

Twenty-eighth session
Council session, part III
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Draft regulations on exploitation of mineral resources in the Area

The President's further revised draft text

Prepared by the President of the Council for the twenty-eight session, Ambassador Juan José González Mijares (Mexico)

Explanatory note

1. I have prepared the President's further revised text in the enclosure to assist discussions during the informal negotiations. The text includes the following parts:

- (a) The Preamble;
- (b) Part III, Rights and Obligations of Contractors;
- (c) Part X, General Procedures, Standards, and Guidelines;
- (d) Annex I, Application for approval of a plan of work;
- (e) Annex II, Mining Work Plan;
- (f) Annex III, Financing Plan;
- (g) Annex V, Emergency Response and Contingency Plan;
- (h) Annex VI, Health and Safety Plan and Maritime Security Plan;
- (i) Annex IX, Exploitation Contract and Schedule;
- (j) Annex X, Standard clauses for exploitation contract;
- (k) Appendix I, Notifiable events;
- (l) Schedule, Use of terms, and scope.

2. I have adopted a similar approach to the revisions as with the previous versions of the text, and I refer to the President's revised text in respect of the working modalities ([ISBA/28/C/TWG/ICE/CRP.1](#)). The views expressed and the textual proposals provided during and after the meeting in July 2023, were considered in the preparation of this further revised text.

Preamble

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

~~—[Ensuring the effective protection for the Marine Environment from harmful effects, which may arise from the activities in the Area, in accordance with Article 145 of the Convention];~~

~~—Reaffirming the fundamental importance of the principle that the Area and its resources are the common heritage of mankind;~~

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

~~—Considering that the objective of these regulations is to provide for the exploitation of the resources of the Area consistent with the Convention and the Agreement.~~

Preamble Alt.

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”) [and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”)], the Area and its resources are the common heritage of human~~man~~kind, and the [Exploration and] Exploitation of the resources of the Area shall be carried out for the benefit of human~~man~~kind as a whole, on whose behalf the Authority acts.

The objective of these regulations is therefore to [regulate] ~~[provide for]~~ the Exploitation of the resources of the Area consistent with the Convention, including the duty [to take necessary measures in accordance with the Convention] to ensure effective protection for the Marine Environment from harmful effects caused by those activities.

Comments/remarks

- I noted that many delegations welcomed the alternative wording of the preamble. Furthermore, many delegations stated their flexibility in terms of what version would be used. I therefore suggest continuing the negotiations based on the alternative wording, and I have attempted to implement the relevant parts of the original wording and ensured better reference to the language of article 145 of UNCLOS.

[Part I Introduction and Part II Applications for approval of Plans of Work in the form of contracts (regulations 1-16) are covered by IWG IM]

Part III Rights and Obligations of Contractors

Section 1 Exploitation contracts

Regulation 17 The exploitation contract

1. Upon the Council's approval of a Plan of Work, the Secretary-General shall prepare an exploitation contract between the Authority and the applicant in the form prescribed in annex IX to these regulations.
2. The exploitation contract shall be signed on behalf of the Authority by the Secretary-General or duly authorized representative. The designated representative or the authority designated under regulation 5 (2) shall sign the exploitation contract on behalf of the applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each exploitation contract.
3. The exploitation contract and its schedules is a public document, and shall be published [without delay]/[7 days] in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

Regulation 18 Rights and exclusivity under an exploitation contract

1. An exploitation contract shall confer on a Contractor [or the Enterprise] the exclusive right to:
 - (a) Explore for the specified Resource category in accordance with paragraph 7 below; and
 - (b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work and regulations 18bis and 18ter, provided that [exploitation activities][mining operations] shall only take place in approved Mining Areas and subject to prerequisites prescribed under regulation 25(6).
2. The Authority shall not permit any other entity to exploit or explore for the same Resource category in the Contract Area for the entire duration of an exploitation contract.
3. The Authority, in consultation with a Contractor, [and with the cooperation of States Parties to the Convention,] shall ensure, [to the extent possible,] that no other entity Contractor operates in the Contract Area for a different category of Resources in a manner which might interfere with the rights granted to [or operations of] the Contractor.
4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended, or terminated except in accordance with [Regulation 18.ter.] [the terms thereof].
5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources [or any other part of the Marine Environment,] other than those rights expressly granted by the terms of the exploitation contract or these regulations [nor limit any freedoms of the high seas].

[5.bis. Adverse impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract area.]

6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for a renewal of its exploitation contract.

7. In relation to exploration activities in the Contract Area conducted under an exploitation contract:

[(a) The Contractor may conduct Exploration activities within the Contract Area, in accordance with the proposed Exploration programme included in the Mining Workplan.]

[(b) the applicable Exploration Regulations shall continue to apply as set out in the relevant [Standards and/or] [Guidelines]. In particular, † The Contractor shall continue to [show] exercise due diligence in conducting exploration activities in the Contract Area and shall, together with the reporting of such activities and it's the results of its Exploration activities to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k) and relevant Standards, taking account of Guidelines.

(c) The Contractor shall also take into account:

(i) any recommendations issued by the Commission pursuant to the Exploration Regulations, and

(ii) provisions of the Exploration Regulations that relate to the protection and preservation of the marine environment, and environmental baselines and monitoring.

(d) In order to progress from Exploration to Exploitation of a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new environmental impact statement and revised Plan of Work, in accordance with regulation [46.bis.] and which must be approved by the Authority in accordance with regulations [12 to 16].

Comments/remarks

- I have received a proposal for the insertion of para 5.bis that relates to the mining impact being limited to the Contract area. I invite for discussions of this insertion.
- Based on several proposals, I have updated para 7.

[Regulation18 bis

Obligations of the Contractors.

1. Contractors shall comply with these Regulations and the Rules of the Authority, as well as the applicable Regional Environmental Management Plan as amended from time to time, in a manner consistent with the Convention, the Agreement and the Exploitation Contract.

1.bis. A Contractor shall carry out the proposed Plan of Work in accordance with these Regulations, Good Industry Practice, Best Available Scientific Evidence and Best Environmental Practices, using appropriately qualified and adequately supervised personnel.

1.ter. Contractors shall remain current in their implementation of Best Environmental Practices and Good Industry Practices, and shall continually identify and implement

solutions that reflect the most up-to-date Best Available Scientific Evidence and Best Available Techniques.

[1.quat. Contractors shall 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.]

2. Contractors, their holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships shall be held liable for the compliance of the Contract. Particularly, they shall be jointly and severally [and strictly] liable for the obligation of compensating damages arising outside of permitted Exploitation Activities [or for unforeseen damage arising from permitted activities].

3. In the event that Contractors fail to comply with their payment obligations under these Regulations, holdings and Ultimate Parent Companies shall be held responsible to effect such payments to the Authority on behalf of Contractors.

~~4. [Sponsor States shall take all legislative and administrative measures to assure that Contractors have all material, operative, and financial means to comply with the Contract and these Regulations and that no corporate limitation shall prevent Contractors, holding and Ultimate Parent Companies to compensate damages and make the payment required by the Contractors under the Contract and these Regulations.]~~

Comments/remarks

- During the July 2023 meeting, the retention of the regulation was discussed, and several delegations and observers supported the inclusion of draft regulation 18 bis. I have thus retained it and updated it according to the proposals for refinement.
- I have deleted para 4, since this regulation relates to sponsoring state liabilities, and not the obligations of the Contractors.

Regulation 18 ter Termination of a Contract

1. An exploitation contract can only be terminated:

(a) by all parties to the contract by mutual consent;

(b) by the termination of State sponsorship, in accordance with regulation 21;

(c) by the Contractor in accordance with the terms of the contract, as covered by section 10 of the Annex X to these regulations;

(d) by the Authority in accordance with the terms of the contract, as covered by section 12 of the Annex X to these regulations; or

(e) by expiry of the term of the contract, without renewal.

2. Any suspension or termination of a contract by the Authority shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate the contract in accordance with Part XI, Section 5, of the Convention, in which case the contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

Comments/remarks

- I have received several written proposals for a regulation that collates the circumstances under which a contract may be terminated, and I have thus inserted this new draft regulation 18 ter.

Regulation 19

Joint arrangements

1. Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.
2. The Council shall enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of the Convention.

~~**Regulation 19 Alt**~~

~~**Joint arrangements**~~

~~Before approving any contract with an entity referred to in article 153, paragraph 2(b), of the Convention, the Authority shall adopt Standards and Guidelines:~~

- ~~(a) providing for joint arrangements between a Contractor and the Enterprise, pursuant to article 11 of Annex III of the Convention; and~~
- ~~(b) in relation to financial terms, to further the objective of enabling the Enterprise to engage in seabed mining, pursuant to article 13(1)(c) of Annex III of the Convention.~~

Comments/remarks

- From the discussion in July 2023, I understood that most delegations and observers were in favour of the original wording of draft regulation 19. I thus suggest that we continue the negotiations based on that version.

Regulation 20

Term and renewal of exploitation contracts

1. ~~[Subject to the provisions of section 8.3 of the exploitation contract,]~~ The maximum initial term of an exploitation contract is 30 years [from the commencement of Commercial Production]. ~~[The Authority and the Contractor may agree to a shorter period in light of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan [and the policies and objectives of the Authority cited in regulation 2.]]~~
2. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than one year before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.
3. The Contractor shall supply such documentation as may be specified in the Standards and Guidelines. If the Contractor wishes to make any changes to a Plan of

Work and such changes are Material Changes, the contractor shall submit a revised Plan of Work.

~~[3.Alt. The Contractor submitting an application to renew an exploitation contract shall supply a revised plan of work, including an updated EIA, as well as such documentation as may be specified in any applicable Standard and taking account of Guidelines. Submission of a revised Plan of Work for the purposes of this regulation is deemed to be a Material Change for the purposes of regulation 57.]~~

4. The Commission shall consider such application to renew an exploitation contract at its next meeting after submission of any revised plans or responses by the Contractor pursuant to regulation 11(2), provided the documentation required under paragraph 3 has been circulated at least [30]/[60] Days prior to the commencement of that meeting of the Commission.

5. In making its recommendations to the Council under paragraph 6 below, the Commission shall examine and assess applications in accordance with regulation 13, against the criteria contained in regulation 12, and take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58, as well as any other relevant information from, inter alia, performance assessments, annual reports, and environmental reports; ~~[legal actions against the contractor].~~

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

(a) The Resource category is recoverable annually in Commercial and Profitable Quantities from the Contract Area;

~~(a)alt. [The term of renewal reflects the expected economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability.]~~

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

~~[(b) bis. The cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan as a result of the renewal, and that such renewal does not hinder the achievement of the strategic and regional environmental goals and objectives;]~~

(c) The exploitation contract has not been terminated earlier;

(d) The Contractor has paid the applicable fee in the amount specified in appendix II;

~~(e) — [The Council is satisfied that the requirements of regulation 13 will be met; and]~~

(f) [The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.]

7. Each renewal period shall be a maximum of 10/15 years.

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated under regulation 5 (2). The terms of a renewed exploitation contract shall be those set out in the standard

exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

~~9. Sponsorship is deemed to continue throughout the renewal period unless the Sponsoring State or States terminates its sponsorship in accordance with regulation 21.~~

10. An exploitation contract in respect of which an application for renewal has been made shall, despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

Comments/remarks

- I have attempted to streamline the draft regulation and omit elements that are already covered in other draft regulations.

**Regulation 21
Termination of sponsorship**

1. Each Contractor that is not the Enterprise or a State Party shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the exploitation contract in accordance with article 153(2)(b) of the Convention and regulation 6, and to the extent necessary that it complies with regulations 6 (1) and (2).

~~[1.bis. A Contractor shall promptly notify the Authority if the Contractor's Sponsoring State or States terminates its sponsorship. The sponsoring State or States shall also promptly notify or confirm any termination of sponsorship to the Authority.]~~

[2.alt. Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship, as defined in this Regulations, if a State ~~may~~ terminates its sponsorship [of a Contractor, it shall promptly] by providing to the Secretary-General with a written notice describing the reasons for such termination and the date the termination is to take effect, and no earlier than the following timeframe:

(i) Termination due to a Contractor's material non-compliance under its terms of sponsorship: ~~termination to~~ takes effect ~~[no earlier] [no later than]~~ [6] months after the date of receipt of the notification by the Secretary-General;

(ii) Termination due to reasons other than those listed in subparagraph (i) above: ~~termination to~~ takes effect ~~no [earlier] [later] than~~ 12 months after the date of receipt of the notification by the Secretary-General.]

2.alt.bis. If the reasons for termination of sponsorship include non-compliance under its terms of sponsorship, the Contractor must immediately suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.

3. In the event of termination of sponsorship, due to reasons other than those listed in subparagraph 2 (i) the Contractor shall, within the period referred to in [sub]paragraph 2 (ii) before the previous State's sponsorship ends, obtain another Sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a Sponsoring State or States within the required period unless the Contractor has sought the Council's consent to transfer its rights and obligations under the exploitation contract pursuant to regulations 23.

3.bis. In the event that the Contractor is able, within the relevant period, to obtain another Sponsoring State or States in accordance with sub-paragraph 3, the Authority shall deal expeditiously with any consents that are required as a result under regulations 23 or 24.

4. A Sponsoring State or States is not discharged from any obligations accrued while it was a Sponsoring State by reason of the termination of its sponsorship nor shall such termination affect any legal rights and obligations created during such sponsorship [consistent with the requirements of contractors, including as set forth in Annex III, Article 17.2(e) of the Convention].

5. The Secretary-General shall promptly notify, ~~as soon as practicable,~~ the members of the Authority of a termination or change of sponsorship.

6. After a Sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, especially in the case of termination of contract that also equates to a material breach of compliance with the terms of the exploitation contract [may]/[shall] require the Contractor to suspend, or continue the suspension of, its mining operations until such time as [the Contractor has proved to the satisfaction of the Council that the breach of compliance with the exploitation contract has been addressed and a new certificate of sponsorship is submitted.

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

8. [If a Sponsoring State terminates its sponsorship of a Contractor, this has no impact on the sponsorship of that Contractor by any other Sponsoring State except in circumstances where the sponsorship termination occurred due to the reason in subparagraph 2(i), any other Sponsoring State or States will also be deemed to have terminated sponsorship of the Contractor that is non-compliant under its terms of sponsorship.]

Comments/remarks

- I have proposed to delete para 1.bis. since the obligations to notify the Authority has already been placed on the Sponsoring State in para 2.alt.
- Para 8 has been proposed to contemplate for the situation where only one Sponsoring State terminates its sponsorship.

Regulation 22

Use of exploitation contract as security

1. The Contractor may, [solely for the purpose of raising financing to effect its obligations under an exploitation contract and only with the prior consent ~~of the Sponsoring State or States and~~ of the Council [which consent shall not be unreasonably withheld or delayed], based on the recommendations of the Commission], mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract.

2. ~~[In seeking consent under this regulation,]~~ The Contractor shall, [in its annual reports submitted in accordance with regulation 38,] disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph

1 above and its potential impact on the activities under the exploitation contract in the event of any default by the Contractor.

3. As a condition to giving consent under this regulation, the Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above shall agree either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the exploitation contract and these regulations, in which case the beneficiary must fulfil the requirement of paragraph 4 and 5 of regulation 23 or that such a beneficiary shall transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23 as determined by the Commission.

4. The Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

(a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted including environmental and social governance standards, with reference to relevant Standards and Guidelines where relevant; ~~or and~~

(b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an exploitation contract, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an exploitation contract. Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract.

6. The Authority shall provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an exploitation contract.

[DR 23, 23bis and 23ter is covered by the OEWG]

Regulation 24

Change of control

~~[1. For the purposes of this regulation, a "change in control" occurs where there is a change [in 50 per cent or more of] in the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, [that results in the holding of the beneficial ownership of 50% or more of the Contractor or the controlling interest in the Contractor by an entity that previously held a minority share or had no prior equity interest,] or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.]~~

1.Alt. [For the purposes of this regulation, a "change in control" occurs where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee.]

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, as soon as reasonably practicable but no later than 24 hours, notify the Secretary-General and the Sponsoring State in advance of such change of control; ~~[but in any event within 90 Days thereafter and in the case of an~~

~~entity providing an Environmental Performance Guarantee, no later than within 90 Days thereafter].~~ The Contractor shall provide the Secretary-General and the Sponsoring State with such details as he or she shall reasonably request of the change of control [including whether or not the change of control affects the Contractor's nationality or State of effective control, ~~for the purposes of determining the Sponsoring State.~~] [On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall promptly notify the Commission and the Council.]

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Commission shall ~~Secretary-General may:~~

(a) Determine whether that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect, or

(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or

(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.

(d) Confirm with the Sponsoring State, [through the Secretary-General.] whether its sponsorship continues, or require a written notice under regulation 21 bis. where sponsorship has terminated.

[(e) Provide a report on any developments pertaining to this paragraph to the Council at its next meeting.]

4. Where the [Commission] ~~[Secretary-General]~~ determines that, following a change of control, a Contractor may not ~~be able to~~ have the [operational or] financial capability to meet its obligations under its exploitation contract, the ~~[Secretary-General shall inform the Commission accordingly. The]~~ Commission shall submit a report of its findings and recommendations to the Council. [The Council shall consider the matter at its next meeting with a view to take a decision.]

Comments/remarks

- I have received proposals for placing the tasks in paras 2, 3 and 4 with the Commission instead of the Secretary-General. I have done that, but would like to remind delegations that these tasks merely has an administrative nature.

**Section 2
Matters relating to production**

**Regulation 25
Documents to be submitted prior to production**

At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared

in accordance with Good Industry Practice, taking into account the applicable Guidelines ~~[as well as the results of the test mining study pursuant to Regulation [48bis], paragraph 2 or 3, as applicable, and in accordance with Annex [IV ter]]~~, and the Secretary General shall submit this matter to the Commission. If the Commission considers that any Material Change needs to be made to the Plan of Work, the Contractor shall prepare and submit to the Commission [through the Secretary-General] a revised Plan of Work accordingly.

~~[2. ——— Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57 (2) shall apply mutatis mutandis to such Environmental Plans [if the modification to the Environmental Plans constitutes a Material Change], and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.]~~

[2.alt. Regulation 57 shall apply to a revised Plan of Work submitted by the Contractor under paragraph 1.]

3. Provided that, where applicable, the procedure under regulation 11 has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine and assess the Feasibility Study and any revised Plan of Work supplied by the Contractor under paragraph 1 above [in accordance with regulations 12 and 13 and any relevant Standard,] and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General ~~on the Environmental Plans~~.

~~[3.bis. An application to renew an exploitation contract shall be accompanied by updated Environmental Plans to be reviewed in accordance with the provisions of regulation 11.]~~

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation ~~57~~44, continues to meet the requirements of regulations 12 and 13, it shall recommend to the Council the approval of the revised Plan of Work. [If the Commission determines that it does not meet said requirements, the procedure established in Regulation 14 (b) will be applied.]

5. The Council shall consider the report and recommendation of the Commission relating to the approval of the revised Plan of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

6. The Contractor may not commence Commercial Production in any part of the Area covered by the Plan of Work until either:

(a) The Commission has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2); or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph 5 above; and the [Authority has confirmed lodgement of] ~~Contractor has lodged~~ an Environmental Performance Guarantee in accordance with regulation 26.

Comments/remarks

- In para 1, I have deleted the reference to test mining. Several delegations have stated that this reference is redundant since it already will be contained in the Feasibility Study.
- I have deleted para 3 bis, as this regulation deals with renewal, and is already covered by draft regulation 20.

Regulation 26 Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of Commercial Production in the Mining Area.
2. The required form and amount of the Environmental Performance Guarantee shall be assessed and recommended by the Commission and determined by the Council according to the applicable Standards and take account of the applicable Guideline, and shall reflect the forecasted costs required for:
 - (a) The premature closure of Exploitation activities;
 - (b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and
 - (c) The post-closure monitoring and management of residual Environmental Effects.
3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period. [In such cases, commercial production may only commence once the full amount has been provided.]
~~[3 bis. The Environmental Performance Bond shall take the form of a letter of credit or surety bond guaranteed by a financial institution with a long term credit rating of AA- or better from Fitch Ratings, Moody's or Standard & Poor and meeting the other financial criteria provided for in the Standard.]~~
4. The amount of the Environmental Performance Guarantee shall be reviewed and updated every five years ~~annually by the Contractor~~:
 - (a) Where the Closure Plan is updated in accordance with these regulations; or
 - (b) As the result of:
 - (i) A performance assessment under regulation 52;
 - (ii) A modification of a Plan of Work under regulation 57; or
 - (iii) A review of activities under a Plan of Work under regulation 58;
 - (iv) [After consultation with a Contractor,] ~~t~~The Authority considers that the likely cost of the activities outlined in (2) have substantially increased;] and
 - (c) At the time of review by the Commission of a final Closure Plan under regulation 60.
 - (d) Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.
5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and submit this calculation to the Secretary General for forwarding to the Commission for their review. [The Commission shall promptly assess and make appropriate recommendations to the Council, which shall determine the revised amount. Within 30 days, the Contractor shall] ~~and~~ lodge a revised guarantee in favour of the Authority.
6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

(a) The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee; or

(b) The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform and non-discriminatory manner.

8. [The lodging of an Environmental Performance Guarantee does not relieve the Contractor of its obligations that are subject of this regulation. Refusal or reluctance on the part of the Contractor to fulfil such obligations shall be subject to the relevant compliance measures under these Regulations.] The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee. [Should the Authority be compelled to make recourse to the Environmental Performance Guarantee due to any non-compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee, the Contractor remains liable to the Authority for any direct, incidental or additional costs incurred by the Authority.]

Comments/remarks

- I had received a proposal from a group to rename the Environmental Performance Guarantee to a “Decommissioning Bond” to clarify and highlight its purpose. During the meeting in July 2023 the proposal did not gain much support, and I have therefore refrained from changing the original naming.
- I have suggested to delete para 3.bis, as this content already is covered by the Commissions guidelines on this matter. Furthermore, if more regulation is needed, I would suggest placing it in standard and/or guidelines.

[DR 27 is covered by the OEWG]

**Regulation 28
Maintaining Commercial Production**

1. The Contractor shall maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations, and market conditions. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.

2. The Contractor shall notify the Secretary-General and the Sponsoring State or States if it:

- (a) fails to comply with the Plan of Work; or
- (b) determines that it will not be able to adhere to the Plan of Work in future.

3. Notwithstanding paragraph 1 above, the Contractor shall immediately suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety to protect the Marine Environment from Serious Harm or a threat of Serious

Harm, to protect human health and safety or to protect human remains, objects or sites of archaeological or historical nature. A Contractor shall notify the Secretary-General and the Sponsoring State or States of such a reduction or suspension of production as soon as is practicable and no later than [72] ~~[24]~~ hours after production is reduced or suspended.

4. A Contractor shall notify the Secretary-General as soon as it recommences any [Commercial Production] ~~mining activities~~, and no later than 72 hours after such commencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

Regulation 29

Reduction or suspension in production ~~[due to market conditions]~~

1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions [or other factors] but shall notify the Secretary-General thereof [as soon as practicable thereafter]. ~~[no later than one month from the date of the reduction or suspension]~~. Such reduction or suspension may be for a period of up to 12 months.

2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least [30 Days] prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. ~~[If business practices are suspended due to global economic conditions or force majeure, the contractor shall be allowed to maintain a longer suspension]~~. The Commission shall [in consultation with the Economic Planning Commission], upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, [of for other circumstances beyond the Contractor's control] recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, decide on the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension. ~~[During the period when the Contractor reduces or suspends production, the annual fixed fee or royalties paid by the Contractor shall be exempted or deducted appropriately]~~.

3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60. Where the Contractor elects to suspend all production for more than five consecutive years, the Council may [suspend] ~~[terminate]~~ the exploitation contract following consultation with the Contractor, and the Contractor [may] ~~[shall]~~ be required to implement the final Closure Plan.

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such commencement, and, where necessary, shall provide to the Secretary-General such non-market information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

~~[Regulation 29 Alt.~~

~~Reduction or suspension in production due to market conditions~~

~~[1. — In pursuance of regulation 2(2)(a) relating to the efficient conduct of activities, and the avoidance of unnecessary waste, and to ensure that the resources are being mined optimally in accordance with the Mining Work Plan, a Contractor shall, in accordance with Best Industry Practices:~~

~~(a) Avoid inefficient mining practices;~~

~~(b) Minimize the generation of waste in the conduct of exploitation in the Area~~

~~2. — A Contractor shall include in its annual report under Regulation 40 such information and Reports as the Secretary General requests, in accordance with the Standards and Guidelines, to demonstrate that the Contractor is meeting the obligations in paragraph 1 above.~~

~~3. — If the Secretary General becomes aware that Contractor is not meeting the obligations in paragraph 1 above, by way of written notice to the Contractor, request a review of mining and processing activities carried out under the Plan of Work. The Contractor shall implement any modifications to bring the Mining Workplan and any mining and processing practice into conformity with Best Industry Practices.~~

~~4. — Members of the Authority shall, to the best of their abilities, assist the Secretary General through the provision of Data and information in connection with this regulation where processing, treatment and refining of ore from seabed mining occur under their jurisdiction and/or control.]~~

Comments/remarks

- I did note support for the deletion of draft regulation 29 Alt during the meeting in July 2023, and I have therefore deleted this alternative.
- I have received a proposal for including a new draft regulation on possible contract termination due to extended suspension in production. I would like to recall that termination is already covered several places in the regulations and the exploitation regulation and would like to open for discussion of the need for including of such a regulation.

Section 3

~~Safety of life [and property] at sea~~

Alt. Safety, labour and health at sea

Regulation 30

Safety, labour and health standards

1. The Contractor shall ensure at all times that:

(a) All vessels and Installations ~~[operating and]~~ engaged in Exploitation activities are in good repair, in a safe and sound condition in accordance with the requirements, specifications and preventive or corrective maintenance plans of the respective manufacturers, and adequately ~~[crewed] [manned]~~, and comply with paragraphs 2 and 3 below; and

(b) All vessels and Installations ~~[engaged in]~~ ~~[employed]~~ in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.

~~(c) [The Health and Safety Plan and Maritime Security Plan annexed to the Plan of Work are kept up-to-date and effectively implemented.]~~

2. The Contractor shall ensure compliance with the ~~[relevant]~~ ~~applicable~~ international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea, the training of seafarers, maritime labour conditions, ~~[as adopted by the Maritime Labour Convention]~~ and the treatment of crew members, as well as ~~[the Rules of the Authority.]~~ ~~[any rules, regulations and procedures of the Authority on these matters.]~~

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their Sponsoring State or States in the case of Installations; and

(b) Comply with the national laws of its Sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker rights for non-crew members and human health and safety that pertains to the mining process rather than to ship operation.

4. The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.

5. The Contractor shall ensure that:

(a) All of its personnel, before assuming their duties, have the necessary experience, training and qualifications ~~[and safety equipment]~~ and are able to conduct their duties safely, competently and in compliance with the Rules of the Authority and the terms of the exploitation contract;

(b) ~~[Implementation of the Environmental Plans, and the Health and Safety Plan and Maritime Security Plan shall include awareness-raising programmes for personnel about the duties arising from those plans, and a programme]~~ ~~An occupational health, safety and environmental awareness plan is put in place~~ to inform all personnel engaged in Exploitation activities as to the occupational and environmental risks which may result from their work and the manner in which such risks are to be dealt with; and

(c) Records of the experience, training and qualifications of all of its personnel are kept and made available to the Secretary-General upon request.

~~6. — When conducting its operations, a Contractor shall [develop], implement and maintain a safety management system, taking account of the relevant Guidelines.~~

[Regulation 30 bis.

Human health and safety management system

1. When conducting its operations, a Contractor shall develop, implement and maintain a safety management system, taking account of the relevant Guidelines.

2. A Contractor's safety management system shall:

(a) Be capable of delivering site-specific safety objectives and meeting performance requirements specified in the Health and Safety Plan and Maritime Security Plan;

(b) Cover occupational health and safety and process safety, including with regards the selection or design of assets, facilities, equipment and materials;

(c) Permit effective reporting to the Authority in connection with safety performance;

(d) Be independently verified annually by an internationally recognized provider of verification services acceptable to the Authority, in accordance with relevant Standards;

(e) Promote inclusivity and gender equality; and

(f) Be in accordance with Good Industry Practice and internationally recognised standards.

3. A proposed change to a Contractor's safety management system shall be treated the same as a modification of a Plan of Work, pursuant to regulation 57 mutatis mutanda.

4. Compliance with this Regulation is a fundamental term of the contract, for the purposes of Regulation 103.]

Comments/remarks

- During the meeting in July 2023, I got the impression that most delegations and observers were in favour of the alternative heading, and I have thus retained it.
- The content of para 6 has been placed in the newly proposed draft regulation 30 bis concerning human health and safety management system.

Section 4

Other activities in ~~users of~~ the Marine Environment

Regulation 31

Reasonable regard for other activities and infrastructure in the Marine Environment

1. Contractors shall, consistent with any relevant [Standards and taking into account any relevant] Guidelines, carry out [exploration and] exploitation [activities] under an exploitation contract with reasonable regard for other activities and infrastructure in the Marine Environment, in accordance with articles 87 and 147 of the Convention, [the Plan of Work] and the approved Environmental Management and Monitoring Plan, [Regional Environmental Management Plan] and Closure Plan.

~~Alt. 1. [Contractors shall, consistent with the [Standards and taking into account the] relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the [and structures] approved Environmental Management and Monitoring] Plan [of Work, the applicable Regional Environmental Management] [and Closure] Plan and any applicable international rules and standards established by competent international organizations, and relevant national laws and regulations of Sponsoring States and flag States.]~~

1.bis. Each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines or interfere with other activities uses of the sea in the Contract Area. In particular, the Contractor shall:

(a) comply with the measures it agreed with the operators undertaking other activities in the Contract Area uses of the sea and of submarine cables and pipelines to reduce the risk of damage to any in-service cables and pipelines; and

(b) ensure that any actions it takes will not interfere with the route of a planned submarine cable or pipeline.

~~[1.bis.alt. Each Contractor shall exercise due diligence to ensure that it does not interfere with other uses of the sea in the Contract Area. In particular, the Contractor shall:~~

~~(a) identify current and planned uses of the sea transiting or proximate to the Contract Area through publicly available data and resources and any other reasonable means — [(b-1) — coordinate directly with the operators undertaking other uses of the sea in order to reduce the risk of interference with those uses as a result of the Contractor's activities];~~

~~(b) coordinate directly with the operators undertaking other uses of the sea in order to reduce the risk of interference with those uses as a result of the Contractor's activities.~~

~~(c) comply with the measures it agreed with the operators undertaking other uses of the sea to reduce the risk of damage to any in-service cables and pipelines; and~~

~~(d) ensure that any actions it takes will not interfere with the route of a planned submarine cable or pipeline];~~

2. ~~Alt.~~ [To further the due and reasonable regard obligations in Articles 87 and 147 of the Convention, the Secretary-General Authority], in conjunction with member States, shall facilitate early-stage coordination between the Contractors and the proponents of the other activities in the marine environment, including through the identification of other marine users in the relevant Regional Environmental Management Plan, which shall be periodically updated].

Comments/remarks

- From the negotiations in July 2023, I understood that most delegations supported the original para 1, and I have attempted to further streamline the provision in accordance with proposals received and attempted to bring it more in line with the wording used in article 147 of the Convention.
- Several delegations suggested to delete para 1.bis.alt. and continue the negotiations based on para 1.bis, and I have thus updated the text accordingly.

Section 5 Incidents and notifiable events

Regulation 32 Risk of Incidents

1. A Contractor shall reduce the risk of Incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction, in accordance with any relevant Standards and taking into account any relevant Guidelines.

2. The reasonable practicability of risk reduction measures shall be kept under review in the light of new knowledge and technology developments and Good Industry Practice, Best Available Techniques and Best Environmental Practices. In assessing whether the time, cost and effort would be grossly disproportionate to the benefits of further reducing the risk, consideration shall be given to best practice risk levels compatible with the operations being conducted.

3. A Contractor shall maintain the necessary risk assessment and risk management systems in accordance with Good Industry Practice, Best Available Techniques and Best Environmental Practices and shall report annually to the Secretary-General on such systems in accordance with regulation 38(2)(h).

Regulation 33 Preventing and responding to Incidents

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable [or likely] that proceeding or continuing would cause or contribute to an Incident, or prevent the effective management of such Incident.

2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its Sponsoring State or States, [States adjacent to the contract area likely to be affected] and the Secretary-General [at the earliest time possible immediately], but no later than 24 hours from the moment the Contractor becomes aware of the Incident;

~~—[(a).Alt. Notify its Sponsoring State or States, [relevant adjacent Coastal States] [States adjacent to the contract area likely to be affected] and the Secretary-General immediately, as soon as reasonably practicable but no later than 24 hours from the time the incident occurred;]~~

(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the Sponsoring State or States, flag State, [States adjacent to the contract area likely to be affected] ~~[coastal State]~~ or relevant international organizations, as the case may be;

(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and

(e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation 34.

(f) Following resolution of an Incident, provide the [Secretary-General and its Sponsoring State or States] [Authority] with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor's response, and lessons learned [and any proposed measures to minimise or reduce the risk of similar incidents occurring in the future].

3. The Secretary-General shall promptly report any Contractor that fails to comply with this regulation to its Sponsoring State or States, [States adjacent to the contract area [likely to be affected]] and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

4. The Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting.

~~[Alt.4.bis.~~ The Secretary-General shall

(a) before issuing instructions under this regulation, request instruction from the Compliance Committee, and consult with the Sponsoring State or State, and other relevant State or international organisations, insofar as it is feasible to do so taking account of the urgency in the situation;

(b) follow any relevant Standards and Guidelines on the issue of instructions under this regulations:

(c) report such Incidents and measures taken to the Commission and the Council at their next available meeting.

5. The Secretary-General shall publish copies of Incident reports at the Authority's website, [subject to ensuring that confidential information is protected].

Regulation 34 **Notifiable events**

1. A Contractor shall immediately notify its Sponsoring State or States, [States adjacent to the contract area likely to be affected] ~~[other relevant stakeholders]~~ and the Secretary-General of the occurrence of any of the Notifiable Events listed in appendix I to these regulations.

2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such Notifiable Event,

(a) provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken, and

(b) Record the Notifiable Events in the Incidents Register,

3. Upon receipt of notification under paragraph (2), the Secretary-General shall consult with the Sponsoring State or States, States adjacent to the contract area [likely to be affected] and other regulatory authorities as necessary, and shall seek the instructions of the Compliance Committee/Council.

4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate.

5. Where a complaint is made to a Contractor concerning a matter covered by these regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within seven Days of the complaint being received.

Comments/remarks

- Several delegations have suggested to delete the reference to “other relevant stakeholders”, as this reference is unclear and creates uncertainty.
- The interrelations between draft regulations 33 and 34 needs to be assessed against the regulations handled in the IWG on ICE, I suggest that it is something that is handled in plenary after the consolidated negotiating text has been prepared.

Regulation 35

Human remains and objects and sites of an archaeological or historical nature

The Contractor shall notify the Secretary-General in writing within 24 hours of any finding in the Contract Area of any human remains of an archaeological or historical and paleontological nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information, within 7 Days of receiving it to the Sponsoring State or State, to the State from which the remains, object or site originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. Such human remains, object or site in the Contract Area should be disposed of for the benefit of mankind as a whole or preserved, so that no further Exploration or Exploitation shall take place, within a reasonable radius, to be determined by the Authority in consultation with the Contractor, after taking into account the views of the State from which the remains or objects originated. [If the Council decides that exploration or exploitation cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or appropriate waiver of fees.]

Comments/remarks

- I have received a proposal to retain the last sentence, since the delegation considers it an appropriate compensation mechanism.

Section 6

Insurance obligations

Regulation 36

Insurance

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with the relevant Standards ~~and Guidelines~~ and applicable international maritime practice, consistent with Good Industry Practice.

[1.bis. The insurance required under paragraph 1 shall:

(a) be proposed at the time of applying for approval of a Plan of Work of exploitation to allow the Commission and Council to assess the satisfactoriness of the proposed insurance policy against this Regulation and the relevant Standard and Guidelines;

(b) be in effect from the start date of the Contract, until such time as the Environmental Performance Guarantee has been released back to the Contractor in full by the Authority; and

(e)I cover all potential harms to people, property, natural resources, and environment that may occur, wherever located, or howsoever caused, as a result of the Contractor's activities in the Area].

2. Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.

3. The obligation under an exploitation contract to maintain insurance as specified in these ~~Regulations and the~~ relevant Standards ~~and Guidelines~~ is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these regulations, the ~~[Compliance Committee]~~ ~~Secretary-General~~ shall issue a compliance ~~notice~~ ~~order~~ under regulation 103. ~~[The Contractor must suspend mining operations as soon as it no longer fulfils the obligation to maintain insurance].~~ The Secretary-General shall notify the Council ~~immediately~~ ~~[at its next available meeting]~~ of such failure, and the corrective measures taken by the Contractor.

4. A Contractor shall not make any material change to or terminate any insurance policy related to its Exploitation activities in the Area without the prior consent of the ~~[Council]~~ ~~Secretary-General~~.

5. A Contractor shall notify the Secretary-General ~~[as soon as practicable possible]~~ ~~immediately~~ if the insurer terminates the policy or modifies the terms of insurance.

6. A Contractor shall notify the Secretary-General ~~[as soon as practicable possible]~~ ~~immediately~~ upon receipt of claims made under its insurance.

7. A Contractor shall provide the Secretary-General at least annually with evidence of the existence of such insurance in accordance with regulation 38 (2) (i).

Comments/remarks

- Several delegations suggested to only refer to standards since this is a vital document for the exploitation activities.
- I have received the newly proposed 1.bis from a delegation. Whilst I think the content is valuable, I would suggest for it to be placed in the standards, and I invite for discussions thereof.
- Some delegations asked for the retention of para 2 since it concerns the protection of the Authority. I have therefore refrained from omitting it.

Section 7 Training commitment

Regulation 37 Training Plan

1. The Contractor shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under schedule 8 to the exploitation contract, these regulations and any training ~~[Standards, taking account of relevant]~~ Guidelines.

2. The Contractor, the Authority and the Sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training Guidelines.

3. Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to the exploitation contract.

~~4. — [In the case of specific training on Mitigation and the prevention of pollution from the Area, participation of representative of the adjacent coastal State should be ensured.]~~

Comments/remarks

- I have received several suggestions from delegations to delete para 4 since the Convention does not contain any provisions or indirect obligations to train representatives of adjacent coastal states.

Section 8
Annual reports and record maintenance

[DR 38 and 39 are covered by the OEWG]

Section 9
Miscellaneous

Regulation 40
Prevention of corruption

1. A Contractor shall not make any gift or reward to any officials, agents or employees or Contractors or subcontractors of the Authority or other individuals operating under the auspices of the Authority to induce or reward such persons for any acts undertaken in accordance with their duties under these regulations.
2. The Contractor acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled and shall conduct its activities under the exploitation contract in accordance with its obligations under such anti-bribery and anti-corruption laws, [including in accordance with the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises].

Regulation 41
Other Resource categories

1. The Contractor shall notify the Secretary-General within 30 Days if it finds, within its Contract Area, Resources other than the Resource category to which the exploitation contract relates. The Secretary-General shall inform the Council about such notification during the next regular session of the Council.
- ~~2. — [If the contractor presents an interest in] [T] [t]he exploration for and exploitation of such finds must be the subject of a separate application to the Authority, in accordance with the relevant Rules of the Authority.~~
- 2.Alt. The exploration for and exploitation of resources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority.

Comments/remarks

- Alt.2 received most support during the meeting in July 2023, and I have thus retained it and suggest deleting the original para 2.

Regulation 42

Restrictions on advertisements, prospectuses and other notices

No statement shall be made in any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor, or to the knowledge with the express or implied permission of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of Exploitation in the Contract Area.

Regulation 43

Compliance with other laws and regulations

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a Sponsoring State and flag State. ~~[Contractors shall comply with all laws and regulations, whether domestic, international, or other, that apply to its conduct of activities in the Area.]~~
2. Contractors shall maintain the currency of all permits, licences, approvals, certificates, [insurance policies,] and clearances not issued by the Authority and that may be required to lawfully conduct Exploitation activities in the Area.
3. Contractors shall notify the Secretary-General promptly when a permit, licence, approval, certificate, [policy] or clearance connected with its activities in the Area is terminated, [changed] or suspended.

[Parts IV and VI are covered by the IWG on Environmental Matters]

[Parts V and VIII covered by the IWG on Institutional Matters]

[Part VII and DR 89 are covered by the OEWG]

[DR 90-92 are covered by the IWG on Institutional Matter]

Part X General procedures, Standards and Guidelines

Regulation 93 Notice and general procedures

1. [Replaced to the Schedule]
2. Any communication shall be made by the Secretary-General or by the designated representative of the applicant or Contractor, as the case may be. [If the communication is transmitted orally, it will be followed up by a written confirmation at the earliest time convenient]; in writing.
3. Service of any communication must be made:
 - (a) By hand, fax, registered mail or email containing an authorized electronic signature; and
 - (b) To the Secretary-General at the headquarters of the Authority or to the designated representative at the address stated on the Seabed Mining Register, as the case may be.
4. The requirement to provide any information in writing under these regulations is satisfied by the provision of the information in an electronic document containing a digital signature.
5. Delivery by hand is deemed to be effective when [made] [accompanied with an acknowledgement copy]. Delivery by fax is deemed to be effective when the “transmit confirmation report” confirming the transmission to the recipient’s published fax number is received by the transmitter. Delivery by registered mail is deemed to be effective 21 Days after posting. Delivery by email is deemed to be effective when the email enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and is capable of being retrieved and processed by the addressee.
6. Notice to the designated representative of the applicant or Contractor constitutes effective notice to the applicant or Contractor for all purposes under these regulations, and the designated representative is the agent of the applicant or Contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.
7. Notice to the Secretary-General constitutes effective notice to the Authority for all purposes under these regulations, and the Secretary-General is the Authority’s agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

[**Regulation 93 bis – Stakeholder consultation** – under development by intersessional working group on a standardized approach for stakeholder consultation]

[Regulation 93 ter Consultations with coastal States

1. Targeted and proactive consultation with adjacent coastal States and any other coastal States adjacent to the areas of a planned activity when they are potentially most affected States, shall take place at different stages of a plan of work, when documents

are being developed and at other appropriate times during and at cessation of exploitation activities, in particular at the development of:

(a) Environmental Plans;

(b) Any review/update of the environmental plans in light of Material Change;

(c) Performance Assessment; or

(d) Closure Plans.

2. Potentially most affected coastal States shall be determined by taking into account the potential effects of the planned activity and includes:

(a) Adjacent coastal States and any other coastal States adjacent to the areas of a planned activity whose exercise of sovereign rights for the purpose of exploring, conserving or managing natural resources may reasonably be affected by the activity;

(b) Adjacent coastal States and any other coastal States adjacent to the areas of a planned activity whose exercise of jurisdiction with regard to the protection and preservation of the marine environment may be reasonably affected by the activity; and

(c) Coastal States identified as potentially affected by the REMP.

3. The Secretariat should assist developing States, including small islands developing States, upon request, to identify potential effects of the planned activity on areas under their jurisdiction.

4. At the different stages indicated in paragraph 1 above, the following steps will be taken:

(a) The contractor/sponsoring State informs the Secretary-General that is ready to engage in a target and proactive consultation. The contractor must then provide a geographical description of the area to be covered by the plan of work and may indicate any coastal State adjacent to the areas of a planned activity that they believe to meet the criteria for potentially most affected States based on studies and available knowledge;

(b) The Secretary-General notifies all States, via Note Verbal, that a plan of work is being prepared for the area "X" and requests them to communicate, within [...] days, whether they meet the criteria for potentially most affected coastal States;

(c) Coastal States that believe they meet such criteria must justify this based on the criteria outlined above in Section II and other relevant information;

(d) The Secretary-General informs the contractor/sponsoring State of the coastal States that have communicated that they meet the criteria for potentially most affected;

(e) The contractor must then undertake targeted and proactive consultations with the coastal States in question [to be further developed in a standard/guideline, which may address inter alia the following issues: (i) the provision of access to information to the coastal States in question relating to the environmental impacts of the planned activity; (ii) consideration of the views and comments of the coastal States in question; (iii) provision of written responses specifically addressing such views and comments, in particular with respect to potential impacts in areas under national jurisdiction; (iv) revision of the planned activity, if appropriate].

5. If the planned activity includes resources that lie across limits of national jurisdiction, the contractor/sponsoring State must exercise due regard to the rights and legitimate interests of the coastal States across whose jurisdiction such deposits lie, and shall:

(a) Notify the coastal State of the intention to submit a plan of work;

(b) Hold regular consultations with the coastal State in question to avoid violation of its rights and interests in the marine resources over which the coastal State exercises sovereignty;

(c) Obtain the prior consent of the coastal States in question if the activity could result in the exploitation of the marine resources over which the coastal State exercises sovereignty; and

(d) Provide opportunity and resources for the coastal State in question to monitor the exploitation activity within the meaning of Article 142 (1) and (2) of UNCLOS.]

Comments/remarks

- I have received one proposal for the insertion of a new draft regulation 93 bis with reference to article 142 of the Convention. I am concerned about the interpretation and extent of the application of article 142 of the Convention, and I have asked the Secretariat to prepare a briefing note in this respect. I invite for discussions of this insertion.

**Regulation 94
Adoption of Standards**

1. The Commission shall, taking into account the views of [recognized experts identified in accordance with annex X], Stakeholders and relevant existing internationally accepted standards, [where applicable,] make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to, inter alia:

(a) Operational safety;

(a).~~bis~~At. The effective protection of human health and safety, and labour matters;

(b) The conservation and Exploitation of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 145.

1.~~bis~~ter. Standards shall describe [and determine] how the Authority and Contractors shall implement these regulations, and shall aim for:

(a) a uniform and non-discriminatory operating environment for all Contractors;

(b) a consistent approach by all parties to reduce environmental impacts and human health and safety risks to as low as reasonably practicable; and

(c) an outcomes-based approach to regulation, which prescribes rigorous environmental outcomes while affording flexibility for the processes by which these outcomes are achieved to enable continuous improvement, particularly as technology advances.

2. The Council shall consider [and approve], upon the recommendation of the Commission and taking into account statements submitted by Stakeholders during a public consultation, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority, including the decisions of the Council and the Assembly and, to the extent relevant, developed on the basis of Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice. If the Council does not approve such Standards, the Council

shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3. The Standards contemplated in paragraph 1 above ~~may~~ must include both qualitative and quantitative standards, if applicable, and must include all the methods, processes and technology required to implement the Standards.

4.~~alt.~~ Standards or amendments thereto adopted by the Council [~~and approved by the Assembly~~] shall be legally binding on Contractors, member States and the Authority from the date of their adoption and the Commission shall review these Standards at least every five years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology, as to whether any revision is required]

4.bis. Standards adopted or revised may incorporate an appropriate transition period for implementation by existing Contractors.

~~[4.ter. For the avoidance of doubt, compliance with Standards is a fundamental term of the contract, for the purposes of regulation 103.]~~

5. In the event of any conflict between the provisions of these regulations and the provisions of a Standard, the regulations shall prevail. The Authority should be notified of the conflict, and shall provide additional guidance as necessary.

~~[5.bis. To the extent of any inconsistency between a Standard and amendments thereto, and an already approved Plan of Work, a Contractor following a reasonable transition period, shall use its best efforts to comply with any additional changes to its Plan of Work as a result of the amendment.]~~

Comments/remarks

- I suggest deleting 4.ter since this is redundant.
- I suggest deleting 5.bis. as this is overlapping and to some extent contradicts the content of paras 4.alt and 4.bis.

Regulation 95 Issue of Guidelines

[1. ~~alt.~~ The Commission or other subsidiary organs of the Authority ~~where so requested by the Council~~, shall, from time to time, [~~where appropriate or upon request by the Council,~~] develop Guidelines of a technical nature, in order to assist in the implementation of these Regulations, taking into account the views of relevant Stakeholders.

1. alt bis. The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, in order to assist in the implementation of these Regulations, taking into account instructions from the Council and the views of the Commission as well as other relevant Stakeholders.

2. The full text of such Guidelines [~~or any revisions thereto~~] shall be reported to the Council Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may direct that the Guideline be modified [~~by the Commission~~] or withdrawn.

3. The Commission or other subsidiary organ, in the case of technical Guidelines and the Secretary-General, in the case of administrative Guidelines shall keep under review such Guidelines which shall be reconsidered, and revised subject to Council approval as needed, at least every five years from the date of their adoption or revision, and in the light of improved knowledge or information.

[4. Guidelines are only of a recommendatory nature, [yet Contractors shall ensure they are apprised of the Guidelines and take them into account in their performance of functions under these regulations and their contract. The observance of a Guideline by a Contractor may serve as supporting evidence of compliance by that Contractor with the relevant Rules of the Authority to which the Guideline relates. The Authority may also request applicants or Contractors to identify and explain departures from Guidelines].

[Part XI is covered by the IWG on ICE]

[Part XII and XIII are covered by the IWG on Institutional Matters]

Annex I

Application for approval of a Plan of Work to obtain an exploitation contract

Section I

Information concerning the applicant

1. Name of applicant.
2. Street address of applicant.
3. Postal address (if different from above).
4. Telephone number [of applicant's designated representative].
- ~~5. Fax number.]~~
6. Email address [of applicant's designated representative].
7. Name of applicant's designated representative.
8. Street address of applicant's designated representative (if different from above).
9. Postal address (if different from above).
10. Telephone number.
11. Fax number.
12. Email address.
13. If the applicant is a juridical person:
 - (a) Identify applicant's place of registration;
 - (b) Identify applicant's principal place of business/domicile; and
 - (c) Attach a copy of applicant's certificate of registration.
 - [(d) Identify the identities and locations of the applicant's:
 - (i) management including any members of its board of directors;
 - (ii) ownership, including any persons or entities holding 5 percent or more of the applicant's equity, if different from the place of registration/domicile, for example in the case the the applicant is a subsidiary of a parent company located in a different jurisdiction and
 - (iii) an organisational chart of the group structure.]
 - (vi) holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships at the time of application]
- [13. bis. Where the applicant is a company, provide an organisational chart or other description of any company group structure, including parent, subsidiary or other associated companies.]
- [13.ter. Provide any additional information to assist determine the nationality of the applicant, or by whose nationals the applicant is effectively controlled.]
14. Identify the Sponsoring State or States.
15. In respect of each Sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.

[15.bis. Provide information about relevant national laws and administrative measures that would apply to the applicant in its conduct of Activities in the Area, including on compensation mechanisms in respect of damage caused by pollution of the marine environment.]

[15.ter. A description of the Contractors and the Sponsoring States (or States) compliance enforcement strategies, and how these align with the Rules of the Authority.]

16. Attach a certificate of sponsorship issued by the Sponsoring State or States.

Section II Information relating to the area under application

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the [World Geodetic System 84] [~~most recent applicable international standards used by the Authority~~] [and a georeferenced file and a map with the limits of the requested area]

Section III Technical information

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.

19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards [and is able to apply its policies in a non-discriminatory and gender-sensitive way].

20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities. [Provide organograms of staffing, and staffing data provided should be disaggregated by gender].

20. bis. [Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines].

[20.ter. Provide evidence that the applicant has demonstrated a satisfactory record of past operational performance and compliance, both within the Area and in other States' jurisdiction].

Section IV Financial information

21. Attach such information, in accordance with the [Standards and] Guidelines, [as applicable], [to enable the Council to determine] [to assist the Authority in determining] whether the applicant has [or will have] access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:

(a) If the application is made by the Enterprise, attach certification by its [competent authority] [Director-General] that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed Plan of Work;

(b) If the application is made by a State or a State enterprise, attach a statement by the State or the Sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed Plan of Work; and

(c) If the application is made by an entity, attach copies of the applicant's audited financial statements, including balance sheets and income statements and cash flow statements for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, noting that:

(i) If the applicant is a newly organized entity and a certified balance sheet is not available, attach a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) If the applicant is a subsidiary of another entity, attach copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the Plan of Work; and

(iii) If the applicant is controlled by a State or a State enterprise, attach a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the Plan of Work.

22. If, subject to regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing [\[and the predicted debt-to-equity ratio\]](#).

23. Provide details of any Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with regulation 26.

Section V Undertakings

24. Attach a written undertaking that the applicant will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;

(b) Accept control by the Authority of activities in the Area as authorized by the Convention; and

(c) Provide the Authority with a written assurance that its obligations under the exploitation contract will be fulfilled in good faith.

Section VI Previous contracts with the Authority

25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:

(a) The date of the previous contract or contracts;

(b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contractors;

(c) The date of termination of the contract or contracts, if applicable;

(d) [The final report on the results of exploration and baseline investigations, including results of testing equipment and operations in the exploration area.]

Section VII

Attachments

26. List all the attachments and annexes to this application (all data and information should be submitted in hard copy and in a digital format specified by the Authority).

26.Alt. [Attach the following attachments and annexes: [xx]]

Annex II

Mining Workplan

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

(a) A comprehensive statement of the Mineral Resource delineated in the relevant Mining Area(s), including details, or estimates thereof, of all known Mineral reserves reported in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves (see [ISBA/21/LTC/15](#), annex V), together with a comprehensive report of a suitably qualified and experienced person that includes details of and validation of the grade and quality of the possible, proven and probable ore reserves, as supported by a pre-feasibility study or a Feasibility Study, as the case may be;

[\[\(a\).bis. A description and schedule of any Exploration activities planned to be conducted following approval of the Exploitation Plan of Work, including a description of the equipment and methods expected to be used.\]](#)

(b) A chart of the boundaries of the proposed Mining Area(s) (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the [II](#) [most recent applicable international standards used by the Authority];

(c) A proposed programme of mining operations and sequential mining plans, including applicable time frames, schedules of the various implementation phases of the Exploitation activities and expected recovery rates;

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of [\[full scale mining machinery\] tests \[test mining\]](#) conducted and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, [and electricity or other energy supply](#) together with details of any certification from a conformity assessment body;

(e) A technically and economically justified estimate of the period required for the Exploitation of the Resource category to which the application relates;

(f) A detailed production plan, showing, in respect of each Mining Area, an anticipated production schedule that includes the estimated maximum amounts of Minerals that would be produced each year under the Plan of Work;

(g) An economic evaluation and financial analysis of the project;

(h) The estimated date of commencement of Commercial Production; and

(i) Details of subcontractors [\[and suppliers of goods and services\]](#) to be used for Exploitation activities, [\[together with information about their compliance records\]](#).

(j) Details on how many vessels [are proposed to] [will] be involved in the mining operations, including how and to where the collected ores [will] [are proposed to] be transported from the mining site to shore for processing, [\[as well as details relating to onshore processing\]](#)

[\(k\) Details relating to onshore processing, if applicable.](#)

Annex III

Financing Plan

A Financing Plan should include [supported by evidence or other relevant sources]:

(a) Details and costing of the mining technique, technology and production rates applicable to the proposed mining activities;

(b) Details and costing of the technological process applicable to the extraction and on-board processing of ~~the~~ Mineral ore;

(c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed mining activities;

(d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;

~~(e)~~ Details regarding other relevant costing, including capital expenditure requirements;

(f) Details of [advance agreed sales, and all] expected revenue applicable to the proposed mining activities;

(g) A detailed cash-flow forecast and valuation, excluding financing of the proposed mining activities, clearly indicating applicable regulatory costs; and

(h) Details of the applicant's resources or proposed mechanisms to finance the proposed mining activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast [and debt-to-equity ratio].

[(i) Details of any loans or planned loans, and the institutions making the loans, with an indication whether those institutions apply [relevant best practice international standards or their equivalent] [the Equator Principles or the International Finance Corporation performance standards, or equivalent].]

[Annex IV is covered by the IWG on Environmental Matters]

Annex V

Emergency Response and Contingency Plan

An Emergency Response and Contingency Plan must:

(a) Be prepared in accordance with Good Industry Practice and the relevant regulations, Standards and Guidelines;

(b) Provide an effective plan of action for the applicant's efficient response to Incidents and events, including processes by which the applicant will work in close cooperation with the Authority, ~~[coastal States,]~~ other competent international organizations ~~[as well as other persons with the relevant expertise or knowhow]~~ and, where applicable, emergency response organizations; and

(c) Include:

(i) The overall aims and objectives and arrangements for controlling the risk of Incidents;

~~(ii) Relevant codes, standards and protocols;~~

(ii) Organizational structure and personnel roles and responsibilities;

~~(iii) Details of individuals authorized to initiate response mechanism(s);~~

~~(v) Details of control mechanisms in place during the course of normal operations;~~

~~(vi) Details of the emergency response equipment;~~

(vii) Details of the safety management system relevant to emergency response;

(viii) Details of the environmental management system relevant to emergency response;

~~(ix) A description of the mining operations and equipment, including emergency response equipment;~~

(x) A description of all foreseeable Incidents, an assessment of their likelihood and consequences and associated control measures;

~~(xi) The number of persons that can be present on the mining vessel(s) at any time;~~

(xii) A description of the arrangements to protect persons on the mining vessel(s), and to ensure their safe escape, evacuation and rescue [in the event of an Incident that presents risks to their safety];

~~(xiii) Details of arrangements for the maintenance of control systems to monitor the Marine Environment in the event of an Incident;~~

~~(xiv) Details of the emergency response plan;~~

~~(xv) Details of the known natural Marine Environmental conditions that may influence the efficiency of response equipment or the effectiveness of a response effort;~~

~~(xvi) Information and measures relating to the prevention of Incidents which could result in Serious Harm to the Marine Environment;~~

(xvii) An assessment of [potential] pollution hazards and the measures to prevent or reduce such hazards, including an assessment of unintentional and unauthorised Mining Discharges and measures to control such discharges;

~~(xviii) An assessment of Mining Discharges and measures to control such discharges;~~
~~[(xviii-1) An assessment of environmental impacts (surface, midwater, benthic) created by the emergency];~~

(~~xii~~) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning;

(~~xiii~~) Details of arrangements for coordinating any emergency response, including coordination with the Authority, other service providers, maritime search and rescue authorities, and nearby vessels, citing the source for such arrangements, where relevant;

(~~xiv~~) Details of training programmes for personnel relating to emergency prevention of response;

~~(xv) A description of the monitoring of performance under the plan;~~

(~~xvi~~) Details of audit and review processes relating to matters covered by this Plan, including regular testing of the Plan, significant changes to the Plan or the nature of operational activities, and the process of Incident investigation, recording and communication to the Authority and the Sponsoring State;

~~(xvii) Details of the presence of other hazards/harmful substances; and~~

~~(xviii) An assessment of the likelihood of oil spills, leaks, etc., due to the normal operation of the mining vessel.~~

~~[(xix-0)] Details of the presence of other hazards/harmful substances;~~

~~(xx) A description of accountability and liability for environmental damage resulting from an [Emergency] [Incident]; and~~

~~(xix) Details of how the Plan is gender-responsive and responsive to persons from vulnerable groups”.]~~

Note: This plan is to be developed further under these regulations and in conjunction with other international organizations, flag States, coastal States and Sponsoring States and other entities that have relevant jurisdictional competence with regard to specific components of the plan.

Comments/remarks

- I have received a proposal for simplifying Annex V to keep the focus on it being the Emergency Response and Contingency Plan. For example, elements and descriptions of the environmental management system should be a part of the Environmental Management Plan.

Annex VI

Health and Safety Plan and Maritime Security Plan¹

A

Health and Safety Plan

1. The Health and Safety Plan prepared under these regulations and this annex must:

(a) Be prepared in accordance with Good Industry Practice, and [relevant] [applicable] standards and guidelines;

(b) Comply with applicable national laws and regulations related to safety and health, including occupational safety and health, of personnel on vessels or installations engaged in activities in the Area, as well as applicable international rules and standards of the International Labour Organization and the International Maritime Organization related to safety and health, including occupational safety and health;

(c) [Be designed with the aim to] eEnsure that all personnel on a vessel or installation engaged in activities in the Area are provided with appropriate safety and health protection, including occupational safety and health protection, and live, work and train in a safe and hygienic environment [with roles and responsibilities allocated to relevant named personnel appropriately];

(d) Identify hazards and risks and include a comprehensive and integrated system for the management of the hazards and risks;

(e) Ensure that the risks to the health and safety of personnel on a vessel or installation engaged in activities in the Area are reduced to a level that is as low as reasonably practicable;

(f) Address all matters of safety of life and the prevention of occupational accidents, injuries and diseases that may be identified as hazards and risks for personnel on vessels or installations engaged in activities in the Area;

(g) Include and refer to the requirements of the Emergency Response and Contingency Plan under annex V of these regulations that relate to protecting and securing the safety and health of all persons on vessels or installations during an incident or emergency;

(h) Be worded in plain language [and, for submission as part of the application for approval of a plan of work, prepared in an official language of the Authority].

(i) [Be gender-sensitive, and specifically address women's safety, and freedom from harassment in the workplace, and consider other issues relevant to ensuring an equitable and inclusive working environment for a diverse workforce].

2. The Health and Safety Plan must contain, as a minimum:

(a) Requirements regarding minimum age and medical fitness for all personnel working and living on a vessel or installation;

(b) Requirements for the competency and training, including mandatory safety training, for all personnel working and living on a vessel or installation;

(c) A description of the measures taken to ensure that the vessel or installation is appropriately and sufficiently staffed manned in order to ensure that the vessel or

¹ Annex VI on a Health and Safety Plan and Maritime Security Plan has been populated with the content of ISBA/26/C/17 and is here shown in a clean version.

installation is operated safely, efficiently and with due regard to security under all conditions;

(d) Information about the number and positions of all personnel working or living and working on a vessel or installation;

(e) Details of shore-based management providing assistance to the vessel or installation, including the designated person with responsibility and authority for monitoring the safety, health and security of operations and with direct access to the highest level of management;

(f) Definitions of levels of authority and effective lines of communication between and among shore staff and personnel on board vessels and installations;

(g) A description of the duties of the master and/or the person designated by the master to take responsibility for the implementation of and compliance with the occupational safety and health plan;

(h) A description of an effective fatigue management strategy determining operational workload requirements matching onboard manning levels and onshore support resources as well as work schedules indicating the maximum hours of work or minimum hours of rest for all personnel living and working on a vessel or installation;

(i) Information about the medical care available on the vessel or installation and the communication and response plans in the event that additional or onshore medical care is required;

(j) Arrangements and procedures for the safe transfer of personnel to and from or between vessels or installations;

(k) A description of [aH] foreseeable occupational hazards, an assessment of their likelihood and consequences, and associated preventative and control measures;

(l) Details regarding procedures for hazard identification and risk assessment on vessels or installations and the preventive and protective measures adopted based on the outcomes of those procedures;

(m) Details of procedures, plans and instructions for key operations concerning the safety of the personnel, vessels and installations;

(n) A description of the equipment and tools to be provided to ensure that all operations are conducted in such a manner as to minimize any adverse effects on [the] [~~workers~~'] occupational safety and health [of personnel] to the extent necessary;

(o) Identification of critical equipment and technical systems that may result in hazardous situations;

(p) A description of crew accommodations and recreational facilities enabling and promoting the personnel's health and well-being, and information on their conformity to relevant rules, regulations and standards;

(q) Details of procedures to ensure that the vessels or installations are maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements that may be established;

(r) Details of audit and review processes, and information on procedures for the implementation of corrective action, including measures intended to prevent recurrence;

(s) Information on procedures ensuring that non-conformities, accidents and hazardous situations are reported, investigated and analysed with the objective of improving safety and prevention;

(t) Details of the procedures for the communication of information between the company/owner/operator and competent authorities and organizations, including the Authority;

(u) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in the warning;

(v) Details regarding consultations with personnel on vessels or installations and, where appropriate, the representative workers' organizations, on the preparation and implementation of the vessel's or installation's occupational safety and health policies and programmes and the procedures to ensure the continuous improvement of the policies to take into account changes in practice and technology;

(w) The occupational safety and health policy and programme for each vessel or installation engaged in activities in the Area:-

[(x) Procedures for the periodic review of the plan and for its updating.]

3. An occupational safety and health policy and programme for a vessel or installation engaged in activities in the Area must contain the following to ensure a safety culture on board the vessel or installation:

(a) An occupational health, safety and environmental awareness plan to inform all personnel engaged in activities in the Area as to the occupational and environmental risks that may result from their work and the manner in which such risks are to be dealt with;

(b) A plan for the communication of the occupational health, safety and environmental awareness plan;

(c) A training plan to establish a safety culture for occupational safety and health for the vessel or installation, including mandatory personal safety training and specific task and equipment training, including the labelling of safety-related equipment;

(d) The roles and responsibilities of:

(i) Masters, officers or other personnel responsible for safety and health, including occupational safety and health on a vessel or installation;

(ii) The vessel or installation safety committee;

(iii) The worker representative on the safety committee.

(e) Requirements, policies and training on the vessel or installation to address the following:

(i) Food and water safety;

(ii) Hygiene and sanitary facilities;

(iii) Measures to prevent disease and vermin;

(iv) Safety, and structural and design features of the vessel or installation, including means of access and asbestos-related risks;

(v) Provision of personal protective equipment for personnel;

(vi) Machinery;

(vii) Ambient factors in the workplace and living accommodation on the vessel or installation, including exposure to noise, vibration, lighting, ultraviolet light, non-ionizing radiation and extreme temperatures;

(viii) Air quality, ventilation and the effects of other ambient factors, including tobacco smoke;

-
- (ix) Structural features of the vessels or installations and means of access, and materials;
 - (x) Special safety measures on and below deck on vessels and installations;
 - (xi) Loading and unloading of equipment;
 - (xii) Fire prevention and fire-fighting;
 - (xiii) Anchors, chains and lines;
 - (xiv) Dangerous cargo and ballast;
 - (xv) Work in enclosed spaces;
 - (xvi) Exposure to biological hazards;
 - (xvii) Exposure to radiological hazards;
 - (xviii) Exposure to chemicals;
 - (xix) Ergonomic hazards;
 - (xx) Physical and mental effects of fatigue;
 - (xxi) Effects of drug and alcohol dependency;
 - (xxii) Communicable diseases;
 - (xxiii) HIV/AIDS protection and prevention;
 - (xxiv) Emergency and accident response;
 - (xxv) Harassment and bullying;
 - (xxvi) Safety and occupational safety and health training of younger workers and trainees on the vessel or installation;
 - (xxvii) Protection for lone and isolated workers;
 - (xxviii) Protection of women workers [and workers from vulnerable groups];
 - (xxix) Measures regarding the safety, and occupational safety and health, of any temporary workers.

- 4. The occupational safety and health policy and programme must also address:
 - (a) Cyberrisks;
 - (b) Procedures for the investigation, reporting and follow-up to any safety or occupational safety and health incidents, including occupational diseases;
 - (c) Protection of the privacy of personal and medical data of personnel.

B

Maritime Security Plan

- 1. The Maritime Security Plan prepared under these regulations and this annex must:
 - (a) Be prepared in accordance with Good Industry Practice and relevant standards and guidelines;
 - (b) Comply with applicable national laws and regulations related to maritime security, as well as applicable international rules and standards of the International Maritime Organization related to maritime security;

(c) Be developed based on a security assessment and risk analysis relating to all aspects of the vessel's or installation's operations in order to determine which of its parts are more vulnerable to maritime security incidents;

(d) Provide an effective plan to ensure the application of measures on board the vessel that are designed to protect the persons on board, the ancillary equipment, the cargo, the cargo transport units, the ship's stores or the vessel from the risks of a security incident;

(e) Be protected from unauthorized access or disclosure;

(f) Be subject to inspection by officers duly appointed by [Inspectors appointed by the Authority under Part XI of these Regulations] ~~the competent authority~~;

(g) Be worded in plain language; ~~and, for submission as part of an application for approval of a plan of work, prepared in an official language of the Authority.~~

[(h) Be gender-sensitive, and specifically address women's security, and any other issues relevant to ensuring maritime safety measures are applied equitably and inclusively for a diverse workforce.]

2. The Maritime Security Plan must contain, as a minimum:

(a) Measures designed to prevent weapons, dangerous substances and devices that are intended for use against persons, vessels, installations or ports, and whose carriage is not authorized, from being taken on board the vessel or installation;

(b) An identification of the restricted areas, and measures for the prevention of unauthorized access to them;

(c) Measures for the prevention of unauthorized access to the vessel or installation;

(d) Procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the vessel or installation, or vessel/port interface;

(e) Basic security measures for security level 1 (the level for which minimum appropriate protective security measures shall be maintained at all times), both operational and physical, that will always be in place;

(f) Additional security measures that will allow the vessel or installation to progress without delay to security level 2 (the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident) and, when necessary, to security level 3 (the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target);

(g) Procedures for evacuation in case of security threats or breaches of security;

(h) Duties of personnel on board vessels and installations who are assigned security responsibilities, and duties of other shipboard personnel relating to security aspects;

(i) Procedures for auditing the security activities;

(j) Procedures for training, drills and exercises associated with the plan;

(k) Procedures for interfacing with port facility security activities;

(l) Procedures for the periodic review of the plan and for its updating;

(m) Procedures for reporting security incidents;

(n) Identification of the vessel or installation security officer;

-
- (o) Identification of the company security officer, including 24-hour contact details;
 - (p) Procedures to ensure the inspection, testing, calibration, and maintenance of any security equipment provided on board;
 - (q) Frequency of testing or calibration of any security equipment provided on board;
 - (r) Identification of the locations where the activation points of the vessel or installation security alert system are provided (when activated, a ship security alert system automatically transmits a ship-to-shore security alert to a competent authority,
 - (s) Procedures, instructions and guidance regarding the use of the vessel or installation security alert system, including testing, activation, deactivation and resetting, and regarding the limitation of false alerts.

3. The Maritime Security Plan must establish that:

- (a) All personnel on board vessels and installations have received security-related familiarization and security-awareness training or instruction;
- (b) Personnel on board vessels and installations with designated security duties have attended a training course on those duties.

[Annex VII and VIII are covered by the IWG on Environmental Matters]

Annex IX

Exploitation contract and schedules

THIS CONTRACT made the ... day of ... between the INTERNATIONAL SEABED AUTHORITY represented by its SECRETARY-GENERAL (hereinafter referred to as “the Authority”) and ... represented by ... (hereinafter referred to as “the Contractor”) WITNESSETH as follows:

A. Incorporation of clauses

The standard clauses set out in annex X to the regulations on exploitation of mineral resources in the Area shall be incorporated herein and shall have effect as if herein set out at length.

B. Contract Area

For the purposes of this Contract, the “Contract Area” means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

C. Grant of rights

In consideration of (a) their mutual interest in the conduct of Exploitation in the Contract Area pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the Convention, (b) the rights and responsibility of the Authority to organize and control activities in the Area, particularly with a view to administering the resources of the Area, in accordance with the legal regime established in Part XI of the Convention and the Agreement and Part XII of the Convention, respectively, and (c) the interest and financial commitment of the Contractor in conducting activities in the Contract Area and the mutual covenants made herein, the Authority hereby grants to the Contractor the exclusive right to Explore for and Exploit [specified Resource category] in the Contract Area in accordance with the terms and conditions of this contract.

D. Entry into force and Contract term

This Contract shall enter into force on signature by both parties and, subject to the standard clauses, shall remain in force for an initial period of [x] years thereafter unless the Contract is sooner terminated, provided that this Contract may be renewed in accordance with the regulations.

E. Entire agreement

This Contract expresses the entire agreement between the parties, and no oral understanding or prior writing shall modify the terms hereof.

F. Languages

This Contract will be provided and executed in the [... and] English language[s] [and both texts are valid].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed this Contract at ..., this ... day of

The Schedules [to the exploitation contract]

Schedule 1

Coordinates and illustrative chart of the Contract Area and proposed Mining Area(s).

Schedule 1 bis

[Certificate of sponsorship]

Schedule 2

The Mining Workplan.

Schedule 3

The Financing Plan.

Schedule 4

The Emergency Response and Contingency Plan.

Schedule 5

The Health and Safety Plan and the Maritime Security Plan.

Schedule 6

The Environmental Management and Monitoring Plan.

Schedule 7

The Closure Plan.

Schedule 8

The Training Plan.

Schedule 9

Conditions, amendments and modifications agreed between the Commission and the Contractor, and approved by the Council, during the application approval process.

Schedule 10

Where applicable under regulation 26, the form of any Environmental Performance Guarantee, and its related terms and conditions.

Schedule 11

Details of insurance policies taken out or to be taken out under regulation 36.

Schedule 12

Agreed review dates for individual plans, together with any specific terms attaching to a review, where applicable.

Schedule 13

To the extent that any documentation is not available at the point of signing the Contract, and a time frame for submission has been agreed with the Commission, this should be reflected here, together with, where applicable, deadline dates.

Annex X

Standard clauses for exploitation contract

Section 1

Definitions

In the following clauses:

(a) “Regulations” means the regulations on exploitation of mineral resources in the Area, adopted by the Authority; and

(b) “Contract Area” means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

Section 2

Interpretation

2.1 Terms and phrases defined in the regulations have the same meaning in these standard clauses.

2.2 In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Contract and references in this Contract to the Convention are to be interpreted and applied accordingly.

Section 3

Undertakings

3.1 The Authority undertakes to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention.

3.2 The Contractor shall implement this contract in good faith and shall in particular implement the Plan of Work in accordance with Good Industry Practice [and Best Environmental Practices]. For the avoidance of doubt, the Plan of Work includes:

- (a) The Mining Workplan;
- (b) The Financing Plan;
- (c) The Emergency Response and Contingency Plan;
- (d) The Training Plan;
- (e) The Environmental Management and Monitoring Plan;
- (f) The Closure Plan; and
- (g) The Health and Safety Plan and Maritime Security Plan,

that are appended as schedules to this Contract, as the same may be amended from time to time in accordance with the regulations.

3.3 The Contractor shall, in addition:

(a) Comply with the regulations, as well as other Rules of the Authority [and Standards], as amended from time to time, and the decisions of the relevant organs of the Authority;

(b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

(c) Pay all fees and royalties required or amounts falling due to the Authority under the regulations, including all payments due to the Authority in accordance with Part VII of the regulations; and

(d) Carry out its obligations under this Contract with due diligence, including compliance with the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment, and exercise reasonable regard for other activities in the Marine Environment.

Section 4

Security of tenure and exclusivity

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct [Exploration and] Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein [and the Regulations]. [Any impacts from activities in the Area carried out under an Exploitation Contract must be strictly limited to the Contractor area.]

4.2 The Authority undertakes not to grant any rights to another person to Explore for or Exploit the same resource category in the Contract Area for the duration of this Contract.

4.3 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than the resource category specified in this Contract but shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation activities of the Contractor.

4.4 If the Authority receives an application for an exploitation contract in an area that overlaps with the Contract Area, the Authority shall notify the Contractor of the existence of that application within 30 Days of receiving that application.

Section 5

Legal title to Minerals

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof; [onto the Contractor's mining vessel or installation and receipt by the Authority of the required payment for those Minerals], in compliance with this Contract.

5.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

Section 6

Use of subcontractors and third parties

6.1 No Contractor may subcontract any part of its obligations under this Contract unless the subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority.

6.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its subcontractors and any work that is further subcontracted, in accordance with Good Industry Practice.

[6.2.bis. The Contractor shall apply due diligence in selecting its suppliers, and shall be responsible to ensure the adequacy of goods and services it procures, in accordance with Good Industry Practice].

6.3 Nothing in this section shall relieve the Contractor of any obligation or liability under this Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under this Contract in the event that it subcontracts any aspect of the performance of those obligations.

Section 7

Responsibility and liability

7.1 [In accordance with the ‘polluter pays’ principle,] (The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, [including the costs of reasonable measures to prevent and limit damage to the Marine Environment,] [arising out of its wrongful acts [or omissions]], account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage [arising out of the Contractors wrongful acts [or omissions]] regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. [For the purpose of clauses 7.1 and 7.2, ‘wrongful acts or omissions’, means any unlawful act or omission attributable to the Contractor that results in damage not anticipated and approved in the Plan of Work, irrespective of bad intention or negligence]. [Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay-out in lieu of actual reinstatement, and/or measures to compensate for third-party economic loss, as well as pure ecological loss and harm to the living resources of the Area.]

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.

7.3 The Authority shall be liable to the Contractor for the actual amount of any damage caused to the Contractor arising out of its wrongful acts in the exercise of its powers and functions, including violations under article 168 (2) of the Convention, account being taken of contributory acts or omissions by the Contractor, its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract, or third parties.

7.4 The Authority shall indemnify the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, against all claims and liabilities of any third party arising out of any wrongful acts or omissions in the exercise of its powers and functions hereunder, including violations under article 168 (2) of the Convention.

Section 8

Force majeure

8.1 The Contractor shall not be liable for an unavoidable delay or failure to perform any of its obligations under this Contract due to force majeure, provided the Contractor has taken all reasonable steps to overcome the delay or obstacle to performance. For the purposes of this Contract, force majeure shall mean an event or condition that the Contractor could not reasonably be expected to prevent or control; provided that the

event or condition was not caused by Contractor action, negligence or by a failure to observe Good Industry Practice.

8.2 The Contractor shall give written notice to the Authority of the occurrence of an event of force majeure as soon as reasonably possible after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance and if a remedy is possible, the estimated time to cure or overcome the event or circumstance and the obligations that cannot be properly or timely performed on account of the event or circumstance) and similarly give written notice to the Authority of the restoration of normal conditions.

8.3 The Contractor shall, upon request to the Secretary-General, be granted a time extension equal to the period by which performance was delayed hereunder by force majeure and the term of this Contract shall be extended accordingly.

Section 9

Renewal

9.1 The Contractor may renew this Contract in accordance with regulation 20, for periods not more than 10 years each, on the following conditions:

~~(a) The resource category is recoverable annually in commercial [and profitable] quantities from the Contract Area;~~

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

~~—(c) This Contract has not been terminated earlier; and~~

~~—(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.~~

~~9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.~~

~~9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract [shall be] [may be] renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.~~

Section 10

Renunciation of rights

10.1 The Contractor, by prior written notice to the Authority, may renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

Section 11

Termination of sponsorship

11.1 If the nationality or control of the Contractor changes or the Contractor's Sponsoring State or States, as defined in the regulations, terminates its sponsorship, the

Contractor shall promptly notify the Authority, and in any event within 90 Days following such changes or termination.

11.2 In either such event, if the Contractor does not obtain another sponsor meeting the requirements prescribed in the regulations which submits to the Authority a certificate of sponsorship for the Contractor in the prescribed form within the time specified in the regulations, this Contract shall terminate forthwith.

Section 12

Suspension and termination of Contract and penalties

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:

(a) If, in spite of written warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this Contract, Part XI of the Convention, the Agreement and the rules, regulations and procedures of the Authority;

(b) If the Contractor has failed, within a reasonable period, to comply with a final binding decision of the dispute settlement body applicable to it;

~~(c)~~ If the Contractor knowingly, recklessly or negligently provides the Authority with information that is false or misleading;

(d) If the Contractor or any person standing as surety or financial guarantor to the Contractor pursuant to regulation 26 of the regulations becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction; or

~~—(e)~~ If the Contractor has not made bona fide efforts to achieve or sustain Commercial Production and is not recovering Minerals in commercial quantities at the end of five years from the expected date of Commercial Production, save where the Contractor is able to demonstrate to the Council's satisfaction good cause, which may include force majeure, [good faith efforts to comply with the environmental obligations imposed by the Authority.] or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving Commercial Production.

12.2 The Council may, without prejudice to Section 8, after consultation with the Contractor, suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if the Contractor is prevented from performing its obligations under this Contract by reason of an event or condition of force majeure, as described in Section 8, which has persisted for a continuous period exceeding two years, despite the Contractor having taken all reasonable measures to overcome its inability to perform and comply with the terms and conditions of this Contract with minimum delay.

12.3 Any suspension or termination shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate this Contract in accordance with Part XI, Section 5, of the Convention. [In [such a] [which] case, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention].

[12.4 If the Contractor takes such action, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.]

12.5 If the Council has suspended this Contract, the Council may by written notice require the Contractor to resume its operations and comply with the terms and conditions of this Contract, not later than 60 Days after such written notice.

12.6 In the case of any violation of this Contract not covered under Section 12.1 (a), or in lieu of suspension or termination under Section 12, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation.

12.7 Subject to Section 13, the Contractor shall cease operations upon the termination of this Contract.

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

Section 13

Obligations on Suspension or following Expiration, Surrender or Termination of a Contract

13.1 In the event of termination, expiration or surrender of this Contract, the Contractor shall:

(a) Comply with the final Closure Plan, [and the Environmental Management and Monitoring Plan] and continue to perform the required environmental management of the Contract Area as set forth in the final Closure Plan and for the period established in the final Closure Plan;

(b) Continue to comply with relevant provisions of the regulations, including:

(i) Maintaining and keeping in place all insurance required under the regulations;

(ii) Paying any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of suspension or termination; and

(iii) Complying with any obligation to meet any liability under Section 8;

(c) Remove all Installations, plant, equipment and materials in the Contract Area; and

(d) Make the area safe so as not to constitute a danger to persons, shipping or [to result in adverse impacts, or a reasonable likelihood of such impacts, to] the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any, shall be deducted from the Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

Section 14

Transfer of rights and obligations

14.1 The rights and obligations of the Contractor under this Contract may be transferred in whole or in part only with the consent of the Authority and in accordance with the regulations, including payment of the fee as set out in appendix II to the regulations.

14.2 The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant in accordance with the regulations and assumes all of the obligations of the Contractor, and if the transfer does not confer to the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention.

14.3 The terms, undertakings and conditions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 15

No waiver

No waiver by either party of any rights pursuant to a breach of the terms and conditions of this Contract to be performed by the other party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

Section 16

Modification of terms and conditions of this Contract

16.1 When circumstances have arisen or are likely to arise after this Contract has commenced which, in the opinion of the Authority or the Contractor would render this Contract inequitable or make it impracticable or impossible to achieve the objectives set out in this Contract or in Part XI of the Convention, the parties shall enter into negotiations to revise it accordingly.

16.2 This Contract may be revised by agreement between the Contractor and the Authority.

16.3 This Contract may be revised only:

- (a) With the consent of the Contractor and the Authority; and
- (b) By an appropriate instrument signed by the duly authorized representatives of the parties.

16.4 Subject to the confidentiality requirements of the regulations, the Authority shall publish information about any revision to the terms and conditions of this Contract.

Section 17

Applicable law

17.1 This Contract is governed by the terms of this Contract, the Rules of the Authority and other rules of international law not incompatible with the Convention.

17.2 The Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract shall observe the applicable law referred to in Section 17.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

17.3 Nothing contained in this Contract shall be deemed an exemption from the necessity of applying for and obtaining any permit or authority that may be required for any activities under this Contract.

17.4 The division of this Contract into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 18
Disputes

Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part XII of the regulations.

Section 19
Notice

Any notice provided to or from one party to another pursuant to this Contract shall be provided in accordance with the notice provision set out at regulation 91 of the regulations.

Section 20
Schedules

This Contract includes the schedules to this Contract, which shall be an integral part hereof.

Appendix I

Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 346 include [any of the following events, except for where it constitutes an “Incident” for the purposes of these regulations]:

~~[1.— Fatality of a person.]~~

~~[2.— Missing person.]~~

3. Occupational lost time illness.

4. Occupational lost time injury.

~~[5.— Medical evacuation.]~~

5.bis. [Marine Mammal Fatality ~~or evident distress~~]

~~[6.— Fire/explosion resulting in an injury or major damage or impairment.]~~

~~[7.— Collision resulting in an injury or major damage or impairment.]~~

8. Significant leak of hazardous substance.

9. Unauthorized Mining Discharge.

10. Adverse environmental conditions with likely significant safety and/or environmental consequences ~~[such as serious harm]~~.

11. Significant threat or breach of security, [including cyber security].

~~[12.— Implementation of Emergency Response and Contingency Plan.]~~

~~[13.— Major impairment/damage compromising the ongoing integrity or emergency preparedness of an Installation or vessel.]~~

14. Impairment/damage to safety or environmentally critical equipment.

15. [Significant] eContact with fishing gear [resulting in its damage].

16. [[Suspected] c[C]ontact with submarine pipelines or cables [resulting in its damage].]

17. [[Significant] eContact with equipment related to marine scientific research [resulting in its damage].

[Appendices II and III are covered by the IWG on Institutional Matters]

[Appendix IV is covered by the OEWG]

Schedule

Use of terms and scope

Comments/remarks

- General terms and scope used throughout the draft regulations are handled in the President’s text. In relation to specialized terms and where expertise within the subject is required for further development, the terms and scope are handled by the relevant working group. Where terms are allocated to any working groups, it is clearly indicated in square brackets in the Schedule included in this text. All proposals provided in the past that relate to the allocated terms and scope have been provided to the relevant chair/facilitator for consideration.

["Authority" means the International Seabed Authority as established by part XI of the Convention and for the purposes of these Regulations shall include all organs of the Authority save for the Enterprise, except where the Enterprise is expressly stated as being included.]

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

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

"Best Available Techniques" [handled by the IWG ENV]

"Best Environmental Practices" [handled by the IWG ENV]

"Best Archaeological Practices" handled by the IWG ENV]

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

["Closure" means activities undertaken within a Contract Area once commercial production has ceased, and includes; Decommissioning, post-mining monitoring and reporting, and any rehabilitation and restoration or compensatory measures that may be agreed.]

"Closure Plan" means the document referred to in annex VIII.

[Alt "Closure Plan" means a document that contains an integrated environmental, social and economic base case for decommissioning, closure and postclosure activities and conditions against which future monitoring can be compared. It will be revised through the lifetime of the contract and must be considered as an integral. Part of operational planning.]

"Commercial Production" shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather

than production intended for information-gathering, analysis or the testing of equipment or plant.¹

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

“**Communication**” means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these regulations;

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

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

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

[Alt “**Contractor**” means a party to an exploitation contract (other than the Authority) in accordance with Part III of these regulations] [and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.]

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

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

“**Cumulative Environmental Effect**” [handled by the IWG ENV]

[“**Decommissioning**” means measures taken, whether onshore or offshore, to permanently cease the operations, remove, or dispose of structures, facilities, installations, and other equipment erected or used for the purposes of activities undertaken pursuant to an exploitation contract, in connection with the abandonment or cessation or partial cessation of those activities in a Contract area or part of a Contract area.]

“**Damage to the Marine Environment**” [handled by the IWG ENV]

“**Day**” means calendar Day.

“**Decommissioning**” [handled by the IWG ENV]

“**Depleted, Threatened or Endangered Species**” [handled by the IWG ENV]

“**Designated representative**” means the person so named on behalf of a Contractor on the Seabed Mining Register [or prior to award of contract, in the application].

“**Ecological Balance of the Marine Environment**” [handled by the IWG ENV]

“**Ecosystem Approach**” [handled by the IWG ENV]

“**Effective Control**” [handled by the IWG IM]

“**Effective Protection**” [handled by the IWG ENV]

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

¹ This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

“Environmental Effect” [handled by the IWG ENV]

“Environmental Impact” [handled by the IWG ENV]

“Environmental Management System” [handled by the IWG ENV]

“Environmental Objectives” [handled by the IWG ENV]

“Environmental Risk” [handled by the IWG ENV]

“Environmental Risk Assessment” [handled by the IWG ENV]

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

“Environmental Performance Guarantor” means each entity or individual that provides an Environmental Performance Guarantee in accordance with these regulations.

“Environmental Plans” [handled by the IWG ENV]

“Exploit” and **“Exploitation”** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in area beyond national jurisdiction~~the Area~~, for the production and marketing of metals, as well as the Decommissioning and Closure of mining operations.

“Exploitation Contract” means an exploitation contract entered into between the Authority and a Contractor in the form prescribed in annex IX to these regulations.

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

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

“Facilities-maritime infrastructure-floating platforms” [handled by IWG ENV]

“Feasibility Study” means a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

“Final Closure Plan” [handled by the IWG ENV]

“Financing Plan” means the document referred to in annex III.

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

“Guidelines” means ~~such documents that provide guidance [support on the implementation of the Regulations] on technical and administrative matters,~~ issued by the ~~organs of the Authority/[Commission and the Secretary-General, respectively]~~ pursuant to regulation 95. [Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. Guidelines are generally considered as recommendatory].

[Alt “Guidelines” means a document that supports the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. The Guidelines are recommendations and not requirements].

“Impact reference zone” [handled by the IWG ENV]

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

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

(b) [A significant unanticipated or unpermitted adverse impact] [Serious Harm] to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such [Serious Harm to the Marine Environment] [adverse impact was only narrowly avoided] is a reasonably foreseeable consequence of the situation; and/or

(c) Damage to a submarine cable or pipeline, or any Installation.

“Incidents Register” means [a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events]~~a register maintained under regulation 33 (2) (e).~~

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

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

“Intangible Cultural Heritage” [handed by the IWG ENV]

“Interference with the Ecological Balance of the Marine Environment” [handled by the IWG ENV]

“Marine Environment” [handled by the IWG ENV]

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

[Alt “Material Change” means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.]

[Alt 2 “Material Change” means a change that effects the fundamental basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority].

“**Metal**” means any metal contained in a Mineral.

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

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

“**Mining Discharge**” means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site [and includes but is not limited to, disposal, spilling, leaking, pumping, emitting, emptying, or discharging].

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

“**Mitigate**” and “**Mitigation**” [means acting/an action or activity intended to remedy, reduce or offset known potential negative impacts to the environment. These occur in a strict hierarchy] [includes]:

(a) Avoiding an Environmental Effect altogether by undertaking or not undertaking a certain activity or parts of an activity;

(b) For Environmental Effects that cannot be avoided, minimizing effects by limiting the degree or magnitude of the activity and its implementation [to the extent practicable and necessary to ensure protection of the Marine Environment];

(c) For Environmental Effects that cannot be avoided or minimised Rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and

(d) For Environmental Effects that cannot be avoided, minimised or rectified, Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;-

[(e) Offsetting, only as a last resort.].

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

“**Preservation**” [handled by the IWG ENV]

“**Preservation reference zone**” [handled by the IWG ENV]

“**Proponent**” [handled by the IWG ENV]

“**Protection**” [handled by the IWG ENV]

“**Rare and Fragile Ecosystems**” [handled by the IWG ENV]

“**Rehabilitation**” [handled by the IWG ENV]

“**Regional environmental management plan**” [handled by the IWG ENV]

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

“**Resources**” [handled by the IWG ENV]

“**Resource Category**” [handled by the IWG ENV]

“**Restoration**” [handled by the IWG ENV]

“Rules of the Authority” means ~~[the Convention]; [the Agreement]~~, these regulations and other rules, regulations and procedures of the Authority [including Standards.] ~~[and Guidelines]~~ [decisions of the Council or Assembly of the Authority, and any other ISA instruments expressed as being binding upon Contractors] as may be adopted from time to time.

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

“Serious Harm” [handled by the IWG ENV]

“Sound commercial principles” means] [...]

“Special Circumstances” means] [...]

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

“Stakeholder” means a natural or juristic person or an association of persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information, [knowledge] or expertise.

“Standards” means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. [Standards have to be considered as mandatory.]

[Alt.1 “Standards” means methodological, procedural, technical or environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, including performance and process requirements, adopted pursuant to regulation 94. Standards are legally binding on Contractors and the Authority”.]

[Alt.2. “Standards” means such documents adopted by the Authority pursuant to regulation 94.]

“Synergistic Impacts” [handled by the IWG ENV]

“Ultimate Beneficial Owner” means each individual who ultimately owns or controls, directly or indirectly and legally or non-legally, shares, capital, a right to profits or voting rights of the Applicant or any individual who otherwise exercises control over the management of the Applicant.

“Underwater Cultural Heritage” [handled by the IWG ENV]