



*Permanent Mission of Costa Rica to the ISA
Kingston, Jamaica*

COSTA RICA SUBMISSION

IN ACCORDANCE WITH PARRAGRAPH 7 OF ISBA/25/C/CRP.5

Costa Rica wishes to start by thanking the Secretary General and his Staff, the Council and the Legal and Technical Commission on the dedicated efforts that allowed for the development of the latest draft of the Regulations, which shows important advancements in the right direction.

It was evident during the last sessions of the Council and the Assembly that there is still a long way to go until we are able to conclude a text that complies with the goals and obligations enshrined in the United Convention for the Law of the Sea.

In line with the abovementioned, on 19 July 2019, the Council of the International Seabed Authority adopted resolution ISBA/25/C/CRP.5, which in its paragraph 7 decided that additional written comments on the draft regulations, including specific drafting suggestions, could be sent to the Secretariat by 15 October, 2019.

Costa Rica is honored to submit its national position on key issues as well as specific draft proposals on said regulations.

Costa Rica authorizes the Secretary General to make public the present submission, uploading it to the Authority's website, including it in the compilation that will be prepared by the Secretariat, and circulating it to the Member States.

INTRODUCTION

According to multiple scientific studies, starting with the *Disturbance and Recolonization experiment in a manganese nodule area of the deep South Pacific* (DISCOL report) and followed by the *Deep Ocean Mining Environmental Study* (DOMES), and the German *MESEDA programme in the Red Sea*, to mention just a few, once mining starts it will be impossible from an environmental point of view, to set a no net loss goal for biodiversity,

because of the vulnerable nature of the seabed, the limited technological capacity, and the uncertainty of the real possibility of the recovery of the seabed.

We cannot ignore the reality that deep seabed mining can cause long-lasting harm, including loss of vulnerable species and ecosystems, and the potential for damage to be irreversible. Because of the aforementioned, our responsibility is enormous. Our only options are to avoid and minimize the impacts. That is why mining shall be viewed in light of a highly precautionary approach and we should ensure opportunities for reviewing the process at each and every stage. Every phase needs to have environmental objectives, pre existing overarching guidelines and standards that would allow the avoidance or minimization of environmental harm and biodiversity loss, not just in the mining area, but in the whole impact zone.

To achieve this, the establishment of REMPS before any exploitation plan can be even considered, is a must. In this regard, the Authority needs to develop a standardized approach to the process that all REMPs should undergo, in particularly with respect to the design, content, adoption, implementation and reviews of all REMPs, including the strategic objectives for the effective protection and preservation of the marine environment and an appropriate and effective monitoring, assessment and review framework.

A very sound standardized and transparent Environmental Impact Assessment Process is also key. The EIA is an essential mechanism through which the marine environment is protected by enabling decision-makers to identify harmful effects in advance and to establish rules and procedures to avoid, minimize or mitigate those harmful effects. The current regulations don't provide a detailed description of the process, stage by stage, as well as those responsible or involved in every phase. It should also include detailed legally binding requirements and mechanisms for supervision, compliance and enforcement.

ITLOS Seabed Disputes Chamber confirmed EIA to be a specific requirement of the sponsoring states' obligation of due diligence in relation to Deep Seabed Mining. The EIA process should enable the ISA to ensure that uniform and consistently high environmental standards are applied to all contractors.

Our responsibility also includes the need to ensure that mining will not start unless there is sufficient information to enable informed decisions, and for the correspondent bodies to be able to reject an application when it is necessary for the effective protection of the marine environment, as mandated by UNCLOS.

We would also like to highlight the importance of the negotiations of the Implementing Agreement for the Conservation and Sustainable Use of biodiversity of Areas

beyond National Jurisdictions, taking place at the UN Headquarters in New York, which are key to several issues related to these Regulations. Said negotiations are set to conclude in 2020. It is advisable to delay the adoption of the Mining Code until after the adoption of the new Implementing Agreement on BBNJ, as many crucial issues will be decided through such Agreement, which will be complementary to the Exploitation Regulations.

Costa Rica also wishes to reiterate the imperative that the Enterprise must be entirely operational before the adoption of the Regulations.

Finally, Costa Rica would like to express its concern regarding the lack of consideration of Climate Change in the process. There is currently no mention of climate in the ISA regulations on exploration and no mention in the ISA High Level Action Plan. The draft regulations on exploitation mention climate only in the context of greenhouse gas emissions of mining activities, and in Annex IV EIS listing climate change policy as other applicable legislation. Climate change considerations can improve environmental management and reduce the risk to the common heritage of humankind.

In this regard Costa Rica welcomes the statements delivered by the Secretary General last September in the framework of the ASEAN and BIMSTEC workshops, where he stated: "As we begin to understand better the way in which the ocean is of fundamental importance to life on Earth, including its role in regulating the climate as well as providing the fundamental ecosystem services to support human life, effective international cooperation in collecting and sharing knowledge of ocean resources become even more critical."

Costa Rica agrees fully with the statement by the Secretary General quoted supra and reiterates its commitment to cooperate constructively in this crucial process.

NATIONAL POSITION ON KEY ASPECTS OF THE DRAFT REGULATIONS

GENERAL COMMENTS ON A CRUCIAL ISSUE

CLIMATE CHANGE

Climate change affects all areas targeted for seabed mining. To ensure the effective protection of the marine environment the Regulations must incorporate consideration and adaptation to climate change to the greatest extent possible. Consideration of climate change is required for effective management, baseline assessment and monitoring of deep seabed mining. Existing regulations, standards and guidelines offer opportunities for incorporation of climate change resilience.

Strategies for incorporating climate change into Draft regulations on Exploitation:

1. Recognize climate change as a component of 'natural' variation – this gets around the issue of assigning human cause to climate change. Documentation of natural variability is a key element of REMP design, baseline data collection and monitoring, EIA, EMMP, and ERA. It will be necessary to distinguish mining from climate impacts.
2. Recognize climate change as a source of uncertainty and incorporate climate change into risk assessment and mitigation planning; quantify mining contributions to /amelioration of climate change.
3. Considering climate change in the context of seabed mining is required to meet obligations of protection of the marine environment and promoting scientific research.
4. Build into ISA environmental objectives the goal of maintaining ecological integrity in the face of changing environments. ISA Environmental regulations or REMPs could have as an objective not to exacerbate ecosystem vulnerability to ongoing climate
5. Call attention to ISA 2016 submission to UN climate conference

-Key base climate metrics are:

Oxygen, Temperature, Calcite / aragonite saturation, Particulate Organic Carbon Flux (from euphotic zone, to seabed), pH, and physical oceanography (e.g. current speeds, stratification).

-Derived climate metrics may include:

Climate uncertainty (historical vs future variability),

climate hazard (climate change/historical variability),

time of emergence (when climate change exceeds natural variability),

climate envelopes (areas of maximal and minimal change).

SPECIFIC DRAFTING PROPOSALS

The proposals follow the format of the draft regulations. Only regulations for which Costa Rica has a proposal are included. The amendments proposed by Costa Rica are included in red. After each proposal, a rationale is included

Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”),

Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind,

Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”),

Recalling that the Authority shall, in developing the resources of the Area, ensure the effective protection of the marine environment from harmful effects which may arise from activities in the Area, in accordance with article 145 of the Convention.

Also recalling that Part XII of the Convention on the Protection and Preservation of the Marine Environment shall be applied to part XI when relevant.

Considering that the objective of these regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement, while ensuring effective protection of the marine environment from harmful effects caused by exploitation activities.

Reaffirming the commitment to the United Nations Sustainable Development Goals and the 2030 Agenda.

RATIONALE: The preamble must recognize the environmental commitments and legal frameworks that will guide the Regulations.

Part I

Introduction

Regulation 1

Use of terms and scope

5. These regulations are supplemented by further rules, regulations and procedures of the Authority, including Standards and Guidelines, as referred to in these regulations and the annexes thereto, in particular on the protection and preservation of the Marine Environment.

RATIONALES: Standards and Guidelines are part of the rules, regulations and procedures. If they are not considered as such their validity may be questioned(in particular the obligatory nature of the Standards)

Regulation 2

Fundamental principles and relevant policies

In furtherance of and consistent with Part XI of the Convention and the Agreement, this Regulations shall be implemented and interpreted with full respect of, inter alia, the following fundamental principles and taking into account, inter alia, the following relevant policies ,

RATIONALE: Principles are fundamental, and they should be prioritized over policies. Also, Part XI does not mention fundamental policies

It is more appropriate to speak of relevant (or main) policies.

(a) Recognize **that the Area and its resources are the Common Heritage of Mankind**, and as such the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring, **inter alia** :

RATIONALE: it should not be an exhaustive list.

(i) The **sustainable** development of the Resources of the Area;

(vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area, **as well as** the prevention of monopolization of activities in the Area by **Sponsor States, Contractors or States operating in reserved areas**.

RATIONALE: The definition of monopolization provided by UNCLOS applies only to developed State sponsors. Another way to solve this would be by including a definition of monopolization.

(c) Ensure that **where exploitation is authorized**, the Resources of the Area are Exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice;

RATIONALE: we cannot ensure that all the resources will be exploited, and the wording as was included in ISBA/25/c/WP/1 seems as if we were ensuring exploitation

(e) **Ensure the implementation of article 145 of the Convention**, in order to **provide** the effective protection and **preservation** of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including **by the adoption of** regional environmental management plans, based on the following principles:

RATIONALE : instead of copying parts of article 145, leaving some parts out, it is better to refer to the full implementation . Preservation needs to be included to keep the wording of UNCLOS, the exploration regulations and the Council's instructions. It is also important to mention that REMPS should be adopted(not just drafted, or discussed, etc.)

(i) A fundamental **condition for the approval of an application for a Plan of Work** shall be that said Plan of Work includes the necessary **provisions to ensure** the effective protection of the Marine Environment, including biological diversity and ecological integrity;

RATIONALE: it should not be just a consideration, but a condition, and it should be directed at the approval phase of the Plan of Work.

(ii) **Ensure the effective** application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;

(iii) **Ensure the effective** application of an ecosystem approach, including the consideration of natural variability and Climate Change

RATIONALE: Climate Change needs to be considered in the regulations, and in this section in particular, since the effective application of the ecosystem approach requires the integration of climate change considerations and the need to maintain climate resiliency in all phases of planning, decision making and oversighting.

(iv) **Ensure the effective application** of “the polluter pays” principle as reflected in Principle 16 of the Rio Declaration on Environment and Development.

RATIONALE: its application should not be limited to market based instruments and or mechanisms.

(vi) Accountability and transparency in **every aspect of the process, including, inter alia,** decision-making, **implementation, monitoring, reporting, compliance;**

RATIONALE: Accountability and transparency should not be limited to the decision making process.

(vii) **Promotion and facilitation** of effective public participation;

RATIONALE: Encouragement is very ambiguous and not enough. Public participation needs to be promoted and facilitated.

(f)bis **Ensure the effective protection and conservation of the Natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.**

RATIONALE: Taken directly from art. 145..

Regulation 3

Duty to cooperate and exchange of information

(a) Members of the Authority and Contractors shall (**text deleted from here**) cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

RATIONALE: Costa Rica’s proposal deletes que wording included by the LTC “use their best endeavours”, as both members of the Authority and Contractors shall cooperate, not just “ use their best endeavours to cooperate”.

g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall, (**text deleted from here**) upon the request of the Secretary-General, provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of

developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

RATIONALE: Costa Rica's proposal deletes que wording included by the LTC "use their best endeavours", since contractors shall facilitate access, not just use their best endeavours.

Regulation 4
Protection measures in respect of coastal States

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause **Harmful Effects** to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such **Harmful Effects of** pollution arising from **activities** in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

RATIONALE: Serious harm is a very high threshold, and the conventions requires the effective protection and preservation of the marine environment, which goes beyond the prevention of serious harm.

4. If the Commission determines, taking account of the relevant **Standards and** Guidelines, that there are clear grounds for believing that **Harmful Effects** to the Marine Environment are likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention.

RATIONALE: Standards should be included as they are the ones which will dictate binding dispositions.

Part II

Applications for approval of Plans of Work in the form of contracts

Section 1 **Applications**

Regulation 7
Form of applications and information to accompany a Plan of Work

2.

a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures, - **including the Standards**- of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

RATIONALE: Since Standards are binding, they should be included.

Section 2

Processing and review of applications

Regulation 11

Publication and review of the Environmental Plans

5. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as a summary of the comments or responses made under regulation 11 (2), as well as **the relevant rationale when said comments or responses are disregarded**. The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

RATIONALE: this proposal is included for the sake of transparency.

Section 3

Consideration of applications by the Commission

Regulation 12

General

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall **ensure its compliance with** the fundamental principles, policies and objectives relating to activities in the Area as provided for in Part XI of and annex III to the Convention, and in the Agreement, and in particular **consider the extent** in which the proposed Plan of Work ensures **the effective protection of the marine environment** and contributes to realizing benefits for **humankind** as a whole.

RATIONALE: The text proposed by the LTC used the wording " shall have regard to the principles, policies and objectives". That language is too flexible and insufficient to ensure the effective protection of the marine environment. In addition, in order to be able to evaluate its contribution, the Commission should consider the extent in which it ensures the effective protection of the marine environment and contributes to the benefits of humankind, not the "manner" in which contributes, which is not measurable.

Regulation 13

Assessment of applicants

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant has or will have:

(b) The technology, **knowledge** and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan , **the applicable Regional Environmental Management Plan** and the Closure Plan, including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate;

RATIONALE: Since REMPS must be in place, and the EMMP has to comply with it, REMPs should be present in the regulations .

(e) **Ensures through** the Environmental Plans, for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the **fundamental principles** and the **relevant** policies and procedures under regulation 2.

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

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

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

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

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

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

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

RATIONALE: Costa Rica considers that a more detailed description of what the effective protection of the marine environment implies is needed.

Regulation 15

Commission's recommendation for the approval of a Plan of Work

1. If the Commission determines that the applicant meets the criteria set out in regulations 12 (4) and 13, it **may** recommend approval of the Plan of Work to the Council.

RATIONALE: The Commission should retain the possibility of not approving a plan in circumstances when even meeting the criteria of regulations 12(4) and 13, the plan cannot ensure the effective protection of the marine environment (because of cumulative impact, insufficient mitigation measures, etc.) That is why Costa Rica proposes the wording "may", instead of "shall".

2. The Commission shall not recommend approval of a proposed Plan of Work **if said Plan does not ensure effective protection of the marine environment , based on the criteria set in Regulation 13 (e) and (e)bis**, or if part or all of the area covered by the proposed Plan of Work is included in:

RATIONALE: As explained before, the effective protection of the marine environment must be ensured.

3.(c) If the Commission is unable to determine if the Plan of Work meets the necessary approval criteria.

RATIONALE : If there is doubt, the Plan of Work shall not be approved by the Commission.

Part III

Rights and obligations of Contractors

Regulation 18

Rights and exclusivity under an exploitation contract

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except **in observance of the applicable rules, regulations and procedures, including Standards, as well as in accordance with the terms thereof.**

RATIONALE: In the current LTC text amendments can only happen according to the terms of the contract. This is not coherent with the regulations that indicate that amendments to the plan of Work can happen under certain circumstances. Also, it is important for the Authority to maintain its legal power to revise terms of contracts.

7. In relation to Exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply as set out in the relevant Guidelines. In particular, the Contractor shall **(wording deleted from here)** continue to show due diligence in conducting Exploration activities in the Contract Area, together with the payment of applicable fees and the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k).

RATIONALE: Costa Rica proposes the deletion of the wording “ be expected to” . The contractor shall continue to show due diligence, period.

Regulation 20

Term of exploitation contracts

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years. **The parties may agree to a minimum initial term of 15 years,** taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.

RATIONALE: The current draft eliminated the previous version which contemplated the possibility of a shorter period for the exploitation contracts. Costa Rica suggests including the option of 15 year contracts

2. The Contractor shall supply a **revised Plan of Work,** as well as such documentation as may be specified in the **Standards and** Guidelines.

RATIONALE: the renewal should not be automatic. After 30 years it must be mandatory for a revised Plan of Work to be presented; conditions and circumstances would have change. We need to be able to consider possible unforeseen situations, or cumulative impacts, for example. Also new technology. From the practical point of view, Work Plans are developed for the period of the contract, so after 30 years the Plan expires, so there is a need for a new revised plan.

Such plan should comply with every disposition of Part II of the regulations. Provision may be included so that the application may be presented 18 months prior to the expiration of the contract.

5. In making its recommendations to the Council under paragraph 6 below, including any proposed amendments to the Plan of Work or revised Plan of Work, the Commission shall take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58, as well as any other relevant information from , inter alia, performance assessments, annual reports, environmental reports, legal actions against the contractor.

RATIONALE: The Commission shall take into account all relevant information, not only reports under Regulation 58.

6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and an exploitation contract may be renewed by the Council, provided that:

RATIONALE: The Council must not be left without discretion. Recommendations are not binding. The council must have the possibility of evaluating environmental reasons for not renewing the contract, such as, but not limited to: cumulative impacts, climate change impact, unforeseeable impacts. With the current drafting only the conditions related to the Constructor behaviour are considered. It may not be enough to ensure the effective protection of the marine environment.

- (b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority, including the rules, regulations, procedures and Standards adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

RATIONALE: Standards are binding, and should be included.

Regulation 21 Termination of sponsorship

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an exploitation contract, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an exploitation contract.

Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of a termination of sponsorship.

RATIONALE: The paragraph proposed by Costa Rica was part of the previous draft regulations. Costa Rica finds no reason to eliminate it, as residual responsibility must remain in the regulations.

Regulation 24 Change of control

1. For the purposes of this regulation, a “change in control” occurs where there is a change in the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change of the ownership of the entity providing an Environmental Performance Guarantee, **which by bringing the ownership to 50% constitutes a change in the effective control.**

RATIONALE: Costa Rica wants to highlight the difference between change of control as it was established in the draft regulation regulation and the effective change of control that can happen under different circumstances. The LTC draft regulation established that a change in 50% of the ownership is needed for a change of control to take place, when the truth is that if a corporation owns 30% of the shares, by acquiring another 20% it would bring about an effective change of control. Costa Rica’s wording pretends to reflect when a change in the effective control happens.

Section 2

Matters relating to production

Regulation 25

Documents to be submitted prior to production

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 14, continues to meet the requirements of regulation 13, it shall recommend to the Council the approval of the revised Plan of Work. **If the Commission determines that it does not meet said requirements, the procedure established in Regulation 14 (b) will be applied.**

RATIONALE: The previous draft proposal does not specify what would happen if the revised Plan of Work doesn’t meet the requirements, Costa Rica’s proposal addresses said situation.

Regulation 28

Maintaining Commercial Production

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment (**wording deleted here**) or to protect human health and safety. A Contractor shall notify the Secretary-General of such a reduction or suspension of production as soon as is practicable and no later than 72 hours after production is reduced or suspended.

RATIONALE: Costa Rica proposes de deletion of “from serious harm or the threat of serious harm”. Since all activities need to contemplate the effective protection of the marine environment, regulation 28.3 should not include such a high threshold. If the suspension is required to protect the marine environment or human life and safety, then production must be reduced or suspended.

Regulation 29 bis

Optimal Exploitation under a Plan of Work

1. In pursuance of regulation 2(2)(a) relating to the efficient conduct of activities, and the avoidance of unnecessary waste, and to ensure that the resources are being mined optimally in accordance with the Mining Work Plan, a Contractor shall, in accordance with Best Industry Practices:
 - (a) Avoid inefficient mining practices;
 - (b) Minimize the generation of waste in the conduct of exploitation in the Area
2. A Contractor shall include in its annual report under Regulation 40 such information and Reports as the Secretary General requests, in accordance with the Standards and Guidelines, to demonstrate that the Contractor is meeting the obligations in paragraph 1 above.
3. If the Secretary General becomes aware that Contractor is not meeting the obligations in paragraph 1 above, by way of written notice to the Contractor, request a review of mining and processing activities carried out under the Plan of Work. The Contractor shall implement any modifications to bring the Mining Workplan and any mining and processing practice into conformity with Best Industry Practices.
4. Members of the Authority shall, to the best of their abilities, assist the Secretary General through the provision of Data and information in connection with this regulation where processing, treatment and refining of ore from seabed mining occur under their jurisdiction and/or control.

RATIONALE: This Regulation was eliminated from the March 2019 draft, without any justification. Costa Rica considers it is important to keep it as a Regulation

Section 4 Other users of the Marine Environment

Regulation 31 Reasonable regard for other activities in the Marine Environment

1. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations. In particular, each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.
 - 1.bis Contractors shall carry out Exploitation under an exploitation contract with reasonable regard for climate mitigation carried out by ecosystems in the area, such as carbon burial and sequestration and nutrients recycling.

Rationale: The activities carried out by the Ocean related to Climate Change must be regarded as they also constitute other activities in the Marine Environment to be taken into account.

Regulation 39

Books, records and samples

3. To the extent practical, a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party. **After the termination of the Contract, samples will be handed over to the Authority, in accordance with the pertinent Guidelines.**

RATIONALE: Samples should be conserved after the termination of the contract as they may be relevant for the Authority and its members.

Section 9

Miscellaneous

Regulation 43

Compliance with other laws and regulations

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a sponsoring State and flag State.

Constructors shall comply with all laws and regulations, whether domestic, international or other, that apply to its conduct of activities in the Area.

RATIONALE: This Regulation was eliminated from the March 2019 draft, without any justification. Costa Rica considers it is important to keep it in the Regulations to ensure compliance with domestic and international laws, and for ISA to be able to act upon eventual breaches of said laws.

Part IV

Protection and preservation of the Marine Environment

Section 1

Obligations relating to the Marine Environment

Regulation 44

General obligations

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring effective protection for the Marine Environment from harmful effects in accordance with the rules, regulations, procedures and **Standards** adopted by the Authority in respect of activities in the Area. To this end, they shall:

RATIONALE: Standards are binding, and should be included.

Regulation 45
Development of environmental Standards

Environmental Standards shall be developed in accordance with regulation 94 and shall include, *inter alia*, the following subject matters:

- (a) Environmental quality objectives, including, *but not limited*, on biodiversity status, plume density and extent, and sedimentation rates;
- (b) Monitoring procedures; and
- (c) Mitigation measures.

RATIONALE: this should be an indicative list. There should be a detailed discussion of this regulation

Regulation 46
Environmental management system

1. *The Authority will develop a document that will set the binding minimum Standards for an Environmental Management System.*

1.bis A Contractor shall implement and maintain an environmental management system, *in compliance with the Standards mentioned in paragraph 1 and* taking account of the relevant Guidelines.

RATIONALE: Contractors should follow a standardized document setting the minimum requirements for the Environmental Management System,

- 2. An environmental management system shall:
 - (a) *Deliver* site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;
 - (b) *Be audited by an independent* recognized and accredited international or national organizations; and
 - (c) Permit effective reporting to the Authority in connection with environmental performance.

RATIONALE: The system shall deliver the environmental objectives and be audited. Not just “be capable of”.

Section 2
Preparation of the Environmental Impact Statement and the Environmental Management and Monitoring Plan

Regulation 47
Environmental Impact Statement

1. The purpose of the Environmental Impact Statement is to document and report the results of the environmental impact assessment. The environmental impact assessment:

- (a) Identifies, predicts, evaluates and mitigates the biophysical, social and other relevant effects of the proposed mining operation;
- (b) Includes at the outset a screening and scoping process, which identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the Environmental Impact Statement on the key environmental issues. The environmental impact assessment should include an environmental risk assessment that *takes*

into consideration the region as a whole, in accordance with the objectives and measures of the relevant REMF.

RATIONALE: EIA and EIS shall be coherent and both shall include the provision of complying with the relevant REMF's objectives and measures.

(c) Includes an impact analysis to describe and predict the nature and extent of the Environmental Effects of the mining operation; and

(d) Identifies measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

1.bis The minimum mandatory stages for the development of an Environmental Impact Assessment are:

- a. Screening: a process to determine which activities will be subject to an EIA.
- b. Scoping: a process to identify the specific environmental issues or concerns to be included in the assessment, including the determination of the alternatives.
 - i. Consideration of alternatives
 - ii. Regulatory review
 - iii. Baseline study review to ensure sufficiency of information to do the EIA
 - iv. Risk assessment
 - v. Mitigation, impact management and residual risk assessment
- c. Preparation of draft EIA
- d. Review of the draft EIA by experts
- e. Review of EIA by stakeholders
- f. EIA Report
- g. Draft Environmental Management and Monitoring Plan
- h. Decision Making
 - i. Permit to proceed
 - ii. Not permit to proceed
 - iii. Require applicant to re-do aspects of EIA or EMMP
- i. Follow up measures including biennial monitoring of the impact during the process and every 5 years after it has been completed

RATIONALE: The regulations need to include more details on the EIA, at least the steps, who is responsible for each phase, etc. This needs further discussion but Costa Rica proposes at least the steps included supra. This shall be further detailed in an Annex, together with the binding Standards.

2. An applicant or Contractor, as the case may be, shall prepare an Environmental Impact Statement in accordance with this regulation.

3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall be (this needs to be binding, and for this the Template should be presented as binding standards, not Guidelines)

- (a) Inclusive of a prior environmental risk assessment;
- (b) Based on the results of the environmental impact assessment;
- (c) In accordance with the objectives and measures of the relevant regional environmental management plan; and
- (d) Prepared in accordance with the applicable Guidelines, Best Industry Practice, Best Available Scientific Evidence, Best Environmental Practices-including the collection of adequate quantity and quality baseline data- and Best Available Techniques.

Section 3

Pollution control and management of waste

Regulation 50

Restriction on Mining Discharges

2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is carried out for the safety of the vessel or Installation or the safety of human life, provided that all reasonable measures are taken to minimize the likelihood of any harm to the Marine Environment, and such disposal, dumping or discharge shall be reported forthwith to the Authority.

RATIONALE : The proposed wording stated that only serious harm must be minimized, when all environmental harm must be minimized in order to comply with the effective protection of the marine environment.

Section 4

Compliance with Environmental Management and Monitoring Plans and performance assessments

Regulation 52

Performance assessments of the Environmental Management and Monitoring Plan

1. The Authority shall conduct performance assessments of the Environmental Management and Monitoring Plan to assess:

- (a) The compliance of the mining operation with the plan; and
- (b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan, which can never be less than every 2 years.

RATIONALE: it does not make sense for the contractor to evaluate itself. It should be the authority through a group of experts, or an independent group of experts. The original frequency included in the previous draft of every 2 years must be included again as an addition to Regulation 52.2

Section 5 Environmental Compensation Fund and Environmental Fund

Regulation 55

Purpose of the Environmental Compensation Fund

The main purposes of the Fund will include:

(a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be;

(b) The restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence. (non-compensatory purposes were deleted to be addressed by another mechanism)

RATIONALE: The other “purposes” were non-compensatory purposes which have nothing to do with ITLOS advisory opinion on liability gap. Those other purposes must be addressed by a separate mechanism.

Regulation 55bis

Purpose of the Environmental Fund

The main purposes of the Fund will include:

(a) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

(b) Education and training programmes in relation to the protection of the Marine Environment;

(c) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area

RATIONALE: the purposes deleted from Regulation 55, are included in Regulation 55bis.

Part V Review and modification of a Plan of Work

Regulation 57

Modification of a Plan of Work by a Contractor

1. A Contractor shall not modify the Plan of Work annexed to an exploitation contract, except in accordance with this regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary General will inform the Council, which shall consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Standards. If the Council considers that the proposed modification constitutes a Material

Change, the Contractor shall seek the prior approval of said Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor. **The sponsoring State shall also be informed.**

RATIONALE: There shall be Standards that will define and specify what is considered a Material Change. The Council should be the one making the decision and there must be a record of all the changes proposed and approved, even those which are not considered Material Changes

Regulation 58

Review of activities under a Plan of Work

1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, **the Secretary-General determines, according to the specific Standards**, there have occurred any of the following events or changes of circumstance:

RATIONALE: Such an important decision should not be based in the “opinion” of the Secretary General, but rather in a determination taken on the basis of specific Standards.

- a) A proposed Material Change in the implementation of the Plan of Work;
- b) Any Incident;
- c) New information relevant to the effective protection of the marine environment**
- d) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;
- e) A performance assessment which requires action under regulation 52 (8);
- f) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;
- g) Changes in Best Available Techniques;
- h) Changes in Best Available Scientific Evidence;
- i) Operational management changes, including changes to subcontractors, the Secretary-General **shall** review with the Contractor the Contractor’s activities under the Plan of Work, and shall **decide** whether any modifications to the Plan of Work are necessary or desirable.

RATIONALE: New environmental information must be included as a trigger.

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor **shall** invite the sponsoring State or States to participate in the review of activities.

RATIONALE: sponsoring States must be informed for transparency.

3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. **Where, as a result of a review, material changes need to be made to the Plan of Work, the Secretary General shall recommend said changes to the**

Commission and Council, and the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).

RATIONALE: The Secretary General should be the one recommending the material changes. It should not be something that depends on the “wish” of the Contractor.

Regulation 60

Final Closure Plan: cessation of production

1. A Contractor shall, at least 12 months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, (~~text deleted here~~), taking into account the Its of monitoring and data and information gathered during the exploitation phase **and the appropriate Regional Environmental Management Plan**.

RATIONALE: A closure plan should always be required, not only “ if such cessation requires a Material Change to the Closure Plan “. This one of the Regulations where a reference to REMPS is required.

2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting. **If the Commission lacks sufficient technical expertise to evaluate the final Closure Plan it shall consult recognized independent experts to assist them in the evaluation process.**

RATIONALE: The Commission must not be required to make decisions on technical matters in which they don’t have enough expertise.

Part VII

Financial terms of an exploitation contract

Since an Ad Hoc Working Group was established to develop and negotiate the financial terms for an exploitation contract, Costa Rica will not make any comment in this submission, but rather continue participating actively in said AHWG.

Part IX

Information-gathering and handling

Regulation 89

Confidentiality of information

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

(f) Relate to the protection and preservation of the Marine Environment, **unless** the Secretary-General agrees that such information is regarded as Confidential Information for a reasonable period, **which shall under no circumstances exceed a period of 2 years**, where there are bona fide academic reasons for delaying its release; or

RATIONALE: Costa Rica believes that there is no reason for environmental information to be kept from the public for academic reasons, so a maximum period of 2 years is suggested

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. **Any dispute arising as to the nature of the data and information shall be dealt through the administrative procedure described in Annex X**

RATIONALE: It does not make sense that a dispute regarding the confidentiality of information be taken to ITLOS or other courts. An administrative procedure needs to be adopted. Costa Rica suggests it is included as an Annex.

Regulation 92 Seabed Mining Register

b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7, **including any revisions as well as the result of every monitoring process.**

RATIONALE: revisions and the results of all the monitoring processes need to be included in the Register to have updated information.

Part X General procedures, Standards and Guidelines

Regulation 94 Adoption of Standards

1. The Commission shall, taking into account the views of recognized experts, **(deletion of text)** Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to:

RATIONALE: Costa Rica proposes the deletion of the adjective “relevant”. The term stakeholders already considers the relevance of the interested persons or organizations.

- (a) Operational safety;
- (b) The conservation of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

1bis. Standards shall be adopted before the adoption of the Regulations , and given its binding character, no exploitation proposal may be considered before the finalization of the Standards.

2. The Council shall consider and approve, upon the recommendation of the Commission, **and giving due consideration to submission by Stakeholders in the framework of the Public Consultations**, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, process or technology required to implement the Standards.

4. Standards adopted by the Council shall be legally binding on Contractors, **sponsoring States** and the Authority and **shall** be revised and **eventually amended** at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology, **or in view of unforeseeable events or environmental considerations**.

Regulation 95

Issue of Guidelines

1. The Commission or the Secretary-General shall, **as the case may require**, issue from time to time Guidelines of a technical or administrative nature, taking into account the views of (text deleted) Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

2. The full text of such Guidelines shall be **recommended to the Council for their adoption**. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified or withdrawn.

3. The Commission, **in the case of technical Guidelines**, or the Secretary-General , **in the case of administrative Guidelines**, shall keep under review such Guidelines in the light of improved knowledge or information.

Part XI

Inspection, compliance and enforcement

Section 1

Inspections

Regulation 96

Inspections: general

1. The Council shall establish a **Compliance Committee for inspection, compliance and enforcement** as provided for in article 162 (2) (z) of the Convention. **Members of the Council will conform the Compliance Committee, which will take into account equitable geographical and gender balance.**

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

Regulation 100 Inspectors to report

1. At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspector shall send the report the Compliance Committee. **The Compliance Committee will present the results to the Council and the Secretary-General**. A copy shall be sent to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

Regulation 101 Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to **the Compliance Committee, who shall consider the complaint as soon as practicable and send a report to the Secretary General.**

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

Regulation 103 Compliance notice and termination of exploitation contract

1. At any time, if **the Compliance Committee reports to the Secretary-General** on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

RATIONALE: A Compliance Committee is the ideal figure to exercise oversight of the inspection, compliance and enforcement

7bis. The Council will bring to the attention of the Assembly instances of not compliance, as established in article 162 (2)(a) of the Convention.

RATIONALE: As self explained, to comply with the Convention.

Part XIII

Review of these regulations

Regulation 107

Review of these regulations

3. The Council shall establish a process that gives ~~(text delete here)~~ Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

RATIONALE: Costa Rica proposes the deletion of “relevant” . Who is to determine who is relevant and who isn’t, when the term stakeholders imply their importance in relation with the issue being discussed?

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