

**Twenty-eighth session**

Council session, part III

Kingston, 30 October – 8 November 2023

**Draft regulations on exploitation of mineral resources in the  
Area**

**Parts I, II (Regulation 5), V, VIII and Appendices II and III**

**Prepared by the Co-Facilitators, Ambassador Georgina Guillén-Grillo (Costa Rica) and Mr. Salvador Vega (Chile), of the Informal Working Group on Institutional Matters**

1. During the twenty-sixth session of the Authority, the Council decided to establish three Informal Working Groups, with the mandate and working modalities set out in the annex to its decision (ISBA/26/C/11). In accordance with that decision, we act as Co-Facilitators of the Informal Working Group on the Institutional Matters.
2. The informal working group on Institutional Matters met three times during the twenty-seventh session of the Authority, twice during the first two parts of the twenty-eighth session, and is due to meet again for the third time this year, for one day in November 2023.
3. The Intersessional Working Group has within its scope Part I [regulations 1-4], Part II [regulations 5-16], Part V [regulations 57-58], Part VIII [regulations 84-88], Part IX [89-92], Part XII [regulation 106], Part XIII [regulation 107], Appendix II and Appendix III of the regulations. These have been discussed at different times during the preceding Council sessions, although draft regulations 89-92 (on information-gathering and handling), 106 (on settlement of disputes) and 107 (on review of the regulations) have not yet undergone a first reading. It must be pointed out that even though this IWG has to cover the largest part of the Draft Regulations, it has been assigned less time than other IWGs.
4. During the Intersessional Working Group's sessions, interventions were heard and marked on a draft text presented on a screen. Written submissions have also been made after each session, and most recently, after the second part of the twenty-eighth session, and by the deadline of 15 September 2023, 65 written submissions were also made in relation to this Working Group's text. We thank the proponents for these inputs.
5. The facilitators also organised an intersessional webinar on the issue of "Effective Control" on 1 September 2023, which was well-attended. The event was intended to provide information and facilitate future discussion on this issue. The background note and presentations from this event are available online here: <https://www.isa.org.jm/events/webinar-informal-working-group-on-institutional-matters-effective-control/>.

6. We have now prepared, on the basis of the preceding discussions and submissions, this new co-facilitator's text, which presents all of the Regulations within the Group's scope, with all current comments compiled, in one document.
7. As with previous co-facilitator texts, we have implemented the following approach to the revisions:
  - a. Proposals in respect of which there has been prior discussion and no express opposition are reflected as text. Where this involved substantive deletion, the text has been retained, but struck-through. This is without prejudice to their future consideration or the possibility for delegations to re-introduce textual proposals not incorporated in the present text.
  - b. Proposals for insertions have been incorporated in red text, and proposals for deletion are reflected by use of red square brackets.
  - c. Where general comments were made but no drafting suggestions were provided or where several drafting suggestions were made going in a similar direction without being identical, we are either noting those comments, or proposing wording for the consideration of delegations
  - d. Where any regulations have not been revised, this should not be taken to indicate agreement on the unrevised provisions.
  - e. Comments in blue font, providing the co-facilitators' explanations of revisions, certain general proposals and/or our comments, are included under the relevant sections.

## **Part I**

### **Introduction**

#### **Regulation 1**

##### **Use of terms and scope**

1. Terms used in the Convention shall have the same meaning in these Regulations.
2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.
3. Subject to paragraph 1 and the Schedule, terms used in other rules, regulations and procedures of the Authority shall have the same meaning in these Regulations.
4. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule and the Standards and Guidelines.
5. Nothing in these Regulations shall affect the rights, jurisdiction and duties of States under the Convention, **including the rights and legitimate interests of the coastal states pursuant to article 142 of the Convention**, the right to conduct marine scientific research **in the Area** pursuant to articles 143 and 256 of the Convention, and the exercise by States of the freedom of the high seas, in accordance with article 87 of the Convention.
6. These regulations are complemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment **[alt 1. including regional environmental management plans, [and conservation and management measures]] [alt 2. (6.bis) These regulations are further complemented by regional environmental management plans.]**

7. The annexes, appendices and schedule to these regulations form an integral part of the regulations and any reference to the Regulations includes the annexes, appendices and schedule thereto.

8. These regulations are subject to the provisions of the Convention and the Agreement [and other rules of international law not incompatible with the Convention.]

9. These regulations shall be applied in a uniform and non-discriminatory manner. *[One delegate suggests moving paragraph (9) to a new Regulation 2(7)].*

## **Regulation 2**

### **Principles, approaches and policies**

1. These regulations, and any decision-making thereunder, shall be applied in conformity with the principles governing the Area embodied in Section 2 of the Part XI [and in Part XII] of the Convention.

2. ~~Recognizing that the rights in the Resources of the Area are vested in humankind as a whole, on whose behalf the Authority shall act,~~ Exploitation in the Area shall be carried out for peaceful purposes and for the benefit of humankind as a whole, taking into particular consideration the interests and needs of developing States, [and] while ensuring the effective protection of marine environment from harmful effects which may arise from such activities in the Area [consistent with Article 145 of the Convention] including [biological diversity and ecological integrity] [its flora and fauna]

2 bis. Exploitation in the Area and other activities in the Marine Environment shall be carried out with reasonable regard for each other in accordance with article 147 of the Convention.

~~[3. Exploitation in the Area shall not commence until the legal framework intended for the effective protection and preservation of the Marine Environment is adopted and scientific evidence demonstrates that the Exploitation will be conducted in such a manner as not to cause significant and harmful changes to the Marine Environment and its resources and to effectively protect and preserve the Marine Environment pursuant to article 145 and [article 209 of] Part XII of UNCLOS.]~~

~~[3 alt 1. Exploitation shall not be authorized in the Area unless, inter alia, phase one and two Standards and Guidelines are adopted, and effective protection of the Marine Environment from harmful effects can be ensured consistent with Article 145 of the Convention [and including biological diversity and ecosystem integrity][and effective protection of human life in accordance with Article 146 of the Convention].~~

~~[3 alt 2. Exploitation in the Area shall not commence until:~~

~~(a) the legal framework intended for the effective protection and preservation of the Marine Environment has entered into force [and the Authority has adopted an environmental policy];~~

~~(b) the implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework is well on track in the area beyond national jurisdiction; and~~

~~(c) scientific evidence demonstrates that Exploitation will be conducted in such a manner so as: not to cause significant and harmful changes to the Marine Environment and its resources, to effectively protect and preserve the Marine Environment pursuant to article 145 and Part XII of UNCLOS [including biological diversity and ecosystem integrity], and not to impede the full implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework in the area beyond national jurisdiction.~~

~~4. [According to article 145 of the Convention,] the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in [accordance] [line] with the Authority's environmental policy, including regional environmental management plans, is based inter alia on the following principles and approaches:~~

4 alt. The following principles and approaches shall guide the application of these regulations:

- (a) Intergenerational equity.
- (b) Precautionary **principle or approach as appropriate.**
- (c) Ecosystem **[based management]** approach.
- (d) Polluter pays principle.
- (e) **Open** access to **[non-confidential]** data, **[and]** information **and knowledge including relating to the protection and preservation of the Marine Environment.**
- (f) Transparency, **inclusivity** and accountability in decision-making~~;~~  
~~(vii)~~ **including effective stakeholder involvement and public participation;**
- (g) The use of Best Available Scientific Information;
- (h) The use of relevant traditional knowledge of Indigenous Peoples and local communities where available.**

5. These regulations shall be also applied in conformity with the policies relating to activities in the Area established in article 150 **and 151** of the Convention and related principles contained in the Annex of the Agreement; **as well as the environmental policy of the Authority.**

[6. Members of the Authority, Sponsoring States, Contractors, and the Authority shall ensure public trust and regulatory integrity, and shall not engage on decisions in which they have a conflict of interest.]

### **Regulation 3**

#### **Duty to cooperate and exchange of information**

In matters relating to these regulations:

- (a) Members of the Authority, the Enterprise, Applicants and Contractors shall cooperate with the Authority to provide such data and information necessary for the Authority to discharge its duties and responsibilities under the Convention;
- (b) The Authority ~~and~~ sponsoring States, flag States, and port States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;
- (c) The Authority and sponsoring States shall cooperate to develop, implement and ensure effective and transparent communication, public information and public participation procedures;
- (d) The Authority shall consult and, where relevant cooperate, with sponsoring States, **[relevant] coastal States [contiguous/adjacent/proximate to the Contract Area], port States,** flag States, competent international organizations **[and other relevant bodies as appropriate],** to develop measures to implement these regulations, including to:
  - (i) Ensure effective protection of human life and property at sea, and effective protection of the Marine Environment, with respect to activities in the Area;
  - (ii) Exchange information and data to facilitate compliance with and enforcement of ~~applicable international rules and standards~~ relevant rules, regulations, and procedures of the Authority;
- (e) Contractors, the Enterprise, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation and related activities on the Marine Environment including at the regional scale,

to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority, sponsoring States, Contractors, and the Enterprise shall, in conjunction with the Authority, cooperate with each other, ~~as well as with other Contractors and national and international scientific research and technology development agencies~~ with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area, including by use of data repositories and open-access databases;

(ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;

(iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;

(iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;

(v) Promoting the advancement of marine scientific research in the Area for the benefit of humankind as a whole; and

(vi) Developing incentive ~~structures~~ **mechanisms**, including market-based instruments, to support transfer of technology and capacity ~~enhancement~~ **building** of developing states, and to enhance the environmental performance of Contractors beyond the legal requirements including through technology development and innovation; ~~and~~

~~(vii) Establishing a community which links the ocean data with data product users such as biogeographers, and ecologists.~~

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors and members of the Authority shall enable access to **[non-confidential]** information, ~~upon the request by the Secretary General [or the Council]~~, to facilitate the Authority's preparation of studies on the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. **[The content of any such studies shall be in accordance with specific terms of reference and any relevant Standards, and taking account of Guidelines.]** *[Facilitators' note: delegates are invited to consider whether the last sentence of this sub-paragraph (g) may be better located in a standalone provision, as this sub-paragraph's focus is on cooperation duties, and obligations of Contractors and member States (not the obligation on the Authority to produce such studies, to which the latter sentence pertains)]*

(h) The Council shall, taking into account recommendations by the Commission, adopt Standards and Guidelines **[concerning the duties mentioned in paras. (c) to (g)]** which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis **[within three years after the adoption of these regulations or before any Commercial Production commences, whichever takes place first].**

## **Regulation 4**

### **Rights **[and legitimate interests]** of coastal States ~~and duty to notify~~**

*[Facilitators' Note: the outcomes of the intersessional working group focused on coastal states will further inform this DR4 (and other references to 'coastal States' contained in this IWG's portions of the regulations). We have nonetheless reflected some comments*

*received on the topic in this latest draft text. In this regard, the view was expressed that identification / definition of coastal States with relevant interests should not be a function left to the discretion of the Contractors or the Secretary-General. It was also suggested that the Regional Environmental Management Plan could be a relevant tool for making such identification.]*

1. Nothing in these regulations shall affect the rights [and legitimate interests] of coastal States in accordance with article 142 and other relevant provisions of the Convention, ~~including its provisions on consultation, prior notification, and the taking of measures.~~

2. The Secretary-General shall inform potentially affected coastal States, as identified in the applicable Regional Environmental Management Plan, upon the submission of an application for Exploitation. Appropriate consultation and notification [alt 1. protocols] [alt 2. procedures][alt 3. Standards] shall be developed **within three years after the adoption of these regulations or before any Commercial Production commences, whichever takes place first.**

**2 alt. During the consideration of an application for Exploitation the Council shall define the list of potentially affected coastal States and address the issue of the relevant rights of coastal States.**

3. Contractors shall take all measures **required and** 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, damage to the flora and fauna, **interference with the ecological balance of the Marine Environment including ecosystem structure, function and resilience** and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that such harmful effects or pollution arising from **Incidents or** activities in its Contract Area do not spread into areas under the jurisdiction or sovereignty of a coastal State.

4. Such measures by Contractors shall include:

(a) consulting with any potentially affected coastal State **in accordance with Article 142 of the Convention, prior to submitting an application for approval of a Plan of Work**]; and

(b) maintaining throughout the term of the contract:

- (i) monitoring of potential transboundary impacts,
- (ii) accurate and precise recording of the operational area, and
- (iii) consultations with any potentially affected coastal State,

with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

5. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor or the Enterprise ~~is likely to~~ **could** cause harm **or a threat of harmful effects** to its coastline or to the Marine Environment under its jurisdiction or sovereignty, **or may result in exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent**, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the [Commission], and the Contractor and its sponsoring State or States or the Enterprise, of such notification. The Contractor and its sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any **provided by the coastal States as the basis for its belief**, and submit their observations thereon to the [Secretary-General] in the shortest possible time. *[Facilitators' note: the references to the Commission and the Secretary-General in this paragraph may be re-visited when the organisational structure for the inspection and compliance function of the Authority has been determined].*

6. Regulation 4(5) shall apply *mutatis mutandi* to any State with grounds for believing that such harm or threat of harm may be caused in any location by an activity under a Plan of Work, **and the procedure established in regulation 4(7) shall also apply.**

7. If the [Commission] determines, in accordance with the relevant Standards and taking into account Guidelines, that there are clear grounds for believing that, as a result of the Contractor's operations:

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28(3); or

(b) other harmful effects, or threat of harmful effects, to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and the [Commission] shall recommend that the Council issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) of the Convention and Part XI of these regulations. *[Facilitators' note: the reference to the Commission in this paragraph may be re-visited when the organisational structure for the inspection and compliance function of the Authority has been determined. It has also previously been proposed that the text contained in this paragraph (7) may be better located in Part XI of the Regulations, pertaining to Inspections, Compliance and Enforcement].*

8. In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be [strictly] liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired[, and the Authority shall require the Contractor to pay compensation, proportionally to the damage caused].

## Part II

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

#### Section 1 Applications

*Facilitators' Note: It has been agreed in the Institutional Matters informal working group that a discussion on **Effective Control** is pertinent. An intersessional webinar to inform this discussion was held on 1 September 2023.*

*Clarity regarding who may become a sponsoring state and whose sponsorship is required for a contractor's application to be approved by the ISA is crucial to the development of an effective compliance and liability system. Clarity regarding the nationality of a contractor will also assist ensure equitable outcomes from activities in the Area, and to avoid monopolization of the resources of the Area.*

*The Authority's past practice appears to have been to default to a State's own assessment that their sponsorship arrangements constitute a relationship of 'effective control'. This may have led to arrangements in which an ISA contractor operates through a subsidiary company registered in the sponsoring State, but the contractor is majority-owned and managed from outside the sponsoring State.*

*Alternative views have been expressed that to evaluate Effective Control, the Authority must go beyond the location of the registration of the Contractor company, analysing also ownership and business management as factors relevant to determine the level of "de facto" control by the State or its nationals.*

*This is a matter for the Council to determine. Article 4(3) of the Annex III to UNCLOS provides that the Authority itself is called to develop criteria and procedures for the implementation of the provisions on sponsorship. For the consequences it can entail, we find the Regulations, and particularly Regulations 5 and 6 are relevant to develop such rules and procedures on sponsorship with a view to ensure that the requirement of effective control is duly met. In this regard, after a more detailed discussion, Member States might decide to include further requirements to demonstrate Effective Control in this Part II, and in other sections of the Regulations e.g. a definition of the term could also be inserted in the Schedule.*

## **Regulation 5**

### **Qualified applicants**

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

- (a) The Enterprise, on its own behalf or in a joint arrangement; and
- (b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of the Convention and these regulations.

2. Each application shall be submitted:

- (a) In the case of the Enterprise, by its Director-General;
- (b) In the case of a State, by the authority designated for that purpose by it;
- (c) In the case of any other qualified applicant, ~~by a designated representative, or~~ by the authority designated for that purpose by the sponsoring State or States.

3. Each application by an entity referred to in regulation 5(1)(b) shall also contain, together with the necessary documentation as supporting evidence:

- (a) The name of the applicant, and all information necessary to determine the nationality of the applicant or ~~the identity of~~ the State or States by which, or by whose nationals, the applicant is effectively controlled;
- (b) The principal place of business or domicile and, if applicable, the place of registration of the applicant;
- (c) All information necessary to demonstrate that the applicant has the necessary financial, technical and operational capability to carry out the proposed Plan of Work in accordance with these Regulations, applicable Standards and Good Industry Practice using appropriately qualified [and adequately supervised] personnel; and
- (d) All information necessary to demonstrate the technical capability in environmental management pursuant to regulation 13(3)(c) and Section III of Annex I to be able to comply with the requirements of these Regulations and applicable Standards.

4. Each application submitted by a partnership or consortium of entities shall contain the information required by these regulations in respect of each member of the partnership or consortium.

5. In the case of a consortium or any group, the consortium or group shall specify in its application a lead member of the consortium or group.



6. The Authority shall not accept the application if the sponsoring State or States has not enacted ~~a mining law~~ **legislation about activities in the Area** that complies with the ~~standards~~ requirements referred to in Regulation 105.

## **Regulation 6**

### **Certificate of sponsorship**

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

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

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

- (a) The name, address and contact details of the applicant;
- (b) The name of the sponsoring State or States;
- (c) ~~A statement and supporting evidence~~ **such as a passport, citizenship certificate, certificate of incorporation or other evidence of registration or nationality** that the applicant is: *[Facilitators' note: the red text, a new proposal from Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd, may need to be removed or relocated, given other delegates' proposals to delete the preceding wording (with the rationale that the certificate of sponsorship is not the correct place to require such evidence). The point to give examples of relevant evidence may be better located in regulation 7 (form and content of applications). What constitutes such examples may also need to be reconsidered, depending on the definition of Effective Control to be agreed by the Council].*
  - (i) A national of the sponsoring State; or
  - (ii) Subject to the effective control of the sponsoring State or its nationals;
- (d) A statement by the sponsoring State that it sponsors the applicant;
- (d) *bis*. A copy or description of the necessary and appropriate measures taken by the State to secure effective compliance pursuant to article 139(2) of the Convention, and to ensure legal recourse for compensation in accordance with article 235 (2) of the Convention. *[Facilitators' note: it has been suggested that this regulation 6(3)(d)bis requirement would be better located in regulation 7, relating to the form and content of applications for a Plan of Work].*
- [(e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and]**
- [(f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention]**

*[Facilitators' note: there are conflicting suggestions to delete sub-paragraphs (e) and (f) on the basis they are unnecessary, and to keep them on the basis of consistency with the Exploration Regulations].*

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

## Regulation 7

### Form of applications and information to accompany a Plan of Work

1. Each application for approval of a Plan of Work shall be

- (a) in the form prescribed in annex I to these regulations;
- (b) addressed to the Secretary-General; and
- (c) prepared in accordance with these regulations and the applicable Standards, and taking account of Guidelines.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept [as enforceable] ~~during all stages of the process chain~~ and comply with the applicable obligations created by the provisions of Part XI of the Convention, the Agreement, the rules, regulations and procedures, **including the Standards** of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

(b) Accept control by the Authority of activities in the Area ~~during all stages of the process chain~~ as authorized by the Convention;

(c) Provide the Authority with a written ~~substantiated~~ assurance that its obligations under its contract will be fulfilled in good faith; and

**(c bis) Provide the Authority with written undertakings from parent or holding companies of the applicant, if any, to assume joint and several liability for damages to the Authority in the event of liability having been established against the applicant in carrying out of the plan of work.**

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

[alt. proposal to delete (2) and all its sub-paragraphs, on the basis that an applicant should already be subject to the relevant instruments and requirements, and a written statement does not give them new legal force.] *[Facilitators' note: Article 4 of Annex III to the Convention requires the undertakings listed in sub-paragraphs (a)-(c) above to be included in every application].*

3. An application shall be prepared in accordance with these regulations and applicable Standards, taking into account applicable Guidelines, and **[alt 1. in accordance with] [alt 2. on the basis of][alt 3. in line with] [alt 4. taking account of] [alt 5. taking into account] [alt 6. consistent with]** the respective Regional Environmental Management Plan.

3. bis. An application shall contain sufficient information to demonstrate that the applicant has **or will have** access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be accompanied by the following:

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

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

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

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

**[(d bis) A test mining study prepared in accordance with regulation 48bis;]**

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

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

[alt. to (f):

(f) A Health and Safety Plan prepared in accordance with Regulation 30 and Annex VI to these regulations;

(f bis) A Maritime Security Plan prepared in accordance with Regulation 30 and Annex VI to these regulations;]

*[Facilitators' note: delegations have proposed that these two subjects should be covered by two separate standalone plans. If that proposal is taken forward, this is likely also to require amendment also to the Regulation 30 and Annex VI, and updating of the cross-reference here].*

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines; *[Facilitators' note: one proposal also suggests addition of an Annex setting out format and minimum requirements for the Training Plan, as with other plans].*

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations ~~[which documents that management and monitoring [are in compliance with [take into account] the applicable Regional Environment Management Plan and based on the result of the Environmental Impact Assessment];~~ [including information regarding the environmental management system that the Contractor will implement in accordance with regulation 46 and the relevant Standards, taking account of Guidelines] *[Facilitators' note: delegates may wish to consider the need to avoid introducing text here, that is also, and more fully, covered in the relevant regulations and Annex that provide the requirements for the EMMP].*

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

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

(k) A copy of the Contractor's code of Conduct or other rules applicable to all staff involved in the execution of a proposed Plan of Work, including policies pertaining to personnel safety, environmental compliance, inclusivity, gender equality and diversity, and sustainability, which shall conform in material respects with the rules applicable to staff of the Enterprise or any other rules proposed by the Authority; and

(l) A copy of documents to evidence the applicant's Environmental Performance Guarantee, in accordance with regulation 26.

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

~~5. Where a single set of documents is submitted by the applicant proposing a Plan of work for two or more non-contiguous Mining Areas and the Commission considers it is not~~

~~appropriate, the Commission shall reject the application and request separate documents under paragraphs 3 (b), (d), (h) (i) and (l) for each Mining Area.~~

## **Regulation 8**

### **Area covered by an application**

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of geographical coordinates in accordance with [alt 1. Annex 1 to these regulations] [alt 2. the World Geodetic System 84] [alt 3. the most recent applicable international standard used by the Authority].

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

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

[4. The area under application must be covered by a relevant Regional Environmental Management Plan pursuant to regulation 44bis.]

[5. In the application, the applicant shall provide an overview of other potential legitimate activities in the marine environment covered by the application, and a statement confirming whether the area under application or any part of it has received attention under any other international organisation or treaty regime.]

5 alt. For any part of the area under application, to the extent practicable after reasonable investigations, the applicant shall indicate in the application, whether it is designated or managed under any international regime or international organization. The applicant will also indicate that it is aware of its obligation of reasonable regard to other activities in the Area in accordance with Article 147.

## **Section 2 Processing and review of applications**

### **Regulation 9**

#### **Receipt, acknowledgement and safe custody of applications**

The Secretary-General shall:

(a) Acknowledge in writing, within [alt 1. 7][alt 2. 14][alt 3. 30] Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

(b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and

(c) Within 30 Days of receipt of an application for approval of a Plan of Work submitted under this Part, and upon confirming that it is complete in accordance with regulation 10(1):

(i) Notify the members of the Authority of the receipt of such application and circulate to them the contents of the application save for any Confidential Information contained in the application along with notice of the determination made, if any, pursuant to regulation 10 as to whether the applicant has preference and priority; and

[(i alt) Notify the members of the Authority of the receipt of such application and circulate to them information of a general nature which is not confidential

regarding the application, and information enabling them to access a non-confidential version of the application; and]

(ii) Notify the members of the Commission and the Finance Committee of receipt of such application.

*[Facilitators' note: previous paragraph 9(2), relating to the LTC consideration of an application has been moved to regulation 11(1 bis)].*

## **Regulation 10**

### **Preliminary review of application by the Secretary-General**

1. The Secretary-General shall preliminarily review an application for approval of a Plan of Work and determine whether the application contains all the information required by Regulations 5 to 8 7 for further processing.

2. Where the Secretary-General determines an application does not contain all the information required by Regulations 7 5 to 8, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, together with a justification in writing as to why the information is necessary and a date by which the application must be completed. Further processing of an application will not begin until the Secretary-General determines that the application is complete, which includes all required information has been submitted by the applicant, including payment of the administrative fee specified in appendix II. An application will not be processed further if there is another potential applicant who has a preference and priority and an intention to apply in accordance with regulation 10 (1).

[3. In case there is a potential applicant who has claims preference and priority in the same area and same Resource category under an Exploration contract in accordance with Article 10 of Annex III to the Convention the Secretary-General shall, before progressing the original application further, confirm the intention of such a potential applicant to apply for approval of a Plan of Work for Exploitation within 30 days of the original applicant's application. The new applicant shall then lodge their application within a further 60 days; and the Secretary General shall consider the additional application in accordance with Regulation 10(1) and (2).]

[4. Should there be more than one application for the same area and same Resource category, [or a potential applicant has confirmed their intention to apply for approval of a Plan of Work pursuant to Regulation 10(2)] the Commission [Secretary-General] shall make recommendations to the Council, and the Council shall determine which applicant has preference and priority in accordance with article 10 of annex III to the Convention and section 1, para. 13 of the annex to the Agreement, and taking into account any relevant Guidelines, and in case of any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision.] The Secretary-General shall notify the members of the Authority of the determination made, if any, as to whether the applicant has preference and priority.

5. Where an application concerns a Reserved Area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention, [and section 2 of the annex to the Agreement].

## **Regulation 11**

### **Publication and review of the Environmental Plans [and Environmental Management Systems][Alt. [Publication, notification, and review of the Application]**

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

(a) **Taking into account the confidentiality of the data**, place [alt 1. the Environmental Plans and any information necessary for their assessment] [alt 2. the application and all non-confidential documentation submitted and associated with it, including any supporting material] [alt 3. the Plan of Work and the accompanying plans and information] ~~[as well as the non-confidential parts of the test mining study]~~ on the Authority's website for a period of ~~60~~ 90 Days, and notify and invite members of the Authority, [relevant] adjacent coastal States, **[and any other States adjacent to the Exploitation Area when they are potentially the most affected States]**, Stakeholders, **[and the general public]** to submit comments in writing **within 90 days, in accordance with the relevant Standards and** taking account of the relevant Guidelines.

*[(b) Request the Commission to provide its comments on the Environmental Plans [and the non-confidential parts of the test mining study] within the 90 Day comment period.] [Facilitator's note: proposals to delete this paragraph (b) noted potential conflict with DRs 11(4) and 12, and queried the rationale for the LTC reviewing the application once in this 90-day period, and then again afterwards]*

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

2. The Secretary-General shall, within seven Days following the closure of the comment period, provide all submissions received, ~~from members of the Authority, relevant adjacent coastal States, Stakeholders, the general public, the Commission]~~, and any comments from [the independent review team and] the Secretary-General to the applicant ~~for its consideration~~ and publish all submissions and comments provided on the website of the Authority.

2 bis. The applicant shall consider the comments provided pursuant to paragraph ~~(2)~~ (1) and ~~may~~ shall, as appropriate, revise the [alt 1. Environmental Plans] [alt 2. application] [alt 3. **Plan of Work and the accompanying plans and information**] or provide responses ~~in reply~~ to the **[relevant and][substantive]** comments, **as to how they were taken into account** and ~~[shall][may]~~ submit any ~~revised plans~~ **revisions and** responses to the [alt 1. Secretary-General] [alt 2. **Commission**]

**...[alt. continuation of 2 bis ...]**~~[within a period of 30 Days following the close of the comment period unless otherwise decided or such longer period as determined by the Secretary-General after considering [alt 1. following a request by the applicant][alt 2. after consulting with the applicant] before the initial time period [of 30 days] expires for an extension of the period due to the time required [alt. on the basis that it requires more time] to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority's website.]~~

**2 ter. The Secretary-General shall provide comments submitted pursuant to paragraph (1), and any revisions and responses to comments submitted pursuant to paragraph (2 bis), to the Commission.**

**[3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the ~~Environmental Plans or revised plans [and the test mining study]~~ in the light of the comments submitted under paragraph (1), together with any **revisions and** responses **provided** by the applicant under**

paragraph (2 bis), and any additional information provided by the Secretary-General under paragraph (2).]

4. Notwithstanding the provisions of regulation 12(2), the Commission shall not consider an application for approval of a Plan of Work until the [alt 1. Environmental Plans have] [alt 2. application has ] [alt 3. Plan of Work and the accompanying plans and information have] been published and if necessary, revised in accordance with this regulation.

5. The Commission shall prepare a report on the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work and the accompanying plans and information], which 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. The report shall include:

- (a) details of the Commission's determination under regulation 13(4)(e);
- (b) details of the comments and responses submitted under paragraphs (1) and (2bis);
- (c) any further information provided by the Secretary-General under paragraph (2);
- (d) any amendments or modifications to the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work] recommended by the Commission under regulation 14 [and changes subsequently made to application documents by the applicant];
- (e) the relevant rationale for the Commission's determination, with specific explanation as to any comments or responses that are disregarded.

[6. In preparing its report under paragraph (5), the Commission shall [alt. may] seek advice from competent independent experts as necessary. ~~In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council.~~ The experts shall be selected and appointed in accordance with relevant Guidelines [alt. Annex [tbc].]

### Section 3      Consideration of applications by the Commission

#### Regulation 12

#### ~~General~~ **Rules for considering applications**

1. ~~Subject to Regulation 10 concerning preference and priority among applicants, t~~The Commission shall examine applications in the order in which they are received by the Secretary-General ~~and shall assess applications in accordance with this regulation and against the criteria contained in regulation 13, in order to make a report and recommendation to the Council whether the Plan of Work under application should be approved, or disapproved, pursuant to regulation 15.~~

**Ibis.** ~~Subject to paragraph (1 ter) and to regulation 11(4), The Commission shall commence the consideration of an application at its next meeting after receipt of the application [alt. within 30 days of its receipt of the application] [provided that the notifications and information pursuant to regulation 11(1)-(2 ter) have been circulated at least 30 90 Days prior to the commencement of that meeting of the Commission.]~~*[Facilitator's note: this has been proposed to move here, from DR9. One submission notes in relation to this paragraph (1 bis), that regulation 11(4) (cross-referenced) actually prevents the LTC from considering the application until after the documents have been published for consultation for 90 days in any event – hence the proposal to delete the wording from 'provided...' onwards.]*

[1 ter. The Commission may defer consideration of an application to a subsequent meeting [alt. suspend further consideration of such application and resume consideration at its subsequent meeting] if it considers the application to be overly complex if the complexity of the applications so requires.]

2. The Commission shall consider applications expeditiously and shall endeavour to submit its reports and recommendations to the Council no later than [alt 1. 120] [alt 2. 180][alt 3. 275] Days from whichever date occurs later out of:

- (a) the close of the comment period, in accordance with Regulation 11(1)(a), or
- (b) the date of submission of a revised plan, in accordance with Regulation 11(2 bis), or
- (c) the date the Commission receives additional information or amendments to the Plan of Work requested by the Commission under regulation 14.

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

3. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the Rules of the Authority in a uniform and non-discriminatory manner, and may not recommend approval of a Plan of Work that does not comply with these requirements.

3 alt. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the Rules of the Authority in a uniform and non-discriminatory manner, and [ensure its compliance with] [shall have regard to] apply the principles, policies and objectives relating to activities in the Area [as provided for in [the Convention,] [the Preamble,][and Part I of these regulations,][and in particular the manner in which the proposed Plan of Work] [contributes to realizing benefits for][is in the interests of] humankind as a whole [in accordance with decisions of the Council and Assembly]] including in ensuring the fair and equitable sharing of benefits] [and ensuring the effective protection of the marine environment], and may not recommend approval of a Plan of Work that does not comply with these requirements

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

3 bis alt. In the case the Commission evaluates that there are aspects of the proposed Plan of Work that are not covered entirely by its own internal expertise, the Commission shall nominate at least three competent independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector, to review the application and provide comments to the Commission to inform their consideration of the proposed Plan of Work.

*[Facilitators' note: the points raised in paragraphs (3 bis) and (3 bis alt.) may be covered sufficiently by regulation 11(6), if this is retained.]*

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

- (a) Any relevant reports from the Secretary-General;
- (a)bis. Any relevant [and substantive] comments received following the publication of the [alt 1. Environmental Plans][alt 2. Application][alt 3. Plan of Work and the accompanying plans and information] or the Commission's report on the [alt 1. Environmental Plans][alt 2. Application][alt 3. Plan of Work and the accompanying plans and information] made by Stakeholders, together with any revisions and responses provided by the applicant pursuant to regulation 11(3);



~~[(a)ter. Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with [alt 1. competence in] [alt 2. relevance to] the subject-matter;]~~

~~[(a) quat. Any information supplied by the sponsoring State or States [relating to the financial and technical capabilities of the sponsored applicant]].~~

~~[(b) Any concern raised by a [relevant] adjacent coastal State [likely to be affected] with respect to the application;]~~

~~alt. to (a bis.), (a ter.), (a quat.), and (b):~~

~~(b) Any further relevant information about the applicant or in respect of the application sought by the Commission or the Secretary-General or supplied by the Sponsoring State(s), Members of the Authority, international organizations, adjacent coastal States, and other States or stakeholders prior to, and during the period of, the Commission's evaluation.~~

~~(b) bis. Reports from the Finance Committee upon matters within its competence, including:~~

~~(i) assessment of the economic benefits to be derived from the activities proposed in the application;~~

~~(ii) advice as to securing optimum revenue for the Authority;~~

~~(iii) the administrative budget required to manage a contract if awarded, and the proposed annual reporting fee to be levied pursuant to regulation 84;~~

~~(iv) any recommendation regarding the amount or format of the environmental performance guarantee; and~~

~~(v) advice as to whether the applicant would be subsidized so as to be given an artificial competitive advantage with respect to land-based miners.~~

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

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

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

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

~~(e) — Any relevant Standards and Guidelines developed in accordance with Regulations 94 and 95; and~~

#### **Regulation 12 bis.**

#### **General obligations of contractors**

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

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

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

*[Facilitators' note: in accordance with proposals received, the content of this regulation 12 bis. has now been captured in regulation 18 bis. (President's Text)]*

### **Regulation 13**

#### **Assessment of Applicants and applications**

1. The Commission shall determine ~~[under consideration of]~~ taking into account the **relevant** ~~comments made by members of the Authority and Stakeholders, responses by the applicant and any additional information or comments provided by the Secretary-General if~~ **whether** the **applicant proposed Plan of Work and the accompanying plans and information:**  
*[Facilitators' note: deleted text is covered in regulation 12 (above), and proposed regulation 13(1 bis) (below).]*

(a) **Document that the applicant is** a qualified applicant pursuant to regulation 5;

(a bis.) **Are accompanied by a certificate of sponsorship;**

(b) **Are** ~~Has prepared the application~~ in conformity with these regulations, the **applicable** Standards and **taking into account** ~~[the applicable]~~ Guidelines, and the **Regional Environmental Management Plan;**

(c) **Demonstrate that the applicant h**Has given the undertakings and assurances specified in regulation 7(2);

(d) **Demonstrate that the applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have** ~~Has~~ satisfactorily discharged ~~its~~ **their** obligations to the Authority, **including having a satisfactory record of past performance both within the Area [and in other jurisdictions];**

(d alt.) *[moved from (h)]* ~~Has d~~**Demonstrated** a satisfactory record of past performance both within the Area **[and in other jurisdictions];**

(e) **Demonstrate that the applicant h**Has **[or can demonstrate that it will have]** the financial and technical capabilities **[and capacity]** to carry out the Plan of Work, **[meet or exceed environmental performance obligations]** and to meet all obligations under an exploitation contract **[according to criteria defined by the Council];**  
*[Facilitators' note: Annex III, Article 4 of the Convention requires the ISA's RRP's to establish qualification criteria relating to 'financial and technical capabilities of the applicant']*

(e)bis. **Fulfil the obligations to protect and preserve the Marine Environment in accordance with the Convention and the Agreement, and as listed out in the Rules of the Authority;**

**[(f) Has d**~~Demonstrated~~ the ~~economic~~ **[commercial] financial** viability of the mining project.]

~~[(g) Has demonstrated]~~ due diligence in relation to the accommodation of other activities in the Marine Environment. *[Facilitators' note: some more detailed original text here has been moved to/ blended with 13(4)(b)].*

1.bis. The Commission shall take into account all information pursuant to Regulation 12(4) and all applicable Standards and Guidelines when making its determinations under this Regulation.

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

- (a) The Financing Plan is compatible with proposed Exploitation activities; and
- (b) The applicant is [or will be] capable of committing [or raising] sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:
  - (i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations **in order to ensure that the project will benefit humankind as a whole;**
  - (ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan ~~and to restore and remediate the affected Marine Environment in case of a significant;~~
  - (iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan, **and effective response to an Incident;** and
- ~~(c)(iv) Necessary access to~~ **The applicant demonstrates that it will purchase insurance [products that are appropriate to the financing of exposure to risk] in accordance with [Good Industry Practice] Regulation 36, and applicable Standards, taking into account Guidelines.**
- (d) The applicant has proposed an Environmental Performance Guarantee whose amount and form is assessed by the Commission to be adequate, and in conformity with the requirements of Regulation 26 and the relevant Standard, and taking into account any Finance Committee report or Guidelines.**

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with **Standards and taking into account** Guidelines whether the applicant has provided sufficient information to demonstrate it has [or will have]

- (a) Certification to operate under internationally recognised quality control and management standards;
- (a bis.) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice **and Best Environmental Practices** using appropriately qualified and adequately supervised personnel;
- (b) The technology, knowledge, and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, **[and taking into account the applicable Regional Environmental Management Plan]** , including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to

modify management and operating procedures as required to avoid [the potential for] Serious Harm];

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

(d) The capability to respond effectively and [alt 1. promptly][alt 2. expeditiously] to Incidents, in accordance with the Emergency Response and Contingency Plan; and

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

(f) A safety management system that meets the requirements of regulation 30 bis; and

(g) An Environmental Management System that meets the requirements of Regulation 46.

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

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

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

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

~~(bd)~~ Provides for Exploitation to be carried out with reasonable regard for other activities in the Marine Environment, in line with regulation 31 and article 87 and 147 of the Convention, including *inter alia* navigation, the laying of submarine cables and pipelines, the right to maintain and repair existing submarine cables and pipelines, fishing and marine scientific research, in accordance with the relevant Standards and taking account of Guidelines. In making such determination, the Commission shall determine if the proposed Plan of Work has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment, including to:

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

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

(iii) identify areas of intense fishing activity as may be defined in Standards or Guidelines in, or adjacent to, the area under application; and

(iv) identify any other activities in or adjacent to the Contract Area in accordance with Regulation 31, including marine scientific research activities, activities relating to marine genetic resources, and environmental protection measures and area-based management tools established or proposed by competent international organizations; and

(iv) where other marine users are identified in relation to the area under application ~~whether listed in the Regional Environmental Management Plan or identified by some other means~~, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities ~~(such as an easement, or a mining exclusion zone within a reasonable radius);~~]

(ce) [alt 1. Demonstrates that the Environmental Plans will secure] [alt 2. Provides under the Environmental Plans to secure] [alt 3. Ensures though the Environmental Plans will secure][alt 4. Demonstrates that the draft Plan of Work and the accompanying plans and information will ensure] ~~for~~ the effective protection of the Marine Environment in accordance with the Convention and the Rules of the Authority ~~rules, regulations and procedures adopted by the Authority, in particular the fundamental principles and the relevant policies under regulation as well as~~ taking into account the objectives and measures under the applicable Regional Environmental Management Plan[, and taking into account the cumulative effects of all relevant activities, and climate change]. For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that:

(i) the draft Plan of Work is based on adequate environmental baseline data, in accordance with applicable Standards and taking into account relevant Guidelines;

(ii) the Standards developed pursuant to regulation 45 will be complied with;

(iii) the objectives and measures of the applicable Regional Environmental Plan will be fulfilled;

(iv) the overarching goals and objectives set by the Authority [in its environmental policy] are complied with;

(v) the Plan of Work gives full effect to the precautionary principle [or approach as appropriate];

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

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

(B) Significant changes in the atmosphere, the terrestrial environment, or the Marine Environment;

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

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

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

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

~~[(vi alt 1. or bis.) The assessment whether the Environmental Plans provide for the effective protection of the Marine Environment from harmful effects that may arise from the proposed activities under sub-paragraph (e), shall include by assessing whether the proposed Plan of Work:~~

(A) will not cause Environmental Impacts to any area designated by the Authority [or other relevant authority] as a protected area in terms that prohibit such impact;

(B) gives rise to a non-negligible [alt. serious] risk of pollution, damage to flora and fauna, or other harmful to ecosystem integrity (i.e. ecosystem structure or function) [in a manner that:

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

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

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

(C) gives rise to a non-negligible [alt. serious] risk that it will undermine the protection and conservation of other natural resources of the Area.]

~~(vi alt 2. or ter.) The activities proposed under the Plan of Work will meet the overarching environmental goal of sustaining marine (benthic and pelagic) ecosystem integrity including the physical, chemical, geological and biological environment, and contributing to restoring ecosystem integrity, as well as the following environmental objectives:~~

~~(A) Prevent loss of genetic diversity, species richness, habitat or community types, and structural complexity on a long-term basis;~~

~~(B) Maintain the ability of populations to replace themselves, including ensuring population connectivity and the preservation of suitable habitat;~~

~~(C) Prevent the degradation of ecosystem functions (e.g. the long-term natural productivity of habitats, elemental cycling, trophic relationships);~~

~~(D) Protect ecosystems from contamination by pollutants generated during any phase of the mining process;~~

~~(E) Maintain resilience to prevent regime shift, and to support recovery from cumulative impacts, including mining, that can affect source populations and communities, connectivity corridors, life-history patterns and species distributions; and~~

~~(F) Sustain ecosystem services, including carbon sequestration, recognizing that many are yet to be discovered.~~

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

- (a) Any Environmental Effects or impact on other activities of allowing the Exploitation activity;
- (b) All proposed Mitigation and risk management measures;
- (c) An evaluation of harmful effects individually, in combination, as well as cumulatively, including effects from other activities in the area under application.
- (d) The effects on human health that may arise from Environmental Effects;
- (e) The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;
- (f) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;
- (g) Traditional knowledge or cultural interests relevant to the area under application;
- (h) The matters set out at Regulation 47(3)(b)46bis(2)(b);
- (i) The assessment framework for Mining Discharges as set out in the Guidelines;
- (j) Any relevant Standards and Guidelines developed in accordance with regulations 94 and 95.
- (k) Whether performance of the Plan of Work can be effectively monitored and controlled by the Authority, to minimise Environmental Effects, and ensure compliance with the Rules of the Authority.

5 bis. The Commission shall determine whether the draft plan of work and the accompanying plans and information demonstrate that the proposed activities will not interfere with any cultural rights or interests.

6. When assessing a Plan of Work, the Commission shall apply the principles set out in regulation 44(1)(a)(i)-(vii)-(e).

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

- (a) is in force and applicable,
- (b) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention, and
- (c) does not contain provisions that appear to exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.]

#### **Regulation 14**

##### **Amendments to the proposed Plan of Work**

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

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

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

2. Where the Commission makes a request under paragraph (1), the Commission shall provide to the applicant a brief justification and rationale for such a request. The applicant must respond **within the timeframe requested by the Commission, which shall be at least 90 days**, ~~90 Days following receipt of such [proposal a request] from the Commission~~ by agreeing to the request, rejecting the request, or making an alternative proposal for the **Commission's consideration**.

3. **The timeframe referred to in regulation 12(2) shall be extended by the timeframe determined by the Commission pursuant to paragraph (1).**

4. **The [alt 1. Secretary-General] [alt 2. Commission] shall publish any amendment, additional information, or revised application received pursuant to paragraph (2) on the website, and where these are significant, shall provide an opportunity for public consultation in accordance with regulation 11.**

5. **The Commission shall ~~then in light of~~ take into account the applicant's response under paragraph (1) and any responses received from public consultation under paragraph (4) into account in making its recommendations to the Council.**

#### **Regulation 15**

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

1. Taking into account regulations ~~12(4)~~ and 13, if the Commission determines that the ~~applicant~~ **application** meets the relevant requirements, it shall **[alt. may]** recommend approval of the Plan of Work to the Council.

**[1 alt 1.] The Commission may recommend approval of a proposed Plan of Work if the Plan of Work complies with all requirements stipulated in Regulation 13.**

**[1 alt 2.] If the Commission determines that the applicant meets the criteria set out in regulations ~~12(4)~~ and 13, it shall recommend approval of the Plan of Work to the Council.**

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

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

**(a bis) a summary of any uncertainties inherent in the Plan of Work and how the applicant is proposed to address these;**

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

(c) a draft Contract.

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

**(a) the Plan of Work does not comply with all requirements stipulated in Regulation 13;**



(a alt 1.) the Plan of Work does not comply with, or the Commission is unable to determine whether the Plan of Work complies with, all requirements stipulated in Regulation 13;

(a alt 2.) The Commission is unable to determine that the Plan of Work either alone or in combination with other activities and impacts ensures effective protection of the marine environment, based on the criteria set out in Regulation 13(4) (c) ~~(e) and (f)~~, on the basis of Best Available Scientific Information, and applying the precautionary approach

(a alt 3.) Pursuant to regulation 13(4)(c) ~~(e) and (f)~~, the Plan of Work fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4)(c) ~~(e) and (f)~~, that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.

(a alt 4.) The Commission determines that the Plan of Work either alone or in combination with other activities and impacts does not ensure effective protection of the marine environment, based on the criteria set out in Regulation 13 (4) (c), on the basis of Best Available Scientific Information.

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

~~(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant; [Facilitators' Note, This wording had been deleted previously, but two written submissions in September 2023 request its reinsertion].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. If the Commission determines that ~~it will not recommend approval of the Plan of Work~~ ~~[alt 1. for any reason][alt 2. pursuant to paragraphs (1)-(3)]~~ ~~the applicant does not meet the~~ ~~[criteria] [requirements] set out in [regulations 12, 13 and 14][the regulations, the~~ Commission shall ~~so~~ inform the applicant in writing, ~~by~~ providing the reasons why ~~any~~ ~~[criterion has]~~ ~~[any requirements set out in regulation 13 have not been met by the applicant~~ ~~or why the Commission has been unable to make a determination,~~ and shall provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. During this period the Commission shall not make a recommendation to the Council on the application.

5. ~~[At its next available meeting,]~~ ~~T~~he Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, ~~[alt 1. provided that the representations have been circulated at least 30 days in advance of that meeting] [alt 2. which it shall do within 30 days of its receipt of such representations].~~ ~~The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.~~

6. The Commission may refuse an application and return it to the applicant. The Commission must provide reasons for refusing an application, including a summary of the deliberations of the Commission specifying what inputs have been taken into account and how these have been assessed, as well as divergences of opinion within the Commission, if any.

#### **Section 4      Consideration of an application by the Council**

##### **Regulation 16 Consideration and approval of Plans of Work**

1. The Council shall consider the reports and recommendations of the Commission [and any other relevant subsidiary body established in accordance with the Convention and the Agreement,] relating to approval of Plans of Work in accordance with paragraph 11 and ~~paragraph 12~~ of section 3 of the annex to the Agreement, after due consideration, and within 60 days unless the Council decides to provide for a longer period, the Council shall approve or disapprove the Plan of Work.

[2. If the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 days or such other time period as has been established by the Council, the Plan of Work shall be deemed to have been approved by the Council at the end of that period.]

3. The Council shall disapprove a plan of work if any requirement of regulation 13 is not fulfilled.

4. The Council shall, when approving a Plan of Work, request the Secretary-General to ensure that the contract to be concluded incorporates all conditions outlined in the draft Plan of Work and the accompanying plans, as well as any additional conditions requested by the Commission or the Council.

16 alt.

The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

#### **Part V Review and modification of a Plan of Work**

*[Facilitators' Note: there were several similar but separate proposals for editing the text of DR57 (regarding the process and responsibilities for modification to Plan of Work during contract term). The proponents of those edits may wish to consider working together inter-sessionally, to produce one consolidated text for DR57].*

##### **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 shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.]

2 alt. If a Contractor wishes to modify a Plan of Work, it shall notify the Secretary-General. The Secretary-General shall [inform the Council and] transfer the [alt 1. request][alt 2. modified Plan of Work] to the Commission, to consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the [applicable] Standards. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor [may submit an appropriate recommendation to the Council] ~~shall seek the prior approval of the Council~~ Based on this recommendation of the Commission, under regulations 12 and 16, [the Council may give its prior approval] ~~and~~ before such Material Change is implemented by the Contractor. The sponsoring State shall also be informed.

3. Where the proposed modification under paragraph 2 [alt 1. relates to a Material Change in] [alt 2. may have a potential impact on] the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.

[3 alt 1. Where the proposed modification under paragraph 2 is determined to constitute a Material Change, the Council, based on the recommendations of the Commission, shall determine whether the Contractor is required to undertake an environmental impact assessment and prepare an environmental impact statement of the proposed modification in accordance with Regulations [46bis] and [47], respectively. The Environmental Impact Statement, and any revisions to the Environmental Management and Monitoring Plan or Closure Plan, shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.]

[3 alt 2. Where the proposed modification constitutes a Material Change, the public participation procedure as outlined in regulation 11 shall be held.]

4. ~~Notwithstanding Paragraph 2,~~ ~~the Secretary-General may propose to~~ and the Contractor may agree to a change to the Plan of Work that is not a Material Change in accordance with the relevant Standards, to correct minor omissions, errors or other such defects. ~~After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change.~~ The Secretary-General shall so inform the Commission and the Council at its ~~their~~ next meeting. ~~The Council may decide to apply the procedure as provided in paragraph (2).~~

~~4. alt 1. The Commission may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. In case of Contractor's agreement the Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary General shall so inform the Council at its next meeting.~~

4 alt 2. The Commission may recommend a change to the Plan of Work that is not a Material Change. The Secretary General will transmit the recommendation to the Contractor, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting. In the instance of correcting minor omissions, errors or other such defects which are not substantive, the ISA Secretariat will be responsible for making the change and informing the Contractor and the Sponsoring State.

4 alt 3. The Commission or the Secretary-General may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. The Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting.

## **Regulation 58**

### **Review of activities under a Plan of Work**

1. A Plan of Work shall be reviewed ~~at~~ intervals not exceeding five years from the date of signature of the exploitation contract. ~~[alt 1. The Commission or the Council can initiate additional reviews][alt 2. or by decision of the Council based on the recommendations of the Commission]~~ in accordance with the applicable Standards and taking into account the applicable Guidelines [or] where, ~~according to the relevant organ of the Authority, as appropriate in the opinion of the Secretary General,~~ there have occurred any of the following events or changes of circumstance ~~taking into account~~:

1 alt. Activities under a Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the exploitation contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:

[(a) A proposed Material Change in the implementation of the Plan of Work;]  
*[Facilitators' note: proponents for deletion of this sub-paragraph noted that a material change would be a potential outcome of a review, not a trigger for a review.]*

[(a bis.) Identification of a new **significant** environmental risk, or a significant change to existing risk calculations;]

(a bis alt.) Information has come to light that was not available when the Plan of Work was approved, including changes in Best Available Techniques or Best Available Scientific Information, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;

(a ter.) An indication that the cumulative ~~effects~~ **impacts as a result** of Exploitation activities exceed any environmental thresholds established under the applicable Standards [and objectives established under the applicable Regional Environmental Management Plan;]

(a quat.) New **significant** information relevant to the effective protection of the Marine Environment;

(a quin.) Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved.

(a sexies.) a request by another international body concerning other activities or measure in the Marine Environment pursuant to regulation 31.

(b) Any Incident;

(c) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;

(d) A performance assessment which requires action under regulation 52(8);

[(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;]  
*[Facilitators' note: proponents for deletion of this sub-paragraph consider this criteria should trigger a compliance response, not a regular review process that leads to an amended Plan of Work. This point may be relevant to the Intersessional Working Group on Inspections, Compliance and Enforcement.]*

(f) **Significant** ~~C~~changes in Best Available Techniques;

(g) **Significant** ~~C~~changes in Best Available Scientific Information;

(g bis.) Significant Changes in Best Environmental Practices;

(h) Operational management changes, including changes to subcontractors and suppliers[, whereby the Commission, after review with the Contractor of the Contractor's activities under the Plan of Work, shall recommend to the Council whether any modifications to the Plan of Work are necessary.] ~~the relevant organ of the Authority as appropriate shall [Secretary General may] review with the Contractor the Contractor's activities under the Plan of Work, and such organ shall recommend to the Council [discuss] whether any modifications to the Plan of Work are necessary or desirable.~~

(h bis.) Changes in the overall policy of the Authority.

*[Facilitators' note: one submission asks for more clarity on the procedure for 'pulling the trigger' to initiate the review; and queries whether or not the Contractor is expected to suspend activities until the review concludes and a new Plan of Work is adopted? Another submission noted the need for a threshold of 'significance' for trigger events, and suggested this could be further detailed in Standards.]*

2. [alt 1. The Contractor shall commission a competent, independent expert or experts to undertake a review under paragraph (1)] [alt 2. A review of activities under paragraph (1) shall be undertaken by the Contractor and verified by an independent expert] in accordance with the relevant regulations, Standards and taking into account the Guidelines. The [Secretary-General][or][and][the Contractor] shall invite the sponsoring State or States, and relevant coastal States, to participate in the review of [activities][the Plan of Work]. **The results of the review shall be compiled as a report.**

*[Facilitators' note: submissions noted that it was yet to be discussed who would be conducting the review, which point needs to be settled in order to be reflected clearly in this regulation 58].*

3. The Secretary-General shall forward the report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, [alt 1. the Contractor or the Council, based on the recommendation by the Commission, wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57(2) and, where applicable, regulation 57(3)] [alt 2. Material Changes need to be made to the Plan of Work, the Commission shall recommend the relevant changes to the Council, and the Contractor shall implement them].

[[3 alt.] The ~~organ~~ **person or persons** in charge of the review shall report on each review to the Commission and Council, the sponsoring State or States and the relevant coastal States. Where, as a result of a review, ~~material changes the Council, Commission, Contractor or reviewer identifies that modifications~~ need to be made to the Plan of Work, ~~the Commission shall recommend said changes to the Council, and the Contractor shall implement such changes as soon as viable. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57(2) and, where applicable, regulation 57(3)~~ **shall apply.**

4. [alt 1. For the purpose of the review, the Contractor shall provide all] [alt 2. The Secretary-General may request the Contractor to submit such additional data and] information **required by the [alt 1. independent expert or experts] [alt 2. Secretary-General]** in the manner and at the times [alt 1. as the Secretary-General reasonably requested] **[as may be necessary for the purposes of this regulation].**

5. Nothing in this regulation shall preclude the ~~appropriate organ of the Authority~~ **Commission or the Council Secretary General**, the sponsoring State or States, or the Contractor from making a request to initiate discussions regarding any matter

connected with the Plan of Work, exploitation contract or the activities under the exploitation contract in cases other than those listed in paragraph (1).

6. The Secretary-General shall make publicly available the findings and recommendations resulting from a review of activities under this regulation.

## **Part VIII**

### **Annual, administrative and other applicable fees**

*[Facilitators' Note: There has been some agreement to our previous proposal to request the Commission or the Finance Committee to clarify the purpose, use and the mechanism to calculate each annual and administrative fee listed in Appendix II. Submissions also generally noted interest in harmonizing the different fees (e.g. combining the annual fixed fee and the annual reporting fee), and also a need in the regulations expressly to state consequences for failure to pay fees.]*

#### **Section 1**

##### **Annual fees**

###### **Regulation 84**

###### **Annual reporting fee**

1. A Contractor shall pay to the Authority, from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof, an annual reporting fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee.

2. The annual reporting fee is due and payable to the Authority at the time of submission of the Contractor's annual report under regulation 38.

[3. Where the effective date is part way through a Calendar Year, the first payment shall be pro-rated and made within 30 Days after the effective date of an exploitation contract.]

*[Facilitators' Note: One submission noted that the annual report is always submitted at annual intervals, so there should be no need for pro-rating.]*

4. Where an annual reporting fee remains unpaid after the date it becomes due and payable:

(a) this constitutes a violation of the fundamental terms of the contract for the purposes of regulation 103, and

(b) a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

###### **Regulation 85**

###### **Annual fixed fee**

1. A Contractor shall pay to the Authority, [alt 1. from the date of commencement of Commercial Production in a Contract Area][alt 2. from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof] an annual fixed fee. The amount of the fee shall be established by the Council as required under paragraph (1)(d) of section 8 of the annex to the Agreement- on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the Authority's management of the contract, including staffing the Secretariat and conducting inspection and enforcement activities.

2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year ~~at the rate prescribed by the Council under paragraph 2 above.~~

3. Where the date of commencement of Commercial Production occurs part way through a Calendar Year, a prorated annual fixed fee shall become due and payable to the Authority within 30 Days of such commencement date.

**3 bis.** Where an annual fixed fee remains unpaid after the date it becomes due and payable,

(a) **this constitutes a violation of the fundamental terms of the contract for the purposes of regulation 103, and**

(b) a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

[4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations.] *[Facilitators' Note: One submission noted that retention of this wording would mean using the financial benefits derived from exploitation to fund the ISA's regulatory costs, i.e. prioritising savings for the contractor above maximising revenue for equitable benefit-sharing for humankind, and particularly developing countries.]*

## **Section 2**

### **Fees other than annual fees**

*[Submissions noted that the text would need to be amended to take into account the March 2023 discussions to delete Appendix II.]*

#### **Regulation 86**

##### **Application fee for approval of a Plan of Work**

1. An applicant for the approval of a Plan of Work shall pay an application fee **[alt 1. as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee]**~~[alt 2. in the amount specified by the Council]~~ ~~[alt 3. in the amount specified in appendix II].~~

2. If the administrative costs incurred by the Authority in processing an application, **which may include the costs of recruiting competent independent experts,** are less than the **[alt 1. amount paid in accordance with paragraph 1]**~~[alt 2. amount specified by the Council]~~~~[alt 3. fixed amount in appendix II],~~ the Authority shall refund the difference to the applicant.

**2 bis.** If the administrative costs incurred by the Authority in processing an application are more than **[alt 1. amount paid in accordance with paragraph 1]**~~[alt 2. amount specified by the Council]~~~~[alt 3. fixed amount in appendix II]~~ the applicant or Contractor shall pay the difference to the Authority, provided that any additional amount to be paid by the applicant or Contractor shall not exceed 10 per cent of the **[alt 1. amount set in accordance with paragraph 1]**~~[alt 2. amount specified by the Council]~~~~[alt 3. fixed fee specified in appendix II].~~

3. Taking into account any criteria established for this purpose by the Finance Committee **or in a case-by-case basis,** the ~~[Secretary-General]~~**[Finance Committee]** shall determine the amount of such differences as indicated in paragraph (2), and notify the applicant or Contractor of its amount. The notification shall include a statement of the expenditure incurred by the Authority. The amount due must be paid by the applicant or reimbursed by the Authority within 90 Days of the effective date of the exploitation contract.

#### **[Regulation 87**

##### **Other applicable fees**

A Contractor shall pay other prescribed fees in respect of any matter specified **[alt 1. by the Council]**~~[alt 2. in appendix II]~~ **and** in accordance with the applicable regulation.]



## Section 3 Miscellaneous

### Regulation 88 Review and payment

1. The Council shall review and determine on a regular basis the amount of each of the annual, processing and other applicable administrative fees specified in appendix II in order to ensure that they cover the Authority's expected administrative costs for the service provided.
2. ~~[A Contractor shall pay fees in full at the time of the submission of the relevant application, request, document, or other event except as provided for in this part and as specified in appendix II]~~ Except as provided for in this Part, fees will be a fixed amount expressed in United States dollars [or its equivalent in a freely convertible currency], and are to be paid in full at the time of the submission of the relevant application, request, document or other event as specified in ~~appendix II~~ **this Part**.
3. The Secretary-General shall not process any application until the applicable fee under ~~appendix II~~ **this Part** has been paid.
4. Fees paid under this Part are not refundable upon the withdrawal, rejection or refusal of an application.

### Regulation 90 Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information **held by the Authority** and shall not, except with **good cause** or the prior written consent of a Contractor, release such information to any person external to the Authority. To ensure the confidentiality of such information, the Secretary-General shall establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information by members of the Secretariat, members of the Commission, members of the Council, and any other person participating in any activity or programme of the Authority. Such procedures shall include:
  - (a) The maintenance of Confidential Information in secure facilities and the development of security procedures to prevent unauthorized access to or removal of such information; and
  - (b) The development and maintenance of a classification, log and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition.
2. A person who is authorized pursuant to these regulations to access Confidential Information shall not disclose such information except as permitted under the Convention and these regulations. The Secretary-General shall require any person who is authorized to access Confidential Information to make a written declaration witnessed by the Secretary-General or duly authorized representative to the effect that the person so authorized:
  - (a) Acknowledges his or her legal obligation under the Convention and these regulations with respect to the non-disclosure of Confidential Information; and
  - (b) Agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such information.
3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these regulations or a contract issued under these regulations. In accordance with the provisions of article 163(8), of the Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

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

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

6. In the case of any breach of obligations relating to Confidential Information **held by the Authority**, the Authority shall notify the relevant Contractor and sponsoring State.

#### **Regulation 91**

##### **Information to be submitted upon expiration of an exploitation contract**

1. ~~Upon expiration of an exploitation contract,~~ The Contractor shall transfer to the Authority, **to the extent feasible** within [alt 1. 90][alt 2. 180] Days, all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and **the Standard** taking into account the Guidelines.

**1 bis. The Contractor may seek advice from the Commission with regards to the data and information that is required pursuant to this regulation, and the Commission will report to the Council in relation to any such advice provided.**

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

#### **Regulation 92**

##### **Seabed Mining Register**

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and taking account of the Guidelines. Such register shall contain **the following information (except to the extent it is Confidential Information)**:

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

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

(c) **A copy of each Council decision to award a contract including the rationale,** and ~~the~~ terms of the various exploitation contracts in accordance with regulation 1, **including copies of the approved Plans of Works;**

(d) The geographical extent of Contract Areas and Mining Areas to which each relate;

(e) The category of Mineral Resources to which each relate;

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

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

(e quat.) Inspection reports;

(f) All payments made by Contractors to the Authority under these regulations;

(g) Any encumbrances regarding the exploitation contract made in accordance with regulation 22;

- (h) Any instruments of transfer;
- (i) All reports submitted to the Authority by the Contractor, including annual reports submitted under regulation 38, Incident reports submitted under regulation 33(2)(f), environmental monitoring reports submitted under regulation 39bis(3) and (4), and performance assessment reports submitted under regulation 52;
- (j) copies of notifications made under regulation 34 of Notifiable Events;
- (k) Reports of reviews of activities under plans of works under Regulation 58;
- (l) A copy of inspection reports prepared under Regulation 100;
- (m) A copy of the compliance record for every Contractor, prepared under Regulation 100bis;
- (n) A copy of every compliance notice issued under Regulation 103 and, where applicable, the corresponding improvement plan;
- (o) copies of each Contractor's documents validating, declaring, and confirming the Environmental Performance Guarantee;
- (p) Any other details which the Secretary-General considers appropriate (save Confidential Information).

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

## **Part XII Settlement of disputes**

### **Regulation 106**

#### **Settlement of disputes**

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI and Part XV of the Convention [and the rules of procedure adopted by the International Tribunal for the Law of the Sea [for the conduct of expedited hearings concerning the Rules of the Authority.]]

2. ~~In accordance with article 21 (2) of annex III to the Convention,~~ Any final decision rendered by a court or tribunal having jurisdiction under the [Convention] [and the Rules of the Authority] relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention [affected thereby].

*[Facilitators' Note: Delegates are requested to consider whether the regulations should provide mechanisms for administrative review procedures for decisions of the Authority (in addition to the more formal dispute resolution procedures in UNCLOS). This may, for example, provide for procedures that can be more efficient than a referral to ITLOS, and may provide more comprehensive grounds for review and/or legal standing in certain circumstances to parties other than Contractors and States. Delegates are also invited to discuss whether the regulations should include a requirement to attempt alternative dispute settlement, rather than requiring immediate recourse to ITLOS.]*

## **Part XIII Review of these regulations**

### **Regulation 107**

#### **Review of these regulations**

1. Five years following the approval of these regulations by the Assembly, or at any time thereafter, the Council shall undertake a full review of the manner in which the regulations have operated in practice.

2. If, in the light of improved knowledge, technology, implementation experience, or identification of regulatory gaps, it becomes apparent that these regulations are not adequate, any State party, the

Commission, any Contractor through its sponsoring State, [or Stakeholder [through its relevant State Party]] may at any time request the Council to consider, at its next ordinary session, revisions to these regulations and the matter shall be included in the provisional agenda of the Council for that session.

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

4. In the light of that review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these regulations, taking into account the recommendations of the Commission or other subordinate organs.

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

5 alt. The Council may incorporate an appropriate transition period for implementation by existing Contractors of any amendments to the regulations.

## **[Appendix II: Schedule of annual, administrative and other applicable fees**

### **Prescribed amount (United States dollars)**

#### **Annual fees**

Submission of annual report (regulation 84) [ ]

#### **Application and other fees**

Application for the approval of a Plan of Work (regulation 7(3)(j)) [ ]

Renewal of an exploitation contract (regulation 20) [ ]

Transfer of an interest in an exploitation contract and approved Plan of Work (regulation 23) [ ]

Use of a contract or approved Plan of Work as security (regulation 22) [ ]

Temporary suspension in Commercial Production (regulation 29) [ ]

Modification to a Plan of Work (regulation 57) [ ]

Approval of a revised/final Closure Plan (regulations 59(2) and 60) [ ]

Approval of a revised Environmental Management and Monitoring Plan (regulation 52(8)(b))

[Other] ]

*[Facilitators' Note: Several delegations have proposed to delete Appendix II, and instead to set specific fee amounts via Council decision (on the basis of a recommendation by the Finance Committee). Another proposal is to retain the list in Appendix II, but with specific fee amounts.]*

## **APPENDIX III: Monetary Penalties**

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

*[Facilitators' Note: Several delegations have proposed to delete Appendix III, and instead to set specific penalty amounts via Council decision.]*

## **Schedule: Use of terms and scope**

**“Effective Control”** or **“effectively controlled”** requires a substantial and genuine link between sponsoring State and Contractor, which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the sponsoring State or otherwise.