all measures necessary to ensure such compliance in accordance with Article 139	

TABLE J: INSPECTIONS

TABLE J: INSPECTIONS			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	exercise of the functions of control and regulation assigned to it thereunder or under any contract and shall have the authority to inspect all installations in the Area used in connection with activities in the Area [UNCLOS, Art 153 (5)]	[UNCLOS Art 153 (4); AO, paras. 124 and 218]	
	Council shall establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with [UNCLOS, Art. 162 (2) (z);		
	LTC shall make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with [UNCLOS, Art. 165 (2) (m)]		
	LTC shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State or other party concerned when carrying out their function of supervision and inspection [UNCLOS, 165 (3)]	SS right to request that a representative of the SS accompany the members of the LTC when carrying out their function of supervision and inspection [UNCLOS 165 (3)]	
Contractor's Obligation to permit ISA to send its inspectors on board vessels and installations used by the Contractor to carry out activities in the exploration area [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (1)]	ISA and Inspectors right to inspect any vessel or installation including its log, equipment, records, facilities all other recorded data and any relevant documents [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (1) and (3)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 – 106]
Contractor's Obligations to assist the inspectors in the performance of their duties [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (1)]	SG and duly authorized representatives shall have access to any books, documents, papers and records of the Contractor necessary to verify expenditures referred to in section 10.2		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 1–3 - 106]



TABLE J: INSPECTIONS

TABLE J: INSPECTIONS			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	(c) [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (6)]		
	SG to give reasonable notice to the Contractor of details of the Inspections [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (2)]		
	Inspectors obligation to avoid interference with safe and normal operations [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (5)]		
	SG shall provide relevant information contained in the reports of inspectors to Contractor and its sponsoring States where action is necessary [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (7)]	SS Right to receive inspection reports where action is necessary [PMN/PMS/CFC Annex IV (Standard Clauses), Section 14 (7)]	
Contractor Obligation to permit ISA to send its Inspectors who may be accompanied by a representative of its state or other party concerned 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 [DR Reg 96 (2)]	ISA right to send its Inspectors aboard vessels and Installations, whether onshore or offshore, used by the Contractor to carry out exploitation activities and to enter its offices wherever situated [DR Reg 96 (2)]	SS right to send a representative to ISA inspections on vessels and installations used for exploitation activities and Contractor's offices [DR Reg 96 (2)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 1-3 - 106]
Contractor (and agents and employees) Obligation to facilitate actions of Inspectors in performance of their duties [DR Reg 96 (5)]	Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities [DR Reg 96 (4)]	ISA Members, in particular SS, shall assist the Council, the SG and Inspectors in discharging their function under the Rules of the ISA [DR Reg 96 (2)]	SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 1-3 - 106]
	Inspector's powers in inspections [DR Reg 98 and 99]		
	SG shall give reasonable notice to the Contractor of the inspections except where the SG has reasonable grounds to consider the matter urgent such that urgent notice cannot be given in which case the SG may, where practicable, exercise the right to conduct an		

TABLE J: INSPECTIONS

TABLE J: INSPECTIONS			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	inspection without prior notification [DR Reg 96 (3)]		
	Inspector's Obligations in inspection [DR Reg 96 (6)]		
	Inspector's Obligation to prepare a report setting out findings and recommendations [DR Reg 100]		
	Inspector's Obligation to report immediately to the SG and SS that an instruction has been issued [DR Reg 99 (3)] and also send the post-inspection report to the SG [DR Reg 100 (1)]	SS right to be informed of an instruction being issued [DR Reg 99 (3)]	
	SG obligation to send post-inspection report to Contractor and SS, and if appropriate to the relevant coastal State and flag State [DR Reg 100 (1)]	SS right to receive post-inspection report [DR Reg 100 (1)]	
	SG obligation to report annually to the Council on findings and recommendations and to make recommendations to the Council on any regulatory action to be taken by the Council [DR Reg 100 (2)]		
	SG obligation to report acts of violence, intimidation, abuse against or the wilful obstruction or harassment of Inspector by any person or failure of Contractor to comply with this regulation to the sponsoring State, flag State concerned for consideration of the institution of proceedings under national law [DR Reg 100 (3)]	SS right to receive information on violence, intimidation, abuse against or the wilful obstruction or harassment of Inspector by any person or failure of Contractor to comply with this regulation [DR Reg 100 (3)]	
Contractor obligation to ensure that all mining vessels and mining collectors shall be fitted with an electronic monitoring system [DR Reg 102 (2)]	All data transmitted to the ISA through the electronic monitoring system shall be transmitted to the SS [DR Reg 102 (4)]		SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, paras 1-3 - 106]
	Council shall establish appropriate mechanisms for inspection [DR Reg 96 (1)] - LTC shall make recommendations to the Council on the appointment, supervision		

TABLE J: INSPECTIONS

TABLE J: INSPECTIONS			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	<p>and direction of Inspectors [DR Reg 97 (2)]</p> <ul style="list-style-type: none"> <li>- Council, based on recommendations of the LTC, shall determine the relevant qualifications and experience to the areas of duty of an Inspector [DR Reg 97 (1)]</li> <li>- SG shall manage and administer such inspection at the direction of the Council</li> </ul>		

TABLE K: CONTRACTOR'S NON-COMPLIANCE

Warnings and Compliance Notices			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
	<p>1. A contractor's rights under the contract may be suspended or terminated only in the following cases:</p> <p>(a) 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; or</p> <p>(b) if the contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.</p> <p>2. In the case of any violation of the contract not covered by paragraph 1(a), or in lieu of suspension or termination under paragraph 1(a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.</p> <p>3. Except for emergency orders under article 162, paragraph 2(w), the Authority 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 him pursuant to Part XI, section <a href="#">[UNCLOS, Annex III, Art 18]</a></p>	<p>SS obligation to assist the ISA by taking all measures necessary to ensure such compliance in accordance with Article 139 <a href="#">[UNCLOS Art. 153 (4); AO, paras 124 and 218]</a></p>	
	<p>The Council may suspend or terminate the contract if in spite of written warning by the ISA, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this contract, Part XI of UNCLOS, the Agreement and the rules,</p>		

TABLE E K: CONTRACTOR'S NON-COMPLIANCE

Warnings and Compliance Notices			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
	regulations and procedures of the ISA [PMN Reg 21.1 (a); PMS Reg 21.1 (a); CFC Reg 21.1 (a)]		
Contractor right to be given a reasonable opportunity to make representations in writing to the SG concerning the compliance notice [DR Reg 103 (4)]	: SG, shall, if it appears to the SG on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, issue a compliance notice requiring the Contractor to take such action as may be specified in the compliance notice [DR Reg 103 (1) – (3)]		

TABLE K: CONTRACTOR'S NON-COMPLIANCE

Monetary Penalties			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
	ISA right to impose monetary penalties: 1. A contractor's rights under the contract may be suspended or terminated only in the following cases: (a) 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; or (b) if the contractor has failed to comply with a final binding decision of the	SS obligation to assist the ISA by taking all measures necessary to ensure such compliance in accordance with Article 139 [UNCLOS Art 153 (4); AO, paras. 124 and 218]	

TABLE K: CONTRACTOR'S NON-COMPLIANCE

Monetary Penalties			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
	<p>dispute settlement body applicable to him.</p> <p>2. In the case of any violation of the contract not covered by paragraph 1(a), or in lieu of suspension or termination under paragraph 1(a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.</p> <p>3. Except for emergency orders under article 162, paragraph 2(w), the Authority 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 him pursuant to Part XI, section 5 [UNCLOS, Annex III, Art 18]</p>		
Contractor to exhaust judicial remedies available: Council may not execute a decision involving monetary penalties until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to Part XI, section 5, of UNCLOS [PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.7]	For violations of the contract not covered by S 21.1 (a), the Council may impose upon the contractor monetary penalties proportionate to the seriousness of the violation [PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.6]		
Except for emergency orders, the Council may not execute a decision involving monetary, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to Part XI, section 5, of UNCLOS [DR Reg 103 (7)]	In case of any violation of an exploitation contract, or in lieu of suspension or termination under DR Reg 103 (5), the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation [DR Reg 103 (6)]		

TABLE K: CONTRACTOR'S NON-COMPLIANCE

Suspension or Termination of Contract			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
	<p>1. A contractor's rights under the contract may be suspended or terminated only in the following cases:</p> <p>(a) 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; or</p> <p>(b) if the contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.</p> <p>2. In the case of any violation of the contract not covered by paragraph 1(a), or in lieu of suspension or termination under paragraph 1(a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.</p> <p>3. Except for emergency orders under article 162, paragraph 2(w), the Authority 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 him pursuant to Part XI, section 5 <a href="#">[UNCLOS, Annex III, Art 18]</a></p>	<p>SS obligation to assist the ISA by taking all measures necessary to ensure such compliance in accordance with Article 139 <a href="#">[UNCLOS Art 153 (4); AO, para. 124]</a></p>	
Contractor right to dispute ISA authority to suspend or terminate the contract in accordance with Part XI, section 5 of UNCLOS <a href="#">[PMN/PMS/CFC, Annex IV]</a>	The Council may suspend or terminate the contract on the occurrence of certain events by notice through the SG which shall include a statement of the reasons for taking such		

TABLE K: CONTRACTOR'S NON-COMPLIANCE

Suspension or Termination of Contract			
Contractor	ISA	Sponsoring State	
		Direct Obligations	Obligation to Ensure Compliance
(Standard Clauses), Section 21.1, 21.3 21.4; DR, Annex X (Standard Clauses), Section 12.4]	action [PMN/PMS/CFC, Annex IV (Standard Clauses), Section 21.1, 21.2, 21.3; DR Reg 103 (5)]		
Except for emergency orders, the Council may not execute a decision involving monetary, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to Part XI, section 5, of UNCLOS [DR Reg 103 (7)]			

TABLE K: CONTRACTOR'S NON-COMPLIANCE

Institution of Proceedings			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	ISA right to bring proceedings against Contractor:  - Before the SDC for disputes between parties to a contract, being States Parties, the ISA or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), concerning: (i) the interpretation or application of a relevant contract or a plan of work; or (ii) acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests [UNCLOS, Art. 187 (e)]  - Before an Arbitral Tribunal for disputes concerning the interpretation or application of a contract referred to in article 187, subparagraph (c)(i), shall be	Right of SS to be given notice and participate in proceedings if a sponsored Contractor is a party to the dispute [UNCLOS, Art. 190 (1)]	



TABLE K: CONTRACTOR'S NON-COMPLIANCE

Institution of Proceedings			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
	submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree [UNCLOS, Art. 188 (2)]		
		SS obligation to ensure enforceability of any final decision rendered by a court or tribunal: Any final decision rendered by a court or tribunal having jurisdiction under UNCLOS relating to the rights and obligations of the ISA and of the Contractor shall be enforceable in the territory of each State Party [UNCLOS, Annex III, Art 21 (2); AO, paras. 218 and 235]	

TABLE L: TERMINATION OF THE CONTRACTOR'S SPONSORSHIP &amp; TERMINATION OF CONTRACT

Termination of Sponsorship of the Contractor			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
Contractor's obligation to have the required sponsorship through the period of the contract and to obtain another sponsor within required period [PMN Reg 29 (1) and (3); PMS Reg 31 (1) and (3); CFC Reg 31 (1) and (3); DR Reg 21(1) and (3)]	SG obligation to notify the ISA members of termination or change of sponsorship of the contractor [PMN Reg 29 (5); PMS Reg 31 (5); CFC Reg 31 (5); DR Reg 21(5)]	SS must promptly notify SG on termination of the contractor's sponsorship and provide reasons. SS should also inform SG of the reasons for terminating its sponsorship. Termination of sponsorship shall take effect six months after the date of receipt of the notification by SG, unless the notification specifies a later date [PMN Reg 29 (2); PMS Reg 31 (2); CFC Reg 31 (2)]	
		SS shall not be discharged by reason of the termination of its sponsorship from any obligations accrued while it was a SS, nor shall such termination affect any legal rights and obligations created during such sponsorship [PMN Reg 29 (4); PMS Reg 31 (4); CFC Reg 31 (4)]	
		Termination of sponsorship takes effect no later than 12 months after the date of receipt by SG, except where termination is due to Contractor's non-compliance under the terms of sponsorship, whereby termination shall take effect no later than 6 months after the date of notification [DR Reg 21 (2)]	
	Council, based on LTC recommendations, taking into account the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until a new certificate of sponsorship is submitted [DR Reg 21 (6)]	A sponsoring State shall not be discharged by reason of the termination of its sponsorship from any obligations accrued while it was a sponsoring State, nor shall such termination affect any legal rights and obligations created during such sponsorship [DR Reg 21 (4)]	

TABLE L: TERMINATION OF CONTRACT

Termination of Contract			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
In the event of termination or expiration of exploration contract, the Contractor shall comply with the Regulations and shall remove all installations, plant, equipment and materials in the exploration area and shall make the area safe so as not to constitute a danger to persons, shipping or to the marine environment [PMN/PMS/CFC Annex IV (Standard Clauses) Section 21.8]			SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [AO, para. 103 - 106]
<p>In the event of termination, expiration or surrender of this Contract, the Contractor shall:</p> <p>(a) Comply with the final Closure Plan, and continue to perform the required environmental management of the Contract Area as set forth in the final Closure Plan and for the period established in the final Closure Plan;</p> <p>(b) Continue to comply with relevant provisions of the Regulations, including:</p> <p>(c) Remove all Installations, plant, equipment and materials in the Contract Area; and</p> <p>(d) Make the area safe so as not to constitute a danger to persons, shipping or to the Marine Environment.</p> <p>13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take</p>			SS Obligation to Ensure Compliance of the Sponsored Contractor by Taking Reasonably Appropriate Measures Within their Legal Systems [DR Reg 105; AO, para. 103 - 106]

TABLE L: TERMINATION OF CONTRACT

Termination of Contract			
Contractor	ISA	Sponsoring State	
		Direct Rights and Obligations	Obligation to Ensure Compliance
necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any, shall be deducted from the Environmental Performance Guarantee held by the Authority			
13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate. <b>[DR, Annex X (Standard Clauses), Section 13]</b>			

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## ABOUT THE INTERNATIONAL SEABED AUTHORITY

Made up of 168 Member States and the European Union, ISA is mandated under the UN Convention on the Law of the Sea to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of humankind as a whole. In so doing, ISA has the duty to ensure the effective protection of the marine environment from harmful effects that may arise from deep seabed related activities.